

# *Synergising International Public Health Law and International Disaster Law*

Pratik DIXIT\* 

---

*There is no time more opportune to review the workings of the International Health Regulations (IHR) than the present COVID-19 crisis. This article analyses the theoretical and practical aspects of international public health law (IPHL), particularly the IHR, to argue that it is woefully unprepared to protect human rights in times of a global public health crisis. To rectify this, the article argues that the IHR should design effective risk reduction and response strategies by incorporating concepts from international disaster law (IDL). Along similar lines, this article suggests that IDL also has a lot to learn from IPHL in terms of greater internationalisation and institutionalisation. Institutionalisation of IDL on par with IPHL will provide it with greater legitimacy, transparency and accountability. This article argues that greater cross-pollination of ideas between IDL and IPHL is necessary in order to make these disciplines more relevant for the future.*

## I. INTRODUCTION

Presently, the world is witnessing the outbreak of an unprecedented biological hazard in the form of a novel coronavirus, officially recognised as COVID-19. The virus was first detected in Wuhan in the Hubei province of China in December 2019.<sup>1</sup> The rapid global spread of COVID-19, similar to previous epidemics such as severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS), is driven by heightened transmission and commercial air travel.<sup>2</sup> The response of most countries has centred on non-pharmaceutical interventions (NPIs), such as physical distancing and quarantines, as well as restricting international and domestic travel, aimed at reducing the spread of the virus. However, such measures have laid bare the fragility of the global multilateral health law system.<sup>3</sup>

Public international law seeks to provide a multilateral coordinated response to events that exceed the response capacity of an individual state through treaty mechanisms and

---

\* National Law School of India University, Bengaluru, Karnataka, India; email: [pratik@nls.ac.in](mailto:pratik@nls.ac.in).

<sup>1</sup> World Health Organization, “Novel Coronavirus (2019-nCoV) Situation Report 1” (21 January 2020) <[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10_4)> (last accessed 18 October 2020).

<sup>2</sup> A Lee, “Wuhan novel coronavirus (COVID-19): why global control is challenging?” (2020) 179 *Public Health* 1–2.

<sup>3</sup> See A von Bogdandy and P Villarreal, “International Law on Pandemic Response: A First Stocktaking in Light of the Coronavirus Crisis” (2020) Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2020-07, 17.

institution building.<sup>4</sup> The most important instrument governing international public health law (IPHL) is the International Health Regulations (IHR) – originally adopted in 1951 and majorly revised in 2005 by the World Health Assembly. The IHR aims to create a global public health response framework to control the cross-border spread of infectious diseases in a way that minimises interference with international trade and travel.<sup>5</sup> These regulations are binding on all of the 196 Member States of the World Health Organization (WHO).<sup>6</sup> Yet, the failure of countries across the globe to contain the spread of the virus by not framing effective coordinated response policies makes one question the efficacy of international public health systems.

In recent years, the International Federation of Red Cross and Red Crescent Societies (IFRC) has sought to employ international law to respond to peacetime natural disasters. This new discipline of international law, known as international disaster law (IDL), provides a normative framework for all aspects of international disaster management, including prevention, response and adaptation.<sup>7</sup> Although IDL's scope extends to all types of disasters, including epidemics, there has been little intersection between IPHL and IDL. This article argues that both of these disciplines have much to learn from each other in terms of providing better socially mediated responses to disaster prevention, risk reduction and mitigation strategies.

This article aims to synergise different aspects of IDL and IPHL. This aim is furthered by an objective of critically analysing the deficiency of the present IHR framework in light of the COVID-19 crisis. This article argues that the IHR should incorporate concepts from IDL to design effective risk reduction and response strategies in order to deal with the occurrence of a public health crisis similar to COVID-19. However, this article does not restrict itself to dealing with the deficiencies of the IHR. It goes on to argue that IDL also has a lot to learn from IPHL in terms of greater internationalisation and institutionalisation. This article argues that institutionalisation of IDL on par with IPHL will provide it with greater legitimacy, transparent information sharing and accountability, leading to greater respect and realisation of human rights by states while implementing disaster response strategies.

