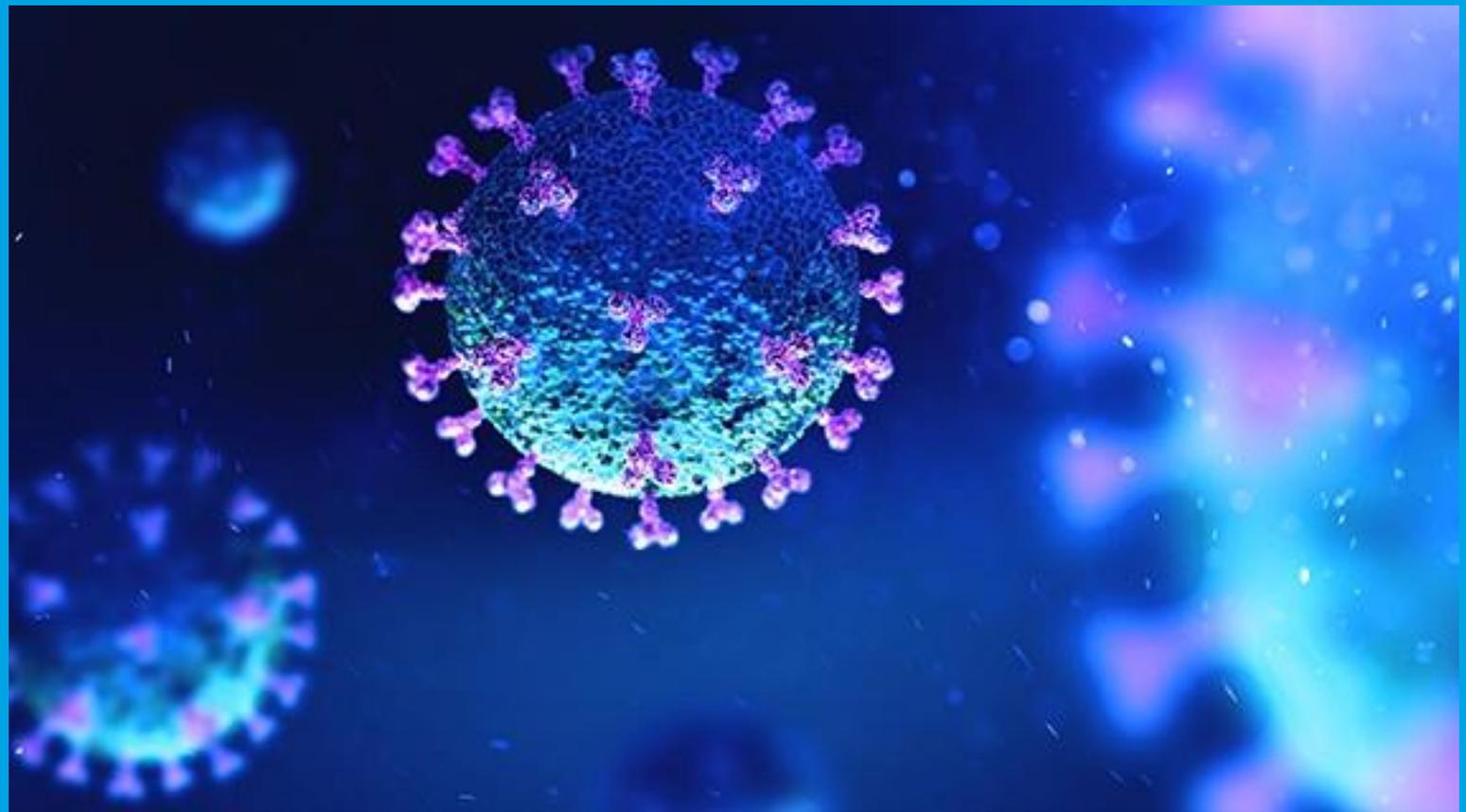


International Law Applicable to Public Health Emergencies

Dr Richard Mackenzie-Gray Scott | Dr Jean-Pierre Gauci



March 2021



British Institute of
International and
Comparative Law

The Role of Good Governance and the Rule of Law in Building Public Trust in Data-Driven Responses to Public Health Emergencies

Funded by the UK Arts and Humanities Research Council, grant AH/V015214/1

This project, at the intersection of law, ethics, citizen deliberation, public health and data science, aims to develop a distinct values-based framework to help understand and address the challenges posed by data-driven responses to public health emergencies and the need to build public trust.

In their COVID-19 responses, states have relied on data-driven approaches to justify far-reaching measures, including closing entire business sectors and categories of travel, curtailing personal liberties and requiring compliance with new technologies for contact tracing and social distancing. To be effective, such measures must be internationally co-ordinated, nationally adopted and adhered to by a high proportion of the public. Trust underpins both national adoption and public adherence: trust in international institutions, in the measures adopted, and in their scientific foundations.

This project examines two critical enablers of that trust: good governance and the rule of law. It aims to provide practical guidance on how international and national institutions can build public trust in the processes by which they design and implement data-driven responses to public health emergencies. The research consists of four interconnected work packages which examine:

- (1) International governance frameworks for public health emergencies.
- (2) Values-based principles to guide data-driven responses by national institutions including governments, parliaments, courts and police.
- (3) Reforms that may be needed to data governance (national and international) given the scale of personal data sharing that is required.
- (4) A citizen jury deliberation on the trustworthiness of data-driven measures and what additional safeguards may be needed.

<https://binghamcentre.biiicl.org/projects/the-role-of-good-governance-and-the-rule-of-law-in-building-public-trust-in-data-driven-responses-to-public-health-emergencies>

This output forms part of Work Package 1. The authors are grateful to colleagues for discussion of earlier drafts, and comments received from Dr Julinda Beqiraj, Dr Claudia Pagliari, Dr Jan van Zyl Smit and Dr Constantinos Yiallourides.

Table of Contents

Table of Abbreviations	4
Introduction	6
I. General International Law	8
II. Global Health Law	9
III. Human Rights Law	10
IV. Data Governance	18
V. International Disaster Law	21
VI. International Humanitarian Law	23
VII. International Trade Law	24
VIII. Environmental and Climate Change Law	25
IX. International Labour Law	27
X. Air Travel	30
XI. International Investment Law	31
XII. Public Procurement	32
XIII. Sustainable Development	34
XIV. State Responsibility	35

Table of Abbreviations

ACHPR – African Charter on Human and Peoples' Rights
ACHR – American Convention on Human Rights
AP – Protocol Additional to the Geneva Conventions
APEC – Asia-Pacific Economic Cooperation
ASEAN – Association of Southeast Asian Nations
ASEAN HRD – Association of Southeast Asian Nations Human Rights Declaration
AU – African Union
BIT – Bilateral Investment Treaty
CAT – Committee Against Torture
CAT – Convention Against Torture
CCPR – Human Rights Committee
CED – Committee on Enforced Disappearances
CEDAW – Committee on the Elimination of Discrimination Against Women
CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women
CEPI – Coalition for Epidemic Preparedness Innovations
CERD – Committee on the Elimination of Racial Discrimination
CERD – Convention on the Elimination of All Forms of Racial Discrimination
CESCR – Committee on Economic, Social and Cultural Rights
CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS – Convention on the Conservation of Migratory Species of Wild Animals
CMW – Committee on Migrant Workers
CoE – Council of Europe
COVAX – COVID-19 Vaccines Global Access
CRC – Committee on the Rights of the Child
CRC – Convention on the Rights of the Child
CRPD – Committee on the Rights of Persons with Disabilities
CRPD – Convention on the Rights of Persons with Disabilities
CSD – United Nations Commission on Sustainable Development
ECHR – European Convention on Human Rights
ECOSOC – United Nations Economic and Social Council
EEU – Eurasian Economic Union
ESC – European Social Charter
FAO – Food and Agriculture Organization of the United Nations
GATS – General Agreement on Trade in Services
GATT – General Agreement on Tariffs and Trade
GAVI – Global Alliance for Vaccines and Immunizations
GBIF – Global Biodiversity Information Facility
GDPR – General Data Protection Regulation
GEF – Global Environment Facility
GPA – Agreement on Government Procurement
HRC – Human Rights Council
ICAO – International Civil Aviation Organization
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICJ – International Court of Justice
ICPED – International Convention for the Protection of All Persons from Enforced Disappearance
ICPRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICRC – International Committee of the Red Cross
ICSID – International Centre for Settlement of Investment Disputes
IFRC – International Federation of Red Cross and Red Crescent
IHR – International Health Regulations
ILC – International Law Commission
ILO – International Labour Organization
IPBES – Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services

