

Statement of the Global Health Law Committee of the International Law Association (ILA) regarding the COVID-19 pandemic

5 April 2020

Please note that this is a statement adopted by the Committee.

It has not been considered or adopted at the level of the ILA as a whole.

The Global Health Law Committee of the International Law Association observes that 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 Committee 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 Global Health Law Committee 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 Committee 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 Committee therefore welcomes the United Nations General Assembly resolution of 2 April 2020 affirming its commitment to international cooperation and multilateralism.
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. States parties 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. **Fundamental human rights.** The rights to life, to health 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.
4. **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.
5. **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). The higher prices facilitated by such exclusive rights may in ordinary times be acceptable as a trade-off between future research and prompt access, though in ordinary times prices must be reasonable. In the extraordinary circumstance of a global pandemic, however, where rapid 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. On 22 March 2020, the Committee joined with other stakeholders in supporting a proposal from Costa Rica to the WHO Director General to create a broad technology pooling and licensing arrangement to address the COVID-19 pandemic. The Committee will continue its role in developing and supporting proposals to further innovation and to assure equitable access.
6. **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 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.

7. **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.
8. **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.
9. **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.
10. **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 Committee believes that the Security Council has a role to play in managing the political effects of the COVID-19 pandemic. In particular, it could 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.
11. **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 Committee 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 Committee 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 Committee also notes the authorization by the World Bank of multiple projects for Emergency Health Support. The Committee 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.

Global Health Law Committee of the International Law Association

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