This article starts with a brief overview of IDL and IPHL. Section II analyses the theoretical and practical aspects regarding the implementation of the IHR in light of the current COVID-19 pandemic. It argues that the IHR, instead of merely focusing on building health capacity, must also incorporate holistic mitigation and response strategies. Section III highlights the deficiencies of the present IDL framework to argue that it must incorporate features of the IHR in order to ensure the implementation of disaster risk reduction and response strategies by respecting human rights. This article concludes by suggesting that greater cross-pollination of ideas between IDL and IPHL is necessary to make these disciplines more relevant for the future.

---

<sup>4</sup> A Boyle and C Chinkin, *The Making of International Law* (Oxford, Oxford University Press, 2007) p 17.

<sup>5</sup> World Health Organization, *International Health Regulations* (3<sup>rd</sup> edn, 2005), Art 2 (“International Health Regulations”).

<sup>6</sup> Constitution of the World Health Organization, 1946, Art 22.

<sup>7</sup> KC Lauta, *Disaster Law* (Abingdon, Routledge 2015) p 94.

## II. ANALYSING THE INTERNATIONAL HEALTH REGULATIONS IN THE TIMES OF COVID-19

Since the fourteenth century, countries have recognised the need to adopt a coordinated and collaborative effort to stem the international spread of infectious diseases.<sup>8</sup> This led to a series of international conventions, known as the International Sanitary Conferences, beginning in the mid-1800s.<sup>9</sup> Through these conventions, the participant states agreed to undertake the following two obligations: first, notify other states about the outbreak of infectious diseases within their territory; and second, adopt disease prevention measures in a way that minimises interference with international trade and travel.<sup>10</sup> After the establishment of the WHO in 1948, the aforementioned obligations were codified under the International Sanitary Regulations, which were later renamed as the IHR. The IHR have been enacted pursuant to Article 21 of the WHO Constitution, and as such are legally binding on all the WHO Member States.<sup>11</sup>

The IHR requires Member States to develop, strengthen and maintain local and national health capacities in order to “respond promptly and effectively to public health risks”.<sup>12</sup> Most importantly, the IHR legally obliges Member States to notify the WHO of all health events that may constitute a Public Health Emergency of International Concern (PHEIC). A PHEIC is defined as an extraordinary event that constitutes a global public health risk and requires a coordinated international response.<sup>13</sup> The Director-General of the WHO wields the executive authority to declare a PHEIC based on the information received from the Member States.<sup>14</sup>

### 1. Of lockdowns and quarantines: violating the International Health Regulations

The prime motivating factor behind the enactment of the IHR is to reduce the impact of health measures on international trade and travel.<sup>15</sup> Article 43 of the IHR expressly proscribes Member States from enacting any health measures that restrict international traffic or intrude on personal liberties.<sup>16</sup> In the aftermath of the outbreak of COVID-19, most of the countries resorted to inconvenient NPIs such as physical distancing, lockdowns and quarantines in order to stymie the spread of the virus. Furthermore, many countries also imposed precautionary travel restrictions, especially

---

<sup>8</sup> S Declich and AO Carter, “Public health surveillance: historical origins, methods and evaluation” (1994) 72(2) *Bulletin of the World Health Organization* 285, 287.

<sup>9</sup> D Fidler, “The globalization of public health: the first 100 years of international health diplomacy” (2001) 79(9) *Bulletin of the World Health Organization* 842, 843.

<sup>10</sup> D Fidler, *International Law and Infectious Diseases* (Oxford, Oxford University Press, 1999) p 23.

<sup>11</sup> Constitution of the World Health Organization, 1946, Art 21.

<sup>12</sup> International Health Regulations, Art 13.

<sup>13</sup> International Health Regulations, Art 1.

<sup>14</sup> International Health Regulations, Art 12.

<sup>15</sup> International Health Regulations, Art 2.

<sup>16</sup> International Health Regulations, Art 43.

against China, to prevent the spread of COVID-19 in their respective states.<sup>17</sup> However, such measures have been particularly criticised for violating the IHR due to them being unscientific and excessive.<sup>18</sup>

The IHR mandates Member States to ensure the implementation of health measures in ways that respect human rights and fundamental freedoms.<sup>19</sup> Yet, NPIs and travel restrictions unnecessarily limit the enjoyment of basic human rights such as the right to movement. This difference between theory and practice largely arises because neither the IHR nor the WHO has elucidated on the interlinkage between human rights and global public health governance. Perforce, most of the countries adopted policies without taking into consideration their secondary and tertiary impacts on the rights of individuals within their territories.<sup>20</sup> The major fault for this divergence between theory and practice, however, lies with the conceptualisation of the IHR. In its present form, the IHR is geared towards protecting the international economy rather than providing an effective functional framework to mitigate the disaster risks through international cooperation.<sup>21</sup>

