NOTE

THE STRUGGLES OF HUMANITARIAN MEDICAL ASSISTANCE ORGANIZATIONS: MAKING VOLUNTEER MEDICINE AN INTERNATIONAL CONCERN

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INTRODUCTION

On July 26, 2014, Dr. Kent Brantly, a volunteer doctor with Samaritan's Purse, an international medical organization that delivers free medical assistance in conflict zones and developing countries, was infected with Ebola, a deadly and contagious virus, while treating patients in Liberia.[1] Liberia was ill-suited to combat the disease, with only one treatment center in the country's capital and a laboratory about an hour away.[2] With a lack of basic infrastructure and supplies, Ebola spread quickly,[3] resulting in thousands of outbreaks of the disease.[4] Despite Dr. Brantly's requests for international assistance and better equipment and supplies to combat the disease, the response was slow resulting in a life threatening delay while waiting for a diagnosis.[5] Without proper isolation, these dying patients were left untreated, potentially infecting others and causing Ebola to spread rampantly.[6]

Although Dr. Brantly is now Ebola-free,[7] his experience in Liberia

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1. *See Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill*, NPR (Sept. 16, 2014), http://www.npr.org/blogs/goatsandsoda/2014/09/16/349012693/dr-kent-brantly-ebola-survivor-gives-testimony-on-the-hill; Maggie Fox, *Exclusive: Ebola Survivor Dr. Kent Brantly Reveals Near-Death Ordeal*, NBC NEWS (Sept. 2, 2014), http://www.nbcnews.com/storyline/ebola-virus-outbreak/exclusive-ebola-survivor-dr-kent-brantly-reveals-near-death-ordeal-n194111.

2. *See Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill*, *supra* note 1.

3. *See id.*

4. *See 2014 Ebola Outbreak in West Africa-Case Counts*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 14, 2016), http://www.cdc.gov/vhf/ebola/outbreaks/2014-west-africa/case-counts.html.

5. *See Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill*, *supra* note 1.

6. *See id.*

7. *See Dr. Kent Brantly: Lessons Learned From Fighting Ebola*, NPR (Dec. 16, 2014), http://www.npr.org/blogs/goatsandsoda/2014/12/15/370958095/dr-kent-brantly-the-lessons-hes-

exemplifies the lack of preparation of some countries that have allowed volunteer medicine within their borders and the lack of accountability for injuries and deaths that occur due to both the host country's and the international community's failure to provide the necessary resources. As of January 2016, there have been 4,809 Ebola-related deaths in Liberia alone.[8]

Due to increasing globalization, international travel, and ecosystem degradation, contagious diseases have become harder to control and can easily spread, increasing the chance of a global epidemic.[9] As a result, volunteer medicine is paramount not only in preventing epidemics, but also as often a medical resource available in conflict zones and developing countries.[10] Despite the long-standing history of organizations providing humanitarian medical assistance to countries throughout the world,[11] there still remains a constant lack of coordination between host countries and organizations that provide resources for humanitarian medical assistance;[12] this results in inefficient medical care and a real potential for a pandemic.[13]

As a solution to this communication and resource disconnect, this Note argues for minimum international standards of humanitarian medical assistance that states must adhere to in order to help assistance organizations deliver effective medical care. This Note argues that the World Health Organization (WHO),[14] using The Sphere Project's Handbook,[15] must research, develop, and implement these international minimum standards. Additionally, to offset the costs associated with implementing these minimum standards and to require states to comply,

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learned-from-fighting-ebola (explaining the lack of global response to contain infectious diseases and the dangers faced by volunteer doctors combatting Ebola).

8. *See Ebola in Africa: The End of a Tragedy?*, ECONOMIST (Jan. 14, 2016), http://www.economist.com/blogs/graphicdetail/2015/03/ebola-graphics.

9. *See* LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 234–35 (2nd ed. 2008).

10. *See, e.g.*, *Our Work, Types of Projects*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org/our-work/how-we-work/types-of-projects (last visited Feb. 29, 2016) (describing the types of areas where Doctors Without Borders works).

11. *See, e.g.*, *id.*

12. *See* Lena H. Sun, Brady Dennis, Lenny Bernstein & Joel Achenbach, *Out of Control: How the World's Health Organizations Failed to Stop the Ebola Disaster*, WASH. POST (Oct. 4, 2014), http://www.washingtonpost.com/sf/national/2014/10/04/how-ebola-sped-out-of-control/ (describing the disconnect between humanitarian organizations, states, and other entities).

13. *See id.*; *Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill*, *supra* note 1.

14. For more information on The World Health Organization (WHO), see *The World Health Organization*, http://www.who.int/en/ (last visited Feb. 29, 2016).

15. *See* THE SPHERE PROJECT, HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN HUMANITARIAN RESPONSE (3d ed. 2011), http://www.ifrc.org/PageFiles/95884/The-Sphere-Project-Handbook-20111.pdf [hereinafter THE SPHERE PROJECT].

an International Medical Assistance Liability Fund must also be established and administered by the WHO. Because world health and the consequences of inefficient medical care can be international in character,[16] all states must contribute to the International Medical Assistance Liability Fund.

So that the reader may understand the need for international minimum standards and the Fund, Part I of this Note explores the problems facing organizations that provide humanitarian medical assistance and introduces the structure of the Oil Spill Liability Trust Fund (OSLTF)[17] as an example for the International Medical Assistance Liability Fund. Part II argues for the establishment and enforcement of mandatory international minimum standards of humanitarian medical assistance. Part II also delineates what the standards should cover and pinpoints the entity best suited for the promulgation of the standards (WHO). This Part continues by arguing for the creation of an International Medical Assistance Liability Fund and outlines its basic structure and purpose. Finally, this Note concludes with an overview of the solutions presented and the arguments that support the adoption of the international minimum standards and the International Medical Assistance Liability Fund.

I. BACKGROUND

In order to successfully develop and implement international minimum standards of humanitarian medical assistance, the resources and cooperation of various entities are required.[18] This Part provides an overview of the crucial players and resources needed for this proposal to succeed, assesses the international consequences of inefficient medicine, and examines the OSLTF[19] in order to formulate the structure and goals of the International Medical Assistance Liability Fund.

16. *See* Nicky Woolf, *Ebola Isn't the Big One. So What is? And Are We Ready for it?*, GUARDIAN (Oct. 3, 2014), http://www.theguardian.com/world/2014/oct/03/-sp-ebola-outbreak-risk-global-pandemic-next (discussing past pandemics and explaining how new infectious diseases will continuously emerge, prompting a need for better international response).

17. For more information on the Oil Spill Liability Trust Fund (OSLTF), see National Pollution Funds Center, *Oil Spill Liability Trust Fund (OSLTF)*, UNITED STATES COAST GUARD: DEP'T OF HOMELAND SECURITY, http://www.uscg.mil/npfc/About_NPFC/osltf.asp (last visited Feb. 29, 2016).

18. *See* Press Release, Security Council, With the Spread of Ebola Outpacing Response, Security Council Adopts Resolution 2177 (2014) Urging Immediate Action, End to Isolation of Affected States, U.N. Press Release SC/11566 (Sept. 18, 2014), http://www.un.org/press/en/2014/sc11566.doc.htm (exemplifying the need for coordinated international response in order to effectively combat an infectious disease).

19. *See* National Pollution Funds Center, *supra* note 17.

A. *Organizations That Provide Humanitarian Medical Assistance*[20]

There is a long history of organizations and states providing humanitarian medical assistance[21] and today there are numerous organizations operating in conflict zones and developing countries.[22] Two medical humanitarian organizations that have helped combat Ebola are Doctors Without Borders and Samaritan's Purse.[23] Doctors Without Borders was originally formed in 1971 by French doctors and journalists as a result of the civil war in Nigeria.[24] The organization is built on the premise that medical assistance should be administered regardless of race, religion, politics, or national borders, and supports the universal right to health care.[25] In order to prevent being associated with a certain political policy or being influenced by a private interest, Doctors Without Borders limits the amount of funding it receives from any one entity.[26] Doctors Without Borders only allows financial contributions without conditions, receiving 80 percent of its funding from private donors and less than 20 percent from states.[27]

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20. Unlike the examples of *Doctors Without Borders* and *Samaritan's Purse*, volunteer medicine does not always come in an institutionalized form. *See, e.g.*, Celine Gounder, *Medical Emergencies at 40,000 Feet*, ATLANTIC (Apr. 4, 2013), http://www.theatlantic.com/health/archive/2013/04/medical-emergencies-at-40-000-feet/274623/4/ (explaining the circumstances of doctors volunteering to respond to medical emergencies in planes). Doctors may also volunteer their services aboard an airplane, while on vacation, or during any other emergency where the doctors are not in their home country, or are not working within the confines of their job. *See id.* These events differ from institutionalized volunteer medicine because they often occur in isolation and in unusual places where health care is not routinely administered. *See id.* Therefore, the minimum medical standards that countries are required to comply with will only pertain to volunteer doctors that arrive via a humanitarian organization.

