One Health and International Law

Panel Discussion

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1. Who are the main actors of One Health?

The answer to this question depends on your definition of One Health. One Health is threefold: it is a fact, it is a method, and it must become a prescriptive concept. Firstly, One Health is an expression invented to briefly capture and restate a fact that our grandfathers already knew without using the expression 'One Health': our health is linked to animal health and to the environment.[1] From this perspective, there is no actor of One Health. One Health is not due to be *done*, it *is*.

However, due to globalization and man's ever-increasing dominion over nature, and the multiplication of threats at the interface between humans, animals, and the environment, we must go beyond the mere acknowledgment that human health, animal health and the state of the ecosystems are interrelated. Nowadays, One Health must become a prescriptive concept, through concrete norms of behavior that minimize the risks at the human-animal-environment interface. From this perspective, the actors of One Health are almost unlimited. These norms can be developed in multiple areas such as agriculture (including land use and meat production), urban planning, veterinarian medicine (the use of antimicrobials), trade (wildlife trade, traditional markets), surveillance systems, or financing programs (which can encourage projects which align with One Health). Additionally, these norms can be developed and promoted at every level, from the community level (local and indigenous communities, farmers, hunters…) to the global level (international organizations, interstate cooperation, global programs), via the subnational level (cities), the national level (ministries) and the regional level (regional organizations). Currently, there are discussions at the WHO to incorporate One Health into a new pandemic treaty. Hopefully, States will agree on norms and principles that will frame practices, projects, and activities from the One Health perspective, such as the prevention principle, the precautionary principle and One Health-based risk assessments.

To foster the development of norms and principles, One Health also has to be conceived of as a method. This method relies on the cooperation of

[1] OIE declares on its webpage that "The 'One Health' concept summarises an idea that has been known for more than a century: animal health, human health, and environmental health are intrinsically intertwined and interdependent." (World Organisation for Animal Health, 'One Health' <https://www.oie.int/en/what-we-do/global-initiatives/one-health/> accessed 21 March 2022)

experts from different disciplines – such as virologists, epidemiologists, public health experts, veterinarians, agronomists, climate and environmental scientists, informaticians and modelers – in order to increase the knowledge at the human-animal-environment interface. This collaboration should also include social scientists as they help in understanding the behavioral and economic causes of the risks emerging at the human-animal-environment interface, in a variety of local and national contexts. Such an interdisciplinary dialogue is crucial in understanding health issues comprehensively, and ultimately allows for the shaping of relevant, realistic, and socially acceptable norms of conduct that will reduce risks and improve human well-being.

2) Institutional perspective: is the UN system (with specialized agencies) adapted to One Health?

After WWII, international organizations were created based on the principle of functional decentralization: the United Nations (UN) itself, at the center of the system, was given political functions, while peripheral organizations were given specialized functions in more technical fields. These organizations are called 'the specialized agencies'. Functional decentralization explains why the WHO is responsible for human health while the FAO is responsible for food and agriculture. Regarding the WHO, this repartition was at the core of the ICJ *Advisory Opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, in which the ICJ declared that the responsibilities of the WHO "are necessarily restricted to the sphere of public 'health' and cannot encroach on the responsibilities of other parts of the United Nations system."[2] For its part, OIE was created in 1924 with the task of improving animal health around the world. Although not formally a specialized agency, OIE is subject to the principle of specialty like every other organization.

Yet, the multiplication of cross-sectoral issues and activities (such as development assistance, climate change mitigation and adaptation, emerging and reemerging infectious diseases…) challenges functional decentralization because these issues do not fall into the responsibility of one single organization. Moreover, specialization leads to a tendency to think in silos and to overlook the interactions between the different sectors.

In theory, the UN Charter provides tools to address this difficulty. First, the specialized agencies are in relationship with the UN through agreements[3], hence the expressions 'the UN family' or 'the UN system'. These expressions suggests that the decisions made inside the system are coherent and serve common objectives. To facilitate this coherence, Article 58 of the UN Charter provides that "[t]he Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies". This task

[2] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Advisory Opinion) [1996], ICJ Rep. 1996, p. 80, [26].
[3] Article 57 and 63, U.N. Charter.

has been allocated to the UNGA (for budgetary and administrative coordination) and to the ECOSOC (for program coordination).[4] In particular, Article 63 of the UN Charter provides that ECOSOC "may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations".

However, in practice, coherence, coordination, and cooperation have always been difficult to achieve inside the UN system. This can partly be explained by the great independence enjoyed by the specialized agencies, who are not willing to give up their autonomy. This phenomenon is aggravated by varying organizational cultures, governance approaches, and power relations from one agency to another. Since the 70s, several initiatives have been launched to improve the overall consistency of the UN system action, with uneven results.

