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## Webinar Report

*Covid-19: An International Disaster Law Perspective*

(13<sup>th</sup> October 2020)

### Overview

On the occasion of the launch of the call for abstracts of Issue no. 3 (2020) of the *Yearbook of International Disaster Law* (YIDL), published by Brill, the Editors, in cooperation with the American Society of International Law Disaster Law Interest Group and the Jean Monnet Project DILAW4EU, organized three live webinars. The first was held on Tuesday 15 September (14.30-15.45 CEST) about “The ILC DAs on the Protection of Persons in the Event of Disasters: A Follow-up of the Thematic Section of Issue No.1”. The second was held on Tuesday 29 September (18-19.15 CEST) about “Disasters and: Exploring New Areas of Research”. The third was held on Tuesday 13 October (15-16-15 CEST) about “Covid-19: An International Disaster Law Perspective”.

### List of Speakers

- Gian Luca Burci (IHEID, Geneva)
- Stefania Negri (University of Salerno)
- Marco Toscano-Rivalta (UNDRR)
- Marlies Hesselman (Editor YIDL), **as moderator**.

### Introduction

**Marlies Hesselman** introduced the webinar, the speakers and their presentations. This webinar relates to the main topic of the forthcoming issue no. 3 of the YIDL, which is dedicated to the COVID-19 pandemic as seen and analyzed from the perspective of IDL. First, the moderator underlined the global health disaster dimension of COVID-19, which raises various classic IDL themes that are generally known to the experts in the field and relate to the entire spectrum of the disaster cycle. Second, she emphasized the concern of integrating the different responses to the pandemic to adopt a holistic approach in terms of the applicable legal frameworks. Other

relevant issues include the configuration of binding obligations, rights and principles in international cooperation and assistance, and human rights and accountability aspects.

### **First Round**

**Gian Luca Burci** addressed the role of WHO in the administration of the COVID-19 emergency. The role of WHO should remain central in terms of leadership, even though in its capacity of specialized agency it is not placed at a hierarchically superior level, but rather is a *primus inter pares* in relation to world health issues and can frame the response to COVID-19 in the most appropriate, coherent and coordinated way. This may hold true under the structural point of view and under an operational perspective. Concerning international health law, the first instrument that deserves mention is the International Health Regulations (IHR), which have been revised in 2005. IHR represent an innovative framework, however with a number of flaws that are currently debated at the WHO, G-20, G-7, etc. Having said so, the IHR show numerous synergies with IDL, in relation to surveillance, identification of risk, prevention and preparedness. The emphasis on the importance of national health systems (that should be sustainable, resilient, inclusive, equitable and accountable) is key, which somehow reveals the legitimate “intrusive” character of certain obligations set forth in the IHR. The outstanding overall objective then remains to build a better system of international cooperation on health emergency issues.

**Marco Toscano-Rivalta** acknowledged the central role of WHO in the management of the present COVID-19 pandemic. In addition, also non-state actors and the private sector in general play a significant role in the present scenario in terms of functions and activities at the international and domestic level. He addressed disaster risk reduction issues, especially as declined in relation to the Sendai Framework for Disaster Risk Reduction of 2015. Notably, the latter recognizes the principle of shared responsibility between States and other actors. COVID-19 definitely is a disaster pursuant to paragraph 15 of the Sendai Framework. In this perspective, the current framework for international assistance is not geared well to manage disaster risk effectively and in a systemic way. In addition, the normative framework internationally and domestically seems to remain insufficient to address disaster risk in the appropriate way. This is revealed by the lack of clear-cut legal obligations to manage disaster risk reduction in accordance to the Sendai Framework, which is to be read in conjunction to the Addis Ababa Action Agenda on Financing for Development, the Sustainable Development Goals (SDGs) and the Paris Agreement. The fundamental point that was achieved within the Sendai Framework is the shift of emphasis from disaster management to (disaster) risk management, including appropriate consideration for risk as intangible element irrespective of the materialization of a disaster. Another topical reflection concerns how disaster risk is created. In this respect, the source of disasters may be natural or anthropic, but risk creation is - by definition - man-made in terms of the three variables of vulnerability, exposure, and capacity.

