Letter to the Journal

To Name a New Coronavirus and the Associated Pandemic: International Law and Politics

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I. Introduction

1. The COVID-19 pandemic has so far infected millions and killed several hundred thousand globally. The full extent of its impact on global economy, governance structures and livelihood of persons is unprecedented and huge but not fully known. COVID-19 has also exacerbated theories about a pandemic, including on its naming. At the level of international law, this piece seeks to shed light on the rules that govern the naming of a virus and its associated pandemic.

2. The World Health Organization (WHO), established under Article 57 of the UN Charter, is the only specialized agency of the UN responsible for international public health. Article 1 of the Constitution of the WHO lays down that the objective of organization “shall be the attainment by all peoples of the highest possible level of health”. In such a scenario an enquiry into the standards under international law in regulating the naming of the pandemic seems a somewhat marginal exercise. However, COVID-19 has a major impact on the ability of nation States to cooperate and actively work together in collective action to counter and contain the effects of the pandemic in all forms, including its naming.

* Secretary General, Asian African Legal Consultative Organization (AALCO). The views expressed in this paper are purely personal and do not constitute legal advice. This paper was completed on 3 August 2020 and the websites cited were current as of that date.
II. The naming of a virus and the associated pandemic

3. Article 2 of the Constitution lists twenty-two functions of the Organization which, given the size and scale of the COVID-19 pandemic, almost all seem relevant to the impact of the disease. With respect to the naming of the virus, the organization has power “to establish and revise as necessary international nomenclatures of diseases, of causes of death and of public health practices”.

4. Towards this end, in May 2015 the WHO issued the “World Health Organization Best Practices for the Naming of New Human Infectious Diseases”. The Best Practices guidelines aim “to minimize unnecessary negative impact of disease names on trade, travel, tourism or animal welfare, and avoid causing offence to any cultural, social, national, regional, professional or ethnic groups”.

5. While the WHO recognizes its responsibility as stated in the Constitution for nomenclature of diseases, it has also been mindful of its functions to co-ordinate with other UN Specialized Agencies and scientific and technical groups. Accordingly, the guidelines were issued in consultation and collaboration with the World Organisation for Animal Health (OIE) and the Food and Agriculture Organization of the United Nations (FAO); WHO also recognized “existing international system and bodies are responsible for taxonomy and nomenclature of pathogens” and stated that they are not directly affected by these best practices.

6. The guidelines lay down the following important principles and that a disease name consists of a combination of terms as provided in the principles:

(a) Generic descriptive terms. The guidelines state that such a term would be particularly useful when there exists a paucity of available information. It generally refers to the symptoms of the disease as can be inferred from the examples provided such as “respiratory disease, hepatitis, and neurologic syndrome”.

(b) Specific descriptive terms. The guidelines state that such a term should be used whenever the available information is considered sufficiently robust that vast changes to the epidemiology or clinical picture are unlikely to occur. The guidelines also state that plain terms are preferred over highly technical terms.

1 https://apps.who.int/iris/bitstream/handle/10665/163636/WHO_HSE_FOS_15.1_eng.pdf?sequence=1
c. Causative pathogen. The guidelines state that if the pathogen is known it should not be directly equated with the disease as it may cause more than one.

7. The other principles are more general in nature inasmuch as they state the names should be short, preferably an acronym different from prior existing ones, and should be as consistent as possible with guidance from the International Classification of Diseases (ICD) Content Model Reference Guide.

8. While the effort for the international classification of diseases has been ongoing since 1893, the WHO issued the Nomenclature Regulations in 1948 incorporating the International List of Diseases and Causes of Death.

9. Further, in 1967 the Nomenclature Regulations 1967 were promulgated calling upon all Member States to compile mortality and morbidity statistics in accordance with the current revision of the International Statistical Classification of Diseases, Injuries, and Causes of Death as adopted from time to time by the World Health Assembly.

10. Apart from the efforts of the WHO, the International Committee on Taxonomy of Viruses (ICTV), a private body formed and governed by the Virology Division of the International Union of Microbiological Societies, organizes and authorizes the nomenclature for viruses. As regards COVID-19, the 2020 Coronavirus Study Group of the International Committee on Taxonomy of Viruses, which had assessed the novelty of the human pathogen, has named it as “Severe acute respiratory syndrome coronavirus 2”, or “SARS-CoV-2”, which is different from the name suggested by the WHO. The WHO refused to use the name as it refers to SARS which may be a cause for panic and fear, especially in Asia which was worst affected by the pandemic in 2003.