21. *See generally* Elizabeth Ferris, *Faith-Based and Secular Humanitarian Organizations*, 87 INTERNATIONAL REVIEW OF THE RED CROSS, no. 858, June 2005, https://www.icrc.org/eng/resources/documents/article/review/review-858-p311.htm (detailing the longstanding history of faith based and secular humanitarian organizations).

22. *See, e.g.*, *Guiding Principles*, US DOCTORS FOR AFRICA, http://www.usdoctorsforafrica.org/index.cfm?views=aboutus (last visited Feb. 29, 2016) (explaining the mission and goals of US Doctors for Africa); *What We Do*, PROJECT HOPE, http://www.projecthope.org/what-we-do/ (last visited Feb. 29, 2016) (explaining the mission and goals of Project Hope).

23. *See* Brady Dennis, *Ebola Crisis Provides Glimpse into Samaritan's Purse*, *SIM,* WASH. POST (Aug. 20, 2014), http://www.washingtonpost.com/national/health-science/ebola-crisis-sheds-light-on-controversial-samaritans-purse/2014/08/20/0b9d670a-27b5-11e4-86ca-6f03cbd15c1a_story.html; *Ebola*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org/our-work/medical-issues/ebola (last visited Feb. 29, 2016).

24. *Founding of MSF*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org/founding-msf (last visited Feb. 29, 2016).

25. *See About Us, Charter*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org/about-us/history-principles/charter (last visited Feb. 29, 2016).

26. *See id.*

27. *See Donation FAQ*, MEDECINS SANS FRONTIERES DOCTORS WITHOUT BORDERS,

Samaritan's Purse, founded in 1970, is an evangelical Christian organization that is also committed to providing international humanitarian medical assistance.[28] Its mission is to provide "spiritual and physical aid to hurting people around the world."[29] During late 2014, Samaritan's Purse was one of the organizations handling the Ebola outbreak in West Africa.[30] Similar to Doctor's Without Borders, Samaritan's Purse also receives a majority of its funding from private gifts and contributions.[31] Although Samaritan's Purse associates itself with a certain religion, it does not discriminate based on religion, politics, or national borders.[32]

Humanitarian medical assistance involves working in developing countries and conflict zones, where there are unique problems faced by volunteers.[33] Volunteer doctors face a variety of acute medical illnesses that require certain precautions and procedures and are often exacerbated by a chaotic environment and a lack of essential equipment and supplies.[34] Volunteer doctors are also required to work with a limited

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http://www.doctorswithoutborders.org/support-us/donation-faq (last visited Feb. 29, 2016).

28. *See History*, SAMARITAN'S PURSE, http://www.samaritanspurse.org/our-ministry/history/ (last visited Feb. 29, 2016).

29. *About Us*, SAMARITAN'S PURSE, http://www.samaritanspurse.org/our-ministry/about-us/ (last visited Feb. 29, 2016).

30. *See Fighting Ebola in West Africa*, SAMARITAN'S PURSE (Oct. 21, 2014), http://www.samaritanspurse.org/article/fighting-ebola-in-west-africa/.

31. *See Samaritan's Purse*, CHARITY NAVIGATOR, http://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=4423#.Vv3VMxMrI01 (last visited Mar. 31, 2016) (Providing a detailed review of the organizations financial statements).

32. *See About Us*, *supra* note 25.

33. *See generally* POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP (Elizabeth Tobin Tyler et. al, eds., 2011) (explaining the correlation between poverty and inadequate health)[hereinafter POVERTY, HEALTH AND LAW]; Donald G. McNeil Jr., *Ebola Doctor Shortage Eases as Volunteers Step Forward*, N.Y. TIMES (Sept 26, 2014), http://www.nytimes.com/2014/09/27/health/Ebola-Doctor-Shortage-Eases-as-Volunteers-Begin-to-Step-Forward.html?_r=0 (explaining the reasons behind the shortage of volunteer doctors); *Our Approach,* FIGHTING EBOLA: A GRAND CHALLENGE FOR DEVELOPMENT, http://www.ebolagrandchallenge.net/our-approach/(last visited Feb. 29, 2016) (explaining the conditions faced by volunteers); Wade C.I. Williams, *Liberia: Unheralded Fear - Ebola Pose Risks for Liberia Health Workers*, ALL AFRICA (June 19, 2014), http://allafrica.com/stories/201406190779.html?viewall=1 (detailing the constant risks that volunteer doctors face in Liberia).

34. *See WHO Updates Personal Protective Equipment Guidelines for Ebola Response*, WORLD HEALTH ORG. (WHO) (Oct. 31, 2014), http://www.who.int/mediacentre/news/releases/2014/ebola-ppe-guidelines/en/ (delineating the specific equipment required when treating Ebola in order to prevent infection); *Working Overseas: Basic Requirements*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.msf.org.uk/working-overseas-basic-requirements-0 (last visited Mar. 22, 2015) (explaining how the ability to cope with stress and flexibility is needed in chaotic environments where Doctors Without Borders are stationed); *Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill, supra* note 1.

number of personnel.[35] Without the necessary resources, equipment, or communication, humanitarian medical assistance organizations are hindered and are often completely disabled from delivering efficient and effective medical care to those who need it.[36] This disconnect not only prevents provision of health care and exposes volunteer doctors to infection, but can also have severe international consequences.[37]

B. *The International Consequences of Inefficient Medicine*

Although volunteer doctors usually serve in developing countries or conflict zones, the consequences of inefficient medicine—resulting from the disconnect between states and international humanitarian medical assistance organizations—can be international in effect.[38] If efficient and effective medical care is not provided to those who need it, an outbreak of disease and global epidemic may result.[39] Additionally, inefficient medicine is dangerous for volunteer doctors as it can increase the likelihood of infection and transmission of diseases, putting their health and safety at risk.[40] Two prominent and contemporary examples of the international consequences of inefficient medicine are the Ebola and the tuberculosis crises.[41]

The recent[42] Ebola outbreak in West Africa and elsewhere is a clear example of the difficulties and global consequences of not having adequate medical supplies, personnel, or equipment available to international humanitarian medical assistance organizations (hereinafter "international medical organizations").[43] A report released by Liberia's

35. *See Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill*, *supra* note 1; *Working Overseas: Basic Requirements*, *supra* note 34; McNeil Jr., *supra* note 33.

36. *See Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill*, *supra* note 1.

37. *See* Kristin Bergtora Sandvik, *Ebola: A Humanitarian Crisis or a Crisis of Humanitarian Governance?*, HPN: HUMANITARIAN PRACTICE NETWORK, http://www.odihpn.org/the-humanitarian-space/news/announcements/blog-articles/ebola-a-humanitarian-crisis-or-a-crisis-of-humanitarian-governance (last visited Feb. 29, 2015).

38. *See id.*

39. *See* Woolf, *supra* note 16.

40. *See* Karen Weintraub, *Doctors and Nurses Risk Everything to Fight Ebola in West Africa,* NAT'L GEOGRAPHIC (Aug. 29, 2014), http://news.nationalgeographic.com/news/special-features/2014/08/140829-ebola-caregivers-doctors-nurses-west-africa-sierra-leone/.

41. *See generally* CONTROL PRIORITIES IN DEVELOPING COUNTRIES 289–310 (Dean T. Jamison et al., eds., 2d ed. 2006), http://www.ncbi.nlm.nih.gov/books/NBK11724/ (detailing the history of Tuberculosis and how it has spread internationally); Sandvik, *supra* note 37 (explaining the international consequences of Ebola due to lack of resources and coordination).

