

Resolution No. 2/2020

GLOBAL HEALTH LAW

The 79th Kyoto Conference of the International Law Association, held online, 29 November - 13 December 2020:

HAVING CONSIDERED the Statement of the Global Health Law Committee of the International Law Association regarding the COVID-19 pandemic adopted by the Committee on 5 April 2020;

OBSERVING that developments since the adoption by the Committee of that Statement have reinforced the importance of its subject matter and recommendations;

TAKING NOTE of the Work Program and Reports of the Global Health Law Committee addressing preparedness and response to global health emergencies;

ADOPTS this Statement regarding the COVID-19 Pandemic.

Statement regarding the COVID-19 pandemic

The potential for virus-based pandemic outbreaks has long been anticipated by public-health specialists as well as by the World Health Organization (WHO). During the 2014-2016 Ebola outbreak attention was drawn to gaps in the preparedness of local health systems, to the scientific challenges of developing new treatments, vaccines and diagnostics in a sufficiently rapid manner to effectively confront large-scale virus outbreaks, and to the special difficulties confronted by low-resource environments in addressing pandemic outbreaks. In February 2015 the Global Health Law Committee of the International Law Association convened a meeting on Global Health Security in Geneva at which a substantial number of interested stakeholders shared concerns about these gaps. Following detailed preparatory work, the World Health Assembly met in May 2015 and decided that additional resources should be directed toward prevention of and response to pandemic outbreaks. Although the precise contours and the magnitude of the COVID-19 outbreak could not be foreseen at that time, the potential for such an event was widely understood, as was the need for further advance investment to address it.

Taking note of the global COVID-19 pandemic, the International Law Association wishes to restate fundamental principles and rules of international law important to containing and ending the pandemic, safeguarding the rights of individuals and groups, and ultimately returning international society to a normal functioning state:

- 1. Cooperation.** The International Law Association stresses the importance of cooperation among states and international institutions in addressing pandemic outbreaks. A pandemic outbreak is an opportunity to demonstrate the value of pooling scientific ingenuity and of open cooperation among scientists and research institutions, for coordinating logistic and manufacturing capacity, for making available the financial resources necessary to purchase and distribute necessary health products (including vaccines, diagnostics, treatments and personal protective equipment), and for attempting to assure that individuals throughout the

- world have access to life-sustaining support, including adequate nutrition. A pandemic outbreak is not an occasion for seeking political or economic advantage. Uncoordinated travel and trade restrictions and, more generally, the perception that states can effectively protect themselves from a pandemic in isolation or competing with other states for limited resources, are counterproductive. Actions taken on such premises threaten to destabilize the existing multilateral regime and its institutions with long-term adverse consequences. The world needs more cooperation, coordination and solidarity at this critical time. The International Law Association therefore welcomes the United Nations General Assembly resolutions of 2 April 2020 ([A/RES/74/270](#)), 20 April 2020 ([A/RES/74/274](#)) and 11 September 2020 ([A/RES/74/306](#) and [A/RES/74/307](#)) affirming its commitment to international cooperation and multilateralism. The International Law Association stresses the importance of universal participation in the United Nations system. Universality and inclusive dialogue are essential to comprehensively addressing the global transboundary threat posed by COVID-19.
- 2. Support to the World Health Organization.** The WHO was established in substantial measure to provide a forum where the world community could meet and agree on the processes and substantive measures necessary to address international public health emergencies. It is critical that states support the central role of WHO in addressing the COVID-19 pandemic and in preparing for and confronting future public health crises. To this end, respecting the independence of the Secretariat and of the experts and enhancing financial support for WHO in a sustainable, predictable and flexible manner through voluntary contributions as well as a long-term increase of its assessed contributions are crucial. Even though the current state of the pandemic arguably exceeds the scope of the International Health Regulations (2005) (IHR), it still has an important role to play as the global legal framework to channel data and information and facilitate the coordination of response measures. Member states must pay due consideration to the recommendations made by WHO's Director-General on the advice of the IHR Emergency Committee and should avoid weakening the IHR through the proliferation of unilateral uncoordinated measures and comply with their obligations, in particular with regard to notifications, provision of information, mutual assistance and cooperation and refraining from restrictive measures not supported by a proper risk assessment.
 - 3. Independent evaluation.** The International Law Association welcomes the establishment of the Independent Panel for pandemic preparedness and response as called for by [World Health Assembly Resolution WHA73.1](#), and it commends the Panel Co-Chairs for the steps already taken, as detailed in their report to the WHO Executive Board ([EBSS/5/3](#)). The International Law Association also welcomes the establishment by the WHO Director-General, further to WHA73.1, of the Review Committee on the Functioning of the International Health Regulations (2005) during the COVID-19 Response. This Committee is reviewing the functioning of the IHR during the COVID-19 response, as well as the status of implementation of the relevant recommendations of previous IHR Review Committees. The results of the work of the IHR Review Committee, including its recommendations, should be the subject of in-depth consideration by WHO member states as potential improvements in the functioning of the IHR are important to containing and addressing future disease outbreaks. The International Law Association reaffirms that the independence and impartiality of the Independent Panel and the IHR Review Committee must be guaranteed, that they must be permitted to pursue their duties without external political interference, and that their work should be undertaken in as transparent a manner as possible.
 - 4. Fundamental human rights.** The rights to life, to health, to an adequate standard of living and to food are fundamental. As treatments, vaccines and diagnostics are introduced to address