IPCC – Intergovernmental Panel on Climate Change
ITPGRFA – International Treaty on Plant Genetic Resources for Food and Agriculture
ITU – International Telecommunication Union
IUCN – International Union for Conservation of Nature
MCPICPD – Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data
OAS – Organization of American States
OCHA – United Nations Office for the Coordination of Humanitarian Affairs
OECD – Organisation for Economic Co-operation and Development
PCA – Permanent Court of Arbitration
RC – Refugee Convention
RIPD – Ibero-American Data Protection Network
SPS – Agreement on the Application of Sanitary and Phytosanitary Measures
TBT – Agreement on Technical Barriers to Trade
TEIA – Convention on the Transboundary Effects of Industrial Accidents
TEU – Treaty on European Union
TFEU – Treaty on the Functioning of the European Union
TRIPS – Trade-Related Aspects of Intellectual Property Rights
UDHR – Universal Declaration of Human Rights
UNAIDS – Joint United Nations Programme on HIV/AIDS
UNCCD – United Nations Convention to Combat Desertification
UNCITRAL – United Nations Commission on International Trade Law
UNDP – United Nations Development Programme
UNDRR – United Nations Office for Disaster Risk Reduction
UNDSGD – United Nations Division for Sustainable Development
UNEP – United Nations Environment Programme
UNEP – United Nations Environment Programme
UNESCO – United Nations Educational, Scientific and Cultural Organization
UNFCCC – United Nations Framework Convention on Climate Change
UNFPA – United Nations Population Fund
UNGA – United Nations General Assembly
UNICEF – United Nations International Children's Emergency Fund
UNSC – United Nations Security Council
UNSDG – United Nations Sustainable Development Goals
USMCA – United States-Mexico-Canada Agreement
VCLT – Vienna Convention on the Law of Treaties
WHO – World Health Organization
WRI – World Resources Institute
WTO – World Trade Organization
WWF – World Wildlife Fund

Introduction

A public health emergency (PHE) poses a range of challenges to individuals, communities, companies, states and international organizations. These challenges have been highlighted during the COVID-19 pandemic and the responses thereto by states. The range of measures that have (and have not) been implemented by states in their attempts to address (or ignore) the spread and impact of COVID-19 raise pressing issues for international governance. This pandemic has been a stress test for global governance mechanisms (within and beyond the health sphere) and for the application of, and respect for, international law.

International law has a role to play in framing and providing safeguards for effective responses to PHEs and in regulating the relationships between states and between states and other actors (such as international organizations) during PHEs. The rules and principles across numerous areas of international law highlight some noteworthy considerations. Global cooperation and coordination are crucial, whether between states, states and international organizations and non-state actors, including companies, civil society and others. This is partly the result of the interconnected period of time in which we live, a matter exemplified by the speed with which COVID-19 spread throughout the world.

A crucial component of global governance is global leadership. The COVID-19 pandemic has raised questions about the political leadership exercised by states at the international level. While there have been scientific successes that can help address the current PHE and those that may occur in the future (for example, test and trace technologies, and safe and effective vaccines being developed in record timescales), these have sometimes been met with political failures (for example, lack of cooperation, stockpiling vaccines, and poor public funding in healthcare systems). If states aim to improve their responses to PHEs, political leadership at the global, regional, national and local levels is crucial. It should also be borne in mind that a global PHE is never over for any state until it is over for every state.

This document maps the key areas of international and regional law that are applicable to PHEs and data governance (encompassing binding rules and non-binding principles), as well as the key institutional frameworks that impact governance during PHEs. It identifies key applicable rules and principles from each area of law, whilst acknowledging that the document is not an exhaustive reflection of all the international and regional law potentially applicable to PHEs.

The key institutions that are at the heart of each area of law are included at the end of each section. These institutions work on different matters and with different degrees of specificity and competence. Some have mandates with a thematic focus (for example, health), whilst others address more general matters. The potential geographical reach of each institution in terms of their governance capabilities also depends on whether they operate on a regional or international level. The rules and principles created by these institutions therefore differ, including with respect to their relevance to public health emergencies and data governance.

This document uses the term 'rule' when referring to binding law, in which a legal obligation exists. 'Binding international law' and 'binding regional law' therefore reflect rules under the applicable areas of law. It should be noted that some rules are not applicable to all states depending on the legal instrument at hand, unless the rule is one of customary international law, in which case it is legally binding on all states, except any state that persistently objects to being bound by that rule. The term 'principle' is used when referring to non-binding law, in which no legal obligation exists. 'Non-binding international law' and 'non-binding regional law' therefore reflect principles under the applicable areas of law.

I. General International Law

General international law creates a series of requirements applicable to PHEs, including responses to such emergencies (encompassing data-driven responses). These rules and principles include international cooperation, solidarity and good faith, which can facilitate responses to threats of an international concern.

1. International Cooperation

International cooperation is a key component of international law. The promotion of such cooperation is a key purpose of the United Nations. Cooperation among states, between states and international organizations, states and non-state actors (for example, pharmaceutical companies), and across all three types of actors is particularly important when responding to PHEs. Such cooperation extends to the sharing of data and information, which is a component of data governance.

- Binding international law:
[UN Charter](#), Arts. 1(3), 11(1), 13, 55, 56 and 73(d).
- Non-binding international law:
UNGA, [Declaration on Friendly Relations](#) (24 October 1970).

2. Solidarity

States should conduct themselves in a spirit of solidarity during PHEs. Solidarity should inform states when making decisions that affect other states and the wider international community. This principle of international law and international relations is fundamental to global peace, security and being a good neighbour.

- Binding international law:
[UN Charter](#), Preamble, Arts. 1 and 74.
- Non-binding international law:
UNGA, [Declaration on Friendly Relations](#) (24 October 1970).

3. Good Faith

States should fulfil their obligations in good faith. This practice regulates the performance of rights and obligations in the course of conducting international relations. The requirement of performing obligations in good faith does not dissipate during PHEs, not least because of its potential to mitigate tensions that may arise during such emergencies.

- Binding international law:
[UN Charter](#), Art 2(2).
[VCLT](#), Preamble, Arts. 26, 31, 46 and 69(2)(b).
- Non-binding international law:
UNGA, [Declaration on Friendly Relations](#) (24 October 1970).

Key institutions:

- [UNGA](#)
- [UNSC](#)

II. Global Health Law

The foundational instrument of global health law is the International Health Regulations (IHR), developed within the framework of the World Health Organization (WHO). The IHR both define what is a PHE of international concern and the measures to be taken by the WHO and by states in response thereto. States have an obligation to monitor for, and notify in case of, a PHE and to share information with other states and the WHO to ensure that they are able to adequately respond to PHEs. The IHR define PHEs of international concern as an 'extraordinary event', determined (i) to constitute a public health risk to other states through the international spread of disease and (ii) to potentially require a coordinated international response. The WHO can issue temporary recommendations to assist responses. Under the IHR states have a number of obligations, including the following.

1. Obligation of Investigation

States should ensure they have the 'capacity to detect, assess, notify and report events'. Upon request, WHO should assist states to develop, strengthen and maintain these capacities.

- Binding international law:
[IHR](#), Art. 5.

2. Obligation of Notification

States should notify WHO 'within 24 hours of assessment' of all events within territory that may constitute a PHE of international concern, and the measures implemented in response. Communications following notifications should continue in timely, detailed and accurate manner, and should also specify any support needed.

- Binding international law:
[IHR](#), Art. 6.

3. Obligation of Information Sharing

States should provide the WHO with information on any 'unexpected or unusual public health event within its territory, irrespective of origin or source, which may constitute a public health emergency of international concern'.

- Binding international law:
[IHR](#), Art. 7.
- Non-binding international law:
UNGA, [A/RES/74/20](#) (28 January 2020).
UNGA, [A/RES/73/3](#) (18 October 2018).
UNGA, [A/RES/70/266](#) (22 June 2016).
UNGA, [A/RES/65/277](#) (8 July 2011).
UNGA, [A/RES/63/33](#) (27 January 2009).

4. Obligation of Improving Responses to Public Health Risks

States should establish, operate, maintain and update national PHE response plans. These are assessed on capacity to respond 'promptly and effectively'.

- Binding international law:
[IHR](#), Art. 13, Annex 1(A)(6)(g) and (B)(2).
- Binding regional law:
[Directive 2011/24/EU](#) (OJ L 88, 4.4.2011, p. 45).
- Non-binding international law:
UNGA, [A/RES/74/307](#) (15 September 2020).
UNGA, [A/RES/74/306](#) (15 September 2020).
UNGA, [A/RES/74/20](#) (28 January 2020).
UNGA, [A/RES/67/81](#) (14 March 2013).
UNGA, [A/RES/66/2](#) (24 January 2012).
UNGA, [A/RES/58/3](#) (17 November 2003).
UNGA, [A/RES/59/27](#) (14 January 2005).
UNGA, [A/RES/60/35](#) (8 February 2006).
WHO, [Pandemic Influenza Preparedness Framework](#) (2011).

