

12th COMMISSION

Epidemics, Pandemics and International Law

Rapporteur: Mr Shinya Murase

RESOLUTION

Preamble

The Institute of International Law,

Affirming that protection of persons from epidemics without discrimination of any kind and regardless of the sources and cause of the disease is a common concern of humankind,

Recognizing that States bear the obligation to prevent, protect against, control and provide public health responses to the international spread of epidemics,

Emphasizing the need for international solidarity and cooperation for the prevention of epidemics and in responding to the threats of epidemics,

Recognizing that respect for, and protection of, human rights is fundamental in applying and implementing international and national health law, and that certain populations in situations of vulnerability may need particular protection from exposure to epidemics, especially women, children, older persons, people living in poverty and persons belonging to minorities, refugees, internally displaced persons and migrants, persons in detention, persons living with co-morbidities and persons with disabilities,

Recognizing also the vital role of the World Health Organization (WHO) in the protection of human health related to epidemics, especially WHO's International Health Regulations (IHR) which facilitate a coordinated and effective response to epidemics,

Considering that international health law must be interpreted, applied and implemented in a coherent manner with other relevant rules of international law,

Considering also that epidemics may take different forms and that in extraordinary events they can be recognized as public health emergencies of international concern,

Adopts the following Resolution:

SCOPE, OBJECTIVE AND THE USE OF TERMS

Article 1

Scope

The present Resolution concerns the rules of international law applicable to the protection of persons, communities and States from epidemics.

Article 2

Objective

The objective of the present Resolution is to promote the progress of international law through its codification and its progressive development for the protection of persons from epidemics and, by so doing, to facilitate timely, adequate and effective responses to epidemics, and to reduce the risk of epidemics, so as to meet the essential needs of the persons concerned, with full respect for their human rights established under international law, and to ensure that epidemics do not create adverse transboundary effects to other States and their communities.

Article 3
Use of Terms

For the purposes of this Resolution:

- (a) “epidemic” means an infectious disease that is likely to spread rapidly to a large number of persons in one country or in different countries within a short period of time. For the purposes of the present Resolution, the term “epidemic” includes “pandemic”, as meaning an extraordinary form of an epidemic, affecting a wider geographical area, often worldwide, infecting a much larger number of persons, causing more deaths, and often creating more severe social disruption and economic loss;
- (b) “public health emergency of international concern” means an extraordinary event, posing a risk to human health, the risk of international spread of disease and/or the risk of interference with international traffic;
- (c) “affected State” means a State under whose jurisdiction or control an epidemic occurs;
- (d) “assisting State” means a State providing assistance to an affected State with its consent;
- (e) “other assisting actor” means a competent intergovernmental organization, or a relevant non-governmental organization or entity, providing assistance to an affected State with its consent;
- (f) “relief personnel” means civilian, public and military personnel sent by an assisting State or other assisting actor for the purpose of providing medical and other relief assistance;
- (g) “equipment and goods” include medical and other supplies, tools, machines, clothing, bedding, vehicles and tents.

GENERAL PRINCIPLES

Article 4

Human Rights

1. Everyone has the right to life and the right to the full enjoyment of the highest attainable standard of health. As part of the efforts for the full realization of these rights, States shall take all necessary steps for the prevention, reduction and control of epidemics and their adverse effects, as well as to ensure equitable access to medical services, vaccines and medicines to all.
2. Persons affected actually or potentially by epidemics are entitled to respect for, and protection of, their human rights in accordance with international law.
3. States shall not act in a way that hinders other States from complying with their human rights obligations mentioned in paragraph 1.
4. State measures must be aimed at preventing, reducing and controlling disease, and be necessary and proportionate to that aim. The measures must be implemented in a manner so as to avoid discrimination of any kind.
5. States may not derogate from their human rights obligations in any epidemic beyond those derogations already allowed under international law.

Article 5

The Role of States

1. Every State has the obligation to prevent, reduce and control epidemics and accordingly to exercise due diligence in taking appropriate legislative, administrative, judicial and other measures in accordance with applicable rules of international law. States shall have due regard for the measures taken by other States to fulfil their obligations in accordance with international law.

2. To the extent that international organizations have been given powers relating to epidemics, the obligations formulated in paragraph 1 also apply to such organizations.

