FOREWORD

Innovative Solutions to Closing the Health Gap Between Rich and Poor: A Special Symposium on Global Health Governance

Lawrence O. Gostin and Emily A. Mok

Health plays a fundamental role in our lives as individuals and as members of society. At the individual level, health is critical to a person's well-being and can affect his or her opportunities in the world. Health is also important to public welfare because a basic level of human functioning is a necessary condition for the development and stability of economic, social, and political structures within a society. International norms reinforce the special value of human health ranging from the constitutional mission of World Health Organization (WHO), to the human right to health, through the Millennium Development Goals (MDGs) — all of which oblige states to act in concert for the protection and promotion of health.

Social justice, which compels the fair disbursement of common advantages and sharing of common burdens,[1] "captures the twin moral impulses that animate global health: to advance human well being by improving health and to do so particularly by focusing on the needs of the most disadvantaged."[2] At present, the world's poor bear a vastly disproportionate burden of disease and injury. As life expectancy has steadily increased in the developed world, the least developed countries and transitional states have seen a decrease.[3] Health disparities between the rich and poor, however, cannot be simplified to a division between rich and poor countries. Rather, health disparities also exist within countries whereby different levels of health are linked to socio-economic conditions of life.[4] Many of the poor living in Europe and North America, for example, have life expectancies equal to those in the least developed countries.[5] In addition, many of the health problems of poor countries can threaten more wealthy countries as diseases have the ability to migrate rapidly across the globe. Hence, the concept of global social justice (or global health equity) promotes the attainment of health for the world's population.

The glaring health disparities between the world's rich and poor can be attributed to social and economic factors.[6] Addressing these factors, which are commonly referred to as the social determinants of health, can dramatically improve the patterns of systematic disadvantage that profoundly and persuasively undermine prospects for well-being of the poor. For example, a lower socioeconomic status (as determined by education, occupation, and income) is strongly correlated to poor health outcomes due to conditions of material disadvantage, diminished control of life circumstances, and lack of social acceptance.[7] In addition, factors such as daily living conditions, the built and natural environment, and equitable distribution of power and resources can have an impact on health.

Despite the international community's awareness of deep and persistent health inequities,[8] foreign aid often is not aligned with local priorities and does not address the principal determinants of health. Instead, international development assistance for health tends to be framed by donor countries in terms of their geostrategic and philanthropic interests. Donors often

Lawrence O. Gostin, J.D., LL.D. (Hon.), *is the Linda D. and Timothy J. O'Neill Professor of Global Health Law, the Faculty Director of the O'Neill Institute for National and Global Health Law, and Professor of Public Health at the Johns Hopkins University. Professor Gostin is a Research Fellow and Visiting Professor at Oxford University and directs the WHO Collaborating Center on Human Rights and Public Health Legislation.* **Emily A. Mok, M.G.A., M.B.E., D.Phil. Candidate,** *is a fellow of the O'Neill Institute for National and Global Health Law and an Adjunct Professor of Law at Georgetown University Law Center. She received dual Master degrees in Government Administration and Bioethics from the University of Pennsylvania, Philadelphia, PA, and is completing her D.Phil. in Law at the University of Oxford in Oxford, U.K.*

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focus on the most visible, high profile diseases (e.g., novel influenza, SARS, anthrax) or dramatic events requiring rescue (e.g., tsunamis, hurricanes, earthquakes), which receive prominent media attention and provoke widespread public concern. This has led to a relative neglect of deeper systemic health problems, such as health systems, essential vaccines and medicines, diseases of poverty, injuries, and chronic diseases.

Even if priorities aligned with core needs, international assistance is fragmented, with duplication and lack of coordination on the ground. A diverse array of non-state actors populates the global health space, adding to the complexities of differing health agendas — e.g., philanthropic organizations, businesses, and civil society groups. It is tragic that the recent influx of international funding and interest in global health still has not been able to reduce extremely poor health. International development assistance for health is often ineffective and, in some cases, counterproductive. Even worse, if the international community's support for global health diminishes due to waning attention and resource constraints in the aftermath of the financial crisis, the subsequent deterioration in health among the world's poor will cause them to suffer immeasurably.

