

SYMPOSIUM ON THE BIDEN ADMINISTRATION AND THE INTERNATIONAL LEGAL ORDER

HOW THE BIDEN ADMINISTRATION CAN REINVIGORATE GLOBAL HEALTH SECURITY, INSTITUTIONS, AND GOVERNANCE

Lawrence O. Gostin^{*}, *Eric A. Friedman*^{**}, and *Sarah Wetter*^{***}

Joseph R. Biden was elected President of the United States during a period of compound crises for global health and security: the worst pandemic in a century, as well as steep reverses in progress toward reducing poverty, hunger, and disease. The United States has been in full retreat from global health leadership, fraying relationships with allies, weakening global institutions, and engaging in nationalist populism that threatens global cooperation to address worldwide challenges. Yet these tragic circumstances are also fertile soil for deep structural reforms. President Biden can both bolster the immediate responses to COVID-19 and its vast ramifications, and spearhead lasting changes to create a healthier and safer world, from which the United States would richly benefit.¹ His immediate task will be to bring U.S. economic and scientific strength to the COVID-19 response in partnership with the World Health Organization (WHO). The Biden administration should also assume financial and strategic leadership in bolstering world efforts to achieve the Sustainable Development Goals (SDGs), including its singular pledge to leave no one behind. Finally, President Biden should empower the WHO and lead on reforms to the global health architecture to advance the right to health.

At a time when the United States is facing its own COVID-19 crisis, the agenda we propose for President Biden is ambitious. And global health leadership will need to complement other, related actions to address pressing global crises that have immense health consequences, like climate change and mass migration. Yet bold leadership on global health will benefit all people, including Americans. As COVID-19 devastatingly demonstrates, Americans' health security is inextricably tied to global health security. Healthier populations are more economically productive; better global health will mean larger markets for U.S. goods and services. U.S. global health leadership will open doors for cooperation on global challenges that themselves threaten the United States, from climate change and antimicrobial resistant organisms to cybersecurity. Such leadership should also help the United States to gain allies for stopping the global advance of authoritarianism and the erosion of human rights. While requiring new funds, the spending linked to our proposals would be minute compared to the overall federal budget, much less the U.S. economy.

^{*} *Faculty Director, O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, D.C., United States; Founding O'Neill Chair in Global Health Law, Georgetown University Law Center; Director, World Health Organization Collaborating Center on National & Global Health Law.*

^{**} *Global Health Justice Scholar, O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington D.C., United States.*

^{***} *Law Fellow, O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, D.C., United States.*

¹ See Lawrence O. Gostin et al., *A Global Health Action Agenda for the Biden Administration*, LANCET (Dec. 1, 2020).

Responding to COVID-19 with Science and Solidarity

The U.S. failure to control COVID-19 domestically has placed the entire world at greater risk, while lowering confidence in U.S. public health and technical expertise and capacities. President Biden should work with governors and tribal leaders to implement a sound national plan with financial support for crucial public health interventions. Equitable and efficient distribution of Food and Drug Administration approved vaccines will be most critical. Leading the COVID-19 response with science, President Biden should support science-based public messaging and guard scientific agencies against political interference.

President Biden can also begin to restore the United States as a leader in combatting global health crises by building cooperation among countries around a global COVID-19 strategy led by the WHO. His promised Global Health Emergency Board would bring together world leaders and scientific experts to coordinate health and economic responses to COVID-19 and future public health emergencies of international concern, securing the recovery of vulnerable communities worldwide now and helping to protect them in the future. This Board should complement and work closely with the Global Preparedness Monitoring Board, which assesses threats and advises policymakers on actions required to prepare and respond to health emergencies.²

Global Health Security for the Future

Global health security requires being able to better predict, avert, and respond to a future pandemic. Launched in 2014 under U.S. leadership, the Global Health Security Agenda (GHSA) convenes partner countries, international organizations, NGOs, and private sector companies to build and independently evaluate national health system capacities, thereby improving countries' pandemic preparedness. The Biden administration should convene GHSA partners to revitalize the GHSA and revisit its focus areas in light of lessons from COVID-19. The GHSA is ripe for additional areas, including building community trust and cooperation, along with equitable preparation for and responses to health security threats.

