

# The Emergence of an Ethical Legal Framework Addressing Global Challenges to Right to Life and Health, in the Time of COVID-19 Pandemic: Some Concerns

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## **Abstract**

This paper discusses the development of the notion of public health as a national security priority in the context of the COVID-19 pandemic and how safeguarding this notion forces governments to take measures contradictory to their morals that involve violations of international human rights law, most of the provisions of which have become part of customary international law that is binding on all states. The problem is that in public international law, there are no exceptions to justify such violations under any circumstances, including the current COVID-19 pandemic. This is because these violations are inconsistent with the inderogable right to life and health. Even the Draft Articles on the Protection of Persons in the Event of Disasters 2016, intended to represent an international framework designated to address all types of disasters, including health emergencies, have fallen short of addressing the ethical, legal, political, and economic challenges of the COVID-19 pandemic. This paper aims to shed light on measures or practices undertaken by several governments as part of their efforts to combat COVID-19 that represent barriers to access to adequate health care for aliens, vulnerable populations, and people of poor and nonindustrial developing and less-developed states.

This paper also aims to acknowledge the urgent need to establish an ethical legal framework crafted specifically to address large-scale health emergencies such as COVID-19. Such a framework should consider issues related to states' duties towards aliens and vulnerable populations, resource allocation, effective monitoring systems, systems of accountability, and systems to resolve conflicts between human rights of a similar nature, namely, the right to life and health.

**Keywords:** Coronavirus, Ethics, Morals, Bioethics, International Health Law, Expulsion, Removal, International minimum standard.

## I. Introduction: The Paradox of The Right to Life and Health in International Law

Coronavirus, also called COVID-19, has been documented across the globe. At the time of the writing of this paper, a total of 1,934,583 cases have of infection by the virus have been confirmed in 185 states and regions, with nearly 120,863 deaths<sup>(1)</sup>.

Since “SARS-CoV-2” is highly contagious and difficult to detect due to its lengthy incubation period, meaning that some COVID-19 patients may not show symptoms of the disease for as many as two weeks after contracting the virus, many states are taking necessary measures to limit the spread of infection in the country and beyond borders, thus controlling the outbreak. These measures have been determined to be the most effective known strategies to preserve public health, protect national security, and mitigate the present and future social and economic impact of the pandemic on people, services, and businesses.

Some of these measures include bans or restrictions on domestic and international travel, closing schools and businesses, lockdowns, curfew, quarantine, and social distancing. Although such measures involve pronounced human rights violations, they are widely accepted by many democratic states to combat the COVID-19 pandemic. Restrictions on certain human rights and freedoms that are not essential for the preservation of life and do not harm health, such as freedom of movement, right to privacy, and right of assembly, find justification in constitutions<sup>(2)</sup>, national laws<sup>(3)</sup>, international treaties such

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(1) “COVID-19 Map.” Johns Hopkins Coronavirus Resource Center. Accessed April 14, 2020. <https://coronavirus.jhu.edu/map.html>.

(2) For example, Chapter 4, part 1, 24, 5 of Kenya Constitution 2010 says:  
“Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service-

- a. Article 31-Privacy;
- b. Article 36-Freedom of association;
- c. Article 37-Assembly, demonstration, picketing and petition;
- d. Article 41-Labour relations;
- e. Article 43-Economic and social rights; and
- f. Article 49-Rights of arrested persons.”

“The Constitution of Kenya, 2010.” WIPOLex. Accessed April 14, 2020. <https://wipolex.wipo.int/en/text/207672>; See Also, Marzocchi, Ottavio. “The Impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU.” European Parliament, April 23, 2020. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651343/IPOL\\_BRI\(2020\)651343\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651343/IPOL_BRI(2020)651343_EN.pdf).

(3) Under Kuwait’s Law No. 8/1969 regarding the prerequisites of the public health and prevention against communicable diseases, it is permissible for authorities responsible for confronting cases of infection

as articles 4(1), 19(3)(b), 21, and 22 of the International Covenant on Civil and Political Rights, and case law<sup>(4)</sup>. According to The Siracusa Principles adopted by the UN Economic and Social Council in 1984 and UN Human Rights Committee general comments on states of emergency and freedom of movement, such limitations on rights and freedoms should be authorized only for the purposes of protection of national security, public order, public health or morals, or the rights and freedoms of others<sup>(5)</sup>.