Article 6

International Cooperation

1. For the purpose of the protection of persons from epidemics, States shall cooperate with other States, as well as within the framework of the United Nations, the World Health Organization (WHO) and other relevant international organizations.

2. The duty to cooperate also applies with and between other relevant international organizations and bodies, including regional organizations, whose specific competence is engaged.

3. The duty to cooperate includes, *inter alia*, further strengthening and enhancing scientific knowledge relating to the causes and impacts of epidemics by sharing information, assessment and responses, and sharing the burdens and benefits of the cooperation efforts. It also includes access to patents and technologies relating to vaccines. Cooperation shall take into account the geographical situation, capacities and resources of States and, in particular, the needs of developing countries.

4. The duty to cooperate also applies to equitable access to medical services, vaccines and medicines, protected by Article 4.1 of this Resolution, taking appropriate measures regarding intellectual property rights.

Article 7

Interrelationship among Relevant Rules

1. The rules of international law relating to epidemics and other relevant rules of international law should, to the extent possible, be identified, interpreted, applied and implemented as coherent obligations, in line with the principles of harmonization and systemic integration, in order to avoid conflicts between obligations, as well as the due

diligence obligation and the need for international solidarity and cooperation in responding to the threats of epidemics. “Other relevant rules” include *inter alia* rules of international environmental law, international trade and investment law, international intellectual property law, international transport law, international law on peace and security and international humanitarian law.

2. International humanitarian law must be strictly observed when an international or non-international armed conflict occurs, including its humanitarian principles relevant to prevention, reduction and control of epidemics.

RISK REDUCTION AND PREPAREDNESS

Article 8

Risk Reduction and Preparedness

1. States shall develop, strengthen and maintain the capacity to respond promptly and effectively to the risk of the spread of epidemics, including overall strategies, policies and institutional structures, in particular monitoring and early warning systems, coordination mechanisms among government ministries and guidelines on containment and control measures. For preparedness, consideration should be given by States, while fully respecting the human rights of persons affected, to the creation and design of specific protocols concerning the state of emergency in relevant situations, the adoption of preventive measures which could facilitate speedy isolation or, in the worst scenario, effective and sustained quarantines, along with the necessary budget reserves allocated for this purpose.

2. States shall establish, within their capacity, scientific institutions, laboratories and hospitals to prepare for possible outbreaks of epidemics. In so doing, States shall conduct health impact assessments on these and other relevant facilities in an open, transparent manner.

3. States shall provide adequate health education of the population for the prevention of epidemics with a view to promoting the epidemic prevention culture.

OBLIGATIONS OF THE AFFECTED STATES DURING EPIDEMICS

Article 9

Obligation of the Affected States to Ensure Information Disclosure

1. If a State has indications of an unexpected or unusual public health event within its territory or areas under its jurisdiction or control, it must immediately notify WHO, other States and relevant international organizations by the most rapid means of communication available, and must also notify any public health measure implemented in response to those.
2. The affected State must guarantee prompt disclosure of relevant information and complete transparency as well as full and unimpeded access to the information by the public. For this purpose, it must guarantee the freedom of expression and communication of individuals within its jurisdiction and protect that of the media in relation to information regarding the outbreak of the epidemic.
3. States must guarantee the privacy of affected persons in accordance with international law.

Article 10

Emergency Measures by the Affected State

1. Taking into account the nature of the epidemic, the affected State must take and implement in a timely manner, in accordance with its laws and regulations, appropriate emergency measures which may include entry and exit restrictions, testing/screening and contact tracing programmes, treatment or vaccination programmes where available, isolation, quarantine or social distancing in parts or the whole of its territory in order to avoid the spread of the epidemic. Those measures must take into consideration the needs of all populations in situations of vulnerability, including the rights of nationals located abroad who may wish to re-enter their State of nationality. They must be taken in conformity with scientific evidence and applicable rules of international law, including the IHR and human rights law, and must fully comply with the requirements of necessity, proportionality and non-discrimination.

2. Information on measures taken by the State must be immediately transmitted to WHO, to other States likely to be affected by the measures and to other relevant international organizations.

Article 11

External Assistance

1. The affected State must seek external assistance from other States and relevant international organizations, particularly WHO, as well as from other potential assisting actors, without delay, if the harm of the epidemic appears likely to exceed national response capacity.

2. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance.