Rectifying the outgoing administration's untimely decisions, the Biden administration should re-establish the White House National Security Council Directorate for Global Health Security and Biodefense, which monitors global health risks and coordinates the U.S. response. The administration should re-launch the PREDICT virus identification and tracking project, which seeks to identify newly emerging pathogens in geographic "hotspots" among animals likely to carry zoonotic diseases and builds both local and global capacities to prevent and respond to an outbreak.³ And by ensuring that the U.S. Strategic National Stockpile is fully stocked with critical medical supplies, including PPE, the administration could prepare the United States for another health emergency while ensuring a ready source of PPE for other countries and eliminating the need for the United States to seek once again to buy up much of the world's supplies.

Furthermore, the Biden administration should address antimicrobial resistance—a steadily growing threat that kills at least 700,000 people a year.⁴ The administration should increase research and development investments in antimicrobials, while backing congressional measures to incentivize companies to develop new antimicrobials and ensure their careful stewardship. The administration should also enhance regulations to limit agricultural antibiotic use and ensure proper medical use. These efforts would help to keep future outbreaks at bay and limit global spread, protecting people everywhere.

² See *Our Work*, GLOBAL PREPAREDNESS MONITORING BOARD.

³ *Predict: Program Info*, ECOHEALTH ALLIANCE.

⁴ Review on Antimicrobial Resistance, [Antimicrobial Resistance: Tackling a Crisis for the Health and Wealth of Nations](#) (Dec. 2014).

To accelerate access to scientific advances, the Biden administration could leverage U.S. research and development funding to support the Open Science movement and make scientific knowledge accessible to all, while implementing protections against the harmful spread of misinformation. Likewise, as COVID-19 has underscored the need for accessible and affordable vaccines and therapeutics everywhere, the administration should break with its predecessors by welcoming other countries' liberal use of flexibility under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and avoid TRIPS-plus (even stricter patent protections than are required by TRIPS) in any trade agreements, thereby increasing the availability of medicines in lower-income countries.

Addressing Vast Humanitarian Crises

President Biden will also confront the pandemic's massive knock-on effects. The pandemic's health services disruption may lead to a total of nearly 1.5 million AIDS, tuberculosis, and malaria deaths this year alone, along with substantial increases in maternal and child deaths. The World Food Programme warned that the number of people facing acute hunger could nearly double to 270 million. According to the WHO and UNICEF, disruptions in childhood vaccine campaigns have led to an "alarming decline" in the number of children receiving life-saving vaccines globally. There is an urgent need for new funding and global leadership.

Financial support for an unfolding humanitarian crisis is essential. President Biden should muster support in Congress to dedicate at least 2 percent of COVID-19 spending to global humanitarian assistance. Congress has thus far appropriated only about US\$2 billion to the global response (compared to US\$5.4 billion during the West African Ebola epidemic). A 2 percent target is modest, particularly given the paucity of appropriations thus far. International development assistance has traditionally comprised approximately 3 percent of U.S. discretionary spending.⁵ If future COVID-19 appropriations are not in the multi-trillion-dollar range, a higher proportion should be devoted to global assistance.

President Biden can also take other steps to ensure public health and safety around the world, such as rescinding the Mexico City policy, which blocks U.S. global health funding for any organization performing, facilitating, or promoting abortion, and restoring funding to the UN Population Fund, which supports strategies to improve reproductive and maternal health worldwide. He should pledge one-third (the statutory maximum) of the additional US\$5 billion the Global Fund to Fight AIDS, TB and Malaria needs in 2021 for its COVID-19 response. Further, the president should mobilize global partners to develop and implement a global funding and action strategy developed in concert with the United Nations, WHO, civil society, and governments to achieve the SDGs.

Further, a multi-year debt-service moratorium and extensive debt cancellation could increase funds that lower-income countries can devote to mitigating COVID-19's health impacts and achieving the SDGs. Likewise, the Biden administration should support the International Monetary Fund in its effort to create additional Special Drawing Rights, which are somewhat like international currency.⁶ The Trump administration had opposed this initiative, as it would provide significant financial resources to Iran and China.