This paper is mainly concerned with violations of human rights committed by some governments as part of their measures to combat the COVID-19 pandemic that cannot be justified on a legal basis since they involve the essential right to life and health. The various human rights instruments determine that the right to life is an inderogable right even in times of war or other public emergency<sup>(6)</sup>.

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to impose medical quarantine on people, subject them to medical examinations, and to enter homes to sterilize them. See, "Kuwait Has Right to Impose Medical Quarantine." ARAB TIMES, February 26, 2020. <https://www.arabtimesonline.com/news/kuwait-has-right-to-impose-medical-quarantine/>.

**Note:** On 24 March 2020, the Kuwait parliament approved the amendment of some articles of Kuwait's Law No. 8/1969. The amendments aim to halt the spread of COVID-19 and impose tough penalties on communicable disease law violators. "Kuwait PM Commends Cooperation with Parliament Against Coronavirus." KUWAIT NEWS AGENCY (KUNA), March 24, 2020. <https://www.kuna.net.kw/ArticleDetails.aspx?id=2881121&language=en>.

- (4) The U.S. Supreme Court held in *Zemel v. Rusk* (1965) that a Secretary of State can impose restrictions on passports to travel to countries "where there is imminent danger to the public health or the physical safety of United States travelers" Dean, John. "Travel Bans and Mandatory Quarantines: Ebola Panic Calls for Clarifying the Law." *Verdict*, October 31, 2014. <https://verdict.justia.com/2014/10/31/travel-bans-mandatory-quarantines>. See also, A Pennsylvania state Supreme Court held in *friends of Devito v. Wolf* (April 13, 2020) that the emergency conditions due to COVID-19 justify Governor Wolf's March 19, 2020 executive order compelling the closure of the physical operations of non-life-sustaining businesses. Posner, Eric. "Public Health in the Balance: Judicial Review of Pandemic-Related Government Restrictions." *Lawfare*, April 20, 2020. <https://www.lawfareblog.com/public-health-balance-judicial-review-pandemic-related-government-restrictions>.
- (5) "Human Rights Dimensions of COVID-19 Response." Human Rights Watch, March 19, 2020. <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>.; See, Zarifi, Sam, and Kate Powers. "Human Rights in the Time of COVID-19: Front and Centre." International Commission of Jurists, April 6, 2020. <https://www.icj.org/human-rights-in-the-time-of-covid-19-front-and-centre/>; See also, "Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights." International Commission of Jurists, July 1, 1984. <https://www.icj.org/siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant-on-civil-and-political-rights/>.
- (6) Articles 2 and 15(2) of the European Convention of Human Rights. "European Convention on Human Rights." Accessed April 14, 2020. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).; See, articles 27 and 4 of the Inter-American Convention on Human Rights, "American Convention on Human Rights." Accessed April 14, 2020. [https://treaties.un.org/doc/Publication/UNTS/Volume 1144/volume-1144-I-17955-English.pdf](https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf).; See Also, Articles 6 and 4(2) of International Covenant on Civil and Political Rights, "International Covenant on Civil and Political Rights." OHCHR. Accessed April 14, 2020. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.; Additionally, Article 4 of the Arab Charter on Human Rights, "Arab Charter on Human Rights." Accessed June 1, 2020. <http://hrlibrary.umn.edu/instreet/loas2005.html>.

Nevertheless, some governments adopt measures with the aim of regulating access to health services in the country. These measures make it difficult for specific groups to have the same opportunity as others to be hospitalized or cared for, which puts their lives at risk. Additionally, other measures or practices adopted by some governments have the aim of attracting health care workers from other states or sourcing medical supplies and products needed to fight COVID-19. Such measures, in this critical time, can weaken other states' ability to fight the virus, especially poor and nonindustrial states that can easily be driven out of the race.

This paper addresses these measures while focusing on the ethical and legal challenges that governments face in balancing their national obligations, on the one hand, and their obligations in accordance with international human rights law, on the other hand. This global struggle mainly develops from the idea that public health, under the current circumstances, is regarded as a national security priority. Furthermore, the health care systems of many states may collapse unless governments take firm actions that involve violations of human rights, namely, violations of the right to life and health. With a shortage of medical supplies and protective suits for health care workers, governments have found themselves in situations in which they are forced to let doctors decide who should receive health care and who should not.

Undoubtedly, the international community is facing an unprecedented health crisis that will forever change our understanding of human rights values and how these values should be implemented. With the end of this pandemic, the international community will have to discuss the existing human rights values demonstrated in international treaties and declarations. In particular, the current pandemic has shown us that respecting many of these values could be impractical or could lead to undesirable results. To illustrate, in the time of the current pandemic, giving up the last bed in the intensive care unit (ICU) to treat cancer sufferers rather than coronavirus patients means that the latter may continue to infect other people. Similarly, sharing scarce resources, such as face masks and hand sanitizers, with poor states might not be the wisest decision by a wealthy state.