42. As of March 2015, Ebola infections had greatly declined but had not completely disappeared. *See* Jonathan Paye-Layleh, *Liberia Official: New Patient Tests Positive for Ebola*, USA TODAY (Mar. 20, 2015), http://www.usatoday.com/story/news/world/2015/03/20/liberia-officials-patient-tests-positive-for-ebola/25087361/.

43. *See* MINISTRY OF HEALTH & SOC. WELFARE OF LIBERIA, LIBERIA EBOLA SITREP NO. 148 (Oct. 10, 2014),

Ministry of Health and Welfare in October 2014 listed a shortage of basic supplies and equipment, such as body bags, plastic buckets, hooded overall protective suits, examination gloves, facemasks, and goggles.[44] The Ministry Report also showed how much of a shortage there was of each item by listing how much Liberia had at the moment and the projected need over the next six months.[45] For example, as of October 10, 2014, Liberia only had 17,729 simple examination gloves and the Ministry predicted that approximately 2,380,754 gloves would be needed over the next six months.[46] To deal with Ebola, volunteer doctors require certain equipment and supplies in order to combat the disease and also ensure that others do not become contaminated.[47] A majority of the items listed in the report are basic but essential supplies to prevent infections and preserve the overall health and safety of the volunteer medical staff and the rest of the community.[48] As of October2014, approximately 400 medical workers have contracted Ebola and since January 2016, approximately 809 Liberians have died from the disease.[49] A lack of adequate supplies and equipment has also resulted in a shortage of personnel, as many volunteer doctors are leaving Ebola-stricken countries or are refusing to volunteer in the first place due to the fear of contracting the disease.[50] As one doctor in Liberia stated: "What can I do? My staff doesn't think it's safe here anymore. . . . Soon I'll be here alone, with patients dying in the ward."[51] The short-

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http://www.mohsw.gov.lr/documents/SITRep%20148%20Oct%2010th,%202014.pdf; Ishaan Tharoor, *Chart: the Awful Lack of Ebola Supplies in Liberia*, WASH. POST (Oct. 15, 2014), http://www.washingtonpost.com/blogs/worldviews/wp/2014/10/15/chart-the-awful-lack-of-ebola-supplies-in-liberia/.

44. MINISTRY OF HEALTH AND SOC. WELFARE OF LIBERIA, *supra* note 43, pg. 11.

45. *Id.*

46. *Id.*

47. *See* Centers for Disease Control and Prevention, *Guidance on Personal Protective Equipment (PPE) to Be Used by Healthcare Workers During Management of Patients with Confirmed Ebola or Persons Under Investigation (PUIs) for Ebola Who are Clinically Unstable or Have Bleeding, Vomiting, or Diarrhea in U.S. Hospitals, Including Procedures for Donning and Doffing PPE Virus Disease in U.S. Hospitals, Including Procedures for Putting on (Donning) and Removing (Doffing)*, (Oct. 20, 2014), http://www.cdc.gov/vhf/ebola/hcp/procedures-for-ppe.html.

48. *See id.*; Drew Hinshaw, *Ebola Virus: For Want of Gloves, Doctors Die*, WALL ST. J. (Aug. 16. 2014), http://online.wsj.com/articles/ebola-doctors-with-no-rubber-gloves-1408142137.

49. *See* Hinshaw, *supra* note 48*;* Dan Diamond, *Ebola Has Killed More Than 200 Doctors, Nurses, and Other Healthcare Workers Since June*, FORBES (Oct. 15, 2014), http://www.forbes.com/sites/dandiamond/2014/10/15/ebola-has-already-killed-more-than-200-doctors-nurses-and-other-healthcare-workers/; *2014 Ebola Outbreak in West Africa-Case Counts*, *supra* note 4.

50. *See* Kevin Sieff, *Liberia Already Had Only a Few Dozen of its Own Doctors, Then Came Ebola,* WASH. POST (Oct. 11, 2014), http://www.washingtonpost.com/world/africa/liberia-already-had-only-a-few-dozen-of-its-own-doctors-then-came-ebola/2014/10/11/dcf87c5c-50ac-11e4-aa5e-7153e466a02d_story.html.

51. *Id.*

age of supplies, staff, and other support contributed to an Ebola outbreak and pandemic that spread to North America, Europe, and Africa.[52]

Tuberculosis is another global pandemic but is different from Ebola in that there has not been a recent outbreak of the disease but a continuous high rate of infection throughout the world.[53] Humanitarian medical assistance organizations in developing countries are still fighting tuberculosis in Kenya and throughout African refugee camps.[54] Similar to the situation in Liberia, the organizations fighting tuberculosis suffer from a lack of resources and state support.[55] In addition, a high rate of poverty results in a high rate of transmission.[56] Other underlying and untreated diseases such as HIV/AIDS in these regions promote widespread transmission of tuberculosis.[57] Although drug-resistant tuberculosis is a factor in the high rate of infection in the developed world, lack of hygiene, resources, vaccines, and other adequate medical care prevent volunteer doctors from successfully fighting tuberculosis in developing countries.[58] As a result, there is constant tuberculosis infection in both developing and developed countries.[59] The potential for tuberculosis to further spread throughout the world is not only alarming but also harms the global economy.[60]

In addition to possible pandemics, inefficient medical care is also dangerous for organizations and volunteer doctors.[61] Without proper resources and equipment, volunteer doctors and other medical staff are prone to infections, contamination, and other life-threatening scenarios

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52. *See* Hinshaw, *supra* note 48.

53. *See Tuberculosis*, WORLD HEALTH ORG. (Oct. 2015), http://www.who.int/mediacentre/factsheets/fs104/en/.

54. *See Our Work*, *Countries: Kenya*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org/country-region/Kenya (last visited Mar. 1, 2016).

55. *See id.*

56. *See* D.P.S. Spence et al., *Tuberculosis and Poverty,* 307(6907) BRITISH MEDICAL J. 759 (1993), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1696420/.

57. *See Tuberculosis,* WORLD HEALTH ORG, http://www.who.int/trade/glossary/story092/en/ (last visited Mar. 21, 2016); *Tuberculosis*, AIDS.GOV, https://www.aids.gov/hiv-aids-basics/staying-healthy-with-hiv-aids/potential-related-health-problems/tuberculosis/ (last visited Mar. 1, 2016).

58. *See* James Maynard, *Tuberculosis is at Crisis Levels, Warns WHO*, TECH TIMES (Oct. 22, 2014), http://www.techtimes.com/articles/18455/20141022/tuberculosis-is-at-crisis-levels-warns-who.htm.

59. *See id.*

60. *See Economic Impact of TB,* TB ALLIANCE, http://blog.newtbdrugs.org/why/economic-impact.php (last visited Mar. 21, 2016).

61. *See* Larry Copeland, *Ebola Now Taking Toll on Doctors*, USA TODAY (July 28, 2014, 11:05 A.M.), http://www.usatoday.com/story/news/world/2014/07/27/ebola-africa-disease-epidemic/13236743/.

during armed conflict.[62]

By putting citizens and volunteer doctors in danger of contracting serious illnesses, countries also violate the right to health. The right to health care is a basic human right under the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.[63] Article 25(1) of the Universal Declaration of Human Rights states that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . medical care . . . ."[64] This right to health care was further defined by the World Health Organization (WHO) and the Office of the United Nations High Commissioner for Refugees (UNHCR) to include the right to "available, accessible, acceptable, and [] good quality" goods and facilities.[65] Because the Universal Declaration of Human Rights requires available and good-quality medical care and facilities, inefficient medical care in any part of the world violates the universal declaration that members of the United Nations vowed to uphold.[66] Although the Universal Declaration does not have the force and effect of law, most of its provisions, including Article 25, have been codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has 70 signatories.[67] Furthermore, General Comment No. 14 of the United Nations Economic and Social Council states that "[t]he realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health

62. *See id.*

63. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, art. 25(1) (1948).

64. *Id.*

65. WORLD HEALTH ORG. & OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, THE RIGHT TO HEALTH: FACT SHEET NO. 31, 4, http://www.ohchr.org/Documents/Publications/Factsheet31.pdf (last visited Mar. 1, 2016) ("Functioning public health and health-care facilities, goods and services must be *available* in sufficient quantity within a State. . . . Finally, they must be scientifically and medically appropriate and of *good quality*. This requires, in particular, trained health professionals, scientifically approved and unexpired drugs and hospital equipment, adequate sanitation and safe drinking water.").