Looking beyond the pandemic, the Biden administration should increase funding to support the health of the tens of millions of people who depend on the international community for their most basic needs, including refugees, internally displaced persons, and others requiring humanitarian assistance. President Biden should build on the tradition of U.S. leadership in humanitarian assistance by working with Congress to fund at least 40 percent of UN and World Food Programme appeals throughout his presidency, using generous U.S. contributions to leverage increased funding from other countries.

⁵ C. Eugene Emery Jr. & Amy Sherman, *Marco Rubio Says Foreign Aid is Less Than 1 Percent of Federal Budget*, POLITIFACT (Mar. 11, 2016).

⁶ Mark Plant, *Making the IMF's Special Drawing Rights Work for COVID-19 Economic Relief*, CTR. GLOBAL DEV. (Mar. 6, 2020).

Strengthening the World Health Organization and International Health Regulations

President Trump blamed China for the pandemic while placing the WHO in the center of a geopolitical conflict between the world's two superpowers. President Biden agreed to rescind the U.S. notice of withdrawal from the WHO on his first day as president⁷ and now has an opportunity to reconcile relations and reconstruct the U.S. role as a global contributor and leader.

The WHO is indispensable, from its global coordination during public health emergencies and its authoritative technical guidance and support to countries across health areas to its role in advocacy, norm-setting, and the global health agenda. President Biden should empower the WHO through reforms to the 2005 International Health Regulations (IHR). He can lead our allies toward global solidarity and propose doubling WHO mandatory assessments, which now cover less than a quarter of WHO's budget, with most voluntary contributions earmarked. The Biden administration should also encourage the WHO Secretariat to reassess its overall budget needs, with the possibility of a significant increase in its overall budget (US\$5.8 billion for 2020–2021⁸).

The Biden administration should also work with WHO and civil society organizations (CSOs) to identify and implement strategies to make WHO open to more CSOs and thus better represent the perspectives and needs of marginalized populations in WHO deliberations and decisions. Presently, fewer than 220 non-state actors are in official relations with WHO, nearly all with global, and the rest regional, remits,⁹ leaving out grassroots, national, and other small CSOs. By contrast, more than 4000 CSOs have consultative status with the UN Economic and Social Council.¹⁰ Currently, WHO's Executive Board must approve a non-state actor's official relations status. To ensure that decisions on organizations' participation status in WHO governance are not politicized, an independent body should handle official registration and approval of CSOs.

COVID-19 has revealed the need for significant IHR reforms to enable WHO and the world to obtain complete and accurate information on outbreaks and improve accountability among nations. The Biden administration could spearhead a reform process here as well. First, the provisions on WHO's use of unofficial sources could be revised to better protect sources' confidentiality and require credible information to be made public quickly. Presently, WHO is required to attempt to verify information from unofficial sources with the state at issue and offer to collaborate in assessing the threat. Only if the state fails to respond within twenty-four hours to the offer to collaborate "may" WHO—it is not required—share the information with other states.¹¹ Meanwhile, WHO may keep the source confidential only "when it is duly justified."¹² Second, following a model established by the Chemical Weapons Convention, the IHR should require countries to permit WHO to investigate official reports of disease outbreaks, with full access to health workers, scientists, authorities, and civil society. When a novel outbreak strikes, WHO must be able to verify state reports independently in real time. Third, the IHR should allow for public monitoring and scrutiny of state decisions that fail to adhere to WHO recommendations for outbreak control. Such a public monitoring system could help identify and prevent countries' use of outbreaks as a guise to implement xenophobic, nationalistic policies, and also support developing countries that fear economic instability from travel and trade restrictions. Finally, the IHR should clearly define states' international assistance and cooperation responsibilities to ensure needed funding and technical support and expand its list of core public health capacities for preventing, detecting, and responding to potential public health emergencies.

⁷ [The Biden Plan to Combat Coronavirus \(COVID-19\) and Prepare for Future Global Health Threats](#).

⁸ [Programme Budget 2020-2021](#), 72nd World Health Assembly, Agenda Item 11.1 (May 24, 2019).