The international community should agree on a plan to guide governments on how they should act when the only reasonable and known way to protect the most important human right, that is, the right to life, is by violating the very same right of others.

The most relevant international instrument applicable to the COVID-19 pandemic is the non-binding Draft Articles on the Protection of Persons in the Event of Disasters 2016<sup>(7)</sup>. Article 3(a) of the draft articles determines that:

“‘disaster’ means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society....”<sup>(8)</sup>.

Discussions of the International Law Commission (ILC) regarding whether an event falls under the definition of “disaster” reflect the intention of the ILC to adopt a broad definition that covers health emergencies such as epidemics and pandemics regardless of the cause of the event, whether nature or human activity<sup>(9)</sup>. Articles 5 and 6 of the draft articles state that response to disasters should be based on the principles of humanity and respect for human rights of all people without discrimination<sup>(10)</sup>. Article 6 gives special consideration to the protection of vulnerable populations<sup>(11)</sup>. Article 10 concerns the duties of an affected state towards the protection of persons in its territory or territories under its control<sup>(12)</sup>. Articles 7 and 8 of the draft articles concern the international duty of cooperation<sup>(13)</sup>. Articles 11, 12, 13, 14, 15, 16, and 17 of the draft articles discuss the international assistance an affected state may receive from other states or actors of international law<sup>(14)</sup>.

The draft articles do not fit the pandemic caused by COVID-19 because the challenges associated with this pandemic are unique in scope and nature. The draft articles reflect the assumption that the disaster, specifically the harm resulting from it, falls within the borders of only one state. Additionally, the draft articles are crafted to cover as many disasters as possible<sup>(15)</sup>. The COVID-19 pandemic needs a special framework that addresses its specific national and international ethical, economic, political, social, and legal aspects.

(7) “Draft Articles on the Protection of Persons in the Event of disasters 2016.” Accessed April 14, 2020. [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/6\\_3\\_2016.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/6_3_2016.pdf).

(8) *Id.* at 2

(9) Valencia-Ospina, Eduardo. “Second Report on the Protection of Persons in the Event of Disasters.” Accessed April 14, 2020. [https://legal.un.org/ilc/documentation/english/a\\_cn4\\_615.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_615.pdf). At 193-196. [https://legal.un.org/docs/?path=../ilc/documentation/english/a\\_cn4\\_615.pdf&lang=EF5X](https://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_615.pdf&lang=EF5X) (Apr. 11, 2020)

(10) Draft Articles, *supra* note 7, at 3

(11) *Id.*

(12) *Id.*

(13) *Id.*

(14) *Id.* 4-5

(15) Valencia-Ospina, *supra* note 9, at 194. para. 33

The draft articles do not contain any mention of the duties of states, whether the affected state or the state of nationality, to protect aliens during disasters. There is no clause in the draft articles about resource allocation, whether within the affected state or among states. Furthermore, the draft articles do not provide any suggestions regarding how governments will be monitored in implementing the provisions of the draft articles, and it is unclear how governments will be held accountable for violating the provisions of the draft articles. Furthermore, the draft articles fail to provide a system to resolve conflicts among human rights during disasters. Such a system is essential to any legal framework concerning human rights but is more significant at the time of large-scale disasters, when only a few options are available for states in terms of limited time and scarce resources.

The research deals with its subject in a descriptive and applied way. This paper has four parts. The first part is an introduction that includes a discussion of the conflict in the measures undertaken by some governments to fight COVID-19. In the introduction, I explained how the Draft Articles on the Protection of Persons in the Event of Disasters 2016 do not provide sufficient provisions to contain the challenges of large-scale health emergencies such as the COVID-19 pandemic. The second part concerns measures undertaken by several governments that, in practice, represent barriers to access health care for aliens and vulnerable populations. The third part discusses the competition between states for health care workers and medical supplies overseas, with a focus on the role of voluntary international cooperation to mitigate the long-term negative effects of the pandemic. The fourth part is the conclusion.