The whole edifice of the IHR rests on countries adequately developing their health capacities in order to be able to detect any PHEIC arising within their territory in a timely fashion. However, this is more of a positive obligation that is progressively realised based on the available state resources. Therefore, it is extremely difficult for developing countries to meet the capacity-building obligations in a timely manner.<sup>22</sup> Furthermore, there is no effective way for the WHO to measure the capacity building of each state, as it largely relies upon self-assessments submitted by Member States.<sup>23</sup> Thus, the major drawback of the IHR lies in its excessive focus on urging states to develop capacities without providing an effective framework for mitigation and response strategies in case of the occurrence of a PHEIC similar to COVID-19.<sup>24</sup>

Compared to IPHL, IDL has taken important strides towards realising the importance of an all-out collaborative and coordinated effort to strategise on disaster response and recovery. For example, the Sendai Framework clearly sets forth the priority areas for the

---

<sup>17</sup> World Health Organization, “Novel coronavirus (2019-nCoV) situation report – 18” (7 February 2020) <[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200207-sitrep-18-ncov.pdf?sfvrsn=fa644293\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200207-sitrep-18-ncov.pdf?sfvrsn=fa644293_2)> (last accessed 18 October 2020); M Corkery and A Karni, “Trump Administration Restricts Entry into U.S. From China” (*The New York Times*, 31 January 2020) <<https://www.nytimes.com/2020/01/31/business/china-travel-coronavirus.html>> (last accessed 18 October 2020).

<sup>18</sup> R Habibi et al, “Do not violate the International Health Regulations during the COVID-19 outbreak” (2020) 395(10225) *Lancet* 664, 665.

<sup>19</sup> International Health Regulations, Art 3.

<sup>20</sup> S Chakraborty, “How Risk Perceptions, Not Evidence, Have Driven Harmful Policies on COVID-19” (2020) 11(2) *European Journal of Risk Regulation* 236, 239.

<sup>21</sup> D Fidler, “From International Sanitary Conventions to Global Health Security: The New International Health Regulations” (2005) 4(2) *Chinese Journal of International Law* 325, 351.

<sup>22</sup> M Broberg, “A Critical Appraisal of the World Health Organization’s International Health Regulations (2005) in Times of Pandemic: It Is Time for Revision” (2020) 11(2) *European Journal of Risk Regulation* 202, 208.

<sup>23</sup> See International Health Regulations, Art 5.

<sup>24</sup> For example, Art 44 of the IHR provides that State Parties to the IHR can collaborate with each other, to the extent possible, with regards to the detection and response to a public health risk. However, this provision fails to elaborate on the manner in which states can collaborate with each other to respond to a PHEIC.

consideration of states at local, regional, national and international levels.<sup>25</sup> It also explains the role and obligations each stakeholder at different hierarchical levels needs to undertake for the effective formulation and implementation of disaster risk reduction, mitigation and response strategies. Moreover, the IDRL Guidelines also lay down the responsibilities of all of the stakeholders, including the assisting states and international organisations, while providing post-disaster assistance and relief.<sup>26</sup>

It must be pointed out that the IHR empowers the Director-General of the WHO to issue temporary recommendations to Member States concerning the PHEIC.<sup>27</sup> These recommendations often provide guidelines as to the implementation of health measures in states affected by a PHEIC.<sup>28</sup> However, since the temporary recommendations are non-binding in nature, they are more honoured in breach than in observance.<sup>29</sup> For example, along with declaring COVID-19 a PHEIC, the WHO also issued certain temporary recommendations to its Member States, wherein it proscribed states from implementing any sort of travel or trade restrictions.<sup>30</sup> However, as observed above, most of the countries disregarded the recommendations of the WHO and instead sought to follow insular paths in order to tackle the pandemic. Nevertheless, it would be wrong to completely blame states for adopting measures such as quarantines, as they were merely trying to pacify public fears and anxieties.<sup>31</sup>