The problems in global health have become increasingly complex and daunting. With the proliferation of state and non-state actors in the global health arena, the redundancy, conflicts, and gaps have become apparent. In addition, programs that address basic survival needs (e.g., sanitation, food, water, and vector control), health systems (e.g., primary care and public health), and the social determinants of health continue to be neglected in favor of disease-specific ("vertical") initiatives. This raises concerns about aid effectiveness, program sustainability for the long term, and synergy among different initiatives. To make matters worse, the current economic crisis has tightened the purse strings of the world's rich and is feared to have slowed the momentum for global health advancement. The key challenges of priorities, coordination, and leadership point to the absence of a cohesive global governance structure, which would allow the global community to act rapidly, efficiently, and collectively.

This extended Preface examines innovative solutions to the challenges of global health governance, focusing on the founding ideal of Georgetown's O'Neill Institute on National and Global Health Law — a Framework Convention on Global Health (FCGH). We also examine another form of governance that captures the ideals of the FCGH, but does not require the politically arduous task of creating an international treaty, such as a Global Plan for Justice. The O'Neill Institute hosted an international consultation on global health governance in Washington, D.C., which formed the basis for this symposium edition of the *Journal of Law, Medicine & Ethics*. After examining the key elements of a global health convention, we frame the issues to be tackled in this symposium edition of *JLME*.

Building New Solutions in Global Health

The challenges of global health governance require a bold and innovative approach.[9] While a number of new initiatives have emerged to address problems of cooperation and coordination, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria and the International Health Partnership, these approaches do not go far enough. A much more comprehensive global health response that tackles the fundamental issues is needed to address current and future problems, especially those faced by the world's poor and vulnerable.

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International law can serve as a means to address grave problems of transnational significance that no single country or group of states can solve on its own. Global health, as a result, deserves to be a major focus in international law, but this has not been the case.

The World Health Organization (WHO), which is the U.N. specialized agency for health, was envisaged by its Constitution to use law, and exercise powers, to proactively promote "the highest attainable standard of health."[10] The agency has rarely acted on these expectations, and its few legal instruments in existence possess a number of historical, political, and structural inadequacies in helping countries out of their perpetual state of dire health.[11]

In order to fill this void and to use international law in a more constructive manner, a new model will be necessary to channel more cooperative action and to get to the heart of the global health dilemma — build-

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ing long-term capacity for poor countries to take ongoing responsibility for their own health in collaboration with other actors (i.e., transitional and rich countries, intergovernmental organizations, businesses, foundations, and civil society). The O'Neill Institute has proposed two, interrelated, structural legal mechanisms to dramatically improve global health governance — a Framework Convention on Global Health[12] and a Global Plan for Justice.[13]

A Framework Convention on Global Health

The Framework Convention on Global Health (FCGH) recognizes the power of international law in global health. Transnational problems of global health demand a stable commitment of resources for the long-term and a prioritization of these resources toward genuinely effective interventions. Such attributes require a governance mechanism that helps establish priorities, coordinate efforts, foster public-private partnerships, and allow poor countries to take ownership of policies and programs in a competent and transparent manner. To address this need, the FCGH promotes a treaty-based, "bottom up" approach to global health governance that is structured around the following key objectives.

The first objective of the FCGH is to set priorities so that international assistance is appropriately directed at meeting basic survival needs. A persistent problem in global health has been the lack of donor resource alignment with activities that reflect the true burden of disease or address the underlying determinants of health in poor countries. Hence, there is an urgent need for a governance mechanism that facilitates evidence-based consensus building and communal priority-setting.[14]

Another objective of the FCGH works to build country capacity for enduring and effective health systems. Capacity building for health involves developing a country's human resources, organizational structures, and infrastructures so that all elements of the health sector can perform their core functions and meet the population's basic needs in a sustainable manner.[15] For example, by building a strong infrastructure, a country will be better equipped to detect, prevent, respond to, and treat disease, particularly among the most vulnerable. Capacity building, however, requires a fundamental shift in how international assistance for health has been provided to date. It requires the long-term commitment of all parties — both developed and developing countries and their partners — for the health of their populations. It also involves a change from the prevailing top-down approach that privileges the ideas and priorities of intergovernmental organizations and foreign governments over local leaders as well as a move beyond simply tabulating how much money has been donated.[16]

A third objective of the FCGH is to engage all stakeholders, both state and non-state actors, so that they can bring to bear their resources and expertise. It is essential to harness the ingenuity and resources of non-State actors (including NGOs, private industry, foundations, public-private hybrids, and civil society) because no single entity has the capability to solve today's daunting global health crises. The FCGH would include these major stakeholders in the process of negotiation, debate, and information exchange as well as reduce barriers for them to actively engage in capacity building.

