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Original Research

International Agreements in Law at Health Sector of the Republic of Uzbekistan

R. Azkhodjaeva University of World Economy and Diplomacy (Uzbekistan)

This article examines international legal documents and national legislation of Uzbekistan in the in the health protection sphere, the activities of the United Nations, analyzes international legal documents regulating health protection issues, cooperation of the Republic of Uzbekistan in the field of health protection.

Introduction

Under Article 25 of the Universal Declaration of Human Rights (1948), everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in the circumstances beyond his control.

The protection of human rights in health is included in several multilateral international agreements. Depending on the scope, the global legal regulation of the human right to health takes place at two levels:

the first level is universal (within the United Nations - UN), which may also have recommendatory significance for the global community;

the second level is regional (within the Council of Europe, the European Union, the Commonwealth of Independent States, etc.), binding on member states of these organizations.

The first level in which human rights in the area of health are established includes the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), and other bare international normative acts of a universal character. These international documents impose legal obligations on participating states: states shall take all necessary measures, including legislative and administrative, to implement the rights enshrined in them; states that have adopted these Covenants and Declarations shall ensure socio-economic and cultural rights for all, at least to a minimum extent, regardless of their level of economic development.

The establishment and regulation of relations in the field of the human right to health by international legal norms is a natural continuation of their provision by constitutional law, as well as essential guarantees of their global implementation, international control over their performance, development of unified standards of quality of medical care [1].

The UN has a significant role in constructing and maintaining world order. Including the activities carried out by the UN form a global trend towards the unification of health policy.

The UN has special divisions whose responsibilities include legislative initiative, drafting international legal acts to realize the human right to health, supervising the implementation of global legal actions enshrining human rights and freedoms ratified by states.

The main deliberative body of the UN is the General Assembly (GA), whose essential function is to

promote cooperation in the areas of economic and social life, culture, education, health, and human rights. In addition, the GA is responsible for adopting resolutions on health and area, which have an indirect impact on global health (such as protecting human rights, access to drinking water, humanitarian assistance, and sustainable development).

In December 2009, the UN General Assembly adopted resolution A/RES/64/108, “Global health and foreign policy”, prepared with WHO [2]. The resolution notes that global health challenges require even more concerted and sustained responses at the national, regional, and international levels. In particular, the resolution stresses the need for countries to:

first, to take health issues into account in the development of foreign policy;

second, enhance coherence between health, development, and foreign policy;

third, increase efforts to train diplomats and health officials on global health and foreign policy.

UN GA conventions establish increased guarantees of the right to health care for specific categories of citizens: children, women, people with disabilities, and others. In particular, article 24 of the Convention on the Rights of the Child concerns that member states recognize the right of the child to use the most advanced health care services and means of treatment of diseases and rehabilitation of health and strive to ensure that no child deprives of its right of access to such health care services. Accordingly, Uzbekistan acceded to the Convention on the Rights of the Child by Resolution of the Supreme Soviet (central legislative institution) of Uzbekistan, №757-XII dated December 9, 1992 [3] (entered into force on July 29, 1994).

Article 25 of the UN GA Convention on the Rights of Persons with Disabilities of December 13, 2006 that the Member States recognize the right of persons with disabilities to the highest attainable standard of health without discrimination based on disability and take all appropriate measures to ensure access to persons with disabilities to gender-sensitive health services, including rehabilitation for health conditions. Uzbekistan signed the Convention on February 27, 2009, and ratified it on June 7, 2021.

Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, concluded on December 18, 1979, requires the Member States to take all appropriate measures to eliminate discrimination against women in the field of health care to ensure, based on equality of men and women, access to health care, in particular about family planning; States Parties shall provide to women appropriate services during pregnancy, childbirth and the post-natal period. The Republic of Uzbekistan acceded to the present Convention following Resolution №87-I of the Oliy Majlis of the Republic of Uzbekistan of May 6, 1995 “On the accession of the Republic of Uzbekistan to the Convention on the Elimination of All Forms of Discrimination against Women”, adopted in New York on December 18, 1979 (entered into force for the Republic of Uzbekistan on August 18, 1995) [4].

The UN Security Council (UNSC) has the primary responsibility for maintaining international peace and security, determining whether there is a threat to peace or an act of aggression. The Security Council adopted resolution 1308 (2000), which defined the HIV/AIDS pandemic as a significant threat to stability and security. The document recommends that States carry out HIV/ AIDS prevention, staff, and community counseling; calls for additional measures to train peacekeeping personnel; and stresses the need for more discussion among stakeholders to achieve progress in this area.

The consideration of combating the spread of HIV/ AIDS at the level of the UN Security Council transformed it from a public health issue into an essential element of national security in developing countries and a clear threat to peace and security.