Traditionally, the WHO has viewed epidemics and pandemics as events that unnecessarily disrupt the global economy. In the process, the WHO has ignored the underlying human rights violations that occur in the aftermath of the global spread of a PHEIC. Even after significant advances in medical science, most countries resorted to archaic and blunt health measures such as lockdowns and quarantines.<sup>32</sup> The society of 1918 – when the Spanish Flu wreaked havoc across the world – is different from today’s society, which places a greater premium on individual liberty. Quarantines and lockdowns are overly broad and often implemented without due

---

<sup>25</sup> United Nations International Strategy for Disaster Reduction (UNISDR), “Sendai Framework for disaster risk reduction 2015–2030” (2015) <[http://www.wcdrr.org/uploads/Sendai\\_Framework\\_for\\_Disaster\\_Risk\\_Reduction\\_2015-2030.pdf](http://www.wcdrr.org/uploads/Sendai_Framework_for_Disaster_Risk_Reduction_2015-2030.pdf)> (last accessed 18 October 2020) (“Sendai Framework”). The Sendai Framework, based on the experiences of the Hyogo Framework for Action, sets forth the following four priority areas for focused action by states: first, understanding disaster risk; second, strengthening disaster risk governance to manage risk; third, investing in disaster risk reduction for resilience; and fourth, enhancing disaster preparedness for effective response and recovery.

<sup>26</sup> IFRC, “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (2007) <[https://www.ifrc.org/PageFiles/41203/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](https://www.ifrc.org/PageFiles/41203/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf)> (last accessed 18 October 2020) (“IDRL Guidelines”).

<sup>27</sup> International Health Regulations, Art 15.

<sup>28</sup> International Health Regulations, Art 15(2).

<sup>29</sup> L Gostin, M DeBartolo and E Friedman, “The International Health Regulations 10 Years On: The Governing Framework for Global Health Security” (2015) 386(10009) *Lancet* 2222, 2225.

<sup>30</sup> WHO, “Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)” (30 January 2020) <[https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))> (last accessed 18 October 2020).

<sup>31</sup> C Worsnop, “Domestic politics and the WHO’s International Health Regulations: Explaining the use of trade and travel barriers during disease outbreaks” (2017) 12 *Review of International Organizations* 365, 366.

<sup>32</sup> A Alemanno, “Taming COVID-19 by Regulation: An Opportunity for Self-Reflection” (2020) 11(2) *European Journal of Risk Regulation* 187, 187; A Mandavilli, “SARS epidemic unmasking age-old quarantine conundrum” (2003) 9(5) *Nature Medicine* 487.

consideration of the evidence-based, scientific approach to the epidemiological profile of the virus.<sup>33</sup> Consequently, the implementation of such NPIs, without any justification grounded in evidence and science, constitutes the most serious form of deprivation of liberty.<sup>34</sup>

In terms of the legality of quarantines and isolations under international law, the authoritative guidelines in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (“Siracusa Principles”) allow states to limit certain rights on grounds of public health.<sup>35</sup> However, in addition to the infringement of civil and political rights, quarantines and lockdowns have serious psychological and economic impacts.<sup>36</sup> The economic brunt is faced most prominently by socially marginalised communities living from hand to mouth.<sup>37</sup> As a result, quarantines and lockdowns will have a far greater and longer-lasting impact on the social and economic rights of marginalised people across the globe.<sup>38</sup>

Presently, the major problem with the IHR framework is that the WHO does not have the power to decide how the State Parties interpret different provisions of the IHR.<sup>39</sup> The WHO’s role in this regard has been fraught with discrepancies – on the one hand, it enjoined states to follow their IHR obligations by respecting human rights; on the other, it praised China’s strict lockdown measures for containing the spread of the virus.<sup>40</sup> This divergence in the WHO’s approach to the pandemic response largely emanates from the fact that the IHR does not provide a post-pandemic review and response framework. Therefore, the IHR must incorporate a new framework in order

<sup>33</sup> M Greenberger, “Better Prepare than React: Reordering Public Health Priorities 100 Years after the Spanish Flu Epidemic” (2018) 108 *American Journal of Public Health* 1465, 1466; K Jobe, “The Constitutionality of Quarantine and Isolation Orders in an Ebola Epidemic and Beyond” (2016) 51(1) *Wake Forest Law Review* 165, 187.