The fourth objective of the FCGH is to coordinate and harmonize the activities among the current proliferation of global health actors. By having the FCGH set priorities and engage all major stakeholders, it is also imperative for this governance scheme to promote a new means for coordination. This will require more than a simple accounting of how much money has been spent by the donor community. In the currently fractured environment where states, NGOs, IGOs, and foundations all fund and prioritize different health interventions, establishing coordination will be an essential task.

The FCGH's final objectives are to establish minimal funding levels for international development assistance for health and to hold the actors accountable for their commitments through rigorous monitoring and evaluation. By establishing the FCGH as an ongoing diplomatic forum with established principles and defined obligations, this can help to transcend the current ebbs and flows of interest in international assistance for global health as well as shifts in political will. In addition, the FCGH would build in compliance measures as a component of this global health governance regime.

Procedurally, the formation of the FCGH involves a framework convention-protocol approach that, in essence, is a process of incremental regime development. In the initial stage, states would negotiate and agree to the framework instrument, which establishes the broad principles for global health governance: goals, obligations, institutional structures, empirical monitoring, funding mechanisms, and enforcement. In subsequent stages, specific protocols would be developed to achieve the objectives in the original framework. These protocols, organized by key components of the global health strategy,[17] would create more detailed legal norms, structures, and processes. The framework convention approach provides states with considerable freedom to decide the level of specificity that is politically feasible now, saving the more com-

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plex or contentious issues to be built into later protocols. This avoids the problem of political bottlenecks over contentious elements, which could hold talks at a standstill and prevent progress. The FCGH process also confers the advantages of facilitating global consensus through a stepwise, incremental manner; fostering a shared humanitarian instinct through normative discussion, which can help to educate and persuade the various parties; and building factual and scientific consensus through the collection and analysis of health data and scientific evidence.

Yet, the FCGH is not a panacea and there exists various social, political, and economic barriers to its creation. The framework convention-protocol approach cannot easily circumvent some current aspects of global health governance: the domination of the most economically and politically powerful countries; the deep resistance to creating obligations to expend, or transfer, wealth; the lack of confidence in international legal regimes and trust in international organizations; and the vocal concerns about the integrity and competency of governments in many of the poorest countries. It also does not ensure consensus on contentious issues. Furthermore, the framework convention's lengthy, incremental process could encounter a loss in momentum or the derailment of subsequent protocols due to its extended timeframe. But given the dismal nature of extant global health governance, the FCGH may be a risk worth taking.

A Global Plan for Justice

To overcome the challenges of the FCGH approach, the O'Neill Institute has also proposed an alternative model for the governance of global health named the Global Plan for Justice (GPJ).[18] This approach involves the creation of a voluntary compact among countries and their private partners (e.g., businesses, philanthropic organizations, and civil society) to redress current global health inequities. The GPJ focuses on three core global health priorities, which address the most critical determinants of health for the world's poor. These core priorities are the following: fairly allocating essential medicines and vaccines, meeting basic survival needs, and mitigating the health impacts of climate change.

It is important to ensure the fair allocation of essential medicines and vaccines, especially in relation to the needs of low-and middle-income countries. Essential medicines and vaccines, according to the WHO, "are those [treatments] that satisfy the priority health care needs of the population."[19] Such treatments are necessary in the prevention and mitigation of human suffering and play a critical role in addressing both chronic needs and emergency situations. Yet, access has proved difficult in many developing countries due to restrictively high prices for patented medicines and the lack of research and development incentives for pharmaceuticals to invest in treatments targeted at diseases of poverty.[20] Public health emergencies, such as the recent H1N1 pandemic, underscore the immediate and crucial need for the fair allocation of vaccines and medicines. When a mass disaster strikes, it almost inevitably leads to scarcity caused by a limited supply and a surge in demand. The poor, who are at greatest risk of serious illness and death from the spread of new infections, tend to be left behind as the rich hoards the available lifesaving medicines and vaccines for themselves; thus, further widening the already large health gap between the rich and poor. Such a trajectory is very troubling for the state of global health as the allocation of resources to the world's most vulnerable is likely to confer the most beneficial effect on levels of morbidity and premature mortality. [21]