66. *See id.*; Universal Declaration of Human Rights, *supra* note 63.

67. *See* International Covenant on Economic, Social and Cultural Rights, art. 12, Dec. 16, 1966, 993 U.N.T.S. 3 (1967) (Article 12 states that "[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) the improvement of all aspects of environmental and industrial hygiene; (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness").

Organization. . ."[68]

C. *The Sphere Project*[69]

The Sphere Project was created in 1997 by a collection of humanitarian non-governmental organizations (NGOs) and the International Red Cross and Red Crescent Movement.[70] Recognizing the need for minimum standards for humanitarian assistance, the Sphere Project composed a Humanitarian Charter and a Handbook with detailed guidelines that every humanitarian organization should strive to follow when providing humanitarian assistance.[71] Although this Handbook is not binding[72] on organizations, it has been adopted by many humanitarian organizations and is used as a guideline by states, such as Zimbabwe, which used it in training sanitation workers in its prison systems.[73] Many humanitarian organizations and states look to the standards recognized in the Sphere Project because the standards are supported by evidence-based details on what is essential for successful humanitarian assistance.[74] The Charter and Handbook are constantly edited to provide updated information on how to "improve both the effectiveness of [agencies'] assistance and their accountability to their stakeholders . . ."[75] Each chapter in the Sphere Project Handbook is organized by type of disaster and delineates a response plan and the types of resources needed to effectively provide assistance to people.[76] The chapter on Minimum Standards in Health Action focuses on medical care and lays out the minimum amount of resources, such as the number of professional staff and laboratories needed to effectively carry out medical care.[77] The chapter is divided by medical fields and explains, in detail, the essential health services and minimum standards needed in order to provide the best medical humanitarian assistance.[78] The medical fields covered are control of communicable diseases, child health, sexual and

68. Office of the U.N. High Comm'r for Human Rights, *CESCR General Comment No. 14: The Right to Highest Attainable Standard of Health (Art. 12)*, ¶ 1, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement.

69. THE SPHERE PROJECT, *supra* note 15.

70. THE SPHERE PROJECT, *supra* note 15, at 4.

71. *See id.* at 4–5.

72. *Id.* at 373

73. *See, e.g., Humanitarian Standards Make a Difference in Zimbabwe*, SPHERE PROJECT (Apr. 23, 2013), http://www.sphereproject.org/news/humanitarian-standards-make-a-difference-in-zimbabwe/.

74. *See* THE SPHERE PROJECT, *supra* note 15, at 4–5.

75. *See id.* at iii.

76. *See id.* at 8.

77. *See id.* at 286–354.

78. *See id.* at 288–89.

reproductive health, injury, mental health, and non-communicable diseases.[79]

Despite the wide acceptance[80] of the Sphere Project's Handbook and Charter, there is still a lack of resources and support for volunteer medicine in developing countries.[81] Although most humanitarian organizations abide by the Handbook to some extent,[82] there is no international minimum standard for states that host humanitarian organizations. This gap between organizations and states results in the continual lack of resources and support because organizations are limited both materially and financially and need the guidance and support of host countries in order to effectively deliver humanitarian medical assistance.[83]

D. *The World Health Organization*

The World Health Organization (WHO) is an international agency of the United Nations that focuses on international public health.[84] WHO has its own constitution that lists the organization's mission and its responsibilities.[85] All members of the United Nations have a right to become a member of WHO but must ratify WHO's Constitution first.[86] There are approximately 194 member states of WHO, which include all of the U.N. member states (except for Liechtenstein) and observer states such as Palestine, the Holy See, the Order of Malta, and Taiwan (referred to as the Chinese Taipei).[87] WHO's core functions revolve around the responsibility to enact international policy for a variety of medical and health needs.[88] These core functions are set out in the Twelfth General Programme of Work, which states:

> [P]roviding leadership on matters critical to health and engaging in partnerships where joint action is needed; shaping the research agen-

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79. *Id.* at 289.

80. *Id.* at 5.

81. *See Dr. Kent Brantly: Ebola Survivor Gives Testimony on the Hill*, *supra* note 1.

82. *See* THE SPHERE PROJECT, *supra* note 15, at 5.

83. *See* Williams, *supra* note 33; McNeil, *supra* note 33.

84. *See About WHO,* WORLD HEALTH ORG., http://www.who.int/about/en/ (last visited Mar. 1, 2016).

85. WHO, CONSTITUTION OF THE WORLD HEALTH ORGANIZATION, http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1 (last visited Mar. 1, 2016) [hereinafter WHO Constitution].

86. *See Countries,* WORLD HEALTH ORG., (last visited Mar. 1, 2016), http://www.who.int/countries/en/.

87. *See Pronouns*, WORLD HEALTH ORG., http://intranet.tdmu.edu.ua/data/kafedra/internal/in_mow/classes_stud/uk/med/lik/ptn/%D0%B0%D0%BD%D0%B3%D0%BB%D1%96%D0%B9%D1%81%D1%8C%D0%BA%D0%B0%20%D0%BC%D0%BE%D0%B2%D0%B0/1/%E2%84%96%2003.%20World%20Health%20Organization.%20Pronouns.htm (last visited Mar. 1, 2016).

88. *See About WHO: The Role of WHO in Public Health*, WORLD HEALTH ORG., http://www.who.int/about/role/en/ (last visited Mar. 1, 2016).

> da and stimulating the generation, translation, and dissemination of valuable knowledge; setting norms and standards and promoting and monitoring their implementation; articulating ethical and evidence-based policy options; providing technical support, catalysing change, and building sustainable institutional capacity; and monitoring the health situation and assessing health trends.[89]

This Constitution makes WHO the international leader in matters of health, empowering the organization to establish standards, monitor implementation, and develop partnerships in order to accomplish its goals.[90] In addition to these roles and responsibilities, WHO has the power to pass International Health Regulations (IHR), which are legally binding on all members and assist countries in preventing the spread of certain diseases without causing interference in international trade and travel.[91] The most recent IHR was published in 2005 and provided a comprehensive framework for countries to follow in order to assess, notify, and respond to public health emergencies.[92] WHO also publishes evidence-based Guidelines that serve as recommendations on various subjects dealing with health policies or clinical interventions.[93] An example is WHO's recently updated personal protective equipment guidelines for the Ebola response.[94] The Guidelines lists the type of equipment recommended in order to prevent Ebola contamination and infection.[95] Although the Guidelines are detailed and comprehensive, they are only recommendations and guidelines.[96] Despite WHO's ability to pass legally binding regulation through the IHR, and the fact that NGOs are being encouraged to use the Sphere Project Handbook[97], the international community still lacks a universal minimum standard for equipment, supplies, or personnel available to volunteer doctors in places that often lack governmental or international oversight.

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89. *Id.*

90. *See* WHO Constitution, *supra* note 85, art. 2.

91. *See International Health Regulations*, WORLD HEALTH ORG., http://www.who.int/topics/international_health_regulations/en/ (last visited Mar. 1, 2016); *Frequently Asked Questions About the International Health Regulations (2005),* WORLD HEALTH ORG., *http://www.who.int/ihr/about/* Ministry of Health and Soc. Welfare of Liberia *2009.pdf?ua=, (last visited Mar. 31, 2016).*

92. *See* WORLD HEALTH ORG., INTERNATIONAL HEALTH REGULATIONS (2d ed. 2005), http://whqlibdoc.who.int/publications/2008/9789241580410_eng.pdf.

93. *See WHO Guidelines Approved by the Guidelines Review Committee*, WORLD HEALTH ORG., http://www.who.int/publications/guidelines/en/ (last visited Mar. 1, 2016).

94. *See WHO Updates Personal Protective Equipment Guidelines for Ebola Response*, *supra* note 34.

95. *See id.*

96. *See WHO Guidelines Approved by the Guidelines Review Committee*, *supra* note 93.

97. *See generally* THE SPHERE PROJECT, *supra* note 15, at 5 (explaining that countries and states are encouraged to use the Sphere Handbook to help guide their actions).