⁹ World Health Org., [List of Entities in Official Relations with WHO](#) (Feb. 4, 2020).

¹⁰ UN Dep't Econ. & Soc. Affairs, [How to Apply for Consultative Status with ECOSOC?](#).

¹¹ World Health Org., [International Health Regulations](#) (2005) art. 10 (3d ed. 2016).

¹² *Id.* art. 9.

WHO has led a vital COVID-19 vaccine initiative along with Gavi, the Vaccine Alliance, and the Coalition for Epidemic Preparedness Innovations. The COVID-19 Vaccine Global Access Facility (COVAX) aims to ensure that ninety-two low- and middle-income countries can access COVID-19 vaccines once available. By early December 2020, COVAX had 190 country partners, including China, but the United States and Russia had failed to join. The United States should join, and work with partners to ensure a minimum of US\$5 billion for the COVAX Advanced Market Commitment, a financing mechanism that guarantees funding for qualifying vaccines at agreed-to prices. Doing so will enable manufacturers to scale-up production of qualifying vaccines and ensure ready availability to all COVAX countries.

Toward a Healthier, More Equitable World

Beyond reform to current international arrangements, the Biden administration should use this moment to catalyze new initiatives for more equitable governance for global health. The early phase of the COVID-19 pandemic was marked by a scramble for PPE, vaccines, testing kits, and other medical resources, not only between U.S. states, but also globally, leaving lower-income countries facing a global bidding war that they could not win. Then came “vaccine nationalism,” with predominantly wealthy nations (and to a lesser degree middle-income countries) signing separate agreements with vaccine manufacturers to hoard limited supplies. As of early November 2020, high-income countries had agreements covering 3.4 billion doses, compared to approximately 1.7 billion doses for middle-income countries and none for low-income countries. COVAX had agreements covering only 500 million of the 2 billion doses it requires by the end of 2021 simply to vaccinate 20 percent of participating countries’ populations.

To address these problems, the Biden administration should propose creating a permanent facility for distributing PPE and other medical supplies and equipment, diagnostics, therapies, and vaccines during epidemics and pandemics. A permanent global distribution mechanism should be based on universality, equity across and within countries, and need. This mechanism could draw heavily on principles proposed by the People’s Vaccine movement, including fair allocation globally and domestically; prioritizing health workers and other higher-risk populations; affordable pricing; data and intellectual property sharing; and transparency and accountability in decision-making, with civil society participation.¹³ The mechanism could also require participants to avoid any separate agreements with developers or manufacturers that may impede equitable distribution globally.

Going further, COVID-19’s devastating global effects open the possibility of still deeper systemic transformations. The Biden administration should lead in creating a rights-based global health architecture, which would enhance equity and accountability and elevate the voices and priorities of marginalized populations.¹⁴ At its foundation would be the Framework Convention on Global Health, a proposed treaty that, if adopted, would strengthen implementation of the right to health and promote global health equity.¹⁵ It would include mechanisms to advance principles of equality and non-discrimination, accountability, and inclusive participation, to advance the right to health across governments and other entities as well as across sectors, and at local, national, and global levels. In addition, a Right to Health Capacity Fund could support right-to-health advocacy, accountability, and participation mechanisms, while the Framework Convention on Global Health could require state parties to participate in equitable distribution mechanisms. Beyond strengthening global health security, these measures would

¹³ THE PEOPLE’S VACCINE.

¹⁴ Lawrence O. Gostin & Eric A. Friedman, *Imagining Global Health with Justice: Transformative Ideas for Health and Well-Being While Leaving No One Behind*, 107 GEO. L.J. 1535 (2020).

¹⁵ FCGH ALLIANCE.

contribute to equitable universal health coverage and address underlying determinants of health, like clean water and nutritious food.

Conclusion

Following a time of unprecedented U.S. retreat from global solidarity and cooperation with countries that share our democratic values, a global health action agenda that meets the immediate crises of COVID-19 and its lasting ramifications could pave the way for global health with justice. Our proposed global agenda could not be a more fitting way for the United States to demonstrate its full return to the international community, powerfully signaling to the people of the world, including those in the most precarious situations who are most in need of hope and a helping hand, that the United States is on their side.