Another key priority of the GPJ is meeting basic survival needs through the provision of fundamental services and functions such as sanitation and engineering, health systems infrastructure and capacity building, and primary health care. Sanitation and engineering play a pivotal role in establishing sustainable development and health. Through cost-effective interventions that address waterborne, mosquito-borne, and rodent-borne diseases, such basic services hold massive potential to improve the health of the world's poorest populations. Building up health systems infrastructure and capacity is another component to ensuring population health. Governments function to identify, prevent, and ameliorate risks to public health. By helping developing country governments attain sound infrastructures (e.g., disease surveillance laboratories and data systems) and a competent workforce, they will have the tools needed to protect their people and the ability to discover solutions to their problems. Primary health care, which is defined as "essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible [and affordable],"[22] is also a critical function upon which human survival is dependent. Components of primary health care include counseling, maternal and child health, family planning, and medical treatment.

The GPJ does not necessitate advanced tertiary care centers or even highly specialized physicians; rather, it simply requires essential health personnel (e.g., family doctors, nurses, midwives, and community health workers) to diagnose and treat the most common injuries and diseases, care for pregnant women and safely deliver babies, and teach people how to live safely.

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It also promotes individual and community self-reliance and participation in the planning, organization, operation, and control of health services, making fullest use of local and national resources. While attaining such everyday survival needs may lack the glamour of high-technology medicine or dramatic rescue, they possess the real potential to bestow a major impact upon population health because they deal with the underlying causes of common disease and disabilities.

The GPJ's third priority seeks to address the problem of climate change because of the severe impact that it can have on human health in the poorest countries. Climate change brings increasingly intense and more frequent natural disasters, which can lead to greater public health emergencies and additional devastation to daily living conditions through water contamination and infrastructure collapse. It can also lead to severe ecosystem changes that will impair crop, livestock, and fishery yields, which can cause increased hunger and famine. Furthermore, climate change holds the potential to broaden the geographic range of disease vectors as well as exacerbate air pollution through increased temperatures.[23] While the effects of climate change will be felt in every region of the world, it will disproportionately burden the global poor and lead to a greater gap in health disparities. These populations already experience major daily disadvantages, such as the scarcity of clean water and nutritious food, as well as a high levels of infectious and chronic diseases. These challenges are compounded by the fact that they lack the capacity to ameliorate the potentially devastating effects of climate change due to weak national health care systems, poor infrastructures, and less technological and manufacturing capabilities to adapt to rapidly changing environmental conditions.

Climate change not only challenges the international community to find solutions to mitigate its health effects, but also to address the inevitable questions of global social justice. To address such concerns in the developing world, the GPJ calls for the adoption of two strategic actions on climate change. One action is to incorporate land-use and agricultural migration (such as avoiding deforestation and degradation) and to pursue sustainable agricultural practices. The second action involves fully funding adaptation projects as a global priority. Adaptation programs are aimed at altering natural or human systems to prepare populations to survive the effects of climate change.[24] The linkages between climate change and health highlight the necessity of not only mitigating further climate change, but also implementing strategies for adaptation in order to enhance a population's resilience and reduce its vulnerability to observed or expected changes in the climate. Hence, it will be important to develop policy strategies that address the various human effects of climate change (such as disease, air quality, natural disasters, food and water supply) and to consult with public health experts during this process so that funds are properly applied for the adaptation of human systems.

In April of 2009, the O'Neill Institute assembled a group of international experts for a conference to propose and analyze fresh ideas and innovative solutions to the current challenges in global health governance. This symposium issue of the *Journal of Law, Medicine & Ethics* includes papers that were presented at the conference, which reveal the breadth and complexity of considerations in addressing global health governance. It also presents a number of lessons learned and critical concerns on the way forward in global health.