This research paper is divided into three parts:

- II. Access Barriers to Health Care for Aliens and Vulnerable Populations During the Covid-19 Pandemic
  - II. Competition Over Health Care Workers and Medical Supplies Overseas During the Covid-19 Pandemic
  - IV. Conclusion: Ethical and Legal Framework for Large-Scale Health Emergencies
- II. Access Barriers to Health Care For Aliens And Vulnerable Populations During The Covid-19 Pandemic**

Public international law defines aliens as nonnationals of a state in which they are present. This definition covers both nationals of another state and individuals

who are not nationals of any state; these are stateless persons<sup>(16)</sup>. States should treat aliens in accordance with the standards established by international law. These standards govern issues related to the admission of aliens, foreigners' situations during their stay in the country, and their deportation. Even though freedom of movement to all is recognized under international law, states may require aliens to meet specific requirements before they are admitted to enter their territory. Once aliens are admitted to a state, the state should guarantee aliens the rights of recognition of their legal capacity, the right to liberty, the right to access justice, protection from criminal acts, and the right to life, among other rights and freedoms<sup>(17)</sup>.

Concerning the deportation of foreigners, the international practice recognizes the state's right to deport aliens based on the following grounds: endangering the security and order of the state of residence, committing an offence against the state of residence, threat or offence to other states, committing crimes within the country or abroad, causing economic damages to the state of residence, and unauthorized residence in the country<sup>(18)</sup>. Issues concerning the treatment of aliens have become even more controversial as the COVID-19 pandemic evolves. Governments have adopted measures either to restrict or to prohibit aliens' entry<sup>(19)</sup>. Additionally, some governmental measures deny health care to aliens.

Furthermore, some governments adopt measures to facilitate the rapid deportation of aliens in order to reduce their numbers in the country and thus reduce the pressure on quarantine centers, hospitals, and other public services<sup>(20)</sup>. Regulating aliens' entry is an undeniable right of any state in international law, and the deportation of aliens is governed by established standards in international law, as noted previously; therefore, I will not include discussion of these two issues in this paper.

However, I will address governments' measures that bar aliens from receiving health care or that at least establish obstacles that prevent aliens from receiving

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(16) "Draft Articles on the Expulsion of Aliens, 2014, with Commentaries 2014." Accessed April 14, 2020. [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_12\\_2014.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf). At 5, para. 6

(17) Ortiz, Loretta. "Aliens." Oxford Bibliographies, August 16, 2017. <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0047.xml>.

(18) *Id.*

(19) Salcedo, Andrea, Sanam Yar, Gina Cherehus. "Coronavirus Travel Restrictions, Across the Globe." The New York Times, April 7, 2020. <https://www.nytimes.com/article/coronavirus-travel-restrictions.html>

(20) "Trump Says Countries Must Accept Deportees or Lose Visas." The New York Times, April 11, 2020. <https://www.nytimes.com/2020/04/10/us/coronavirus-live-updates.html>.

adequate medical services. This type of measure directly conflicts with the inderogable right to life and health that should be recognized at all times, even during emergencies, for all people without discrimination on any basis, including nationality, as determined by numerous international instruments concerned with human rights as well as the constitutions of civilized and democratic states<sup>(21)</sup>. Since such measures are inconsistent with states' duties to protect the lives of aliens, the responsibility of the state that caused injury by its internationally wrongful act can be triggered if the state of the nationality of the alien or the state where a stateless person or a refugee is lawfully and habitually resident decides to exercise diplomatic protection on behalf of the injured person<sup>(22)</sup>.

Examples of government measures to respond to the pandemic that aim to deny or limit access to health care for aliens include the discriminatory restrictions introduced on Syrian refugees by more than 20 municipalities in Lebanon<sup>(23)</sup>. On March 19, 2020, Darbaashtar municipality prohibited Syrians from leaving their homes or having visitors, with no exceptions. At the same time, only general restrictions on movements were imposed on Lebanese residents, with the exception of emergencies<sup>(24)</sup>.

Similar measures as those undertaken by governments against aliens to address the pandemic have been adopted against vulnerable, marginalized, and isolated communities. Such communities include, for example, people who live in rural and remote areas, minorities such as people who speak different languages or those of different religions, people with existing medical conditions such as persons living with AIDS/HIV, persons with disabilities, asylum seekers, and elderly people. Measures against vulnerable populations that prevent them from access to health care contradict states' obligations towards these groups

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(21) *Supra* note 6.; *Also*, article 5(d)(iv) of International Convention on the Elimination of All Forms of Racial Discrimination 1965, "International Convention on the Elimination of All Forms of Racial Discrimination." OHCHR. Accessed April 14, 2020. <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>; *See also*, article 12 of International Covenant on Economic, Social and Cultural Rights 1966, "International Covenant on Economic, Social and Cultural Rights." OHCHR. Accessed April 14, 2020. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>; *See also*, articles 10 and 54 of Macedonia (Republic of)'s Constitution of 1991 with Amendments through 2011, "Macedonia (Republic of)s Constitution of 1991 with Amendments through 2011." Accessed April 14, 2020. [https://www.constituteproject.org/constitution/Macedonia\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Macedonia_2011.pdf?lang=en).