<sup>34</sup> C Bensimon and R Upshur, “Evidence and Effectiveness in Decisionmaking for Quarantine” (2007) 97(Suppl 1) *American Journal of Public Health* S44, S45; L Gostin and W Curran, “The Limits of Compulsion in Controlling AIDS” (1986) 16(6) *Hastings Center Report* 24, 26. Gostin and Curran note that isolations and quarantines are “the most serious form of deprivation of liberty that can be utilized against a competent and unwilling person”. They further observe that such measures are “based upon what a person might do in future rather than what he or she has done; there is no clear temporal limitation; and it is not subject to same rigorous due process procedures as in a criminal charge.”

<sup>35</sup> See Siracusa Principles of the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Annex to the document of the UN Commission for Human Rights, 28 September 1984, E.CN.4/1985/4; A Zidar, “WHO International Health Regulations and human rights: from allusions to inclusion” (2015) 19(4) *International Journal of Human Rights* 505, 507.

<sup>36</sup> S Brooks et al, “The psychological impact of quarantine and how to reduce it: rapid review of the evidence” (2020) 395(10227) *Lancet* 912, 916.

<sup>37</sup> PTI, “Lockdown in India has impacted 40 million internal migrants: World Bank” (*The Hindu*, 23 April 2020) <<https://www.thehindu.com/news/international/lockdown-in-india-has-impacted-40-million-internal-migrants-world-bank/article31411618.ece>> (last accessed 18 October 2020); P Inman, “Half of world’s workers at immediate risk of livelihood due to coronavirus” (*The Guardian*, 29 April 2020) <<https://www.theguardian.com/world/2020/apr/29/half-of-worlds-workers-at-immediate-risk-of-losing-livelihood-due-to-coronavirus>> (last accessed 18 October 2020).

<sup>38</sup> M Abi-Habib, “Millions Had Risen out of Poverty Coronavirus Is Pulling Them Back” (*The New York Times*, 30 April 2020) <<https://www.nytimes.com/2020/04/30/world/asia/coronavirus-poverty-unemployment.html>> (last accessed 18 October 2020).

<sup>39</sup> See D Fidler, “COVID-19 and International Law: Must China Compensate Countries for the Damage?” (*Just Security*, 27 March 2020) <<https://www.justsecurity.org/69394/covid-19-and-international-law-must-china-compensate-countries-for-the-damage-international-health-regulations/>> (last accessed 18 October 2020).

<sup>40</sup> WHO, “Report of the Director-General, 146<sup>th</sup> Meeting of the Executive Board” (3 February 2020) <<https://www.who.int/dg/speeches/detail/report-of-the-director-general-146th-meeting-of-the-executive-board>> (last accessed 18 October 2020).

to assess the human rights impacts of state response measures in the event of a PHEIC. Under this new framework, the WHO must ask states to publicly disclose the necessity and the impacts of their decisions on human rights, so as to foster greater transparency and accountability in decision-making.<sup>41</sup>

## 2. Incorporating disaster response strategies into the International Health Regulations

The IHR, instead of merely focusing on capacity-building strategies, must adopt a more holistic mitigation and response strategy framework. Specifically, the WHO must adopt the robust disaster response framework developed by IDL to further evolve the IHR. This will ensure that the IHR also focuses its resources on formulating effective collaborative and coordinated post-disaster response strategies on a global scale. Reforming and reframing the IHR in terms of IDL will also help in reversing the current trend of the “bystander effect”.<sup>42</sup>

The “bystander effect” was particularly stark in the case of the current pandemic, where most of Western countries, in the initial period of outbreak, viewed COVID-19 as essentially China’s problem.<sup>43</sup> Nearly all countries relied on China to contain the spread of the virus globally rather than undertaking collaborative efforts to understand the virus and preparing for its eventual international spread. The problem of the “bystander effect” could be overcome by incorporating IDL strategies into the IHR, so as to instil in states the importance of “doing something now”.<sup>44</sup>

The IDL strategies, encapsulated in the Sendai Framework, emphasise the formulating of global partnerships among the scientific community in order to enhance the dissemination of science-based methodologies, relevant data and statistics, disaster risk modelling, assessment, monitoring, etc., so as to create common information systems in order to address common transboundary disaster risks and to promote mutual learning.<sup>45</sup> The Sendai Framework further emphasises promoting coordination and collaboration across nations in order to ensure rapid and effective disaster response in situations that exceed the capacities of any particular nation. However, the Sendai Framework is not the sole legal initiative laying down the IDL strategies.