E. *The Oil Spill Liability Trust Fund (OSLTF)*

As stated above, the OSLTF exemplifies the structure and goals of a successful international trust fund[98] and its model should be adopted for the International Medical Assistance Liability Fund.

The OSLTF was created in 1986 and funded by the U.S. Congress in 1990 with the passage of the Oil Pollution Act (OPA) after the *Exxon Valdez* oil spill.[99] The Fund is used to cover the "costs of oil spill containment, countermeasures, cleanup, and disposal activities."[100] The Fund has two components: (1) an emergency fund and (2) a principal fund.[101] The emergency fund is used for responding to damage and initiating damage assessment.[102] The principal fund is used to pay claims and pay the agencies that administer and support the Fund.[103] Some of the sources of revenue are "interest on the fund," "cost recoveries from the responsible parties," and payment of "fines or civil penalties."[104] The Fund is administered by the U.S. Coast Guard's National Pollution Funds Center (NPFC), and private companies, states, and other governmental identities are qualified to receive funding.[105]

The OSLTF was created in order to provide the financial and administrative resources to clean up pollution from an oil spill.[106] Under the OPA, the party responsible for the oil spill is also responsible for cleaning up the spill and is liable for any damages.[107] However, if the responsible party cannot be identified or refuses to pay, then the OSLTF is used to pay for damages and clean up the spill because immediate cleanup is the priority.[108] If a responsible party refuses to pay, they can be sued in a U.S. court to pay for the costs incurred by private parties and the government for cleaning up.[109] An international fund helps

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98. *See* Allen R. Thuring, *The Oil Spill Response Fund – Four Decades of Success*, http://ioscproceedings.org/doi/pdf/10.7901/2169-3358-2014.1.2146 (last visited Mar. 1, 2016).

99. *See* National Pollution Funds Center, *supra* note 17.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *See* Envtl. Protection Agency, *Oil Spill Liability Trust Fund*, http://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/oil-spill-liability-trust-fund (last visited Mar. 1, 2016).

108. *See id.*

109. *See* 33 C.F.R. §136.115(a) (2015) ("Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund.").

clean and monitor oil spills since they have the ability to affect the entire world.[110]

Although the OSLTF is administered by and geographically limited to only the United States, the potential international consequences of oil spills are similar to the potential international consequences of health crises exacerbated by inefficient medical humanitarian assistance.[111] Both oil spills and inefficient humanitarian medical assistance affect the economy by requiring countries and governments to devote significant amounts of resources to clean up the spill or prevent further spread of the disease and can have grave international consequences by affecting the ecosystem and spreading illnesses throughout the world.[112]

II. ANALYSIS

This Section addresses the solutions required to bridge the resource and communication gap between states and humanitarian medical organizations and prevent inefficient medicine. First, there must be international minimum standards for humanitarian medical assistance, and WHO should take the primary role in developing and implementing these standards.[113] Second, as a way to offset the costs imposed on states from implementing the international minimum standards, and to compensate patients for injuries as a direct result of the state's failure to implement these standards, an International Medical Assistance Liability Fund must be established.

A. *International Minimum Standards for Humanitarian Medical Assistance*

To ensure effective medical care, countries should be held to interna-

110. *See e.g.*, *How Does the BP Oil Spill Impact Wildlife and Habitat?*, NAT'L WILDLIFE FED'N, http://www.nwf.org/What-We-Do/Protect-Habitat/Gulf-Restoration/Oil-Spill/Effects-on-Wildlife.aspx (last visited Mar. 22, 2015) (detailing the international impacts oil spills can have).

111. *Compare* Sandvik, *supra* note 37, *with Effects of Oil Pollution on Coastal Habitats*, GLOB. MARINE OIL POLLUTION INFO. GATEWAY, http://oils.gpa.unep.org/facts/habitats.htm (last visited Mar. 1, 2016).

112. *See* Sandvik, *supra* note 37; *Effects of Oil Pollution on Coastal Habitats*, *supra* note 111; Woolf, *supra* note 16.

113. *See generally* Laura H. Kahn, *Who's in Charge During the Ebola Crisis?*, BULLETIN OF ATOMIC SCIENTISTS (Oct. 13, 2014), http://thebulletin.org/who%E2%80%99s-charge-during-ebola-crisis7723 (detailing the confusion of roles and responsibilities during the Ebola crisis and countries' lack of preparation); Sheri Fink, *Cuts at W.H.O. Hurt Response to Ebola Crisis*, N.Y. TIMES (Sept. 3, 2014), http://www.nytimes.com/2014/09/04/world/africa/cuts-at-who-hurt-response-to-ebola-crisis.html?_r=0 (explaining that WHO's limited budget prevented it from doing more during the Ebola crisis); Grayson Kamm, *Emails Show Leaders Delayed Ebola S.O.S.*, 10 NEWS (Mar. 20, 2015), http://www.wtsp.com/story/news/health/2015/03/20/emails-show-world-health-leaders-delayed-ebola-emergency-declaration/25069473/ (explaining that WHO leaders delayed calling Ebola an international emergency because of its unprecedented nature).

tional minimum standards for humanitarian medical assistance.[114] Similar to the minimum standards delineated in the Sphere Project Handbook, the international minimum standards for states would set out the basic infrastructure as well as the material and financial resources needed to help humanitarian medical assistance organizations deliver effective medical care, while also preventing infection and contamination.[115] The details of each standard, such as the specific number of gloves, or protective gear, still need to be researched to accurately assess the amount of resources needed to adequately deliver efficient medical care.[116] Similar to the Sphere Project, the standards must also, at a minimum, identify which supplies and resources are needed to keep volunteer doctors and patients safe from infection and contamination.[117] Additionally, as in the Sphere Project, the standards must require states to develop basic infrastructure in the form of hospitals and laboratories that are located close to each other and affected communities, and provide adequate and sanitary water, shelter, and waste disposal.[118] In addition to basic but essential supplies and equipment, the international minimum standards must also include an estimation of the amount of medical personnel needed to fully staff the hospitals and laboratories.[119]

Although international medical organizations consist of volunteer doctors and medical staff, by offering a methodology on which such estimates should be calculated on a basis specific to the particular situation, states will be able to utilize their own resources and justify the costs if international medical organizations are unable to find enough volunteers.[120] Regardless of their economic, political, or social statuses, countries that host humanitarian medical assistance organizations must comply with the international minimum standards for humanitarian medical assistance in order to prevent a pandemic and uphold the universal right to adequate medical care.[121] Although the Sphere Project Handbook identifies and delineates the resources and assistance necessary for humanitarian organizations to effectively administer assis-

114. *See generally* Sun et al., *supra* note 12 (describing the disconnect between humanitarian organizations, states, and other entities).

115. *See generally* THE SPHERE PROJECT, *supra* note 15 (providing minimum standards in Water Supply, Sanitation and Hygiene Promotion; Food Security and Nutrition; Shelter, Settlement and Non-Food Items; and Health Action).

116. *See id.* at 299–300.

117. *See id.*

118. *See id.*

119. *See id.* at 297, 302–303.

120. *See id.*

121. *See* International Covenant on Economic, Social and Cultural Rights, *supra* note 67, art. 12.

tance,[122] the international community must develop international minimum standards specifically for host countries in order to prevent a disconnect between the organization and the country.

Many of the guidelines and standards identified and established in the Sphere Project Handbook require considerable financial support, which is often hard for humanitarian organizations to get from donors.[123] Humanitarian medical assistance organizations are limited in their ability to raise funds because they lack the platform to reach a large number of donors and are careful not to compromise any real or perceived neutrality.[124] Therefore states, as more powerful actors in the international realm,[125] must proactively assist in obtaining the resources and support necessary to ensure efficient global medical care. Additionally, many of the guidelines and standards identified by the Sphere Project require basic infrastructure so that different sectors of the health care field, such as laboratories, hospitals, doctors, professional staff, and pharmaceutical companies, can deliver efficient medical care.[126] States are capable of developing and organizing basic infrastructures such as hospitals and laboratories with adequate and sanitary water, shelter, and waste disposal, especially in remote areas or areas of conflict.[127] Therefore, in order to not only meet the minimum standards but to also ensure that people receive adequate and effective medical care, states must work with humanitarian medical assistance organizations to make sure the region has the basic infrastructure and resources needed in order to deliver efficient medical care.[128]

The international minimum standards must be detailed and evidence-based in order to prevent them from clashing with the roles and responsibilities of humanitarian medical assistance organizations. Further-

122. *See* THE SPHERE PROJECT, *supra* note 15.