A resolution adopted by the Security Council on June 7, 2011, urges the international community to continue combating HIV/AIDS, inform the population about protection methods, provide treatment and care to as many people as possible, and implement preventive programs [5].

The work of the UN in health has contributed to the development of the field of the international health law. The activities carried out by the UN, and its specialized agencies have formed a worldwide trend toward the unification of health policies. Unfortunately, none of the documents developed and adopted by the UN is universally binding [6].

As for the international documents of the second level, for example, at the Commonwealth of Independent States (CIS) level, there is the Agreement on providing medical assistance to the citizens of the CIS member-states of March 24, 1997, concluded intending to promote further development and deepening of cooperation in providing medical aid to the CIS population, the Agreement on cooperation in the field of public health care (1992), the Agreement on cooperation in the problem resolution of HIV infection (1998).

Agreement in the field of health care to citizens of one the Member States of the CIS in the territory of others was approved by the decision of the Cabinet of Ministers “On approval of international agreements” №406 of August 19, 1997, [7].

The Agreement guarantees citizens emergency and urgent medical care without hindrance, free of charge, and in total volume on the territory of the state of temporary stay by medical and preventive institutions regardless of organizational and legal forms, departmental affiliation, and forms of their own in the following cases: sudden acute conditions and diseases that threaten the life of the patient or the health of others, accidents, poisonings, injuries, childbirth, and urgent needs during pregnancy.

As a development of this Agreement, a Protocol on the mechanism of implementation of the Agreement on the provision of health care to citizens of the CIS member states in terms of the procedure for providing medical services (Moscow, 1997) was adopted, in which the states define the process for providing emergency and urgent and planned medical assistance [8].

Also, the Presidential decree of the Republic of Uzbekistan №PP-2550 of June 17, 2016, approved the Agreement between the governments of the Shanghai Cooperation Organization (SCO) member states on cooperation in health, signed on June 15, 2011 [9].

Following the legislation of each the Member States, the Parties to this Agreement develop cooperation in the following areas: science and innovative technologies; prevention and control of infectious diseases; safety and quality of medicines and medical devices; health informatization and telemedicine; medical care in emergencies, etc.

These areas of cooperation are implemented following the laws of each SCO member state in the following forms: exchange of scientific and innovative achievements; exchange of advanced and modern technologies; participation in international events (exhibitions, conferences, symposiums, etc.) held by the Parties; operational information exchange in emergencies that threaten public health; interaction between health organizations and institutions of SCO member states.

Of the bilateral acts, the Agreement between the Government of the Russian Federation and the Republic of Uzbekistan on cooperation in healthcare, medical education, and science (Moscow, April 5, 2017, entered into force on April 5, 2017) should be noted [10].

The World Health Organization (WHO) is the specialized agency that guides and coordinates global action on disease control. It is responsible for providing leadership on global health issues. Since 1977, the WHO has been promoting a new approach to the definition of health policy at various levels, which has now been embodied in the international strategy “Health for All”, adopted in most

countries worldwide.

The goal plan of the policies and activities of the health care system of WHO member states is to achieve “positive health status” and reduce morbidity, disability, and mortality. The strategy is also intended to increase the priority of health promotion and disease prevention, actively involve those parts of society whose activities directly or indirectly influence the population’s health, and attach great importance to the role of individuals and population groups in these activities.

The goals set by the WHO “Health for All” program are aimed at fairness in health care, a continuation of an entire life, living conditions for the disabled, reduction of morbidity and disability, elimination of infectious diseases, reduction of child and maternal mortality, reduction of mortality from vascular diseases, cancer, and accidents.

Uzbekistan officially acceded to the WHO on May 25, 1992. WHO cooperation with the Government of Uzbekistan is currently guided and guided by the European Policy and Strategy “Health 2020” (signed by the country in 2012) and the Bilateral Cooperation Agreement between the Ministry of Health of the Republic of Uzbekistan and WHO Regional Office for Europe for 2020-2021. The Agreement provided a practical framework for cooperation and was developed through successive consultations between the national health authorities and the WHO Regional Office for Europe Secretariat.

Health 2020 builds on the values embodied in the WHO Constitution: the enjoyment of the highest attainable standard of health as a fundamental human right. It recognizes the interconnectedness between health actors, actions, and challenges at local, national, regional, and global levels and recommends maintaining the unity of approach and adopting a single region-wide policy framework focused on outcomes. It provides a complete and clear picture of the options and trade-offs available in implementing measures to improve health and reduce inequities.

Achieving better and more equitable health and well- being requires the combined efforts of many partners because health is the responsibility of the whole society and the whole state at all levels.

Health 2020 recognizes that the state can improve health outcomes by working at all levels and across all government sectors to address two interrelated strategic objectives.