---

<sup>41</sup> At present, Art 43 of the IHR only requires Member States to notify the WHO of “the public health rationale and relevant scientific information” for undertaking any additional health measure. Thus, it does not ask Member States to clearly define the impacts that such additional measures may have on the human rights of persons within their territories.

<sup>42</sup> J Darley and B Latane, “Bystander Intervention in Emergencies: Diffusion of Responsibility” (1968) 8(4) *Journal of Personality and Social Psychology* 377, 378. Darley and Latane hypothesised the bystander effect in following terms: “The more bystanders to an emergency, the less likely, or the more slowly, any one of the bystander will intervene and provide aid”.

<sup>43</sup> E Graham-Harrison, “Coronavirus: how Asian countries acted while the west dithered” (*The Guardian*, 21 March 2020) <<https://www.theguardian.com/world/2020/mar/21/coronavirus-asia-acted-west-dithered-hong-kong-taiwan-europe>> (last accessed 18 October 2020).

<sup>44</sup> See A Telesetsky, “Overlapping International Disaster Law Approaches with International Environmental Law Regimes to Address Latent Ecological Disaster” (2016) 52(1) *Stanford Journal of International Law* 179, 204.

<sup>45</sup> Sendai Framework, para 25.

In 2016, the International Law Commission adopted the Draft Articles on the Protection of Persons in the Event of Disasters (“Draft Articles”).<sup>46</sup> The Draft Articles state that different stakeholders have a duty to cooperate with each other in providing effective disaster response and relief assistance. It has been suggested that these Draft Articles will eventually form the infrastructure of an all-encompassing universal flagship treaty.<sup>47</sup> Furthermore, it has been stated numerous times that the scope of the Draft Articles is broad enough to include pandemics.<sup>48</sup> Considering its broad scope and relevance, the IHR should also incorporate the theories and practices related to disaster risk response and management strategies contained in the Sendai Framework and the Draft Articles.

The WHO has previously recognised the importance of a global collaborative response to infectious diseases. For example, in 2011, the WHO adopted the Pandemic Influenza Preparedness Framework (“PIP Framework”) in order to promote transboundary information sharing and the equitable distribution of vaccines and other benefits.<sup>49</sup> However, the scope of the PIP Framework is limited to influenza viruses, and it does not extend to novel viruses. Furthermore, the PIP Framework is not a legally binding document, as it is merely a resolution of the World Health Assembly.<sup>50</sup> Therefore, the WHO needs to adopt a new binding response framework, either in the form of a new treaty or as an addition to the IHR, based on the principles laid down in the Sendai Framework to promote transboundary collaboration in the aftermath of epidemics and pandemics. The primary objective of any such framework must be the promotion of global partnerships in terms of scientific research, regular information sharing and vaccine development programmes.

This new framework, which should be based on the goals of equity and justice, must also emphasise coordinating the global production and equitable distribution of essential medical equipment such as testing kits, ventilators, masks, personal protective equipment and vaccines.<sup>51</sup> Such global partnerships will help countries, especially developing countries, to manage the social, economic and distributive costs entailed in controlling the spread of infectious diseases such as COVID-19.<sup>52</sup> The urgency to act in a collaborative manner in response to international legal obligations could also

---

<sup>46</sup> International Law Commission, “Draft articles on the protection of persons in the event of disasters (2016)” <[https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/6\\_3\\_2016.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/6_3_2016.pdf)> (last accessed 18 October 2020).

<sup>47</sup> G Bartolini, “A universal treaty for disasters? Remarks on the International Law Commission’s Draft Articles on the Protection of Persons in the Even of Disasters” (2017) 99(3) *International Review of the Red Cross* 1103, 1106.

<sup>48</sup> International Law Commission, *Preliminary report on the protection of persons on the event of disasters by Special Rapporteur Eduardo Valencia-Ospina* (5 May 2008) UN Doc A/CN.4/598, para 49.

<sup>49</sup> See WHO, “Pandemic influenza preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits” (2011) <[http://whqlibdoc.who.int/publications/2011/9789241503082\\_eng.pdf?ua=1](http://whqlibdoc.who.int/publications/2011/9789241503082_eng.pdf?ua=1)> (last accessed 18 October 2020).

