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Unified Social Control Through International Law for Mobility During Covid-19 Pandemic

Axel Victor Christian

axel.victor99@gmail.com

Abstract. States takes measure during Covid-19 Pandemic. Those measures are not unified under the same standard thus limiting mobility. With the vaccine then available the measures and standards states take becomes more complicated and not unified. There needs to be a unified measure which is a unified social control through international law by analysing whether social control is permissible under international law. A unified social control for measures that effect the mobility will unify standards. It is permissible considering the states behaviour under the current Covid-19 Pandemic. Unified control through international should be done in a treaty or convention. Diplomacy for the success of the treaty then should be done through track two model of diplomacy which will provide freedom to the states in raising their wills and concern on the respective treaty.

Keywords. Social Control, International Law, Treaties, Convention, Covid-19, Pandemic

1. Introduction and Background

Coronavirus Disease 2019, further named Covid-19, took the world by surprise in the early year of 2020. States around the world rushed to contain the spread of infection through various measures. These measures include social distancing, closing down certain institutions to prevent crowds from forming and quarantine (Guner et al., 2020). These measures are general in its nature whereas in reality each state has their own parameter of how to measure. Different parameters from different states cause different measures to be applied in different states. The measure that the states conduct falls under the definition of social control instigated by Roscoe Pound. Pound elucidated that social control is the use of pressure from a person to another person to prevent antisocial behaviours with law as its greatest means of conducting social control (Pound, 1996). Therefore the measures taken in regard to Covid-19 are to prevent the antisocial behaviour of spreading the disease itself.

Research in the year 2020 concluded that mobility for persons between states are fragmented and frenetic and calls for an urgent general standard guideline applicable to all states (Benton et.al, 2020). The research was conducted in 2020 concluding that there were no unified regulations for mobility which means there was no unified social control at that time. Consequently, people who wish to travel would be faced with multiple difficulties as each state has their own measures and their own parameters.

Now it is available for mankind vaccines for Covid-19. This paper will not discuss the efficiency or the efficacy of the Covid-19 vaccines but will point out that there exists vaccine

currently distributed for use to prevent and alleviate Covid-19. To some extent these vaccine became prerequisites to conduct travel overseas and anything relating to travel in between states. With different regulations conducted in each state in regard to travel restrictions due to vaccination and quarantine, the international community now stands on multiple standards causing confusion and uncertainty to persons who wish to travel between states with whatever reasons they hold. The vaccination provides a change in the social system as it is increasingly becomes a mandatory element for conducting activities in relation with the society. A unified social control through international law will unify standards. Seeing that different social controls through law are held, this article wishes to explore whether it is preliminary possible for a unified social control through International Law and how it is possible to implement it. Therefore it is accounted also the notion of international law.

2. Research Method

Research method is done through literature review. Ramdhani et al. defined literature review as an act to discuss existing literature works in which the literature works discusses a certain subject also it may discuss it in a certain time (Ramdhani et al., 2014). Therefore this research article will answer the issue presented in the previous section through literature reviews.

3. Analysis and Discussion

3.1 Unified Social Control Through International Law for Covid-19

Measures

We must first assess the permissibility of a unified social control in international law by firstly defining international law. International Law is a legal order described as a legal order between states as its subject. Kelsen described that international law is a legal order supreme to a national legal order with reprisals and war as its sanction when there is a breach of the legal order in question (Kelsen, 1949). The execution of the sanctions is left to the state who in actuality committed a delict causing the international law to be highly decentralized (Kelsen, 1941). Kelsen's description on international law provides that it is similar to those of national law only differing in the execution of a sanction due to a delict. To Austin however, he considers that international law is not a law or not a positive law due to the absence of sanctions (Austin, 1832). This is due to his command theory stating that a law is a command and within it must include sanctions as a consequence towards the command's disobedience. This creates confusion on whether international law is indeed a law or is it not. Kelsen solved this question by explaining that in international law exist a delict, which is illegal acts, and that sanctions are delivered from states to states (Kelsen, 2003). Therefore Austin's definition falls short when using sanction as its fundamental theory of whether international law is indeed a law or not.

Pound states that the main agent of social control is the law itself, without considering whether the law is international law or national law. At a glance the notion of social control and international law does not correlate neither they complement each other which may be further supported with the argument that Kelsen, Austin and Pound did not assert their views and opinions intertwining each other. However the question really is in regards to permissibility of social control in international law. When assessing permissibility the question shifts to whether can international law accommodate social control. To answer that question we must first move into the states behavior towards international law.

There are three models of a state's behavior towards international law in the existing literature which are the interest based model, norm based model and the one who wishes to find

a middle solution is known as promising convergence (Hathaway, 2005). The interest based model provides that states enter into agreements because of common interest whereas the norm based model argues that states enter into agreements due to the realization and adherence towards a standard norm. The promising convergence model provides that state's behavior towards international law may be due to influence of its domestic affairs, shaping the norms they adhere to and the state's interest.