Key institutions:

- [WHO](#)
- [UNGA](#)
- [World Bank](#)
- [UNICEF](#)
- [UNFPA](#)
- [UNAIDS](#)
- [The Global Fund](#)
- [GAVI](#)
- [CEPI](#)
- [COVAX](#)
- [Bill & Melinda Gates Foundation](#)

III. Human Rights Law

States have a duty to respect, protect and fulfil human rights in line with their international obligations. Whilst human rights instruments allow for limitations and derogations, including for the purpose of protecting public health in situations of emergency, adhering to human rights obligations is an important part of effective responses to PHEs. They are also crucial to building and maintaining public trust. States' responses during a PHE may aim to protect, but may also result in interference with, the following rights.

1. Right to Life

Human beings have a right to life. No one should be arbitrarily deprived of life. States must do all that is reasonably within their power (factual ability) and authority (within the limits of the law) to protect human life. The duty to protect life also implies that states should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right

to life with dignity. An element of the right to life is the obligation to investigate situations of preventable loss of life.

- Binding international law:
 - [ICCPR](#), Art. 6.
 - [CRC](#), Art. 6.
 - [ICPRMW](#), Arts. 9 and 28.
 - [CRPD](#), Art. 10.
- Binding regional law:
 - [ECHR](#), Art. 2.
 - [ACHR](#), Art. 4.
 - [ACHPR](#), Art. 4.
- Non-binding international law:
 - [UDHR](#), Art. 3.
 - HRC, [General Comment No. 36](#) (2018).
- Non-binding regional law:
 - [ASEAN HRD](#), General Principle 11.

2. Right to Health

Human beings have the right to the enjoyment of the highest attainable standard of physical and mental health, and the right to a healthy environment. States are required to take measures necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creation of conditions that assure medical services and medical attention to all persons in the event of sickness. In the context of PHEs, measures should be applied that can prevent PHEs, and treatment and management of diseases should take place before reaching the threshold of a PHE.

- Binding international law:
 - [ICESCR](#), Art. 12.
 - [ICPRMW](#), Arts. 28 and 43(1)(e), 45(1)(c) and 70.
 - [CRC](#), Arts. 3(3), 17, 23(3)(4), 24, 25 and 39.
 - [CEDAW](#), Art. 10(h), 11(1)(f), 12 and 14(2)(b).
 - [CERD](#), Art. 5(e)(iv).
 - [CRPD](#), Arts. 25, 26 and 27(1)(a)(b).
 - [ICPED](#), Arts. 17(3)(f) and 18(1)(f).
- Binding regional law:
 - [TFEU](#), Arts. 168 and 191.
 - [ESC](#), Arts. 3, 7, 11, 13, 22 and 23.
 - ACHR ([Protocol of San Salvador](#)), Arts. 7(f), 10 and 11.
 - [ACHPR](#), Arts. 16 and 18(1).
- Non-binding international law:
 - [UDHR](#), Art. 25.
 - UNGA, [A/RES/67/81](#) (14 March 2013).
 - UNGA, [A/RES/S-26/2](#) (2 August 2001).
 - CESCR, [General Comment No. 14](#) (11 August 2000).
- Non-binding regional law:

[ASEAN HRD](#), General Principles 27(3) and 29.

3. Right to Enjoy the Benefits of Scientific Progress

Human beings have a right to benefit from scientific progress and its applications. States should ensure without discriminating that all individuals and communities have access to the benefits afforded by progress in science, including that necessary to live a dignified life. Access to vaccines that are safe and effective is a component of this right. States should take all necessary measures in light of their available resources to guarantee access to available vaccines that are needed to address a PHE.

- Binding international law:
[ICESCR](#), Art. 15.
- Binding regional law:
[ESC](#), Preamble, para. 11 and Art. 11.
[ACHR \(Protocol of San Salvador\)](#), Art. 14.
[ACHPR](#), Art. 22.
- Non-binding international law:
[UDHR](#), Art. 27.
CESCR, [E/C.12/2021/1](#) (12 March 2021).
- Non-binding regional law:
[ASEAN HRD](#), General Principle 32.

4. Right to Privacy

Human beings have a right to privacy without arbitrary or unlawful interference. Legal protections should exist to safeguard this right, including with respect to data on individual health. Processing of data during PHEs is subject to legal protections and should be undertaken in a lawful, fair and transparent manner. Collection and sharing of data should be for a specific, explicit and legitimate purpose and limited to what is necessary for achieving that purpose.

- Binding international law:
[ICCPR](#), Art. 17.
[ICPRMW](#), Art. 14.
[CRC](#), Arts. 16 and 40(2)(b)(vii).
[CRPD](#), Arts. 22 and 31(1)(a).
[ICPED](#), Art. 20(1).
- Binding regional law:
[GDPR](#), Preamble (paras. 4 and 6), Arts. 1, 5, 6, 17, 21, 77, 78 and 79.
[TFEU](#), Art. 16(1).
[ESC](#), Art. 23.
[Directive 2002/58/EC](#) (OJ L 201, 31.7.2002, p. 37).
[ECHR](#), Art. 8.
[ACHR](#), Art. 11.
- Non-binding international law:
[UDHR](#), Art. 12.

- Non-binding regional law:
[ASEAN HRD](#), General Principle 21.

5. Right to Non-Discrimination

Human beings have a right not to be discriminated against. Non-discrimination may, in specific circumstances, require states to implement measures aimed at overcoming historical or wide-ranging inequalities that jeopardise equal treatment. Measures implemented in response to PHEs must not discriminate.

- Binding international law:
[ICESCR](#), Art. 2(2) and 10(3).
[ICCPR](#), Arts. 4(1), 24(1), 26.
[RC](#), Art. 3.
[ICPRMW](#), Art. 7.
[CRC](#), Art. 2.
[CEDAW](#), Arts. 2, 4, 12 and 13.
[CERD](#), Arts. 1(3)(4), 2, 3, 5 and 6.
[CRPD](#), Arts. 3(b), 4(1), 5, 6, 25 and 28.
- Binding regional law:
[ECHR](#), Art. 14 (Protocol No. 12), Art. 1.
[ESC](#), Art. E.
[ACHR](#), Arts. 1(1), 24 and 27(1).
[ACHPR](#), Arts. 2, 18(3) and 28.
- Non-binding international law:
[UDHR](#), Art. 7.
- Non-binding regional law:
[ASEAN HRD](#), General Principles 3, 9 and 29(2).

6. Right to Free Movement

Human beings have a right to: (i) move freely within state borders; (ii) leave any state, including their own; (iii) return to their own state. Restrictions on this right during a PHE must be necessary, proportionate and provided for in law for the purpose of furthering a legitimate aim, such as protecting public health.

- Binding international law:
[ICCPR](#), Art. 12.
[RC](#), Arts. 26 and 31(2).
[ICPRMW](#), Art. 39.
[CEDAW](#), Art. 15(4).
[CERD](#), Art. 5(d)(i).
[CRPD](#), Art. 18.
- Binding regional law:
[TEU](#), Arts. 3(2)
[TFEU](#), Arts. 20(2)(a), 21, 45 and 79(2)(b).
[ESC](#), Art. 12(4)(a).
[ECHR](#) (Protocol No. 4), Art. 2.

[ACHR](#), Art. 22.
[ACHPR](#), Art. 12.

- Non-binding international law:
[UDHR](#), Art. 13.
- Non-binding regional law:
[ASEAN HRD](#), General Principle 15.

7. Right to Free Expression

Human beings have a right to hold any opinion and express that opinion. There is friction with this right during PHEs when information is spread that is false or misleading and impacts public health efforts (for example, misinformation in the case of vaccinations). In terms of data governance, it is not the role of states to restrict information, regardless of accuracy. However, sanctions can be applied if the expression impacts the rights of other human beings, so long as such measures are prescribed by law.

- Binding international law:
[ICCPR](#), Art. 19.
[ICPRMW](#), Art. 13.
[CRC](#), Arts. 12 and 13.
[CERD](#), Art. 5(d) (viii).
[CRPD](#), Art. 7(3) and 21.
[ICPED](#), Art. 25(5).
- Binding regional law:
[ECHR](#), Art. 10.
[ACHR](#), Art. 13.
[ACHPR](#), Art. 9.
- Non-binding international law:
[UDHR](#), Art. 19.
UNGA, [A/HRC/44/49](#) (23 April 2020).
- Non-binding regional law:
[ASEAN HRD](#), General Principle 23.

8. Right to Liberty and Security

Human beings have a right to freedom from unreasonable detention, meaning individuals must not be detained without good reason established by law. During PHEs quarantines may be necessary in order to reduce and/or prevent transmission of a disease. However, any measures that are implemented (for example, detention at state borders) must not be disproportionate and allow for reasonable conditions (for example, supervised time outdoors) that protect human dignity and cultural identity.

