

International Health Governance (IHG)

From an International Public Authority (IPA) perspective

The *Forschungsstätte der Evangelischen Studiengemeinschaft e.V.* / *Institute for Interdisciplinary Research* ([FEST](#)) and the *Max Planck Institute for Comparative Public Law and International Law* ([MPIL](#)) are pleased to announce a research project on International Health Governance (IHG). This continually evolving field is characterized by a multi-level network of different actors that extends beyond common structures of public international law. It instead reflects the ongoing structural changes that public international law faces today. This is why MPIL's International Public Authority ([IPA](#)) approach offers a methodological framework that will guide and help us to coherently reconstruct and explain IHG. IPA is a collaborative project within the framework of the German "[Normative Orders](#)" Cluster of Excellence at Goethe University Frankfurt / Main.

IHG structures considerably affect peoples' lives, particularly when concrete aid delivery is necessary. When a State is dependent on international assistance because it cannot fulfill its obligations deriving from the international right to health on its own, IHG structures are decisive for the safeguard of this right in times of grave crisis. IPA provides a reconstructive methodology in order to capture these governance structures, and understand how effective they are. In what we call "doctrinal constructivism", we propose to track the formation of legal concepts and principles in the area of IHG. We will also use insights from other disciplines where appropriate in order to determine and explain the effects of IHG.

For the initial phase of our research, we selected three sub-areas of IHG:

- (1) **Responsibilities of IHG actors:** How can we define and distinguish the different legal and related ethical responsibilities of IHG actors? Which level of liability does international law impose on the different actors? These actors are notably states, international institutions, private actors, and the networks linking them. The international right to health focuses primarily on the home states of the people concerned, yet they partly fail to satisfy the needs of their population. Therefore, the role of the international community and other actors gains importance and needs to be scrutinized.
- (2) **Coordination of IHG actors:** How does law formally coordinate different IHG actors? How can we relate the responsibilities outlined in sub-area (1) to different IHG actors, and / or different levels of governance?
- (3) **Publicly-financed research:** Publicly-financed research plays an important role in public health policies. This holds especially true for scientific evidence creation. To what extent are research and its funding an element of modern statehood when threats to life and health are at stake? Does the human right to health consider research in health issues as an obligation of states? What role do international organizations play in sharing research findings across borders when it comes to international threats by infectious diseases? What conclusions for the development of international law can be drawn from research cooperation between the different actors? To what extent could the EU be a model for common research for the international sphere?

For the initial period, we have selected the infectious disease epidemics control, and in particular, the recent West African Ebola crisis as a case study. They serve as a good example for sub-areas (1)-(3). Examined from a different angle that is useful for research purposes, this case study also provides the opportunity to critically assess the interplay between regulatory provisions and obvious structural shortcomings affecting the coordination between various actors, at the expense of delivering aid effectively.

Why the international response to the Ebola crisis may serve as an example to illustrate our research proposal: Generally speaking, epidemics control is motivated by both security concerns and the idea of development aid. In a globalized world, epidemics are of transnational character in two ways: Firstly, epidemics easily cross borders by people traveling all over the world. Secondly, there is an increasing sense of responsibility by the international community to collaborate in epidemics control with respect to countries that are particularly vulnerable to infectious disease outbreaks. Though the main Ebola outbreaks might now be contained, the international community could have reacted sooner. Valuable time was lost, which was arguably due to shortcomings within the national health systems of the primarily affected countries, and a lack of coordination in the international arena. The central question in terms of a joint learning curve remains how to collaborate effectively within short time windows, whilst creating the highest possible impact.

It is therefore crucial to identify the main actors (states, WHO and other international organizations, global public-private partnerships and non-state actors) and to assess their roles, responsibilities and duties with regard to epidemics control. Existing legal regulatory tools shape the organization of international aid delivery. The framework analysis of these regulatory tools offers valuable insights to clarify these roles and responsibilities. A natural component of such an analysis would form the close interpretation of legal mandates in order to distinguish the different layers of responsibilities involved. In light of the aforementioned coordination shortcomings during the Ebola crisis, it will be particularly important to understand where, how, and why the interpretation of the assigned mandates diverged in practice. At the same time, individuals are becoming increasingly important subjects of public international law. The human right to health provides individuals with legal claims which are binding for their home-states, and it empowers those individuals even though it still lacks mechanisms for its effective enforcement. The international response to these challenges, and in particular to infectious diseases such as Ebola, frequently occurs through non-binding acts and instruments that do not fit under the formal categories of public international law, yet establish critical precedents (arguably, e.g. WHA resolution 19.16 (1966) was the internal legal tool employed by WHO towards smallpox eradication), and can even amount to authorizing restrictions of certain individual human rights (e.g. WHO Director General's temporary recommendations regarding quarantine and isolation measures). Therefore, the IPA concept can serve as a basis for analyzing these acts and providing a framework capable of responding to some of the conceptual and practical challenges that they expose, as well as to questions surrounding the legitimacy of such acts.

Within this context, states are still the entities primarily responsible for the health of their population. Consequently, the response to disease outbreaks requires a minimum set of surveillance and response capabilities, such as the ones established by the current International Health Regulations. Thus, there is a continuous emphasis within a multi-level

approach to strengthen national health systems as a necessary step towards an overall robust framework for infectious disease epidemics alert and response protocols.

Furthermore, the need for a multi-level, multi-actor approach to roles and responsibilities is exemplified by the process that has led to the development of an effective Ebola vaccine. Notably, public funding by several governmental institutions for vaccine research and development in this particular case highlights the potential of hybrid models of collaboration. The partnerships between international organizations (e.g. WHO), non-state actors at the international level (e.g. Médecins sans Frontières), national governmental institutions (e.g. the Public Health Agency of Canada), and the private sector have been able to react effectively and at relatively short notice. While not wholly unusual in its nature, this collaboration between a broad spectrum of actors can constitute a landmark precedent for future responses towards public health emergencies, and other types of health-related scenarios. At the same time, these collaborations exemplify how actors in the international arena and their methods of collaboration have changed, and that international law can be examined through the analytical tools of the IPA project.

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