These behaviors now we pose to the current situation. The states of this world now are all intertwined under the same issue: Covid-19 vaccinations and the fact that the measures between each states are all different much less unified. Theoretically, the interest of state, whichever model they practice, provides that they all have the interest or is at the very least facing the same vaccination measure issue. Facing a common issue means that all the states are unified under the same issue and suffering under the same issue albeit not all suffers equally. When suffering equally in terms that the root cause of the suffering is common, the measures the state take together becomes unified. The measure the state takes in regards to this article's topic is in regards to Covid-19 vaccination measures, therefore already fulfilling both social control and international law. Therefore, when states take a measure together as a unity, it becomes a unified measure which is a unified social control. It is a unified social control in international law because the subject who takes the measure is states.

3.2 Treaties and Convention on Covid-19 Vaccination Measures

Now we know that it is permissible and possible for a unified social control through international law. It is also discussed above that when states take the same measure together it becomes a unified social control through international law, owing to the fact that the subjects are the state and that it is higher than that of their own respective national law. Now the question shifts to how to realize and apply a unified social control through international law so that the Covid-19 vaccination measures can be crystalized into positive law. To answer this question it must be first understood how international law can be crystalized into positive law, which are laws that are written and enacted and have the power to be enforced. To see how it may be crystalized into a positive law, it must be assessed the sources of international law. The sources of international law makes up or constructs the international law, which means the sources are positive laws that is enforceable and have legal power.

Kacrowska provides that the sources of international law can be found in Article 38 of the Statute of the International Court of Justice which are treaties and convention, customary practices of the international community, general principles of law and opinions of highly regarded experts in law (Kacrowska, 2010). Those sources are what make the international law as it is meaning they are practiced in reality within the international community. From those sources the only one fitting into the definition of a explicitly mentioned and enforceable positive laws are the treaties and conventions. The rest of the sources may become positive law but under the condition that they are practiced when needed. If they are not needed in any positive law, their existence is normative and not explicitly written.

With treaties and convention as a source of explicit positive law in international law, the unified measures for Covid-19 vaccination use these laws as a means to implement a unified social control. It will not be discuss in this section what the contents of the treaty should be as it is not possible to do so and not within the scope of this research article. What is hinted is the use of treaties and conventions to apply Covid-19 vaccination measure applicable to all the states that signs and ratifies the treaty or convention. This is the only possible way there may

be provided a general standard. However, there is an important element needed to be analyzed and that is the element of diplomacy.

When states are willing or shows minimum intent to take a measure together, either bilateral or multilateral, diplomacy becomes the key to the success of the measure to be taken together. Normally, diplomacy is done through official representatives from each state. However such ways are usually rigid and hardly provides any common ground to reach a conclusion. Diplomacy then becomes long, lengthy and difficult. Aside from the how normal diplomacy is conducted there exist track two diplomacy which is informal diplomacy. Triggs provided that track two diplomacy are informal diplomacy with the actors not officially representing the government (Triggs,1997). This model of diplomacy means there are less pressure and more freedom for states to express their wills and concerns without having to fear of insulting other states or cause unwanted consequences.

Track two diplomacy should be model in approaching when discussing treaties or conventions regarding Covid-19 vaccination measure. The Covid-19 vaccination measure is a global issue which includes all states existent as everyone is affected by it. Normal diplomacy model would be very lengthy considering that it is done in a formal way and includes hundreds of country. Track two diplomacy solves this issue by providing states the freedom to conduct non formal diplomacy by freely allowing them to express their concerns and will regarding the Covid-19 vaccine measure. Therefore, with a much more flexible model, the achievement for the consensus of the treaty should be much quicker than those of the normal model of diplomacy.

Lastly it is important to discuss compliance of the treaties itself. Treaties in international law have always been subject to the critic that there exist no sanction and no single body to execute that sanction. As explained above the notion of sanction is a reason to dismiss international law as a law. This section will not discuss and analyze whether the presence of sanction is needed for international law to become law. This section simply discusses whether there is a need for a sanction to be present in the treaty for the vaccination measure. When presented with the notion of sanction it becomes difficult to devise just the sanction itself. If there exists a sanction then there must be a body with enough authority to execute it those who the sanction is directed against. So it is not possible to introduce sanctions as the introduction of sanctions itself would need another separate diplomacy so there can be consensus, causing unnecessary complications

4. Conclusion

It is concluded that the states during Covid-19 takes fragmented therefore different measures which causes difficulty in mobility during Covid-19 Pandemic. A unified social control through international law may solve this issue by providing unified standards. Analysis shows social control is permissible under international law considering the states behavior towards the current ongoing pandemic. Treaties would be the best means as to how a unified social control may be conducted.

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