- Binding international law:
[ICCPR](#), Arts. 9 and 10.
[ICPRMW](#), Arts. 16 and 17.
[CRC](#), Art. 37.
[CRPD](#), Art. 14.

[ICPED](#), Arts. 17, 18, 20, 21, 22 and 23.

- Binding regional law:
[ECHR](#), Art. 5.
[ACHR](#), Arts. 5(2) and 7.
[ACHPR](#), Art. 6.
- Non-binding international law:
[UDHR](#), Art. 3.
- Non-binding regional law:
[ASEAN HRD](#), General Principle 12.

9. Right to Freedom from Cruel, Inhuman or Degrading Treatment

Human beings have a right to not be subject to cruel, inhuman or degrading treatment. No derogation can be made to this right and it should not be limited or restricted. During PHEs, although measures such as quarantining may be necessary, the conditions surrounding any such measure should not amount to cruel, inhuman or degrading treatment of individuals subjected to such measures.

- Binding international law:
[ICCPR](#), Art. 7.
[CAT](#), Preamble and Art. 16.
[ICPRMW](#), Preamble and Art. 10.
[CRC](#), Arts. 37 and 39.
[CRPD](#), Preamble, Art. 15.
- Binding regional law:
[ECHR](#), Art. 3.
[ACHR](#), Art. 5.
[ACHPR](#), Art. 5.
- Non-binding international law:
[UDHR](#), Art. 5.
- Non-binding regional law:
[ASEAN HRD](#), General Principle 14.

10. Right to Freedom of Religion

Human beings have a right to adopt a religion or belief of their choice, which includes the freedom, either individually or in a community, to manifest that religion or belief in public or private. During PHEs the manifestation of religious beliefs in places of worship, observance, practice or teaching may need to be limited in order to protect public health. Any such limitations should be necessary and proportionate in order to protect public health, as well as being prescribed by law.

- Binding international law:
[ICCPR](#), Art. 18.
[RC](#), Art. 4.
[ICPRMW](#), Art. 12.

[CRC](#), Art. 14.
[CERD](#), Art. 5(d)(vii).

- Binding regional law:
[ECHR](#), Art. 9.
[ACHR](#), Art. 12.
[ACHPR](#), Art. 8.
- Non-binding international law:
[UDHR](#), Art. 18.
- Non-binding regional law:
[ASEAN HRD](#), General Principle 22.

11. Right to Freedom of Peaceful Assembly

Human beings have a right to peacefully assemble, including, but not limited to, holding meetings, sit-ins, strikes and protests (both offline and online). This right serves as the basis for the exercise of other human rights, such as freedom of expression and taking part in the conduct of public affairs. During PHEs limitations may be placed on this right in order to protect public health. Any restriction on exercising this right must be provided for in law and should be both a necessary and proportionate means of advancing a legitimate aim, such as protecting public health.

- Binding international law:
[ICCPR](#), Art. 21.
[CRC](#), Art. 15.
[CEDAW](#), Art. 7.
[CERD](#), Art. 5(d)(ix).
[CRPD](#), Art. 29.
[ICPED](#), Art. 24.
- Binding regional law:
[ECHR](#), Art. 11.
[ACHR](#), Art. 15.
[ACHPR](#), Art. 11.
- Non-binding international law:
[UDHR](#), Art. 20.
- Non-binding regional law:
[ASEAN HRD](#), General Principle 24.

12. Right to Education

Human beings have a right to access educational opportunities to assist with the full development of their personality. During PHEs the means by which education is administered within states may be interrupted and/or modified (for example, school closures and/or switching to online lessons) in order to address a particular PHE. If such actions occur, states should make their best efforts to ensure that access to the modified form of education does not create disparities amongst the same group of

learners (for example, school children that do and do not have internet access at home).

- Binding international law:
 - [ICESCR](#), Arts. 13 and 14.
 - [RC](#), Art. 22.
 - [ICPRMW](#), Arts. 30, 43(1)(a) and 45(1)(a)(4).
 - [CRC](#), Arts. 23(3), 24(2)(e), 28, 29 and 32(1).
 - [CEDAW](#), Arts. 10, 14(2)(d) and 16(1)(e).
 - [CERD](#), Art. 5(e)(v).
 - [CRPD](#), Art. 24.
- Binding regional law:
 - [ECHR](#) (Protocol No. 1), Art. 2.
 - [ESC](#), Arts. 7(1)(3), 10, 17 and 30.
 - [ACHR](#), Art. 26 ([Protocol of San Salvador](#)), Arts. 7(f), 13 and 16.
 - [ACHPR](#), Art. 17.
- Non-binding international law:
 - [UDHR](#), Art. 26.
 - [UNSDG](#), Goals 4 and 17.
- Non-binding regional law:
 - [ASEAN HRD](#), General Principle 31.

13. Right to Water

The right to water is of fundamental importance to all societies and that importance is highlighted during PHEs. Collective human action that is necessary in order to address a PHE (for example, handwashing across a population) is impossible if individuals and communities do not have access to clean, safely drinkable water. States should make a concerted effort to help realise this right.

- Binding international law:
 - [ICESCR](#), Arts. 11 and 12.
 - [CRC](#), Art. 24(2)(c).
 - [CEDAW](#), Art. 14(2)(h).
 - [CRPD](#), Art. 28(2)(a).
- Non-binding international law:
 - HRC, [A/HRC/46/28](#) (19 January 2021).
 - CESCR, [General Comment No. 15](#) (20 January 2003).
 - [UNSDG](#), Goals 6 and 17.
- Non-binding regional law:
 - [ASEAN HRD](#), General Principle 28(e).

14. Derogations

Derogations are an exemption to or relaxation of a particular rule through the suspension or modification of legal obligations under particular circumstances, such as national emergencies. There are limitations on the derogations that states can make regarding their human rights obligations, including during PHEs. Certain human rights are non-derogable (for example, the right to life or the right to non-

discrimination). If made, any derogation must be strictly necessary to further a legitimate aim of the public interest, provided for and carried out in accordance with the law, and be a proportionate means of furthering that aim, which during a PHE would be improving health outcomes for a population.

- Binding international law:
 - [ICESCR](#), Art. 5
 - [ICCPR](#), Arts. 4, 5 and 6(3).
 - [ICPRMW](#), Arts. 25(2) and 82.
 - [CRPD](#), Art. 4(4).
- Binding regional law
 - [ESC](#), Arts. F and G.
 - [ECHR](#), Art. 15.
 - [ACHR](#), Art. 27.
- Non-binding international law:
 - [Siracusa Principles](#) on the Limitation and Derogation Provisions in the ICCPR (1985), paras. 39-70
 - CCPR, [General Comment No. 29](#) (31 August 2001).

Key institutions:

- [UNGA](#)
- [HRC](#)
- [CCPR](#)
- [CESCR](#)
- [CRC](#)
- [CEDAW](#)
- [CERD](#)
- [CAT](#)
- [CMW](#)
- [CRPD](#)
- [CED](#)
- [CoE](#)
- [EU](#)
- [OAS](#)
- [AU](#)
- [ASEAN](#)

IV. Data Governance

The law relating to data governance regulates what data can be collected, how it is stored, how it is shared between different entities, and the purposes relating to its use. Existing principles require that the collection and processing of personal data (including health data) must be proportionate, serve a public interest, and collected and shared in a transparent way.

1. Retention of Personal Information

There is broad scope for national health authorities and others to retain health data about individuals. This practice can create an exception to the 'right to be forgotten' when it is in the public interest to do so in terms of public health. Further, ease of access for data subjects to their health data is an enforceable right. Restrictions can be

implemented by states where there is an objective of general public interest such as public health or during disasters.

- Binding international law:
[IHR](#), Art. 45.
- Binding regional law:
[GDPR](#), Preamble (paras. 35, 63, 65 and 73), Arts. 4(7), 17(3)(c) and 23(1)(e).
CoE, [Convention 108](#), Preamble, Arts. 1 and 3-9.
CoE, [MCPIPPD \(Amending Protocol\)](#) not yet in force), Preamble, Arts. 1 and 3-13.
- Non-binding international law:
UN, [Personal Data Protection and Privacy Principles](#).
ICDPPC, [Madrid Resolution](#).
- Non-binding regional law:
CoE, [CM/Rec\(2019\)2](#), Preamble and Chapters I-IV.
OECD, [Privacy Framework](#).
APEC, [Privacy Framework](#).
AU, [Malabo Convention](#) (not yet in force).
ASEAN, [TELMIN Framework](#).
OAS, [Principles on Privacy and Data Protection](#).
RIPD, [Data Protection Standards](#).

2. Obligations when Processing Data

The processing of health data should be necessary for the performance of a task carried out in the public interest, bearing in mind risks to rights and freedoms of natural persons. Obligations relating to data processing also extend to scientific research, including studies in the public interest area of health. Derogations can be made for public interest reasons regarding protecting life and health.