These two strategic objectives are:

first, improving health for all and reducing health inequities;

second, enhancing leadership and collective governance for health [11].

Based on the global priorities that the Member States have set for the WHO, the Health 2020 policy proposes four priority areas for strategic action, which correspond to the specific needs and experiences of the European Region. Efforts in these areas are also based on relevant WHO regional and global strategies and action plans.

These four priority areas include:

- investing in health at all stages of life and empowering citizens;

- reducing the burden of major non-communicable and infectious diseases in Europe;

- strengthening people-centered health systems and public health capacities, including maintaining emergency preparedness and response capacity;

- creating an enabling environment and ensuring the resilience of local communities.

The WHO Constitution defines the organization's primary goal as the attainment by all peoples of the highest possible level of health. Among the functions, which should lead to the achievement of the goal, the WHO Constitution names the adoption of various acts (including normative ones) - conventions, agreements, and regulations on international health issues, the conclusion of international treaties, adoption of recommendations by the states, assistance in the formation of international customs, i.e., using traditional for international intergovernmental organizations ways of implementing normative powers [12].

Most of the documents developed by the WHO are adopted in recommendations. Recommendations establish a desirable model of behavior, but their adoption and amendment are not associated with the complexities inherent in the process of developing binding norms. Suggestions are more lenient than conventions, agreements, or regulations.

At present, it can be concluded that WHO does not make sufficient use of the regulatory tools of influence on States. For example, the WHO makes little use of its right to adopt binding conventions. The first and only international treaty adopted under the aegis of the WHO was the WHO Framework Convention on Tobacco Control (WHO FCTC) [13]. Uzbekistan also acceded to the convention – President signed the relevant law on April 24, 2012 [14].

We believe that insufficient normative regulation leaves the states too much freedom of choice and negatively affects the state of the law in health care. Therefore, the standard-setting activity of the WHO, as an organization that has an absolute advantage in this area in the international arena, should be intensified. Today, international law should become an effective mechanism for protecting public health.

While other international organizations adopt international treaties, the WHO has practically eliminated this important function entrusted to the Constitution; in addition, many health issues are already regulated by conventions and agreements adopted at the regional level (including within the framework of the Council of Europe and the CIS), which allows a conclusion about the possibility of normative regulation of this sphere. Therefore, because health care is crucial for a human being, it is necessary to propose adopting a normative framework within the WHO to ensure the proclaimed human rights in health care.

In particular, there is a proposal to develop a convention on the right to health, defining the concept of this right, ensuring its implementation, and the mechanism of control by the WHO [15]. While proclaiming the human right to health, the Constitution does not provide an enforcement mechanism, so adopting a convention could fill this gap.

Adopting international treaties at the regional level does not ensure the unity of regulation concerning each person. Among them are, in particular, the issues of providing medical assistance to citizens of foreign countries and the protection of human rights in connection with the use of new medical technologies.

By the Decision of the Cabinet of Ministers №220 of July 31, 2015 [16] to organize and strengthen a comprehensive system of regulation of relations related to the provision of sanitary and epidemiological welfare of the population of the republic, as well as to prevent the international spread of diseases, the International Health Regulations (IHR) were adopted.

The IHR is an international treaty that establishes binding global rules in public health to enhance health security at the national, regional, and international levels. They were adopted by the Fifty-eighth World Health Assembly on May 23, 2005, entered into force in 2007, and are binding on all WHO Member States [17].

The IHR provides a comprehensive legal framework defining the rights and responsibilities of countries concerning public health actions and emergencies that potentially cross borders. As one

of WHO's core documents, the rules are intended to help the global community prevent and respond to the spread of disease. The Members States are obliged to cooperate with WHO and each other in good faith by assessing health events occurring on their territory, notifying WHO of those that reach a certain threshold of severity, providing detailed information, and taking a range of measures depending on the nature of the health event. Moreover, the Members States should establish and maintain a set of core capacities in their respective national health systems to promptly identify, notify and respond to public health risks during emergencies.

There are also challenges and uncertainties in coordinating the international response to the emergency, and the current COVID-19 outbreak confirms these challenges. Although the IHR contains relatively straightforward obligations for due diligence and cooperation and general public health measures, national responses to the emergency must be guided by WHO interim guidance. However, the available practice indicates a varying level of compliance, particularly concerning travel and trade restrictions with affected countries.

The current COVID-19 outbreak again tests the effectiveness and credibility of the IHR as a legal tool and as a public health tool. Thus, given the complexity and many variables surrounding outbreaks, severe design and implementation issues must be thoroughly and urgently addressed to avoid irreversibly weakening the integrity of the IHR as the sole and necessary legal basis for global health security.

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