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### Responsibility of hybrid public-private bodies under international law: A case study of global health public-private partnerships

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## 7. CONCLUSION

As long as partnerships between the public and private sectors continue to be a worthwhile method to deal with pressing global matters, it is reasonable to expect that the number and variety of these types of collaborations will continue to increase. Correlatively, as these partnerships bring together transnational entities and have effects across borders and on the international plane, it is important to figure out how these partnerships can be brought within the rules of international law, especially the rules of responsibility under international law.

In this research, public-private partnerships in the area of global health featured as the case study. In particular, the focus was on formal partnerships or alliances – the Roll Back Malaria Partnership (RBM) and the Stop TB Partnership (Stop TB) – and separate organizations – the GAVI Alliance (GAVI) and the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund). It is hoped, however, that the analysis undertaken here will be applied by analogy, to the extent possible, to public-private partnerships outside the area of global health as well.

Partnerships, such as RBM, Stop TB, GAVI and the Global Fund, are valuable contributors in the response to global health issues such as AIDS, tuberculosis and malaria and are, consequently, dealing with issues that are normally considered in the domain of states and international organizations. A shift is thus taking place which moves (at least partly) the regulation of global health from the hands of states and international organizations into the hands of public-private partnerships. The contribution these partnerships make to ameliorating life and health globally, thereby realizing the right to life and the right to health, must not be underestimated. The work of these partnerships, by bringing together the public and private sectors, has saved and improved the lives of millions of people, particularly in the regions of the world where access to medication and other forms of prevention and treatment of diseases are limited or nonexistent.

As these partnerships regulate matters of global health, however, they also become capable of adversely impacting the rights of individuals, such as the right to life and the right to health. This capability to adversely impact in turn leads to concerns of responsibility under international law. These partnerships are thus in need of belonging within the ambit of rules of responsibility under international law. The purpose of this research was to explore responsibility under international law in relation to the acts of public-private partnerships, using public-private partnerships in the area of global health as the case study. It inquired: who can be held responsible under international law in the event a global health public-private partnership adversely impacts the rights of individuals, such as the right to life or the right to health? Can the partnership be held responsible? And/or can the partners and/or hosts of the partnership be held responsible?

The starting point involved examining the legal status of global health public-private partnerships under international law. Possession of legal personality under international law is needed in order to hold an entity responsible under international law. The legal status of global health public-private partnerships under international law is, however, not clear. Partnerships involve public entities which have legal personality under international law, i.e. states and international organizations, but also involve private entities which are not thought to have legal personality under international law, i.e. companies, non-governmental organizations, research institutes and philanthropic foundations. The legal personality of global health public-private partnerships under international law is, ergo, obscure.

In order to clarify this obscurity, this research examined the will of the member states approach, the recognition approach and the objective approach used to determine the legal personality under international law of international organizations. It then applied these approaches to global health public-private partnerships in order to determine whether or not these partnerships also have legal personality under international law.

The will of the member states approach relies on the intention of the member states of an international organization to grant (or not) legal personality under international law to the international organization, as set out, explicitly or implicitly, in the constituent treaty and/or demonstrated in practice. The recognition approach contends that legal personality under international law only exists in relation to those states that have recognized an entity, explicitly or implicitly, as having legal personality under international law. And the objective approach holds that legal personality under international law for an international organization is based on general international law and conclusive for all states, regardless of intention or recognition.

It was determined, in this research, that global health public-private partnerships, in particular formal partnerships or alliances (RBM and Stop TB) and separate organizations (GAVI and the Global Fund), do not have legal personality under international law, whether the will of the member states approach, the recognition approach or the objective approach is applied. The only exceptions are GAVI which is recognized as having legal personality under international law in Switzerland and the Global Fund which is recognized as having legal personality under international law in Switzerland and the United States and, possibly also, in Moldova, Montenegro, Rwanda, Swaziland, Ghana, Ethiopia and Georgia.

These approaches tend to produce the same result, in spite of the difference in the underlying reasoning of each approach, because these approaches, similarly, depend on the relationship a proposed subject of international law has with states. States, and interactions with them, are thus central to determinations of legal personality under international law, regardless of the approach applied.

The legal status of global health public-private partnerships could change in the future. The absence of legal personality under international law of partnerships means partnerships can more easily develop creative approaches to deal with issues since they are not subject to the constraints of international law. However, the absence of legal personality under international law of partnerships also means partnerships cannot sign

treaties; bring claims or have claims brought against them under international law; or protect its staff on the ground in those states that have not granted the partnership privileges and immunities. There are thus both pros and cons of partnerships having legal personality under international law. The *lex lata* situation is, nonetheless, that global health public-private partnerships do not have legal personality under international law and, as a result, are not able to be held responsible under international law.