- Binding international law:
[IHR](#), Art. 45.
- Binding regional law:
[GDPR](#), Preamble (paras. 45, 52, 75, 112 and 159), Arts. 4(15) and 5-11.
CoE, [Convention 108](#), Preamble, Arts. 1 and 3-9.
CoE, [MCPIPPD \(Amending Protocol\)](#) not yet in force), Preamble, Arts. 1 and 3-13.
- Non-binding international law:
UN, [Personal Data Protection and Privacy Principles](#).
ICDPPC, [Madrid Resolution](#).
- Non-binding regional law:
[CM/Rec\(2019\)2](#), Preamble and Chapters I-IV.
OECD, [Privacy Framework](#).
APEC, [Privacy Framework](#).
AU, [Malabo Convention](#) (not yet in force).
ASEAN, [TELMIN Framework](#).
OAS, [Principles on Privacy and Data Protection](#).

RIPD, [Data Protection Standards](#).

3. Limitations of Data Usage

The collection, retention and use of personal data should be limited to that which is necessary for the purposes of collection.

- Binding international law:
[IHR](#), Art. 45.
- Binding regional law:
[GDPR](#), Preamble (paras. 65 and 71), Arts. 4(4) 5 and 58(2)(f).
CoE, [Convention 108](#), Preamble, Arts. 1 and 3-9.
- Non-binding international law:
UN, [Personal Data Protection and Privacy Principles](#).
ICDPPC, [Madrid Resolution](#).
- Non-binding regional law:
CoE, [CM/Rec\(2019\)2](#), Preamble and Chapter II(8)(3).
OECD, [Privacy Framework](#).
APEC, [Privacy Framework](#).
AU, [Malabo Convention](#) (not yet in force).
ASEAN, [TELMIN Framework](#).
OAS, [Principles on Privacy and Data Protection](#).
RIPD, [Data Protection Standards](#).

4. Special Protections for Specific Types of Data

Specific conditions may apply to health-related data where necessary. Although the processing of personal data concerning health can be prohibited, exceptions have been recognized, including where processing is necessary for reasons that are in the public interest, such as public health (for example, in order to protect against serious cross-border threats to health).

- Binding regional law:
[GDPR](#), Preamble (para. 53), Art. 9(1),(2)(h)(i),(4).
CoE, [Convention 108](#), Art. 6.
CoE, [MCPIPPD \(Amending Protocol\)](#) (not yet in force), Art. 6.
- Non-binding regional law:
CoE, [CM/Rec\(2019\)2](#), Preamble, Chapters I-V and VII.
OAS, [Principles on Privacy and Data Protection](#).

5. Data Impact Assessments and Monitoring

Applies to large-scale data processing operations, which may be necessary during a PHE. Data governance mechanisms that aim to protect the rights and freedoms of natural persons can be undertaken in consultation with supervisory authority for public interest matters, including public health.

- Binding regional law:
[GDPR](#), Preamble (para. 91), Arts. 35(1) and 36(5).

CoE, [MCIPPD \(Amending Protocol\)](#) not yet in force), Art. 10.

- Non-binding international law:
UN, [Personal Data Protection and Privacy Principles](#).
ICDPPC, [Madrid Resolution](#).
- Non-binding regional law:
OECD Recommendation of the Council on Health Data Governance, Nos. 6, 9 and 12.
CoE, [CM/Rec\(2019\)2](#), Chapter II(4)(2).
OECD, [Privacy Framework](#).
APEC, [Privacy Framework](#).
AU, [Malabo Convention](#) (not yet in force).
OAS, [Principles on Privacy and Data Protection](#).
RIPD, [Data Protection Standards](#).

Key institutions:

- [CoE](#)
- [EU](#)
- [OAS](#)
- [AU](#)
- [ASEAN](#)
- [OECD](#)
- [UN](#)

V. International Disaster Law

States should mitigate disasters through responses undertaken in accordance with the principle of humanity in order to alleviate human suffering and protect human beings and the natural environment. To ensure effective measures to disasters, including those relating to PHEs, responses should be harmonised across actors. Preparing for and reducing the risk of disasters is also a crucial aspect of this framework.

1. Duty to Cooperate

Efficient cooperation across actors responding to a disaster is indispensable for the protection of human beings during such times. This duty encompasses cooperation in order to prevent and reduce the risk of disasters. Forms of cooperation include, but are not limited to, placing humanitarian relief personnel at the disposal of affected states, financial aid, logistical support and coordinating other relief actions.

- Binding international law:
[Tampere Convention](#), Preamble, Arts. 2 and 3.
- Binding regional law:
[TFEU](#), Arts. 196 and 214.
- Non-binding international law:
ILC, [Articles on Disasters](#), Arts. 7, 8, 10, 11, 12, 13 and 15.

UN, [Hyogo Framework](#).
UN, [Sendai Framework](#).

2. Ensure Communications

States should give assistance to other states when it is requested for the purposes of providing telecommunications during disasters, including a PHE. The timely deployment and use of telecommunication resources during a PHE plays a life-saving role.

- Binding international law:
[Tampere Convention](#), Arts. 1(6)(8), 2, 3, 4 and 7(8)(b)(g).
- Binding regional law:
[TFEU](#), Arts. 196 and 214.
- Non-binding international law:
ILC, [Articles on Disasters](#), Arts. 2, 3(g), 8 and 13.
UN, [Hyogo Framework](#).
UN, [Sendai Framework](#).

3. Reduce Risks of Disasters

States should take lawful measures to prepare for and assist in the prevention of disasters, including PHEs. Risk reduction measures should also include those that address the destruction of the natural environment in addition to establishing, maintaining and updating early warning systems.

- Binding regional law:
[TFEU](#), Arts. 196 and 214.
- Non-binding international law:
ILC, [Articles on Disasters](#), Art. 9.
UN, [Hyogo Framework](#).
UN, [Sendai Framework](#).

4. Protection of Relief Personnel, Equipment and Goods

States should ensure the protection of personnel that operate within their territory or territory under their jurisdiction or control. Protection efforts also apply to equipment and goods used in disaster response. Doing so facilitates the mitigation strategies that are implemented to address a PHE, especially in settings where there may be security threats.

- Binding international law:
[Tampere Convention](#), Art. 5(3).
- Binding regional law:
[TFEU](#), Arts. 196 and 214.
- Non-binding international law:
ILC, [Articles on Disasters](#), Art. 16.
UN, [Hyogo Framework](#).

UN, [Sendai Framework](#).

Key institutions:

- [UNDRR](#)
- [IFRC](#)
- [ITU](#)
- [OCHA](#)

VI. International Humanitarian Law

International humanitarian law requires parties to armed conflict to limit human suffering as far as possible during such times and treat people humanely at all times, including by safeguarding public health. A key aim of this legal framework is to protect and respect human dignity, including during a PHE when this occurs simultaneously with an armed conflict.

1. Obligation to Care for and Protect the Sick and Wounded

Parties to an armed conflict or multiple conflicts should protect and respect all persons who are sick and/or wounded during armed conflict, whether on land or at sea. Such persons should not be left without medical care or exposed to contagion or infection.

- Binding international law:
 - [Geneva Convention I](#), Arts. 3, 6, 7, 9, 10, 12, 15, 18, 19 and 46.
 - [Geneva Convention II](#), Arts. 3, 7, 9, 10, 12, 18, 21, 28, 30 and 47.
 - [Geneva Convention III](#), Arts. 3 and 30.
 - [Geneva Convention IV](#), Arts. 3, 16 and 91.
 - [AP I](#), Arts. 10, 11 and 44(8).
 - [AP II](#), Arts. 7 and 8.
 - [ICRC Customary Rules](#), nos. 109-111.

2. Obligation to Protect Medical Personnel

Parties to an armed conflict or multiple conflicts should protect and respect medical personnel, including during a PHE. Parties to conflict must ensure that medical personnel can carry out their work without undue interference. These personnel and the individuals they treat must not be harmed.

- Binding international law:
 - [Geneva Convention I](#), Arts. 24-27, 28-30 and 32.
 - [Geneva Convention II](#), Arts. 36 and 37.
 - [Geneva Convention IV](#), Art. 20.
 - [AP I](#), Arts. 15 and 16.
 - [AP II](#), Arts. 9 and 10
 - [ICRC Customary Rules](#), nos. 25 and 26.

3. Obligation to Protect Medical Facilities and Transport

Parties to an armed conflict or multiple conflicts should protect and respect medical facilities (including data contained therein), and transportation that is used for medical purposes. Medical transportation, including access routes to and from medical facilities and those that require medical care, is essential to protecting public

health during conflict. Equally, medical facilities in conflict zones help address PHEs as well as the damages caused by armed conflict.