Against this backdrop, a genuine One Health approach at the scale of the UN system will be difficult. In 2008, there was an attempt by FAO, OIE, WHO, the UN System Influenza Coordination (UNSIC), UNICEF and the World Bank to collectively promote One Health through the adoption of the *One World, One Health Strategic Framework for Reducing Risks of Infectious Diseases at the Animal-Human-Ecosystems Interface.*[5] However, the organizations involved in this initiative did not 'convert the try' into a comprehensive and even more inclusive cooperation on One Health. Subsequently, the UN General Assembly (UNGA) adopted the 2016 Political declaration on antimicrobial resistance (AMR)[6] – an important problem in One Health – but no comprehensive One Health program was adopted by the UNGA nor ECOSOC. It is also worth underlining that from the earliest days that a pandemic treaty was evoked in 2020, although One Health rapidly appeared as a core topic to be included in the negotiations, the WHO was almost atavistically identified as the appropriate forum, without any discussion about a system-wide international conference which would involve the various other organizations involved in One Health.[7] In other words, the passion for One Health that arose after the COVID-19 pandemic did not lead to a meaningful change of paradigm.

That being said, FAO, OIE and WHO ('the Tripartite') have been collaborating on pressing problems in One Health (AMR, rabies and zoonotic

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[4] Schermers and Blokker, '*International Institutional Law'*, 4th ed., Boston/Leiden, Martinus Nijhoff Publishers (2003), at 1101, [1726].
[5] FAO, OIE, WHO, UN System on Influenza Coordination, UNICEF, and The World Bank, 'Contributing to One World, One Health. A Strategic Framework for Reducing Risks of Infectious Diseases at the Animal-Human-Ecosystems Interface' (14 October 2008), <https://www.fao.org/3/aj137e/aj137e00.pdf>, accessed 21 March 2022
[6] UNGA Res 71/3 (5 October 2016), UN Doc A/RES/71/3.
[7] Article 62 of the UN Charter authorizes ECOSOC to "prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence" and to "call (…) international conferences on matters falling within its competence".

diseases) for more than a decade. This collaboration relies on a corpus of documents whose legal character is growing stronger with time, from a mere 'Concept Note' (2010)[8] – a soft and narrative document without any legal character – towards a 'Commitment' (2017)[9] – whose form and content are close to the Concept Note's but whose title suggests a stronger engagement – and then to a 'Memorandum of Understanding' (2018)[10] – whose form and content are reminiscent of a legally binding agreement.

In 2021, this Tripartite collaboration expanded to include UNEP. The three organizations and UNEP created the One Health High Level Expert Panel (OHHLEP), composed of scientists charged with developing knowledge and providing guidance and advice on One Health-related matters that will support cooperation among governments and collaboration among the four partners.[11] As attested to by the 'Notes for the Record' issued after each of its meetings, OHHLEP is working in an efficient and productive way. Its first concrete accomplishment was the adoption of an operational definition of One Health.[12]

Despite these important steps forward, the collaboration between FAO, OIE, WHO and UNEP still faces some resistance. First, while they were asked by OHHLEP to "officially endorse this unified definition" of One Health,[13] the four entities merely "welcome(d) the newly formed operational definition of One Health" and declared that they "will continue to coordinate and implement One Health activities in line with *the spirit* of the new OHHLEP

[8] FAO, OIE, WHO, 'The FAO-OIE-WHO Collaboration. Sharing responsibilities and coordinating global activities to address health risks at the animal-human-ecosystems interface. A Tripartite Concept Note' (April 2010), p. 5
[9] FAO, OIE, WHO, 'The Tripartite's Commitment. Providing multi-sectoral, collaborative leadership in addressing health challenges' (October 2017), p. 4
[10] 'Memorandum of Understanding between the United Nations Food and Agriculture Organization and the World Health Organisation for Animal Health and the World Health Organization regarding cooperation to combat health risks at the animal-human-ecosystem interface in the context of the "One Health" approach and including antimicrobial resistance' (30 May 2018)
[11] FAO, OIE, WHO, and UNEP, Terms of Reference for the One Health High Level Expert Panel (OHHLEP) (2021), (*OHHLEP ToR*) <https://wedocs.unep.org/20.500.11822/35438> accessed 21 March 2022
[12] The One Health definition developed by the OHHLEP states: "One Health is an integrated, unifying approach that aims to sustainably balance and optimize the health of people, animals and ecosystems. / It recognizes the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and inter-dependent. / The approach mobilizes multiple sectors, disciplines and communities at varying levels of society to work together to foster well-being and tackle threats to health and ecosystems, while addressing the collective need for clean water, energy and air, safe and nutritious food, taking action on climate change, and contributing to sustainable development."
[13] Third virtual meeting of OHHLEP (30 September – 1 October 2021), Note for the Record, p. 1. < https://cdn.who.int/media/docs/default-source/food-safety/onehealth/ohhlep-3rd-panel-meeting-notes.pdf?sfvrsn=af124b35_7>, accessed 21 March 2022

definition"[14] (emphasis added). This reference to the mere "spirit" of what is supposed to be an operational definition might testify to a desire to safeguard their autonomy and margins of freedom. A brief survey of the four entities' webpages still shows no unified practice or understanding regarding the definition of One Health. In particular, OIE still displays its own definition of One Health.[15]

Second, while FAO, OIE, WHO and UNEP are collectively referred to as the "Partners", the sectoral approach is not abandoned. From the outset, in the OHHLEP terms of reference, each of the four entities is presented as "the leading organization/authority in the field of…" or "the organization responsible for…" or "the directing and coordinating authority on…".[16] Although legally correct, this presentation implicitly secures each entity its own private corner and primacy over certain issues and activities.