the COVID-19 pandemic, it is critical that the international community focus on assuring equitable access to all people, at all levels of income, wherever they may be located. The response to this pandemic must be grounded in the principle of nondiscrimination. The International Law Association calls attention to the need for governments and international organizations to address violence against women that has intensified as a consequence of the pandemic, constituting a deprivation of the human rights to personal security and equality, among others. It further affirms the importance of maintaining adequate funding and support for mental health services that have been severely disrupted during the course of the pandemic.

5. **Food security and trade.** The Committee applauds the joint statement by the heads of the UN Food and Agriculture Organization (FAO), the WHO and the World Trade Organization (WTO) of 31 March 2020 calling on states, as they move to enact measures aiming to halt the accelerating COVID-19 pandemic, to minimize potential impacts on the food supply or unintended consequences on global trade and food security. The Committee also welcomes the declaration by the G20 leaders to avoid unnecessary disruptions and interferences in international trade.
6. **Pooling and availability of technologies.** Exclusive rights to technologies such as those afforded by patents and regulatory-based market exclusivity may be useful in ordinary circumstances to promote the aggregation of capital necessary for private enterprise to engage in research and development (R&D). In the extraordinary circumstance of a global pandemic, however, where rapid, general and equitable access to treatments, vaccines and diagnostics is vital, technologies must be shared so that production, distribution and access are maximized. Technology should be pooled and made available at low cost. Exclusive intellectual property rights must not act as a constraint on access, especially as regards COVID-19 in a circumstance of ongoing international emergency. On 22 March 2020, the Global Health Law Committee joined with other stakeholders in supporting a proposal from Costa Rica to the WHO Director General to create a broad technology pooling arrangement to address the COVID-19 pandemic. The International Law Association recognizes that there are a number of collaborative projects underway directed toward the financing, development and testing, acquisition and distribution of health technologies and products needed to protect against, diagnose and treat COVID-19, including the ACT-Accelerator, the COVAX Facility and the C-TAP initiative. The International Law Association encourages strong support for these initiatives, including financial support from governments with adequate resources, as well as support for other initiatives being made by governments and groups to promote and assure timely and affordable access to health technologies and products to address COVID-19. The Global Health Law Committee should continue its role in developing and supporting proposals to further innovation and to assure equitable access.
7. **Temporary restrictions to rights and freedoms.** Some measures to curb the COVID-19 pandemic, including quarantines, are inherently at tension with a range of rights and freedoms guaranteed under human rights law, including the right to privacy and physical integrity, and freedom of movement. These measures must have a legal basis and be proportionate. They should be designed to minimize interference with human rights. Should a State decide to temporarily 'derogate' from human rights, such derogation should be formally proclaimed and notified to the competent international organizations and treaty bodies. Derogation requires careful monitoring to ensure that rights are not set aside unnecessarily. These extraordinary restrictions and derogations should be temporary and great caution and attention must be taken to assure they are lifted as soon as they become unnecessary and do not persist after the public health emergency has passed. A pandemic

must not provide an ongoing basis for heightened and indefinite government intrusion in personal spheres of activity. International monitoring bodies should hold states accountable for how they have implemented limitations and derogations to their human rights obligations as part of their fight against the COVID-19 pandemic, while fully taking into account the exceptional nature of the situation.