**Stefania Negri** underlined the importance of the “One Health” approach to tackle holistically international emergencies caused by zoonotic diseases such as the COVID-19. Such an approach may foster cross-sectorial and integrated cooperation between international organizations and national authorities in the response to infectious diseases transmitted by wildlife species. Indeed, from the viewpoint of international health law the “One Health” approach helps promoting de-fragmentation in terms of the applicable legal framework. The WHO, the FAO and the World Organization for Animal Health have been usually cooperating through bilateral agreements, but currently the model is evolving in favor of the establishment of a tripartite coalition, as

acknowledged in their 2018 Memorandum of Understanding. This tripartite coalition has created a sort of governance structure (for instance, through annual meetings on a regular basis) to frame priorities and develop a common vision to address health hazards. This model has been effective in relation to the setting of common standards and early warning systems. WHO and FAO have adopted guidelines for food safety in relation to COVID-19, in addition to specific programs about wildlife species. In general, however, the results of the tripartite coalition remain less visible than needed, which remains a matter of concern.

## **Second Round**

**Marlies Hesselman** introduced the second round of interventions by speakers, focusing on recommendations for possible reforms of the existing system.

**Gian Luca Burci** stated that the current IHR system is not, in and of itself, ill-equipped to tackle the current COVID-19 emergency and other disasters impacting global health. However, IHR are under a revision process to correct their flaws. First, better alert systems are required. Second, the system of compliance assessment should be amended, for instance through peer-review mechanisms. Third, the system demands clear obligations in terms of core capacities in comparison to the current vagueness of the IHR. Moreover, beyond IHR, an inter-agency cross-sectorial approach, both at the international and state level, ought to be developed. Finally, delicate issues are in place as to the interaction between international health law and other international legal regimes, especially as far as trade and investment agreements are concerned.

**Marco Toscano-Rivalta** underlined again the importance of the emphasis on the disaster risk building. Such an emphasis is found under the Sendai Framework and, moreover, under the 2016 Draft Articles on the Protection of Persons in the Event of Disasters (DAs) by the International Law Commission. Indeed, disaster risk reduction provisions are specifically inserted in the DAs, in terms of legal obligations pertaining to prevention. However, both the DAs and the Sendai Framework leave quite undefined the issues of the nature of the legal obligation of prevention (be it either of conduct or of result) and of liabilities in general. In this respect, the outstanding unanswered question is whether it is possible to envisage liability for the mere fact the disaster risk has arisen without disaster materialization. Unlike disasters themselves, risk is - by definition - local, which triggers aspects of liability of national and sub-national authorities, as well as applicable regulations to be framed by domestic lawmakers.

**Stefania Negri** focused on the role of international organizations in the implementation of the IHR. In particular, she mentioned the 2018 Memorandum of Understanding between WHO, FAO and the World Organization for Animal Health as being a successful model for the development of new policies, instruments, and systems of coordination. Relevant fields of action are represented by antimicrobial resistance and zoonoses. The intersection with environmental protection issues is also key in the current scenario. Therefore, the tripartite coalition may be broadened to UNEP, especially in relation to the application and implementation of agreements such as the Biodiversity Convention and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This would definitely promote holistic views, approaches and measures to tackle health emergencies and build core capacities at the nationwide level.

## **Q&A**

**Marlies Hesselman** opened the floor to Q&A. Questions by the audience addressed the following topics: the relevance of artificial intelligence, compliance issues (including sanctions), data and information dissemination, and the role of regional organizations.

## **Closing Remarks**

**Marlies Hesselman** closed the webinar by thanking the panelists, the YIDL contributors and the participants. Finally, she reminded the call for abstracts for the forthcoming volume of the YIDL, which is indeed dedicated to COVID-19 and open until 30 October 2020.