The faculty to escape responsibility under international law, due to the lack of legal personality under international law, may cause one to inquire whether domestic legal systems are a better avenue for finding responsibility for the acts of global health public-private partnerships. Partnerships, however, enjoy immunity from the jurisdiction of domestic courts in certain states.

Formal partnerships or alliances, such as RBM and Stop TB, are hosted by the World Health Organization (WHO) and obtain privileges and immunities through this hosting relationship. The privileges and immunities of RBM and Stop TB are thus the same as the privileges and immunities of the WHO, which are set out in the Constitution of the World Health Organization and the Convention on the Privileges and Immunities of the Specialized Agencies. Separate organizations, such as GAVI and the Global Fund, also have privileges and immunities in certain states. GAVI has privileges and immunities in Switzerland through the Agreement between the GAVI Alliance and the Swiss Federal Council in order to determine the legal status of the GAVI Alliance in Switzerland and the Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State (Host State Act). The Global Fund has privileges and immunities in Switzerland through the Agreement between the Swiss Federal Council and the Global Fund to Fight AIDS, Tuberculosis and Malaria in view of determining the legal status of the Global Fund in Switzerland; in the United States through the International Organizations Immunities Act (IOIA); and in Moldova, Montenegro, Rwanda, Swaziland, Ghana, Ethiopia and Georgia through the Agreement on Privileges and Immunities of the Global Fund to Fight AIDS, Tuberculosis, and Malaria.

At the moment, however, there are no recorded instances of claims being brought against global health public-private partnerships and consequently no invocations by these partnerships of immunity from the jurisdiction of domestic courts. In order to gain a better understanding of how the immunity of partnerships from the jurisdiction of domestic courts might operate in practice, a comparison was made with the immunity of international organizations from the jurisdiction of domestic courts.

It was predicted that the controversies that emerge in relation to granting immunity to international organizations from the jurisdiction of domestic courts will also emerge in relation to granting immunity to global health public-private partnerships from the jurisdiction of domestic courts. The sources of immunity for partnerships are, in certain ways, similar to the sources of immunity for international organizations. Also, the reason for granting immunity to partnerships is the same reason for granting immunity to international organizations, i.e. functionality necessity. Further, once a partnership is granted immunity, it is probable that it will, similar to an international organization, come up against arguments that this immunity breaches the right of access to a court, if alternative means of dispute resolution are not available and effective.

It was suggested, also keeping in mind the gap in responsibility under international law in relation to the acts of partnerships arising from the absence of legal personality of these partnerships under international law, that states should re-consider granting immunity to partnerships from the jurisdiction of domestic courts, especially where alternative means of dispute resolution are not available and effective. Otherwise, those injured will be left without a remedy.

The gap in responsibility under international law in relation to the acts of global health public-private partnerships, due to the lack of legal status of these partnerships under international law, and the immunity certain global health public-private partnerships are granted from the jurisdiction of domestic courts provokes a search for other avenues to deal with responsibility in relation to the acts of partnerships. Other possible avenues

include holding states and/or international organizations, as partners and/or hosts, responsible under international law in relation to the acts of partnerships. This might be possible by attributing the acts of partnerships to states and/or international organizations and/or finding that states and/or international organizations are under an obligation of due diligence with respect to the acts of partnerships. States are partners of partnerships and international organizations are partners and/or hosts of partnerships. States and international organizations are thereby enabling partnerships to manage activities that normally fall within the realm of states and international organizations. If something were to go wrong in partnerships, could the states and international organizations involved justifiably disassociate themselves from responsibility under international law?

The elements of an internationally wrongful act of a state are attribution to a state and a breach of an international obligation of that state. The chapter on state responsibility explored these two elements more closely and in the context of states and global health public-private partnerships.

This chapter contemplated attributing the acts of global health public-private partnerships to states, as partners in such partnerships, through application of Article 5 (conduct of persons or entities exercising elements of governmental authority), Article 7 (excess of authority or contravention of instructions), Article 8 (conduct directed or controlled by a State) and Article 9 (conduct carried out in the absence or default of the official authorities) of the Articles on State Responsibility. Applying these articles in this way requires them to be applied in a way not anticipated. But, in order to address concerns of responsibility under international law in relation to the acts of global health public-private partnerships, such application must be given consideration. This chapter further contemplated attributing to states a failure to exercise due diligence in relation to the acts of global health public-private partnerships. States are obligated to prevent, investigate, punish and compensate breaches of human rights under international law by partnerships within its territory or jurisdiction. States are not, however, responsible for all breaches of human rights under international law by partnerships within its territory or jurisdiction. The circumstances of the case and the knowledge, based on reasonableness, of the

involved state must be examined. The avenue of due diligence is, nonetheless, more easily applied than the above-described avenues of attribution; due diligence is often relied on as a means by which a state deals with persons or entities engaging in activities within its territory or jurisdiction.