- 8. Humanitarian assistance.** The Interagency Standing Committee (IASC) is the humanitarian coordination forum of the UN system. It brings together the executive heads of 18 UN and non-UN organizations and programs (including WHO, FAO, UNICEF and UNHCR) to ensure the coordination of humanitarian assistance during emergencies. After the Ebola outbreak in West Africa, IASC adapted its procedures to ensure a more effective response to infectious disease events. We welcome the adoption of the COVID-19 Global Humanitarian Response Plan launched on 25 March 2020. This plan is to be implemented by the IASC partners in selected vulnerable States already facing humanitarian crises because of conflict or natural disasters. It is thus essential that all member states of the United Nations, especially developed states, fully support the COVID-19 Global Humanitarian Response Plan through additional funding that should not be diverted from ongoing humanitarian operations. As requested in the plan, donor funding should maximize flexibility (across the board rather than project by project) to enable rapid adjustments of the response. The Committee notes that funding for the COVID-19 Global Humanitarian Response Plan will be complementary to the financing instrument launched by the UN Secretary General on 31 March 2020 for responding to the socio-economic impacts of the pandemic. The International Law Association acknowledges that the scale of financing needed for emergency humanitarian response to the COVID-19 pandemic reflects a wider struggle to end poverty everywhere to secure economic and social rights and to achieve UN Sustainable Development Goal (SDG) 1. The pandemic has set back meaningful progress already made toward SDG 1. Sustained increases in financial and other support will be needed to move efforts to end poverty back in the direction of achieving that goal.
- 9. Ongoing conflicts.** Parties to ongoing conflicts, whether internal or international, should immediately pursue ceasefires as requested by the UN Secretary-General so as to avoid magnifying the scale of human suffering. The United Nations organs such as the General Assembly and the Security Council, as well as the UN Secretary General, should demand that hostilities be suspended to stem the spread of the pandemic. Health has historically served as a humanitarian consideration during armed conflicts, including “days of tranquility” agreed between opposing combatants to allow for child vaccination. WHO, the UN, the ICRC and other international institutions should build on the value of health at this moment both to enable urgent health operations as well as to pursue de-escalation of current conflicts.
- 10. Limitations to economic sanctions.** As part of the elementary considerations of humanity, unilateral and collective countermeasures (“sanctions”) should not interfere with access to food and should not prevent the circulation, export, import and purchase of goods required for humanitarian needs, such as medicines and medical devices.
- 11. UN Security Council role.** The United Nations Security Council has discussed in the past the possible implications of certain diseases on international security, notably HIV-AIDS and Ebola. Given the unprecedented magnitude of the current crisis, the International Law Association considers that the Security Council has a central role to play in managing the political effects of the COVID-19 pandemic. In particular, the Security Council can and should monitor and address the impact of the pandemic on current crises and conflicts, peacekeeping operations and request cooperation and coordination among states and other actors when warranted by health considerations. The International Law Association welcomes

adoption by the Security Council on 1 July 2020 of Resolution 2532 (2020) ([S/RES/2532 \(2020\)](#)) that acknowledges likely threats to international peace and security associated with the COVID-19 pandemic and demands the cessation of hostilities that jeopardize human health and humanitarian operations and that impose exceptional hardship on the most vulnerable populations.

- 12. Combatting corruption.** The International Law Association takes note that weakened governmental oversight and inadequate transparency during the COVID-19 pandemic regrettably has presented opportunity for corruption that is diverting substantial resources from those in need, undermining public trust and interfering with protection of fundamental rights. It supports the UN Secretary General's Statement of 15 October 2020 on Corruption in the Context of COVID-19 urging "all governments and all leaders to be transparent and accountable, and to use the tools provided by the United Nations Convention against Corruption".
- 13. International financial institutions.** International financial institutions are positioned to attenuate the more vulnerable situation of developing countries facing economic shocks due to the pandemic. The International Law Association welcomes the recent announcements by the International Monetary Fund (IMF) and the World Bank to authorize additional funding to developing countries aimed at mitigating the multidimensional economic impact of the COVID-19 pandemic. In the case of the IMF, the International Law Association takes note of its close collaboration with the WHO, which resulted in doubling the amount of available emergency response funds for strengthening healthcare systems. The International Law Association also notes the authorization by the World Bank of multiple projects for Emergency Health Support. It encourages review of existing mechanisms such as the World Bank's Pandemic Emergency Financing Facility to identify gaps in pandemic response, and to address those gaps as appropriate.