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RESPONSIBILITY OF HYBRID PUBLIC-PRIVATE BODIES UNDER INTERNATIONAL LAW: A CASE STUDY OF GLOBAL HEALTH PUBLIC-PRIVATE PARTNERSHIPS

Hybrid public-private bodies have been springing up over the past decade in order to respond to global issues facing the public. States and international organizations (representing the public sector) and companies, non-governmental organizations, research institutes and philanthropic foundations (representing the private sector), recognizing the insufficiency of the public or private sectors alone in addressing global concerns, are joining forces. As a result, hybrid public-private bodies are increasingly regulating matters affecting the public in addition to, or instead of, states and international organizations and are thus becoming capable of favorably and adversely impacting the human rights of individuals. This possibly adverse impact then leads to concerns of responsibility under international law.

The purpose of this research is to examine responsibility under international law in relation to the acts of public-private partnerships, using select public-private partnerships in the area of global health as case studies. If, for example, a partnership provides (or assists in providing) medication to a population that is damaging to the life and health of the population because it is unsafe, not properly tested and/or expired, who is responsible under international law? An inquiry is made as to whether the partnership and/or the partners and/or hosts of the partnership, i.e. states and/or international organizations, can be held responsible under international law in relation to the acts of partnerships.

To address this inquiry, this research explores the legal status of global health public-private partnerships under international law in order to determine whether or not these partnerships have legal personality under international law, resulting in them being subject to rules of responsibility under international law. It is determined that these partnerships do not, at present, have legal personality under international law and, as a result, reside outside the framework of responsibility under international law. This leads to a consideration of the possibility of holding global health public-private partnerships responsible in domestic legal systems and the immunity these partnerships have from the jurisdiction of domestic courts in certain states. The obstacles to holding global health public-private partnerships themselves responsible instigates an investigation into holding states and/or international organizations, as partners and/or hosts of these partnerships, responsible under international law in relation to the acts of these partnerships. Finally, a conclusion is reached on the best option(s), in the framework of international law, to bridge the gap in responsibility under international law in relation to the acts of global health public-private partnerships.