3. The affected State shall take appropriate measures to ensure protection of relief personnel, and equipment and goods present in its territory or areas under its jurisdiction or control, for the purpose of providing external assistance.

OBLIGATIONS OF OTHER STATES DURING EPIDEMICS

Article 12

Preventative Measures

1. States other than the affected States shall undertake preventative emergency measures in order to avoid further transmission of the disease. The measures may include closure of the border, travel restrictions and quarantine which must be taken in conformity with scientific evidence and applicable rules of international law, including the IHR and human rights law and international refugee law, taking into consideration the needs of all the populations in situations of vulnerability. The measures must fully comply with the requirements of necessity, proportionality and non-discrimination.

2. The State must immediately inform other States, WHO and other relevant international organizations on the measures taken, and conduct good faith negotiations and consultations with them concerning necessary response coordination.

3. States shall abstain from proceeding to the forced displacement or transfer of persons to an affected State, be it through extradition, administrative expulsion or other measure if it is established that that State to which persons are to be transferred is not in a position to provide the protection required to safeguard their health during an epidemic.

4. States shall abstain from including in economic sanctions directed against affected States any measure that prevents such States from preventing, reducing or controlling an epidemic, such as receiving delivery and service of vaccines and other medical assistance. States shall also take appropriate measures in lifting or suspending any measures already in place as part of economic sanctions imposed on one or more affected States to enable them to perform the task of preventing, reducing or controlling an epidemic and seek all necessary assistance in accordance with international law.

Article 13

Offer of Assistance

When external assistance is sought by affected States, other States, along with WHO, the United Nations and other potential assisting actors, must offer assistance as appropriate to the affected State in an expeditious manner. The modalities of the provision of external assistance shall be agreed expeditiously between the States concerned.

MEASURES IN THE POST-EPIDEMIC PHASE

Article 14

Review and Information Sharing

1. Given that a review conducted in the post-epidemic phase is of paramount importance for preventing similar events in the future, WHO shall conduct a thorough review of its performance in accordance with its Constitution and other applicable procedures. An independent panel of experts may also convene to review the performance of each key State. External reviews may be conducted, as appropriate. All applicable information shall be shared by all States, the relevant international organizations and other relevant stakeholders.
2. Each State that was most seriously affected by the epidemic shall, by establishing an independent panel of experts, conduct a thorough post-epidemic review to assess the propriety of its own actions and omissions.
3. States shall share all applicable information among themselves and with the relevant organizations and other relevant stakeholders as well as their own populations.

Article 15

International Responsibility of States and International Organizations

1. States and international organizations shall ensure that all measures to prevent, reduce and control epidemics are in conformity with international law.
2. A breach of the obligation under international law of a State to prevent, reduce and control epidemics or to provide early information on the outbreak of epidemics to other States concerned or affected and to the competent international organizations shall entail the responsibility of that State.

3. A breach of the obligation under international law of an international organization to prevent, reduce and control epidemics or to provide early information of the outbreak of epidemics to States concerned or affected and to other competent international organizations shall entail the responsibility of that international organization.

Article 16

Dispute Settlement

1. Disputes between States relating to epidemics shall be settled by peaceful means, including negotiation, inquiry, mediation, conciliation, arbitration and judicial means, resort to regional agencies or arrangements, or any other peaceful means of their own choice.

2. Without prejudice to other obligations which may be applicable to the dispute, State parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation, failing which they may elect to use one of the following means of peaceful settlement of the dispute:

(a) A party to the dispute may invite the other party or parties to a mutually agreed conciliation procedure.

(b) A party to a dispute concerning epidemics may invite the other party or parties to submit the dispute, by mutual agreement, to an arbitral procedure.

(c) The parties should also consider referring their legal disputes relating to epidemics to the International Court of Justice.

3. Given that disputes concerning epidemics may be of a fact-intensive and science-dependent character, due consideration should be given to the use of technical and scientific experts.

Article 17

Saving Clauses

1. The general principles stated above do not undermine additional, more specific obligations of prevention, reduction and control that commit States to cooperate with other States and with international organizations that States have undertaken in relation to epidemics pursuant to an international convention, whether under the IHR or otherwise.
 2. These general principles are without prejudice to the State's human rights and humanitarian law obligations, including the prohibition to go beyond the limitations or derogations authorized by these bodies of law.
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