Lastly, the four entities are often presented as "Tripartite and UNEP". This can formally be explained by the historical alliance between FAO, OIE and WHO, as well as the specific administrative status of UNEP (which is not an organization per se). However, again, it suggests that the involvement of environmental programs and experts is less integrated than what a genuine One Health approach would call for.

To conclude on a more optimistic note, FAO, OIE, WHO, and UNEP are currently working on a Global Plan of Action (GPA) on One Health, supported by OHHLEP. This Plan "aims to be a technical document providing a framework with a joint vision and commitment allowing the four Partner organizations to work together. / It also aims to support countries, enable collaboration across sectors and regions, identify synergies and overlaps to support coordination and mobilize investment including better use of resources."[17] The final version of the Global Plan will be presented at the next annual Tripartite Executive Meeting, in March 2022. Will the four entities set aside rigid specialization and significant autonomy to work together earnestly to serve One Health in all its dimensions?

3) Normative perspective: is the SPS Agreement adapted to One Health?

[14] Joint Tripartite (FAO, OIE, WHO) and UNEP Statement, 'Tripartite and UNEP support OHHLEP's definition of "One Health" (1 December 2021), <https://wedocs.unep.org/20.500.11822/37600>, accessed 21 March 2022

[15] World Organisation for Animal Health, 'One Health' (n 1)
[16] OHHLEP ToR (n 11), Introduction.
[17] Fourth virtual meeting of OHHLEP (9-10 December 2021), Note for the Record, p. 4., <https://cdn.who.int/media/docs/default-source/food-safety/onehealth/ohhlep-4th-panel-meeting-notes.pdf?sfvrsn=cb6731b1_8>, accessed 21 March 2022

The functional decentralization implemented after WWII at the institutional level produces direct consequences at the normative level, as evidenced by the SPS Agreement.

The SPS Agreement is one of the main WTO Agreements. It applies to all sanitary and phytosanitary (SPS) measures adopted by States which may affect international trade. The purpose of the SPS Agreement is to standardize SPS measures and to prevent protectionist measures disguised as SPS measures.

To incentivize harmonization of SPS measures, Article 3 of the SPS Agreement provides that "Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist".[18] Those measures "which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with" the SPS agreement and GATT."[19]

Article 3 of the SPS Agreement mirrors the traditional approach to health, whereby human health is separated from animal and plant health. This is not surprising, considering that this Agreement was adopted in 1994. The sectoral approach is also at the core of Annex A of the SPS Agreement. Annex A, para. 3, defines what is due to be understood by "international standards, guidelines or recommendations" as used in Article 3. For 'food safety' (a), the relevant standards, guidelines and recommendations are those adopted by the Codex Alimentarius Commission. For 'animal health and zoonoses' (b), the relevant standards, guidelines and recommendations are those developed by OIE. For 'plant health' (c), the relevant standards, guidelines and recommendations are those developed under the International Plant Protection Convention (IPCC). Despite references to the Joint FAO-WHO-Codex Alimentarius Commission and to zoonoses (animal diseases transmissible to humans), the overall approach adopted by Annex A, para. 3, is, ultimately, still a sectoral approach. Even more glaring is UNEP's total absence from the list.

Still, it is early days yet. One Health could become a prescriptive concept, leading FAO, OIE, WHO, and UNEP to collectively adopt cross-cutting norms that simultaneously serve the interests of food safety, animal health, plant health, human health, and environmental health — per the One Health perspective. For instance, OIE, WHO, and UNEP adopted the interim guidance on traditional food markets during the COVID-19 pandemic.[20] This

[18] Agreement on the Application of Sanitary and Phytosanitary Measures, 1867 U.N.T.S. 493 (*SPS Agreement*), Article 3.1
[19] *Ibid.*, Article 3.2
[20] OIE, WHO, UNEP, 'Reducing public health risks associated with the sale of live wild animals of mammalian species in traditional food markets, Interim Guidance' (12 April 2021), <https://cdn.who.int/media/docs/default-source/food-safety/ig--121-1-food-safety-

guidance, whose scope is relevant for domestic as well as international trade, is based on the One Health approach. Yet its status under the SPS Agreement is unclear. Since Annex A, para. 3, (d) is ill-suited to serve as a 'receptacle' for such norms,[21] one possibility would be to amend Annex A to refer to collective standards which reflect the One Health perspective. Otherwise, One Health standards collectively adopted by FAO, OIE, and WHO could also be attached to sub-paragraph (a), (b) and (c) altogether.

and-covid-19-guidance-for-traditional-food-markets-2021-04-12-en.pdf?sfvrsn=921ec66d_1&download=true>, accessed 21 March 2022.

[21] SPS Agreement, Annex A, para. 3d states: "for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members, as identified by the Committee." Yet, One Health encompasses matters that are covered by FAO, WHO and OIE, which are the very organizations which promulgate norms on One Health.