(22) Articles 3, 4, and 8 from Draft articles on Diplomatic Protection 2006, "Draft Articles on Diplomatic Protection (2006)." Accessed April 14, 2020. [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_8\\_2006.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_8_2006.pdf).

(23) "Lebanon: Refugees at Risk in COVID-19 Response." Human Rights Watch, April 2, 2020. <https://www.hrw.org/news/2020/04/02/lebanon-refugees-risk-covid-19-response>.

(24) *Id.*



or individuals to respect and fulfill their right to mental and physical health without discrimination due to their vulnerability<sup>(25)</sup>.

In this regard, complaints have been filed in several states in the U.S., including Alabama, Washington, Tennessee, and Utah, alleging that the triage protocols developed by those states to ration scarce resources during the COVID-19 pandemic discriminate against disabled people.<sup>(26)</sup> Human Rights Watch reported in China a child with cerebral palsy left to die when his father was taken to be quarantined<sup>(27)</sup>. Additionally, in China, a man who suffered from kidney disease committed suicide after he could not obtain access to health care for dialysis<sup>(28)</sup>.

### III. Competition Over Health Care Workers and Medical Supplies Overseas During the Covid-19 Pandemic

The allocation of resources at the time of the coronavirus pandemic is not only a national concern but also a global concern. Poor and nonindustrial states are more likely to be affected by the crisis than wealthy and industrial states because they do not have the public health infrastructure, vaccines, and medicines that are essential to face a pandemic. Developed and wealthy states are obligated under international law to cooperate and provide assistance, even though the extent of this obligation is still subject to debate<sup>(29)</sup>. A state's duty of international cooperation and assistance is derived from several international instruments, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Health Regulations<sup>(30)</sup>.

Nevertheless, we observe that some governments of developed states have undertaken measures that might undermine the ability of other states to fight coronavirus. For example, The U.S. Department of State lifted U.S.

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(25) "The Right to Health." Office of the United Nations High Commissioner for Human Rights. Accessed April 14, 2020. <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>. At 11

(26) "HHS-OCR Complaints Re COVID-19 Treatment Rationing." The Arc, March 23, 2020. <https://thearc.org/resource/hhs-ocr-complaint-of-disability-rights-washington-self-advocates-in-leadership-the-arc-of-the-united-states-and-ivanova-smith/>.

(27) Human Rights Dimensions, *supra* note 5.

(28) *Id.*

(29) Gostin, Lawrence, and Robert Archer. "The Duty of States to Assist Other States in Need: Ethics, Human Rights, and International Law." Georgetown University Law Center. Accessed April 14, 2020. [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1006&context=ois\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1006&context=ois_papers). At 527

(30) *Id.*

visa suspension for non-U.S. medical professionals trained overseas<sup>(31)</sup>. The measure aims to increase the medical workforce fighting coronavirus in the U.S.<sup>(32)</sup>. Additionally, the U.S. has been accused of “modern piracy” after reportedly diverting a shipment of approximately 200,000 N95 masks intended for Germany as they were being transferred between planes in Thailand<sup>(33)</sup>.

Tunisia also accused Italy of seizing a shipment of medical alcohol intended for Tunisia from China<sup>(34)</sup>. Several states, including France, Germany, and Russia, have taken measures meant to limit exports of protective medical equipment<sup>(35)</sup>.

An ethical question arises: do developed and wealthy states still have the responsibility to assist states in need during the current pandemic? The answer, from an acute angle, is that international cooperation and assistance should not be attempted by a state unless the state has fulfilled its national duties towards the people in its territory first<sup>(36)</sup>. From a wider angle, the answer is that withholding international assistance at this time means that COVID-19 will continue to spread in other states in need, which would cause future harm in the long term for developed and wealthy states because the risk of contracting the virus would remain high<sup>(37)</sup>. To put it differently, all the efforts that have been undertaken to control the disease in developed and wealthy states will be diminished without timely and collective international action.