123. *See World Bank Group Ebola Response Fact Sheet*, WORLD BANK (Feb. 2, 2016), http://www.worldbank.org/en/topic/health/brief/world-bank-group-ebola-fact-sheet.

124. *See, e.g.*, *Financial Information*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org/about-us/financial-information (last visited Mar. 1, 2016) (describing Doctors Without Borders' commitment to political neutrality).

125. *See, e.g.*, Press Release, General Assembly, Budget Committee Approves $50 Million for United Nations Ebola Response Mission, Reviews Assessment Sale to Calculate Financial Contributions of Member States, U.N. Press Release GA/AB/4119 (Oct. 7, 2014), http://www.un.org/press/en/2014/gaab4119.doc.htm (exemplifying how much money countries are able to donate) [hereinafter General Assembly].

126. *See* THE SPHERE PROJECT, *supra* note 15, at 256.

127. *Id.* at 97–103*; see e.g.*, Colin Freeman, *UK to Build Three New Ebola Labs in Sierra Leone,* TELEGRAPH (Nov. 1, 2014), http://www.telegraph.co.uk/news/worldnews/ebola/11203119/UK-to-build-three-new-Ebola-labs-in-Sierra-Leone.html (demonstrating how a country might build basic infrastructures in other countries).

128. *See* THE SPHERE PROJECT, *supra* note 15, pg. 6, 21 (advocating for the teamwork and communication between states and humanitarian aid organizations).

more, they must be by a neutral third party in order to limit the influence of other actors' personal and political agendas.[129] By striving to operate from scientific rather than political principles, humanitarian medical assistance organizations will not only be able to provide efficient medical care but will also be able to affirm their belief in neutrality and independence from supervising entities.[130] Delineated roles and responsibilities for each entity[131] will also foster communication between states and the humanitarian medical assistance organizations. If states fail to communicate with the organizations, they will thereby fail to comply with the standards—by preventing states from knowing what resources are lacking and what areas of operation they can improve on. By fostering communication between a host country and a humanitarian medical assistance organization without infringing on the organization's neutrality, the standards will eliminate the disconnect between these two entities and help the organizations deliver efficient and effective medical care to those in need.

The entity best suited to research, compose, and implement the standards is WHO. WHO's international presence—with its 194 member states, its specialty in ensuring world health, and its concentration of resources[132]—makes it the best entity to spearhead the development and implementation of the international minimum standards for humanitarian medical assistance. In addition to WHO's almost universal membership, WHO maintains regional offices and liaison offices throughout the world[133] that can facilitate research, composition, and implementation of the international minimum standards for humanitarian medical assistance. WHO should designate a number of its collaborating centers[134] to determine the viable range of minimum standards for humanitarian medical assistance by taking the social, economic, and political variations of different countries into account.

Additionally, WHO should enlist its regional offices[135] to conduct region-specific research and assess local needs and the associated costs

129. *See id.* at 30.

130. *See, e.g.*, *On Humanitarian Response,* MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org/news-stories/op-ed/humanitarian-responsibility (last visited Mar. 1, 2016) (stressing the importance of neutrality).

131. *See, e.g.*, THE SPHERE PROJECT, *supra* note 15, at 21 (detailing the roles and responsibilities of each component in a humanitarian aid organization).

132. *See id; Countries*, *supra* note 86.

133. *See WHO - Its People and Offices*, WORLD HEALTH ORG., http://www.who.int/about/structure/en/ (last visited Mar. 1, 2016).

134. *See WHO Corroborating Centers*, WORLD HEALTH ORG., *http://www.who.int/collaboratingcentres/en/.*

135. *See WHO Regional Offices*, WORLD HEALTH ORG., http://www.who.int/about/regions/en/ (last visited Mar. 1, 2016).

that each country or region would incur in order to meet the international minimum standards for humanitarian medical assistance. By enlisting regional offices, WHO would ensure that every country is accounted for, because each respective country could voice its concerns, challenges, and opinions before the standards were formulated, adopted, and implemented.

Because WHO operates offices in various regions and states,[136] it is better equipped to research and compose the international minimum standards for humanitarian medical assistance than other organizations or entities. WHO should ensure that the standards are truly universal in nature and can be adopted and implemented by all countries regardless of their location or economic status.[137] WHO and its regional offices[138] should also serve as the primary liaisons between the humanitarian medical assistance organizations and the host country's government, fostering open communication and ensuring that the needs of both entities are met, resulting in efficient medical care. Additionally, WHO and its regional offices would be well suited to be an international mouthpiece for the organizations, volunteer doctors, and patients, to bring media and public attention to pressing situations and assist in providing other non-material support.[139]

WHO is also best suited to implement the international minimum standards for humanitarian medical assistance because it is an international third party[140] that is more neutral than states or blocs of states that have specific agendas and are often perceived as less neutral than an international organization. Because WHO has 194 member states, consisting of developed and developing countries throughout the world,[141] WHO is less likely to follow the whims of a certain government or state or to try to impose a certain government's wishes on less powerful and smaller states. Therefore, by having WHO formulate and implement the international minimum standards, these standards will be influenced by the needs of the public interest rather than the political or self-interests of individual countries or powerful people or entities. Additionally, WHO should obtain research and input from member states and also from individual experts, humanitarian assistance organizations, and ordinary citizens living in areas in need of humanitarian medical assistance, ensuring that a broad range of ideas and voices are heard.

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136. *See id.*

137. *Id.*

138. *See id.*

139. *See About WHO: The Role of WHO in Public Health*, *supra* note 88 (exemplifying the international reach of WHO and its offices).

140. *See* WHO Constitution, *supra* note 85.

141. *See Countries*, *supra* note 86.

WHO's Constitution empowers it to adopt binding conventions, promulgate regulations, make recommendations, and monitor national health legislation.[142] Therefore, WHO already possesses the mechanisms for researching, developing, and implementing the international minimum standards for humanitarian medical assistance.[143] WHO should use IHRs to pass these standards. WHO should utilize its power to adopt a binding convention that establishes standards that all 194 of its member states are required to adopt and comply with.[144] Although IHRs are binding on member states, there are no specified or delineated method that WHO can use to ensure compliance.[145] However, because health is of universal concern and codified as a universal right in international treaties, strong disincentives such as international embarrassment, trade restrictions, economic sanctions, and social and political disruptions may encourage states to comply with the IHRs.[146]

B. *Humanitarian Medical Assistance Liability Fund*

In order to facilitate implementation of, and ensure compliance with, the international minimum standards for humanitarian medical assistance, a Humanitarian Medical Assistance Liability Fund, mirroring the OSLTF,[147] must be created in order to (1) offset the costs of complying with the standards themselves and (2) help to pay for damages for patients, doctors, medical staff, and/or humanitarian medical assistance organizations' injuries that result from a country's failure to comply with the standards. Funding for the Humanitarian Medical Assistance Liability Fund will come from all WHO member states. Any other country that is not a member of WHO but that hosts humanitarian medical assistance organizations within its borders will also need to contribute. While conducting research to develop and implement the international minimum standards for medical assistance, WHO will figure out how to calculate how much each country must pay in order to ensure that no country must carry too heavy a burden.[148] WHO will consider the totality of the circumstances when establishing each country's dues,

142. *See* WHO Constitution, *supra* note 85, art. 2.

143. *See id.*; *About WHO: The Role of WHO in Public Health*, *supra* note 88.

144. *See About WHO: The Role of WHO in Public Health*, *supra* note 88.

145. *See Frequently Asked Question about the International Health Regulations (2005)*, WORLD HEALTH ORG., http://www.who.int/ihr/about/FAQ2009.pdf (last visited Mar. 1, 2016) [hereinafter IHR FAQs].

146. *See, e.g.*, *id.*

147. *See generally* National Pollution Funds Center, *supra* note 17 (detailing the structure and purpose of the OSLTF).