The GPJ could be established through a World Health Assembly resolution and administered by the WHO. The WHO Director-General could facilitate states and their non-state partners in the negotiation of funding commitments, spending priorities, an allocation system, and mechanisms for monitoring, compliance, and implementation. A special feature of this approach includes the establishment of a "Global Health Fund,"[25] which is modeled off of the current Global Fund addressing AIDS, TB and malaria. Through the Global Health Fund, achievable annual funding targets could be established for states based on their ability to pay and these funds could be prioritized and allocated based on the health needs of developing countries through the measures of poverty, morbidity, and premature mortality.

The GPJ's structural and procedural flexibility as a voluntary compact holds the promise of overcoming the challenges of achieving a formal multilateral treaty,

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such as the FCGH. While the FCGH offers a broadly imagined global health governance system for coordinating actors, setting funding levels and priorities, and harnessing the creativity of non-state actors, the political obstacles identified earlier limit its prospects for success. This does not mean that global health advocates should not continue to press the case for a global health convention, and press it hard. The continued "bottom up" agitation for a meaningful global health convention could bear fruit in the future. In the interim, however, the GPJ may be more appealing to states because it does not impose mandatory international obligations upon them.

Some critics understandably assert that a voluntary compact would be less likely to hold powerful states accountable; however, the global health sector (as opposed to international trade) has never developed mechanisms for adjudication and enforcement, and is unlikely to do so in the near term. The trade-off between a binding and voluntary compact may be worth assuming because soft law can gradually alter state behavior and develop the necessary critical mass for state acceptance of agreed upon norms. To ensure progress, it will be necessary first to persuade states to voluntarily assume obligations, with soft, rather than hard, targets and enforcement as the creation of binding international obligations of health justice must be built over time. This process also provides the opportunity to call upon the WHO to exercise its constitutional powers in the establishment of norms and to assume a greater leadership role in global health.

The O'Neill Institute's Global Health Governance Conference and Symposium Issue

Inspired by the call to action for a FCGH or a GPJ, the O'Neill Institute for National and Global Health Law has been exploring innovative approaches to improve global health governance. The O'Neill Institute for National and Global Health Law at Georgetown University was founded in 2007 with the mission of searching for solutions to the most pressing and perplexing problems in global health today. Comprised of faculty from Georgetown's Law Center and School of Nursing and Health Studies as well as other parts of the University, the O'Neill Institute has sought to address health problems from an interdisciplinary and non-traditional perspective.[26] The Framework Convention for Global Health, along with the Global Plan for Justice, is one such project within the O'Neill Institute that has gained prominence as a possible governance mechanism through high-level discussions at international organizations — such as the WHO and World Bank.

In April of 2009, the O'Neill Institute assembled a group of international experts for a conference to propose and analyze fresh ideas and innovative solutions to the current challenges in global health governance. This symposium issue of the *Journal of Law, Medicine & Ethics* includes papers that were presented at the conference, which reveal the breadth and complexity of considerations in addressing global health governance. It also presents a number of lessons learned and critical concerns on the way forward in global health.

The first set of articles in this issue explores the potential value of the FCGH along with its current shortcomings. In the article by Scott Burris and Evan Anderson, the authors highlight the transformative value that the FCGH brings as a public health-based intervention to social justice in contrast to the old ways of thinking about public health and its institutions. The next article by Just Balstad Haffeld, Harald Siem, and John-Arne Røttingen analyze the strengths and weaknesses of a global health convention approach. They find that this approach may be an appropriate instrument to deal with some global health issues and that the process of working towards a convention provides the invaluable opportunity to make significant gains in global health through the build-up of supranational support, the engagement of current stakeholders towards a compromise through negotiations, and the utilization of WHO as a forum for discussion. Finally, Mark Heywood and John Shija of the innovative South African civil society organization SECTION27 (formally the AIDS Law Project) see the Framework Convention approach as an essential aspect of the human right to health. SECTION27 — named after the section of the South African Constitution that provides socioeconomic rights — is founded on the idea of realizing rights to health, basic education, and food. Heywood and Shija argue that civil society groups can coalesce to make the FCGH a reality.