<sup>50</sup> National Academies of Sciences, Engineering, and Medicine, *Exploring Lessons Learned from a Century of Outbreaks: Readiness for 2030: Proceedings of a Workshop* (Washington, DC, National Academies Press 2019) p 94.

<sup>51</sup> G Brown and D Susskind, “International cooperation during the COVID-19 pandemic” (2020) 36(Suppl 1) *Oxford Review of Economic Policy* S64, S69.

<sup>52</sup> M Kituyi, “COVID-19: Collaboration is the engine of global science – especially for developing countries” (World Economic Forum, 15 May 2020) <<https://www.weforum.org/agenda/2020/05/global-science-collaboration-open-source-covid-19/>> (last accessed 18 October 2020).



eliminate the problem of the “bystander effect”. Thus, fostering greater interactions between IPHL and IDL could ensure that the IHR are more relevant and responsive in future.

### III. WHAT INTERNATIONAL DISASTER LAW COULD LEARN FROM INTERNATIONAL PUBLIC HEALTH LAW

IDL is a relatively new discipline of international law aiming at institutionalising a normative framework to prepare for, respond to and recover from the disruptive effects of natural disasters.<sup>53</sup> In the absence of any effective international legal framework, international non-governmental organisations such as the International Red Cross and Red Crescent Movement play an active and important role in administering aid during and in the aftermath of a disaster.<sup>54</sup> In 2000, the IFRC realised that the absence of a comprehensive international system for responding to disasters and their socioeconomic fallout hampers effective deployment of humanitarian aid and assistance.<sup>55</sup> Since 2001, the IFRC has been working on developing international disaster response laws, rules and principles (IDRL) in order to create a normative standard-setting disaster response framework.<sup>56</sup>

The IFRC’s assiduous work resulted in the formulation of the IDRL Guidelines in 2007. The purpose of IDRL Guidelines is to assist governments in “improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance”.<sup>57</sup> Although the IDRL Guidelines lay down the core responsibilities of state and non-state actors concerning disaster risk reduction and prevention, its main focus is largely centred on eliminating the legal hurdles to a coordinated disaster response.<sup>58</sup> Additionally, the Sendai Framework prescribes that states carry out their disaster prevention, risk reduction and response activities “while promoting and protecting all human rights”.<sup>59</sup> However, presently, there is no clear understanding with regards to the interlinkage between human rights and disaster management activities as enumerated under the IDRL Guidelines and the Sendai Framework.<sup>60</sup>

In its present form, IDL fails to adequately take into consideration the anthropogenic activities that create the conditions for future disasters. IDL has been particularly

---

<sup>53</sup> K Dale, “The Red Cross and Red Crescent Movement: Power Players in International and Domestic Natural Disaster Law” (2016) 25(1) *Cardozo Journal of International and Comparative Law* 111, 112.

<sup>54</sup> *ibid*, at 115. The International Red Cross and Red Crescent Movement is composed of the following three essential units: the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and various National Societies.

<sup>55</sup> M Hoffman, “Towards an international disaster response law” in P Walker and J Walter (eds), *World Disasters Report 2000* (Geneva, International Federation of Red Cross and Red Crescent Societies 2000) p 145.

<sup>56</sup> D Fischer, “The Future of International Disaster Response Law” (2012) 55 *German Yearbook of International Law* 87, 89.

<sup>57</sup> IDRL Guidelines, para 1.

<sup>58</sup> IDRL Guidelines, parts IV and V.

<sup>59</sup> Sendai Framework, para 19.

<sup>60</sup> KC Lauta, “Human rights and natural disasters” in S Breau and K Samuel (eds), *Research Handbook on Disasters and International Law* (Cheltenham, Edward Elgar Publishing 2016) p 107.

criticised for its failure to incorporate mainstream international law concepts such as the precautionary principle into practice.<sup>61</sup> The failure on the part of the states to undertake effective preventative action to reduce exposure to disasters not only exacerbates the socioeconomic impacts of disasters, but also threatens the lives and liberties of the affected people.<sup>62</sup> Therefore, disaster prevention, risk reduction and mitigation are effectively human rights issues. In this regard, IDL has much to learn from the practices of IPHL.