- Binding international law:
 - [Geneva Convention I](#), Arts. 19-23 and 33-37.
 - [Geneva Convention II](#), Arts. 21-35 and 38-40.
 - [Geneva Convention IV](#), Art. 18, 19, 21, 22 and 57.
 - [AP I](#), Arts. 12-14 and 21-31.
 - [AP II](#), Art. 11
 - [ICRC Customary Rules](#), nos. 28 and 29.

4. Obligation to Protect Environment

Parties to an armed conflict or multiple conflicts should ensure that the least amount of damage is inflicted on the natural environment. Protecting the environment is crucial to protecting human beings during PHEs and during armed conflict, as environmental damage exacerbates the issues that are faced by societies when addressing PHEs.

- Binding international law:
 - [AP I](#), Arts. 35 and 54-56.
 - [AP II](#), Arts. 14 and 15.
 - [ICRC Customary Rules](#), no. 45.
 - [ENMOD](#), Arts. 1 and 2.

Key institutions:

- [ICRC](#)
- [IFRC](#)

VII. International Trade Law

International trade law aims to reduce trade restrictions, including by implementing measures that are crucial during PHEs, such as expediting export/import processes for goods (for example, green channelling). States can also implement measures that can affect international trade in order to protect public health.

1. Patents

The TRIPS Agreement allows for exceptions to the intellectual property rights of patent holders, for instance in situations of 'national emergency' or 'other circumstances of extreme urgency', which would also cover PHEs. When applicable conditions are met, states may allow the production of a patented product or process without the consent of the patent owner, while still providing compensation to the owner for copies of the products made. Such flexibility would cover pharmaceutical products needed to address a PHE, including medicines, vaccines and diagnostic tools or processes.

- Binding international law:
 - [TRIPS Agreement](#), Arts. 31, [31bis](#) and 73.
- Non-binding international law:
 - [DOHA Declaration](#), in particular paras. 4, 5(b)(c) and 6.
 - CESCR, [E/C.12/2021/1](#) (12 March 2021).

2. Protecting Non-Trade Interests: Public Health

States have a right to implement measures, including those that are trade-restrictive, which are necessary for the protection of their public health interests, including during a PHE that is of international concern and/or when a serious threat is posed to public health.

- Binding international law:
 - [TRIPS Agreement](#), Arts. 8 and 73.
 - [GATT](#), Art. XXI.
 - [GATS](#), Arts. XIV and XIVbis.
 - WTO, [SPS Agreement](#), Arts. 2-10.
 - WTO, [TBT Agreement](#), Preamble, Arts. 2 and 5.
- Non-binding international law:
 - [DOHA Declaration](#), para. 5(c).
 - WTO, G20 Trade and Investment Ministerial Meeting, [Ministerial Statement](#) (14 May 2020).
 - WTO, G20 Trade and Investment Ministerial Meeting, [Communiqué](#) (22 September 2020).
 - CESCR, [E/C.12/2021/1](#) (12 March 2021).

3. Data protection

States parties to trade agreements have the right to implement measures that are necessary to ensure compliance with other legal obligations in order to protect the privacy of individuals with respect to the processing and dissemination of personal data. International trade should facilitate cross-border data flows that respect and protect the rights of data subjects.

- Binding international law:
 - [GATS](#), Art. XIV(c)(ii).
- Non-binding regional law
 - EU, [Cross-Border Data Flows Proposal](#), Arts. 1 and 2.
 - EU, EDPS, [Opinion 3/2021](#).

Key institutions:

- [WTO](#)
- [UNCITRAL](#)
- [EU](#)

VIII. Environmental and Climate Change Law

Environmental and climate change law exist to reduce pollution and protect the natural environment. There are many ways in which harmful impacts on the natural environment contribute to harmful impacts on public health. States should share data on environmental protection and impact and foster precaution in activities that can impact the natural environment. States and other actors should continue capacity building efforts to prevent and be in a position to effectively respond to environmental disasters, including those that could lead to a PHE. PHEs should also not be used a

pretext to subvert commitments under environmental and climate change agreements.

1. Obligation to Protect Biodiversity

States should ensure they do everything reasonably within their power (factual ability) and authority (within the limits of the law) to protect biodiversity. Large-scale destruction of the natural environment (for example, deforestation) contributes to the initiation and continuance of PHEs, in addition to the large proportion of infectious diseases that are zoonotic. Impact assessments should be carried out in order to identify and address environmental risks, including those that could contribute to PHEs.

- Binding international law:
 - [Biological Diversity Convention](#), Preamble, Arts. 5, 8, 9, 10, 11, 14 and 20.
 - [Nagoya Protocol](#), Preamble, Arts. 8 and 29.
 - [CITES](#), Arts. II and VIII.
 - [Paris Agreement](#), Preamble, Arts. 7 and 8.
 - [CMS](#), Preamble and Art. II.
 - [ITPGRFA](#), Arts. 1.2 and 6.2(a),(b).
 - [Ramsar Convention](#), Arts. 2-5.
 - [UNCCD](#), Arts. 2-4.
 - [World Heritage Convention](#), Preamble, Arts. 2, 4 and 5.
 - [TEIA Convention](#), Preamble and Art. 3.
- Non-binding international law:
 - UNGA, [A/RES/66/115](#) (24 February 2012).
 - UNGA, [World Charter for Nature](#) (28 October 1982).
 - UNGA, [Rio Declaration](#) (12 August 1992), Principles 1 and 2.
 - ILC, [Articles on Prevention of Transboundary Harm](#), Arts. 7, 9 and 10.
 - UN, [Agenda 21](#), Chps. 6.17, 6.39, 11, 12, 13.16(e), 13.21, 15, 17 and 18.

2. Sharing of Data

States should share information between each other and disseminate data to the general public regarding activities that carry the risk of causing transboundary damage to the natural environment. Data that is shared should include an assessment of possible environmental impact that a particular activity will have, which includes any possible impact on public health.

- Binding international law:
 - [Biological Diversity Convention](#), Art. 17.
 - [Nagoya Protocol](#), Preamble and Art. 14.
 - [Paris Agreement](#), Preamble, Arts. 7, 8, 10, 12 and 13.
 - [CMS](#), Art. V(5)(d),(l).
 - [ITPGRFA](#), Arts. 13.2, 14 and 17.1.
 - [Ramsar Convention](#), Art. 4(3).
 - [UNCCD](#), Arts. 12 and 16.
 - [Aarhus Convention](#), Preamble, Arts. 1 and 3-5.
 - [OSPAR Convention](#), Art. 9.
 - [Tehran Convention](#), Art. 21.
 - [TEIA Convention](#), Arts. 2, 3, 4, 9, 15 and 22.
- Non-binding international law:

UNGA, [World Charter for Nature](#) (28 October 1982).
UNGA, [Rio Declaration](#) (12 August 1992), Principles 18 and 19.
ILC, [Articles on Prevention of Transboundary Harm](#), Arts. 8, 12, 13 and 17.
UN, [Agenda 21](#), Chps. 6.7, 12.29, 19.50, 19.61(c), 31.4(e).

3. Capacity Building

States should cooperate with themselves, corporations and local (including indigenous) communities in order to strengthen capacities with respect to preventing damage to the natural environment and improving knowledge on how best to respond to events that cause environmental damage. These processes should involve consultations regarding environmental protection and impact, and cooperation involving actors with traditional knowledge of the local natural environment.

- Binding international law:
 - [Nagoya Protocol](#), Preamble, Arts. 11, 12 and 22.
 - [Paris Agreement](#), Arts. 6, 7, 11 and 13.
 - [ITPGREA](#), Arts. 13.2 and 14.
 - [UNCCD](#), Art. 19.
 - [TEIA Convention](#), Arts. 2, 6, 8, 14 and 16.
- Non-binding international law:
 - UNGA, [World Charter for Nature](#) (28 October 1982).
 - UNGA, [Rio Declaration](#) (12 August 1992), Principles 9, 10, 22 and 27.
 - ILC, [Articles on Prevention of Transboundary Harm](#), Arts. 3, 4, 9, 13 and 16.
 - UN, [Agenda 21](#), Chps. 11, 12, 26, 34 and 37.

Key institutions:

- [UNGA](#)
- [UNEP](#)
- [UNFCCC](#)
- [FAO](#)
- [IPCC](#)
- [GEF](#)
- [IUCN](#)
- [IPBES](#)
- [GBIF](#)
- [UNESCO](#)
- [WRI](#)
- [WWF](#)

IX. International Labour Law

International labour law refers to the body of laws that seeks to protect the rights of workers including their right to representation. Various international labour law instruments make specific provisions related to the protection of the physical and mental health of workers, as well as on the prohibition of child labour. During PHEs, employers and states should put in place measures that protect the physical and mental health of workers. Health data that is held on workers should be respected and protected by employers and states.

1. Protect Health of Workers

Employers and states should implement lawful measures that protect the mental and physical health of workers, including during a PHE. PPE should be provided to workers that require it during PHEs so that they can work as safely and effectively as possible during such events.