In the second set of articles, the problems associated with international development assistance for health and the implementation of public health policies and programs in developing countries are examined. Gorik Ooms argues in his article that the West has been perceived as unworthy of cooperation at the global scale because it does not exhibit responsibility for human rights in other parts of the world. He advocates for a "sliding scale of mutual responsibility" for human rights in accordance with the degree of cooperation between humans as opposed to a binary understanding of human rights. In addressing the current problems of aid effectiveness, Devi Sridhar identifies seven challenges that can be found in international development assistance for health efforts

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and presents three suggestions for ways forward. The article by Emily Mok, Lawrence Gostin, Monica Das Gupta, and Max Levin build and expand upon one of the suggestions highlighted by Sridhar relating to national empowerment. In this article, the authors examine ways that developing countries can deal with the struggle to implement more effective public health programs and regulations despite severe limitations in national resources and staff.

The third set of articles highlight the issue of participatory approaches for global health governance and presents some new ideas on how greater non-state actor and public engagement could be achieved. In the article by Ilona Kickbusch, Wolfgang Hein, and Gaudenz Silberschmidt, the authors identify the problem of the proliferation of actors in global health and propose the creation of a new mechanism (i.e., a "Committee C" within the World Health Assembly at the WHO) that would allow non-state actors to become more engaged in collaboration and cooperation and help to establish greater transparency and accountability in global health. Laura Anderko's article proposes a "public health framework for action" to achieve greater health equity on a global scale. In her proposal, she places emphasis on the need for a community-based participatory approach that would allow affected populations to interact with policymakers in the identification of issues and the development of strategies in targeting the problems related to the social determinants of health. Janet Lord, David Suozzi, and Allyn Taylor conducted an analysis of the UN Convention of the Rights of Persons (CRPD) for their article and bring to light the various contributions of the CRPD to health and human rights law as well as global health governance. In particular, the authors discuss the treaty's emphasis on the principle of public participation in the CRPD's negotiation and implementation and the lessons that this provides for global public health.

In the fourth set of articles, the symposium edition turns its attention to some of the current pressing issues for global health. Roger Magnusson, an international global health leader, focuses on his signature issue of non-communicable diseases (NCDs) and considers how a global response to this urgent problem can be conceptualized through a review of the emerging and proposed initiatives for the global governance of NCDs. He also assesses how these initiatives contribute to global governance and benefit national health outcomes. The following article by Rudolf Van Puymbroeck tackles the challenging problem of access to medicines. In this article, the author assesses empirical data from three low-and middle-income countries to conclude that developing countries should promote generic medicines as a key policy option for the improvement of access to medicines. Van Puymbroeck also argues that, on an international scale, there is a need for "conversion" to a public health vision of universal and affordable access and "calculation" to show the costs and adverse consequences in dealing with the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights.

The last set of articles in this symposium issue consider the importance of the social and environmental determinants of health and what this means in relation to global health governance. In the article by Ruth Bell, Sebastian Taylor, and Michael Marmot, the authors show how the Commission on the Social Determinants of Health's genesis and findings raise some important questions for global health governance. Bell and her colleagues, in particular, consider how the Commission's recommendations impact current global health governance as well as how the social determinants of health have moved to the forefront of policy discourse. Finally, in Lindsay Wiley's article on the opportunities for global health policymaking in international climate change governance, she describes the problem of policymakers' slowness in integrating approaches to environmental and health concerns and argues for a new, robust response by the two sectors — whereby both the climate change and health communities should recognize and elevate the importance of the other sector in their work.

The articles in this issue of the *JLME* make a valuable contribution to the growing body of scholarship on global health governance. As the current state of global health continues to struggle with a complex and jumbled array of actors and initiatives, along with increasingly limited resources, a rational governance solution remains glaringly at large. The two O'Neill Institute proposals, the Framework Convention on Global Health and the Global Plan for Justice, make an important step forward in stimulating current ideas about global health governance in a new and bold direction, but they require hard thinking and deliberative action by a wide range of stakeholders. This symposium issue, which has brought together some of the leading academics and practitioners working at the intersection of public health, law, and international relations, seeks to develop innovative ideas for how the global community can overcome the current governance hurdles in the pursuit of a new approach. Stagnancy in global health will only result in further devastation and greater inequities; hence, action in reforming global health governance must be taken now.

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