Although both IDL and IPHL are meant to provide socially mediated response to disasters, there has been little effort to interlink the two disciplines. Two of the major reasons provided for the different approaches adopted by IDL and IPHL are as follows: first, extensive international law developments in the context of epidemics and pandemics largely developed because of the state interests in international trade;<sup>63</sup> and second, the difference in expected reaction time – as compared to IPHL, which works across longer time frames and focuses on capacity building, IDL is geared towards providing immediate responses to short-lived events that do not affect state interests.<sup>64</sup> Another major drawback of IDL is that there is no effective institutional mechanism for the states to coordinate disaster risk reduction and response strategies between each other. In the absence of normative rules and procedures, states often approach IDL as a diplomacy issue.<sup>65</sup>

Although IPHL, and particularly the IHR, do not specifically deal with disaster issues, it has adopted many progressive measures geared towards disaster prevention and mitigation. Through a systemic focus on capacity-building and notification obligations, the IHR recognises the importance of good governance for delivering effective public health responses.<sup>66</sup> Furthermore, the presence of a supranational body in the form of the WHO leads to better international coordination among diverse stakeholders, such as Member States and international non-governmental organisations. Good governance at both the national as well as the supranational scale not only ensures institutional legitimacy, but also promotes greater accountability and transparency.<sup>67</sup> This inherent commitment to accountability and transparency fosters rule of law and protects human rights and freedoms.

IDL should incorporate the language of good governance from the IHR and implement it into practice. It should ideally begin by adopting a set of legally binding rules creating international legal obligations for states to enhance their resilience to disasters. Similarly

<sup>61</sup> Telesetsky, *supra*, note 45, at 184.

<sup>62</sup> For example, in *Budayeva v. Russia*, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgement (29 September 2008), para 129, the European Court of Human Rights affirmed the positive obligation of states under Art 2 of the European Convention of Human Rights to take effective preventative steps against threats to the right to life arising out of identifiable natural disasters.

<sup>63</sup> D Fidler, “Disaster Relief and Governance after the Indian Ocean Tsunami: What Role for International Law” (2005) 6 *Melbourne Journal of International Law* 458, 460.

<sup>64</sup> *ibid.*, at 461.

<sup>65</sup> See I Kelman, “Connecting theories of cascading disasters and disaster diplomacy” (2018) 30 *International Journal of Disaster Risk Reduction* 172, 175; L Comfort, “Disaster: Agent of Diplomacy or Change in International Affairs?” (2000) 14(1) *Cambridge Review of International Affairs* 277, 286.

<sup>66</sup> G Venturini, “International Disaster Response Law in Relation to Other Branches in International Law” in A de Guttery, M Gestri and G Venturini (eds), *International Disaster Response Law* (Berlin, Springer 2012) p 58.

<sup>67</sup> N Woods, “Good Governance in International Organizations” (1999) 5 *Global Governance* 39, 44.

to the capacity-building obligations under the IHR, IDL should also seek to develop state resilience to disasters by imposing binding positive obligations on states. These binding obligations could be in the form of developing contingency evacuation plans, planning temporary and permanent rehousing of the affected persons, deploying adequate healthcare facilities to provide healthcare for the injured, prioritising the rights of women, children and other minorities such as the LGBTIQ+ community, etc. If IDL seeks to impose binding norms, rules and procedures, it would also need to institutionalise a supranational body similar to the WHO in order to ensure compliance. Institutionalisation of IDL on par with IPHL will provide it with greater legitimacy, transparency and accountability, leading to greater respect and realisation of human rights by states while implementing disaster response strategies.

#### IV. CONCLUSION

This article aimed to synergise different aspects of IDL and IPHL. The analysis of IPHL showed that the present IHR regime is woefully underprepared to protect human rights in times of global public health crisis. Therefore, this article argued for the revision of the IHR by incorporating disaster risk reduction and response concepts from IDL. On similar lines, this article suggested that IDL also has a lot to learn from IPHL in terms of greater internationalisation and institutionalisation. Through such an analysis, this article tried to emphasise that greater cross-pollination of ideas is necessary between IDL and IPHL in order to make these disciplines more relevant in contemporary times.

At their core, both IDL and IPHL are geared towards the realisation of human rights by providing effective disaster response strategies. Where the former is focused on collective and collaborative international response efforts, the latter emphasises developing and maintaining national health capacities in order to reduce public health risks. Looking ahead, there is a greater need to synergise IDL and IPHL with other disciplines of international law such as international human rights law, international environmental law, international humanitarian law, etc.