148. The system used by the United Nations can serve as a model. *See generally* General Assembly, *supra* note 125 (explaining the factors the United Nations considers when figuring out how much each member state pays to the UN budget).

including its economy, amount of humanitarian medical assistance used, current state of resources, and basic infrastructure (or lack thereof). By considering the totality of the circumstances, WHO will ensure that no country closes its borders to humanitarian medical assistance because it cannot afford the dues or because it does not think it should pay as much as countries that require a lot of assistance. This will also prevent countries from withdrawing from WHO because they feel that they are being required to contribute more than they can handle and that it is a violation of their sovereignty.

Because WHO lacks a direct enforcement mechanism to ensure compliance with its IHRs[149] and in order to prevent states from opting out of hosting humanitarian medical assistance organizations, a Humanitarian Medical Assistance Liability Fund will help to ensure compliance without embarrassing poorer or uninterested states or forcing them to comply. Although the minimum standards of humanitarian medical assistance will likely be universal and mandatory for any country that hosts organizations providing humanitarian medical assistance, the countries most likely to be affected by these standards will be under-developed, resource poor, inefficient, or warring countries.[150] Thus, the creation of a Humanitarian Medical Assistance Liability Fund is not only useful but also critical to helping these countries meet the international minimum standards of humanitarian medical assistance.

In addition to alleviating the costs of compliance on poorer and less developed countries, the Humanitarian Medical Assistance Liability Fund will also prevent host countries from imposing political pressures[151] on humanitarian medical assistance organizations that strive to remain neutral.[152] The Humanitarian Medical Assistance Liability Fund will be composed of funds from every country that is a member of WHO and/or that hosts humanitarian medical assistance organizations. The Fund will also be administered by WHO because its expertise in world health, international presence, and neutrality[153] helps ensure that

149. *See Frequently Asked Question About the International Health Regulations*, *supra* note 145.

150. *See* POVERTY, HEALTH AND LAW, *supra* note 33 (explaining the correlation between poverty and inadequate health care); FIGHTING EBOLA: A GRAND CHALLENGE FOR DEVELOPMENT, *supra* note 33; Williams, *supra* note 33; McNeil, *supra* note 33.

151. *See e.g., Political Considerations Delayed WHO Ebola Response, Emails Show*, CBS NEWS (Mar. 20, 2015), http://www.cbsnews.com/news/political-considerations-delayed-who-ebola-response-emails-show/.

152. *See* Joelle Tanguy & Fiona Terry, *On Humanitarian Responsibility*, MEDECINS SAN FRONTIERES: DOCTORS WITHOUT BORDERS (Dec. 12, 1999), http://www.doctorswithoutborders.org/news-stories/op-ed/humanitarian-responsibility;

153. *See* Tanguy & Terry, *supra* note 152; *WHO - Its People and Offices*, *supra* note **Error! Bookmark not defined.**; *About WHO: The Role of WHO in Public Health*, *supra* note 88.

funds will be allocated fairly and to those countries that need it most. Thus, the funds will not be distributed through conditions established by the donating country, but by WHO, which will distribute based on neutral decision making as to which country or injured patients need it most.[154]

The Fund will also serve the purpose of compensating patients that are directly and medically injured due to a country's failure to comply with the international minimum standards for humanitarian medical assistance. The Fund will not cover an injury that results from care given on airplanes or other unique places where imposing an international minimum standard is impractical (as care given on planes and other similar places is not institutionalized).[155] If the patient dies, the spouse or any other dependent will be eligible to bring a claim on their behalf. Humanitarian medical assistance organizations and/or the individual doctors associated with these organizations will be able to bring a claim on behalf of a patient or the patient's family. If there is no dependent or spouse and thus, no compensation is needed, humanitarian medical assistance organizations and/or the individual doctors may file a claim in order to flag a problem that requires attention and might need additional funding to solve.[156]

A separate review board will be established that specifically deals with the claims that are submitted.[157] Its duties will resemble those of the Federal On-Scene Coordinator (FOSC) under the OSLTF,[158] who is in charge of collecting facts, evaluating the spill, and helping direct federal resources to help the cleanup, but consist of a number of individuals, instead of just one.[159] The review board will consist of doctors, researchers, and members of WHO's regional offices.[160] WHO will be in

154. For an example of how this can be done, see National Pollution Funds Center, *supra* note 17.

155. *See, e.g.*, Gounder, *supra* note 20 (explaining the unique circumstances of doctors volunteering on airplanes).

156. This is similar to the process used for Oil Spill Claims. *See* National Pollution Funds Center, *Oil Spill Claims*, U.S. COAST GUARD, DEP'T OF HOMELAND SECURITY, http://www.uscg.mil/npfc/Claims/default.asp (last visited Mar. 2, 2016); Envtl. Protection Agency, *supra* note 107.

157. *See id.*

158. *See* U.S. Coast Guard Sector, *Federal On Scene Coordinator Representative: Performance Qualification Standard*, http://www.uscg.mil/hq/nsfweb/foscr/ASTFOSCRSeminar/References/FOSCRPQS.pdf (last visited Mar. 2, 2016) (describing the investigative role of the Federal on Scene Coordinator Representative); *National Response System - Concept of Response, FOSC,* U.S. DEP'T OF LABOR, https://www.osha.gov/SLTC/etools/ics/nrs.html (last visited Mar. 2, 2016).

159. U.S. Coast Guard Sector, *supra* note 158; *National Response System - Concept of Response, FOSC*, *supra* note 158.

160. *See WHO – Its People and Offices*, *supra* note **Error! Bookmark not defined.**.

charge of establishing the qualifications, hiring, and setting up rotations of the members of the review board. Similarly to the OSLTF,[161] the salaries of the board will come from the liability fund in order to prevent any type of bias. When a claim is filed, the review board will conduct an investigation as to the validity of the claim.[162] Due to the unique circumstances of each case and the lack of a uniform standard of care, the assessment of each case will be extremely fact-specific. WHO will take into account the environment, resources, and the doctor's actions/inaction in order to assess whether payment should be made. The goal of the review board is not to look for evidence of traditional medical malpractice by looking for evidence of a physician's negligence,[163] but to see whether the country's failure to comply with the international minimum standards for humanitarian medical assistance caused the injury. The investigation will focus on trying to figure out what standard was not followed. This standard will bar claims by patients who were terminal and/or whose injury could not have reasonably been prevented through better regulation.

The review board's goals when assessing a claim are (1) to make the injured patient "whole,"[164] and (2) find a solution so that the injury will not happen again. The goal of the compensation is to make the injured patient or their family whole.[165] In order to prevent over-compensation, there will be a cap on damages for pain and suffering, which has been implemented into medical malpractice laws by various countries in the world.[166] Additionally, the review board will take into account the cost of living and the totality of circumstances when calculating the award.[167] WHO will be responsible for setting estimates and guidelines

161. *See* National Pollution Funds Center, *supra* note 17.

162. This is similar to what is done in the context of OSLTF claims. *See* U.S. Coast Guard Sector, *supra* note 158; *National Response System - Concept of Response, FOSC*, *supra* note 158.

163. *See generally Proving Fault in Medical Malpractice Cases*, FINDLAW, http://injury.findlaw.com/medical-malpractice/proving-fault-in-medical-malpractice-cases.html (last visited Mar. 2, 2016) (explaining the need to find negligence in order to have a valid medical malpractice case).

164. *See generally Types of Damages Available for Breach of Contract*, LEGALMATCH, http://www.legalmatch.com/law-library/article/types-of-damages-available-for-breach-of-contract.html (last visited Mar. 2, 2016) (explaining that the goal of contract remedies is to make the parties whole).

165. *See generally id.*

166. *See, e.g.*, *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229 261 (Can.) (explaining the limit to pain and suffering damages in Canada); Michael I. Krauss, *'Pain and Suffering' and the Rule of Law: Why Caps Are Needed*, FORBES (Apr. 17, 2014), http://www.forbes.com/sites/michaelkrauss/2014/04/17/pain-and-suffering-and-the-rule-of-law-why-caps-are-needed/#7ff3fa6f3577 (explaining the ethical problems of allowing unlimited damages for pain and suffering in tort cases).

167. This is similar to what the U.N. does. *See* General Assembly, *supra* note 125 (explaining the circumstances the United Nations takes into account when measuring how much a mem-

for calculating costs. Once WHO has identified a particular problem, it will use the International Humanitarian Medical Assistance Liability Fund to provide the resources necessary to make sure that the problem does not happen again.

