Reviewer’s report

Title: International norm development and change: Can international law play a meaningful role in curbing the lifestyle disease pandemic?

Version: 0 Date: 23 Dec 2019

Reviewer: Marlies Hesselman

Reviewer's report:

REVIEW ADVICE:
accept after (minor) revisions and clarifications / accept after discretionary revisions.

The article includes a worthwhile reflection on the dynamics of norm emergence as tied to proposals for further legal (treaty?) norms on NCDs.
It is also a welcome contribution to the general literature on norm emergence.
In order to strengthen the contributions on both scores, the following points and questions for review, also reflected in attached comments, are summarized for benefit of the review:

1) The part on CLS and CILS currently contribute least strongly/clearly to the purpose of the paper and the literature. Especially, the discussion of CLS/CILS points remain somewhat superficial. As it stands, the paper summarises some existing CLS insights almost as a warning to campaigners and law-makers, but the findings are not very strongly or concretely tied to the actual NCD crisis or NCD law making. There is limited new or actual analysis across NCDs and CLS - e.g. a reflection on how the FCTC may viewed through a CLS lens for example? Most specifically: after a general discussion of some key points and concerns from CLS/CILT theory, it seems fairly weak to conclude that the NCD crisis knows a lot (structural) inequalities which would be difficult to address through law. It seems more useful if the paper could consider how treaty negotiation processes or treaty texts reinforce or entrench structural NCD inequalities, power relations, hierarchies, harmful ideologies around NCDs? In addition, can the paper offer ideas about how treaties could be more sensitively drafted, if possible at all? What are concrete CLS-fears/cautions/worries for NCD treaties? If such fears/worries cannot be managed, e.g. with Koskenniemmi, what should be the consequence of that conclusion? Should there be no more international law/legal codification of "norms”? This is not the conclusion that the author follows?

If the paper is to retain some of the useful critical notes available from CLS scholarship, it is suggested to introduce a few concerns on CLS in a much shorter way, e.g. more by way of a side comment or concern, rather developing it seperately as a full second leg of the paper, which it seems now? If kept as a full second leg of the paper, it would have to be developed better/more concretely, incl. as more clearly relevant-specific to NCD-law making.

Incidentally, I like the comment at the start of the conclusion that we "are just beginning to understand the international politics of noncommunicable diseases". Maybe this concept of "the international politics of NCDs" can be brought to the fore, and emphasized in the introduction as well? Then, what this paper seems to do is to understand the possible role and challenges of
international law/treaties/norms within the international politics of NCDs and the desire to do something about this pandemic.

2) throughout the paper, the author refers to different types of legal norms/principles/law: without opening up a whole debate on the "normative quality" of "legal" norms/principles/rules or treaty law, it would be useful to at least include some statement/clarification as to whether the author thinks it is important or not to differentiate between the type/form of (legal) norm? It is sometimes very clear that the paper is mostly about treaties and treaty negotiation processes. (How) does the type of norm "that norm advocates might work towards" affect norm dynamics/emergence, the norm cycle model, or CLS?

This question may be relevant because:
(a) within WHO there are already a range of "normative" documents available that are not treaties - does that mean that the norms contained in these documents are not norms, or not complete norms, or insufficiently normative? (e.g. the various WHO NCD Strategies, Recommendations, Action Plans)
(b) the development of a multi-lateral treaty text seems quite a specific form of norm development? Especially, it will typically at one point imply (the bargaining for) the opening up of some formal negotiation procedure based on (draft) texts, conference settings, rules on civil participation etc.? (see also point (3): how does this fit in the norm cycle model?)

(Why) Is there the assumption that a binding treaty text would be the desirable end stage of a norm?

3) in similar vein: the author refers at various points to the "norm emergence process". But what is this process exactly, and is it indeed different/peculiar in the context of wishing to develop a multi-lateral (inter-State) treaty? The paper presently does not really seem to clearly distinguish between (a) possible various ways of codifying norms - i.e. are Strategies or Codes part or ends of norm emergence processes? or (b) any possible different phases in the norm emergence process, e.g. from the conception of the initial idea for norm, to the start of the idea that this norm may be best formulated through a multi-lateral treaty text, to the opening (or not) of formal treaty negotiations, to the conclusion (or not) of negotiating process. It is helpful to briefly distinguish/clarify the phases that the paper is concerned with?

4) I note that the paper does not distinguish between pushing for a general norm on "NCDs", or for for norms on specific risk NCD factors, e.g. norms on tobacco, alcohol, salt, sugar control? If we talk about framing, or network building, may this be important? Again, within WHO presently both general and very specific initiatives are undertaken and proposed in practice already (e.g. the various WHO Strategies and Action Plans on NCDs / specific risk factors, but also civil society proposals for a Healthy Diets Draft Convention (2014), or a Framework Convention on Alcohol (2006)).

5) finally, see attached some comments on the role of powerful corporate actors and their place in social constructivist norm cycle theory. The paper now seems to quite readily accept that corporate actors (only, mostly?) operate according to logics of consequences. It would be interesting to see this problematized/contextualized more? To what extent are corporate actors also affected by logics of appropriateness? And in this sense constrained/empowered in influencing/contesting
norm emergence? If it truly should be concluded that cooperations operate in norm emergence spheres largely free from logics of appropriateness, or mostly according to logic of consequences, what does this mean for the constructivist norm cycle model as a whole?

Paper might benefit from a look at literature on network formation on alcohol and tobacco by Gneiting, Schmitz and Taylor.
Paper would benefit from some specific reflection on concrete NCD treaty campaigns in the past.

**Are the methods appropriate and well described?**
If not, please specify what is required in your comments to the authors.

Yes

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