- Binding international law:
 - ILO, [Occupational Safety and Health Convention](#), Arts. 4, 5, 7-9, 11-14, 16, 18 and 19.
 - ILO, [Occupational Safety and Health \(Dock Work\) Convention](#), Arts 4(1)(2), 8 and 13(2).
 - ILO, [Protocol to the Occupational Safety and Health Convention](#), Arts. 2-5.
 - ILO, [Occupational Health Services Convention](#), Arts. 3, 5, 12, 13, 14 and 15.
 - ILO, [Health Protection and Medical Care \(Seafarers\) Convention](#), Arts. 3-10 and 13.
 - ILO, [Promotional Framework for Occupational Safety and Health Convention](#), Arts. 2-5.
- Binding regional law
 - [ESC](#), Arts. 3 and 22.
- Non-binding international law:
 - ILO, [Protection of Workers' Health Recommendation](#), Arts. I-IV.
 - ILO, [Occupational Safety and Health Recommendation](#), Arts. II-IV.
 - ILO, [Occupational Health Services Recommendation](#), Arts. I-V.
 - ILO, [Safety and Health in Agriculture Recommendation](#), Arts. I-IV.
 - ILO, [Promotional Framework for Occupational Safety and Health Recommendation](#), Arts. II-V.

2. Ensure Safety of Work Environment

Employers and states should ensure that working environments are safe for all workers. Places of work should be sanitary and have washing facilities that are sanitary. Workplaces should have safe drinking water. Consultations across stakeholders should occur in deciding what measures should be implemented during PHEs in order to best assess and manage hazards and risks.

- Binding international law:
 - ILO, [Occupational Safety and Health Convention](#), Arts. 4, 5, 7-9, 11-14, 16, 18 and 19.
 - ILO, [Occupational Safety and Health \(Dock Work\) Convention](#), Arts 4(1)(2), 5, 6(2), 8, 16(2) and 40.
 - ILO, [Protocol to the Occupational Safety and Health Convention](#), Arts. 2-5.
 - ILO, [Occupational Health Services Convention](#), Arts. 3, 5, 12, 13, 14 and 15.
 - ILO, [Health Protection and Medical Care \(Seafarers\) Convention](#), Arts. 3-10 and 13.
 - ILO, [Promotional Framework for Occupational Safety and Health Convention](#), Arts. 2-5.

- Binding regional law:
[ESC](#), Arts. 3 and 22.
- Non-binding international law:
ILO, [Protection of Workers' Health Recommendation](#), Arts. I-IV.
ILO, [Occupational Safety and Health Recommendation](#), Arts. II-IV.
ILO, [Occupational Health Services Recommendation](#), Arts. I-V.
ILO, [Safety and Health in Agriculture Recommendation](#), Arts. I-IV.
ILO, [Promotional Framework for Occupational Safety and Health Recommendation](#), Arts. II-V.

3. Protect Data of Workers

Employers and states should protect the health data of workers in light of its confidential nature. Protections extend to processes where health data is shared between parties for the purpose of addressing public health risks and/or PHEs.

- Binding international law:
ILO, [Protocol to the Occupational Safety and Health Convention](#), Arts. 3 and 5.
ILO, [Health Protection and Medical Care \(Seafarers\) Convention](#), Art. 12.
ILO, [Promotional Framework for Occupational Safety and Health Convention](#), Art. 4(3)(f).
- Non-binding international law:
ILO, [Occupational Safety and Health Recommendation](#), Art. IV(15)(2).
ILO, [Occupational Health Services Recommendation](#), Arts. II(A)(6), (B)(14), (C)(22) and (E)(30)(1).
ILO, [Promotional Framework for Occupational Safety and Health Recommendation](#), Art. IV.

4. Eliminate Forced, Exploitative and Child Labour

States should eliminate slave labour and practices similar to slavery such as debt bondage or forced or compulsory labour. PHEs can exacerbate the practice of slavery and those similar to slavery. Necessary measures that effectively implement and enforce rules prohibiting such practices should be adopted by states, including the provision and application of criminal sanctions. Exceptions to prohibiting children from working can be made so long as doing so is not likely to be harmful to their health or development and does not prejudice their education.

- Binding international law:
ILO, [Worst Forms of Child Labour Convention](#), Preamble, Arts. 6, 7 and 8.
ILO, [Minimum Age Convention](#), Preamble, Arts. 3, 7 and 9.
ILO, [Forced Labour Convention](#), Preamble, Arts. 2 and 25. [2014 Protocol](#), Arts. 1-6.
ILO, [Abolition of Forced Labour Convention](#), Preamble, Arts. 1 and 2.
ILO, [Medical Examination of Young Persons \(Industry\) Convention](#), Arts. 2-7.

ILO, [Medical Examination of Young Persons \(Non-Industrial Occupations\) Convention](#), Arts. 2-7.
[CRC](#), Art. 19.

- Non-binding international law:

ILO, [Forced Labour \(Indirect Compulsion\) Recommendation](#), Arts. I-III.

ILO, [Forced Labour \(Supplementary Measures\) Recommendation](#), Arts. 1-14.

ILO, [Minimum Age Recommendation](#), Arts. I-V.

ILO, [Worst Forms of Child Labour Recommendation](#), Arts. I-III.

ILO, [Medical Examination of Young Persons Recommendation](#), Arts. I-V.

Key institutions:

- [ILO](#)
- [CoE](#)
- [CRC](#)

X. Air Travel

Whilst international law in the field of travel is primarily aimed at facilitating international travel, there are situations, including PHEs, where states may implement restrictive measures as a means to protect public health. Such restrictions are subject to requirements of notification and communication.

1. Prohibiting and Restricting Air Travel

States have the right to prohibit or restrict aircraft from entering their territory for reasons of public safety. During PHEs states may implement measures that prevent air travel within their airspace in order to protect public health.

- Binding international law:
[Chicago Convention](#), Art. 9.

2. Preventing the Spread of Disease

States should take effective measures to prevent the spread of communicable diseases by means of air travel. The measures should be developed in consultation with applicable regulations to sanitation on aircraft.

- Binding international law:
[Chicago Convention](#), Art. 14.

3. Communication of Adopted Measures

States should communicate flight prohibition and restriction measures adopted during a PHE to other states and the International Civil Aviation Organization (ICAO).

- Binding international law:
[Chicago Convention](#), Arts. 9 and 14.

Key institutions:

- [ICAO](#)

- [WHO](#)

XI. International Investment Law

International investment law exists to protect the interests of overseas investors. States are therefore obligated to balance their own interests with those of investors, including during PHEs. States should accord investors fair and equitable treatment, incorporating a minimum standard of treatment, to their investments, in addition to providing full protection and security to such investments. States can however expropriate property when it is for reasons that are in the public interest, such as public health, so long as any such measures are carried out under due process of law, non-discriminatory and accompanied by adequate compensation.

1. Compensation for Losses

Investors that incur losses due to a PHE should be compensated or restituted by states to an extent that is no more or less favourable than that which they accord to other investors.

- Binding international law:
 - [UK/Mozambique BIT](#), Art. 4(1).
 - [Italy/Dominican Republic BIT](#), Art. V.
 - [Trinidad and Tobago/Germany BIT](#), Art. 6.
 - [Angola/Brazil BIT](#), Art. 12.
 - [Sierra Leone/UK BIT](#), Art. 4.
 - [Japan/Kenya BIT](#), Art. 11.
 - [Pakistan/Kazakhstan BIT](#), Art. 6.

2. Fair and Equitable Treatment Incorporating the Minimum Standard

States should ensure that the interests of its population as a whole are balanced with those of investors. FET clauses in international investment agreements exist to protect investments and apply without reference to how other investors are treated by states. The MST can be incorporated into FET and encompasses a broad understanding of justice, including state responsibility for injuries to aliens.

- Binding international law:
 - [ASEAN Comprehensive Investment Agreement](#), Art. 11.
 - [COMESA Common Investment Area Agreement](#), Art. 14.
 - [Belgium-Luxembourg Economic Union/Qatar BIT](#), Art. 3.
 - [Oman/Croatia BIT](#), Art. 3(2).
 - [US/Bahrain BIT](#), Art. 2(3)(a).
 - [Rwanda/US BIT](#), Art. 5.
 - [Netherlands/Oman BIT](#), Art. 2.

3. Full Protection and Security

States should guarantee stability and a secure physical, commercial and legal environment for investors. As with FET clauses, FPS does not depend on how other investors are treated by states and can therefore be interpreted in a vacuum.

- Binding international law (examples):

[ASEAN-Australia-New Zealand Free Trade Area Agreement](#), Chp. 11(Art. 6).
[Japan/Philippines Agreement for an Economic Partnership](#), Art. 91.
[Switzerland/China BIT](#), Art. 4.
[Romania/US BIT](#), Art. II.
[Vietnam/UK BIT](#), Art. 2.
[Czech Republic/Netherlands BIT](#), Art. 3.
[Canada/Peru BIT](#), Art. 5.