#### IV. Conclusion: Ethical and Legal Framework for Large-Scale Health Emergencies

This research paper attempts to shed light on an ethical and legal problem that affects many governments, individuals, and groups in the wake of the

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(31) (“Update on Visas for Medical Professionals.” U.S. Department of State-Bureau of Consular Affairs, April 8, 2020. <https://travel.state.gov/content/travel/en/News/visas-news/update-on-h-and-j-visas-for-medical-professionals.html>).

(32) *Id.*

(33) Willsher, Kim, Julian Borger, and Oliver Holmes. “US Accused of ‘Modern Piracy’ after Diversion of Masks Meant for Europe.” *The Guardian*, April 4, 2020. <https://www.theguardian.com/world/2020/apr/03/mask-wars-coronavirus-outbidding-demand>.

(34) “Tunisia Accuses Italy of Confiscating Medical Alcohol.” *Middle East Monitor*, March 25, 2020. <https://www.middleeastmonitor.com/20200325-tunisia-accuses-italy-of-confiscating-medical-alcohol/>.

(35) McKernan, Bethan, Lorenzo Tondo, Kim Willsher, and Oliver Holmes. “US Hijacking Mask Shipments in Rush for Coronavirus Protection.” *The Guardian*, April 3, 2020. <https://www.theguardian.com/world/2020/apr/02/global-battle-coronavirus-equipment-masks-tests>.

(36) Gostin, Lawrence, and Robert Archer, *supra* note 29, at 530

(37) *Id.*; *See Also*, Gostin, Lawrence, Eric Friedman, and Sarah Wetter. “Responding to COVID-19: How to Navigate a Public Health Emergency Legally and Ethically.” *Wiley Online Library*. *The Hastings Center Report*, March 26, 2020. <https://onlinelibrary.wiley.com/doi/epdf/10.1002/hast.1090>.

COVID-19 pandemic, which is the problem of weighing the right to life and access to health of some against the same right of others. As the pandemic escalates, several governments have adopted measures that undermine the right to life and health of specific individuals or populations. From the perspective of governments, such measures are necessary to protect public health and thus to protect national security. From the perspective of international human rights law, for which most of the rules are derived from morals, there is no justification for taking such measures. Some of these measures target aliens and vulnerable populations within a state, while other measures target other states, particularly poor, developing, and nonindustrial states. The common element of both measures is that they weaken the ability of specific individuals and groups as well as governments to gain access to health care required to fight coronavirus.

This research paper suggests that a framework to resolve this problem should be of an ethical and legal nature. This framework should consider the complex national and international legal, political, economic, and ethical challenges that characterize large-scale health emergencies. To illustrate, the framework should consider issues related to the state's duties to protect aliens and vulnerable populations, the allocation of resources, monitoring governments' implementation of agreed-upon provisions, and systems to hold governments accountable for violations of their duties. Notably, this framework should recognize a system to resolve conflict between humans' right to life and health that identifies some type of prioritization. However, the prioritization system should be based on scientific evidence and implemented in a way that respects civil liberties as much as possible.

A worldwide prioritization system is important because the current pandemic is evidence that an absolute balance between public health and civil liberties cannot be achieved, particularly if conflicting rights involve the right to life and health. Additionally, the lack of guidance within international human rights law will allow every state to implement its interpretation that reflects its understanding of the international human rights rules, which will certainly lead to greater conflict over the correct application of the rules. Such conflict will increase if some states interpret these rules in favor of nationals or in light of religious or cultural teachings.

Finally, this research recommends that resolving the crisis requires comprehensive international action. Separate actions of states to combat COVID-19 will slow any efforts to contain the virus and will leave the most

affected states skeptical about the effectiveness of the remaining members of international organizations and unions that had to provide assistance to them at this critical time but failed to do so. This lack of trust may greatly harm the international order if the affected states decide to leave international organizations and unions that have primary goals of global concerns<sup>(38)</sup>.

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(38) In this regard see, Johnson, Miles. "Coronavirus: Is Europe Losing Italy?." Financial Times, April 6, 2020. <https://www.ft.com/content/f21cf708-759e-11ea-ad98-044200cb277f>.

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## Table of Contents

Subject	Page
Abstract	107
I. Introduction: The Paradox of The Right to Life and Health in International Law	108
II. Access Barriers to Health Care for Aliens and Vulnerable Populations During the Covid-19 Pandemic	112
III. Competition Over Health Care Workers and Medical Supplies Overseas During the Covid-19 Pandemic	115
IV. Conclusion: Ethical and Legal Framework for Large-Scale Health Emergencies	116
References	119