Although it can be argued that developed countries, or those not directly affected by humanitarian medical assistance organizations, might contest the need to participate, there are many powerful factors that will deter countries from refusing to participate. Although WHO itself does not have any delineated enforcement measures or power to punish countries, countries will still be reluctant to refuse because of the possibility of a pandemic, international embarrassment, and social and political pressures.[168]

First, the need to prevent pandemics such as tuberculosis and Ebola is a universal deterrent because pandemics are costly and affect the entire world.[169] Tuberculosis and Ebola exemplify the reality of pandemics in the twenty-first century because of ever-increasing globalization.[170] Due to globalization, an illness, if not addressed or treated adequately, can easily spread throughout the world, mutating or becoming antibiotic resistant, resulting in a pandemic.[171] Developed countries may have less need to worry about pandemics because they have the resources to combat them, but the costs of doing so are high and widespread infection is fairly easy due to globalization.[172]

For example, even though the United States was able to contain the spread of Ebola within its borders, it spent approximately $35.3 million and the Obama administration asked Congress for an additional $6.18 billion in late 2014.[173] This money was used to send U.S. military per-

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ber state must pay into the UN budget).

168. *See* IHR FAQs, *supra* note 145, at 3 (explaining how "peer pressure" and the presence of social media can serve as effective enforcement mechanisms).

169. *See* Sara Davies, *National Security and Pandemics*, UN CHRONICLE (Aug. 2013), http://unchronicle.un.org/article/national-security-and-pandemics/.

170. *See generally Infectious Disease, Global Challenges, Globalization*, NAT'L ACADEMIES, http://needtoknow.nas.edu/id/challenges/globalization/ (last visited Mar. 2, 2016) (explaining how globalization helps infectious diseases spread easily).

171. *See, e.g.*, *id.*; *Tuberculosis*, WORLD HEALTH ORG., http://www.who.int/mediacentre/factsheets/fs104/en/ (last visited Mar. 2, 2016) (discussing the antibiotic resistant nature of tuberculosis); GOSTIN, *supra* note 9, at 239–43 (discussing the impact of globalization on health).

172. *See, e.g.*, Amanda Taub, *Why America's Health Care System Can Stop Ebola, Even Though Other Countries Couldn't*, VOX (Oct. 1, 2014), http://www.vox.com/2014/10/1/6875623/ebola-wont-spread-in-the-us-because-the-key-to-stopping-it-is-a; Kathleen Caulderwood, *Ebola Virus Outbreak 2014: Ebola Costs by the Numbers - WHO Requires $490 Million to Fight Ebola as Outbreak Grows*, INT'L BUS. TIMES (Aug. 29, 2014), http://www.ibtimes.com/ebola-virus-outbreak-2014-ebola-costs-numbers-who-requires-490-million-fight-ebola-1673538.

173. *See* Jack Linshi, *Here's How Much Money the World Has Spent Battling Ebola*, TIME

sonnel to Ebola-infected countries in Africa to build Ebola Treatment Units in affected areas and train local health care workers.[174] With the establishment of minimum standards and an International Medical Assistance Liability Fund, the entire international community will help bear the costs of similar measures in preventing a pandemic, rather than having one developed country bear the costs[175] associated with containing an already rampant pandemic.

Another reason that developing and developed countries would be likely to comply with the minimum standards and participate in the International Medical Assistance Liability Fund is because ICESCR, which codified many notions in the Universal Declaration of Human Rights, recognizes the universal right to adequate health, including medical care, and all signatories must adhere to it.[176] Additionally, the international social and political pressures in favor of aiding the Good Samaritan conduct of humanitarian medical assistance organizations, and the taboo of challenging Good Samaritan acts, would deter countries from opposing the standards.[177]

Other potential deterrents may come from neighboring states or the United Nations in general.[178] These deterrents include international embarrassment, economic sanctions, and social and political unrest.[179] A recent example of the importance and significance of peer pressure among states is in the climate change arena.[180] In 2014, over 200 countries met in Lima, Peru to sign the Lima Accord, an international

(Sept. 17, 2014), http://time.com/3393656/ebola-donations-funding/; Julia Belluz, *Why Obama Wants Congress to Spent $6.2 Billion More to Fight Ebola*, VOX (Nov. 5, 2014), http://www.vox.com/2014/11/5/7163119/the-obama-administration-wants-6-2-billion-more-for-ebola.

174. *See* Office of the Press Secretary, *Fact Sheet: U.S. Response to the Ebola Epidemic in West Africa*, WHITE HOUSE (Sept. 16, 2014), https://www.whitehouse.gov/the-press-office/2014/09/16/fact-sheet-us-response-ebola-epidemic-west-africa.

175. *See* Linshi, *supra* note 173; Belluz, *supra* note 173.

176. *See* International Covenant on Economic, Social and Cultural Rights, *supra* note 67, art. 12; Universal Declaration of Human Rights, *supra* note 63.

177. *See* Lincoln Feast, *Australia Bows to Pressure to Step Up Ebola Fight in Africa*, REUTERS (Nov. 5, 2014), http://www.reuters.com/article/2014/11/05/us-health-ebola-australia-idUSKBN0IP0E020141105; Christopher A. Coons, *Those Who Help Ebola Patients Should Be Honored, Not Punished*, WASH. POST (Oct. 29, 2014), http://www.washingtonpost.com/opinions/christopher-coons-those-who-help-ebola-patients-should-be-honored-not-punished/2014/10/29/57321d58-5ee4-11e4-9f3a-7e28799e0549_story.html.

178. *See What is the Security Council?*, U.N. SEC. COUNCIL, http://www.un.org/en/sc/about/ (last visited Mar. 2, 2016).

179. *See id.*; IHR FAQs, *supra* note 145.

180. *See* Coral Davenport, *A Climate Accord Based on Global Peer Pressure*, N.Y. TIMES (Dec. 14, 2014), http://www.nytimes.com/2014/12/15/world/americas/lima-climate-deal.html.

agreement aiming to gradually reduce fossil fuel emissions.[181] Instead of including provisions allowing for sanctions, the international agreement was based upon peer pressure and international embarrassment.[182] Although the success of this agreement is yet to be seen, the negotiations and sheer number of countries that signed the agreement serve as an important example of the power of international embarrassment and peer pressure, especially when dealing with environmental and health issues.[183]

With specific regard to the Humanitarian Medical Assistance Liability Fund, the logical concern is that states will not want to contribute financial resources to something that does not affect them, particularly if they are no longer hosting humanitarian medical assistance organizations. However, as stated above, countries will be reluctant to deny compensation for those patients injured by a failure to comply with the standards because of international and reputational stigma, along with economic sanctions, and social and political unrest that could result from a refusal to join.[184] Additionally, as mentioned before, inefficient medical care will contribute to an international pandemic and countries will be reluctant to refuse when it can harm them in the future—both socially and economically.[185]

CONCLUSION

There is often a communication and resource disconnect between host countries and humanitarian medical assistance organizations, resulting in inefficient medical care and a real potential for a pandemic, as the cases of tuberculosis and Ebola demonstrate.[186] In order to foster communication and ensure that humanitarian medical assistance organizations are able to deliver efficient medical care to those that need it, states need to adopt and adhere to international minimum standards of humanitarian medical assistance. WHO, as the leading authority on world health,[187] must research and develop these standards to ensure that all states can comply with them. In order to alleviate the costs of implementing the standards and to compensate patients with injuries directly resulting from a state's failure to adhere to the standards, WHO

181. *See id.*

182. *See id.*

183. *See id.*

184. *See What is the Security Council?*, *supra* note 178; IHR FAQs, *supra* note 145.

185. *See, e.g.*, Office of the Press Secretary, *supra* note 174; Coons, *supra* note 177.

186. *See generally 2014 Ebola Outbreak in West Africa – Case Counts*, *supra* note 4 (mapping out the number of Ebola-related deaths in Liberia to date); *Tuberculosis*, *supra* note 53 (detailing the long history of tuberculosis infections).

187. *See generally About WHO*, *supra* note 84 (explaining WHO's roles and functions).

must then administer the Humanitarian Medical Assistance Liability Fund. By adopting the standards and participating in the Fund, both states and humanitarian medical assistance organizations can provide adequate and efficient medical care to those in need.