4. Expropriation of Property in the Public Interest

States have a right to expropriate property for reasons of public health, meaning during PHEs expropriation can be carried out so long as the procedure is conducted under due process of law, non-discriminatory, and adequately compensates the investor.

- Binding international law (examples):
[UK/Colombia BIT](#), Art. VI(1).
[South Africa/Cuba BIT](#), Art. 5(1).
[Cameroon/Canada BIT](#), Art. 10(1).
[China/New Zealand BIT](#), Art. 6(1).
[Austria/Guatemala BIT](#), Art. 5(1).
[Nigeria/Finland BIT](#), Art. 5(1).
[India/Lithuania BIT](#), Art. 5(1).

Key institutions:

- [ICSID](#)
- [UNCITRAL](#)
- [PCA](#)

XII. Public Procurement

Public procurement regulates public sector purchases and contracts for goods and services. This area of law exists to stimulate production and enhance competition. States should not discriminate on a national basis in their procurement practices, ensuring impartiality in these processes that treat parties equally and provide them with the same opportunities. States should also ensure that their procurement practices are transparent and free from corruption, including during PHEs.

1. Non-Discrimination

Any measures related to public procurement that are implemented during PHEs should accord the goods and services of states and other suppliers a level of treatment that is no more or less favourable than the treatment afforded to other states and suppliers.

- Binding international law:
WTO, [GPA](#), Arts. IV and XVIII.
- Binding regional law:
[USMCA](#), Arts. 13.4 and 13.18.
[TFEU](#), Art. 37(1).

[EEU Treaty](#), Art. 88.

- Non-binding international law:
UNCITRAL, [Model Law](#), Arts. 8, 9(6), 34(1)(b), 35(2)(b), 53(2) and 60(7).
- Non-binding regional law
OECD, [Recommendation for Further Combating Bribery](#), Art. IX(iii).

2. Transparency and Anti-Corruption

States should ensure their procurement practices are transparent and free from corruption. With respect to being fully transparent, there may be exceptions for the purpose of public health and safety. States need not necessarily disclose data that is essential for the protection of their security interests.

- Binding international law:
WTO, [GPA](#), Preamble, Arts. IV, V(3)(ii), XVI and XVIII.
- Binding regional law:
[USMCA](#), Arts. 13.15, 13.17, 13.18 and 13.20(2).
OECD, [Convention on Combating Bribery](#), Preamble, Arts. 1-10.
[EEU Treaty](#), Art. 88.
- Non-binding international law:
UNCITRAL, [Model Law](#), Preamble.
- Non-binding regional law:
OECD, [Recommendation for Further Combating Bribery](#), Art. XI(iii).
OECD, [Recommendation on Managing the Risk of Corruption](#), Art. 9(iii),(v).
OECD, [Guidelines for Multinational Enterprises](#), Art. VII(5).
OECD, Public Procurement and Infrastructure Governance: [Initial policy responses to the Coronavirus \(COVID-19\) crisis](#), pp. 5, 7, 12, 16-19, 20, 32 and 33.

3. Fair and Effective Competition

States should afford equal access to procurement procedures and should ensure fair and effective competition during the public procurement process, including during PHEs. Emergency contracting is an exception limited to unforeseeable, immediate needs of extreme urgency to tackle a PHE.

- Binding international law:
WTO, [GPA](#), Arts. X(5), XIII(1) and XVII.
- Binding regional law:
[USMCA](#), Arts. 13.11(4) and 13.16(2)(3).
[EEU Treaty](#), Art. 88.
OECD, [Convention on Combating Bribery](#), Preamble.
- Non-binding international law:
UNCITRAL, [Model Law](#), Art. 35(2)(b).

- Non-binding regional law:
 OECD, [Recommendation for Further Combating Bribery](#), Preamble, Art. XI(i).
 OECD, [Guidelines for Multinational Enterprises](#), Commentary (para. 1).
 OECD, Public Procurement and Infrastructure Governance: [Initial policy responses to the Coronavirus \(COVID-19\) crisis](#), pp. 10, 12, 15, 17, 21-23 and 26.

Key institutions:

- [WTO](#)
- [UNCITRAL](#)
- [OECD](#)

XIII. Sustainable Development

Sustainable development is a component of international governance in which states and other actors should strive to achieve certain targets. The UN communicated its current targets through the SDGs. These goals are applicable to PHEs and data governance in the sense that by attempting to achieve a particular goal, it is assumed that states would be in a better position to effectively respond to PHEs and govern data. The SDGs addressed below provide a sample of some matters in which such alignment takes place.

1. End Poverty and Hunger

States should implement measures that eradicate poverty and assist other states in this effort. Poverty is a contributor to the worsening of PHEs, and increases during PHEs and in their aftermath.

- Non-binding international law:
[UNSDG](#), Goals 1, 2 and 17.
 UNGA, [Declaration on the Right to Development](#) (4 December 1986).

2. Reduce Inequalities Within and Between States

States should implement lawful measures that reduce inequality within and between themselves. The increasing inequality within and between states worsens PHEs in a variety of ways, and PHEs increase inequality further. PHEs are more likely to negatively impact certain persons and groups of persons than others (for example, women because of increases in domestic violence during PHEs, or children because of their education being interrupted, or migrants and refugees because they are held in quarantine facilities that increase the risk of exposure to a disease due to issues such as overcrowding and sub-optimal or lack of access to sanitation amenities). Inequalities are also directly relevant in the context of access to resources, including vaccinations.

- Non-binding international law:
[UNSDG](#), Goals 5, 10 and 17.
 UNGA, [Declaration on the Right to Development](#) (4 December 1986).

3. Moderate Consumption

In order to protect the natural environment, which is crucial to preventing PHEs, states should implement lawful measures that moderate consumption so as to better manage demand for goods, the production of which creates harmful impacts on the environment.

- Non-binding international law:
[UNSDG](#), Goals 11-15 and 17.
UNGA, [Declaration on the Right to Development](#) (4 December 1986).

4. Access to Justice and Good Governance

States should promote peaceful and inclusive societies that provide access to justice for all. The strengthening of effective, accountable and diverse institutions at all levels of governance will assist states and other actors in effectively responding to PHEs whilst adhering to their international obligations.

- Non-binding international law:
[UNSDG](#), Goals 16 and 17.
UNGA, [Declaration on the Right to Development](#) (4 December 1986).

Key institutions:

- [UNSDG](#)
- [UNDP](#)
- [UNEP](#)
- [ECOSOC](#)
- [CSD](#)
- [FAO](#)
- [UNESCO](#)
- [OECD](#)

XIV. State Responsibility

This area of international law concerns determining state responsibility for internationally wrongful acts when states are involved in conduct that is contrary to their international obligations. It also sets out the lawful measures available under international law to states when internationally wrongful acts occur. Although states may be considered responsible for a particular act or omission, including with respect to their conduct during a PHE, there are defences that can be adopted depending on the circumstances in a particular case.

1. Distress

Should a state be considered responsible for an internationally wrongful act, or have contributed to it by way of act or omission, the state may invoke the defence of distress. Such a claim takes into consideration whether the state had no other reasonable way in a situation of distress to save the lives of persons entrusted to its care.

- Non-binding international law:
ILC, [Articles on State Responsibility](#), Art. 24.

2. Necessity

Should a state be considered responsible for an internationally wrongful act, or have contributed to it by way of act or omission, the state may invoke the defence of necessity. Such a claim takes into consideration whether the state conduct was the only way for it to safeguard an essential interest against a grave and imminent peril, and whether the conduct did not seriously impair an essential public interest.

- Non-binding international law:
ILC, [Articles on State Responsibility](#), Art. 25.

3. Unforeseen Events

Should a state be considered responsible for an internationally wrongful act, or have contributed to it by way of act or omission, the state may invoke the defence of unforeseen events. Such a claim takes into consideration whether the event in question was foreseeable, beyond the ability of the state to address the event making it materially impossible to perform the obligation at issue, whether the event was due to the conduct of the state, and whether the state assumed risk of the event occurring.

- Non-binding international law:
ILC, [Articles on State Responsibility](#), Art. 23.

Key institutions:

- [ICJ](#)
- [PCA](#)
- [ICSID](#)

**BINGHAM
CENTRE FOR
THE
RULE
OF
LAW**

Charles Clore House
17 Russell Square
London WC1B 5JP

T 020 7862 5151
F 020 7862 5152
E binghamcentre@biicl.org

www.binghamcentre.biicl.org

The Bingham Centre for the Rule of Law is a constituent part of the British Institute of International and Comparative Law (www.biicl.org).

Registered Charity No. 209425



**British Institute of
International and
Comparative Law**