A breach of an international obligation of a state – the other element, in addition to attribution, of an internationally wrongful act of a state – was then considered in this chapter. The focus was, in particular, on the obligations under the right to life and the right to health. Treaty law and customary international law were examined and the scope of these human rights, as relevant to the context of global health public-private partnerships, was explored. Scenarios were further provided of the possibility of a breach of obligations under the right to life and the right to health by states through the acts of these partnerships or through the failure to exercise due diligence in relation to the acts of these partnerships.

This chapter finally suggested the possibility of finding more than one state responsible in the event a breach of an obligation under international law occurs in relation to the acts of global health public-private partnerships. It is conceivable that the conduct of a partnership might be attributable to more than one state and thus that more than one state is then responsible for this conduct of the partnership. It is also conceivable that, in regard to the conduct of a partnership, more than one state might be attributed and held responsible for causing the same damage through separate internationally wrongful acts.

Another way to close the gap in responsibility under international law in regard to the acts of global health public-private partnerships might be by holding international organizations, as partners and/or hosts, responsible under international law in relation to the acts of these partnerships.

The elements of an internationally wrongful act of an international organization are in line with those of a state: attribution to an international organization and a breach of an international obligation of that international organization. The chapter on the

responsibility of international organizations considered these two elements in the context of global health public-private partnerships and an international organization with which they are associated, the WHO.

This chapter discussed attributing the acts of global health public-private partnerships to the WHO through application of Article 6 (conduct of organs or agents of an international organization) and Article 8 (excess of authority or contravention of instructions) of the Articles on the Responsibility of International Organizations. It further discussed attributing to the WHO a failure to exercise due diligence in relation to the acts of global health public-private partnerships.

Applying Article 6 and Article 8 of the Articles on the Responsibility of International Organizations in this way would require them to be applied in a way not foreseen and it may be argued that this stretches the responsibility of international organizations beyond its intended scope. But where international organizations act not only as partners but also as hosts of partnerships, the responsibility of international organizations need not be stretched that far beyond its intended scope. Further, holding international organizations responsible for a failure to exercise due diligence is also an option and seems to be generally accepted.

A breach of an international obligation of an international organization – the other element, in addition to attribution, of an internationally wrongful act of an international organization – was then explored in this chapter. The focus, as in the chapter on state responsibility, was, specifically, on the obligations under the right to life and the right to health. Customary international law and the rules of the organization were considered as sources of obligations of these human rights. Scenarios were then provided of the possibility of a breach of obligations under the right to life and the right to health by international organizations through the acts of partnerships or through the failure to exercise due diligence in relation to the acts of partnerships.

This chapter concluded by investigating the possibility of finding an international organization and one or more states or international organizations responsible when a breach of an obligation under international law occurs in relation to the acts of global health public-private partnerships. It is imaginable that the conduct of a partnership might be attributable to an international organization and one or more states or international organizations and as a result, that an international organization and one or more states or international organizations is then responsible for this conduct of the partnership. It is also imaginable that, in regard to the conduct of a partnership, an international organization and one or more states or international organizations might be attributed and held responsible for causing the same damage through separate internationally wrongful acts.

If the suggestions made in this research find application in practice and lead to the responsibility of states and international organizations in relation to the acts of global health public-private partnerships, this does not, however, mean we are out of the woods. There remain hurdles, particularly in relation to remedies, that cannot be easily maneuvered around. Remedies is a topic falling outside the scope of this research, which instead focuses on finding responsibility under international law, but a few short remarks must be made in order to draw attention to outstanding and problematic aspects of this area of international law.

States are immune from the jurisdiction of domestic courts in other states for acts that are governmental (as opposed to commercial) in nature.<sup>1</sup> The International Court of Justice (ICJ) has jurisdiction in contentious cases over states that are members of the United Nations, that are parties to the Statute of the International Court of Justice or that have accepted the jurisdiction of the ICJ under certain conditions.<sup>2</sup> Jurisdiction in contentious cases is limited to these states and does not extend to international organizations or

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<sup>1</sup> R. van Alebeek, *The Immunity of States and their Officials in the Light of International Criminal Law and International Human Rights Law* (E.M. Meijers Instituut 2006); Hazel Fox, *The Law of State Immunity* (2<sup>nd</sup> edn, OUP 2008)

<sup>2</sup> How the Court works <<http://www.icj-cij.org/court/index.php?p1=1&p2=6>> accessed 10 June 2012; States Entitled to Appear before the Court <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=1&sp3=a>> accessed 10 June 2012

private entities or persons.<sup>3</sup> Further, the responsibility of a state only operates when invoked by other states and these other states can only invoke if their own interests are affected.<sup>4</sup> Even if these interests are affected, it is furthermore rare that states will take the formal step of invoking the rules of state responsibility.<sup>5</sup> As a result, a remedy for an individual whose human rights have been breached by a state is remote.