11. The Trade Related Aspects of International Property Rights Agreement (TRIPS) which lays down the basis for national jurisdictions to implement their respective patent regimes, allows for the patenting of life forms, which will have a bearing on the naming of certain disease-causing life forms. On the other hand, developing countries have expressed concern about the problem of “biopiracy” or misappropriation of biological resources and traditional knowledge that becomes the basis for applications for patent rights across a spectrum of fields including cosmetics, herbal medicines, pharmaceuticals and biotechnology. In response to this problem in 2010 the United Nations Convention on Biological Diversity system adopted the Nagoya Protocol on
Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

12. This new Protocol, in Article 6, establishes that those seeking to conduct research and development on genetic resources and traditional knowledge from a particular country must: (a) seek prior informed consent from the relevant government; (b) seek prior informed consent from relevant indigenous and local communities, and (c) establish a benefit-sharing agreement on mutually agreed terms.

13. The overarching aim of the guidelines to “minimize unnecessary negative impact of disease names on trade, travel, tourism or animal welfare, and avoid causing offence to any cultural, social, national, regional, professional or ethnic groups” embodies the no-stigmatization requirement in the naming of a virus and/or the associated pandemic. This requirement also serves to provide guidance that even national jurisdictions sought to grant patents on certain life forms that cause diseases.

14. The name suggested for the COVID-19 pandemic seems to conform to these guidelines. In the light of past experiences, it emerges that the WHO and private research institutions should adopt nomenclatures, based on the guidelines, which do not cause any stigma in order maintain a coordinated multilateral approach towards the containment and eradication of diseases.

III. International relations and the naming of a pandemic

15. For centuries, several beliefs and political ideologies have existed on disease and its transmission. For instance, four major beliefs in scientific discourse in the United States and Europe on disease and disease transmission are contagion, atmospheric, life-style choices, and supernatural. They are all political, based on paranoiac and xenophobic ideas about who and what to blame for the disease. In the end, it was a “matter of which theory had the most political power, not which was the most rational and scientific”. (Mathew Wills, Blaming People for Getting Sick Has a Long History (2020), 22). This was also common before the adoption of the 2015 WHO Best Practices for the Naming of New Human Infectious Diseases.

16. For instance, with respect to the H1N1 Influenza virus, which is claimed to have killed more than 50 million people during the First World War, the international relations through politics of the time challenged its

2 https://daily.jstor.org/blaming-people-for-getting-sick-has-a-long-history/
name as the Spanish Flu. Historians believe that the flu may not have originated in Spain but merely received that name because Spain was the first State to reveal to the world its existence and extent. The fact that Spain was largely neutral during the war allowed it to reveal the existence of the pandemic to the world without appearing weaker to another side in the World War.

17. In fact, in Spain it was known by the name “The Soldier of Naples” after a popular song at the time, or the “French Flu”. (J. Meyer, The Origin of The Name “Spanish Flu” (2019), 33). Spain also protested against the use of the term Spanish Flu, which it said had falsely stigmatized its people. A recent article published in Time magazine also presented a number of instances where diseases have been used to stigmatize immigrants in the past (B. Little, Trump’s “Chinese” Virus Is Part of a Long History of Blaming Other Countries for Disease (2020), 1).

18. In the past, badly chosen names have had the effect of stigmatizing people, as in the case of AIDS. They have also created confusion and hurt tourism and trade. The so-called swine flu, for instance, is not transmitted by pigs, but some countries still banned pork imports or slaughtered pigs after a 2009 outbreak. More recently, some States also objected that a new disease was called Middle East respiratory syndrome. Other examples from the past include Hendra, the name of a suburb in Brisbane, Australia and Ebola, the name of a river in Africa.

19. Recently, the COVID-19 pandemic has been given some names and attracted several instances of outrage, fuelling bigotry, and putting some communities at risk of racist slurs and physical abuse. It needs to be noted that the place where a pandemic is first reported may not necessarily be the source of the pandemic or the virus (R. Lu, Genomic characterisation and epidemiology of 2019 novel coronavirus: implications for virus origins and receptor binding, The Lancet (2020), 572).

IV. Conclusion

20. International law provides for rules for the naming of pandemics that have been issued in the form of guidelines by the WHO. The rules specifically provide that in choosing the nomenclature for a pandemic care must be taken

3 https://www.sciencefriday.com/articles/the-origin-of-the-spanish-flu/
4 https://news.yahoo.com/trumps-chinese-virus-part-long-175705412.html
5 https://www.sciencedirect.com/science/article/pii/S0140673620302518
that it does not cause stigma or prejudice to persons belonging to a particular State, region, profession or trade. The reasons for the adoption of such guidelines is clear that while the effects of the disease may be countered and will probably abate after some time, the stigma and damage caused as a result of it may last for a long time in the communities affected by it. Politically, States must rise above politics when naming pandemics, not only to better counter the effects of the disease in a collaborative manner but also to prevent further misunderstandings, xenophobia and racism. Deference must be afforded to the scientific community to ascertain scientific nomenclatures for diseases, who must adhere to the fundamental principles of medical ethics, that is, to do no harm.