International organizations are also immune from the jurisdiction of domestic courts.<sup>6</sup> Also, no international court has compulsory jurisdiction over international organizations.<sup>7</sup> International organizations, in theory, are able to bring claims and have claims brought against them before tribunals and there are indeed instances, in practice, of the existence of such tribunals.<sup>8</sup> Such tribunals do not, however, exist in or for all international organizations. Further, tribunals that do exist tend to limit their scope to handling

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<sup>3</sup> Statute of the International Court of Justice, 18 April 1946, art 34(1); Contentious Jurisdiction <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1>> accessed 10 June 2012

<sup>4</sup> Articles on the Responsibility of States for Internationally Wrongful Acts, UNGA Res 56/83, Annex (28 Jan 2002) arts 42 and 48 (Articles on State Responsibility or ASR)

<sup>5</sup> Other shortcomings of state responsibility can be found in Dinah Shelton, *Remedies in International Human Rights Law* (OUP 2005) 2; Jutta Brunnée, 'International Legal Accountability Through the Lens of the Law of State Responsibility' (2005) XXXVI *Netherlands Yearbook of International Law* 21

<sup>6</sup> Jan Klabbers, *An Introduction to International Institutional Law* (CUP 2009) 292; Alexander Breitegger, 'Sacrificing the Effectiveness of the European Convention on Human Rights on the Altar of the Effective Functioning of Peace Support Operations: A Critique of *Behrami & Saramati* and *Al Jedda*' (2009) 11 *International Community Law Review* 155, 156; Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt, 'Accountability for Human Rights Violations by International Organisations: Introductory Remarks' in Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt (eds), *Accountability for Human Rights Violations by International Organisations* (Intersentia 2010) 1, 11. Cf Olivier De Schutter, 'Human Rights and the Rise of International Organisations: The Logic of Sliding Scales in the Law of International Responsibility' in Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt (eds), *Accountability for Human Rights Violations by International Organisations* (Intersentia 2010) 51, 119-123

<sup>7</sup> Klabbers (n 6) 292; Breitegger (n 6) 156; Wouters, Brems, Smis and Schmitt (n 6) 11; Alexander Orakhelashvili, 'Division of Reparation between Responsible Entities' in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (OUP 2010) 647, 663

<sup>8</sup> For example: the International Labour Organization Administrative Tribunal (ILOAT) <<http://www.ilo.org/public/english/tribunal/about/index.htm>> accessed 10 June 2012; the Inspection Panel of the World Bank <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64132057~pagePK:64130364~piPK:64132056~theSitePK:380794,00.html>> accessed 10 June 2012; and the Court of Justice of the European Union <[http://europa.eu/about-eu/institutions-bodies/court-justice/index\\_en.htm](http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm)> accessed 10 June 2012. See Klabbers (n 6) 43-44; De Schutter (n 6) 104-110; Kristen E. Boon, 'Regime Conflicts and the U.N. Security Council: Applying the Law of Responsibility' (2010) 42 *George Washington International Law Review* 787, 818; August Reinisch, 'Privileges and immunities' in Jan Klabbers and Åsa Wallendahl (eds), *Research Handbook on the Law of International Organizations* (Edward Elgar 2011) 132, 140-141

employment disputes.<sup>9</sup> The result is that remedies are then dependent on the international organization agreeing to an arbitration clause in the relevant contract *a priori* or voluntarily setting up an *ad hoc* dispute settlement mechanism *a posteriori*.<sup>10</sup> In those cases an arbitration clause is not agreed to in the relevant contract and an *ad hoc* dispute settlement mechanism is not set up, an individual whose human rights have been breached by an international organization is left without a remedy.

Another hurdle, relating also to remedies, arises. It arises in the context of a plurality of responsible states and international organizations and allocations of the legal consequences of responsibility under international law.<sup>11</sup> Allocations of the legal consequences of responsibility under international law are challenging to determine in cases of a plurality of responsible states and international organizations.

Article 47 of the Articles on State Responsibility holds that where more than one state is responsible for the same internationally wrongful act, the responsibility of each state may be invoked in relation to that act. It further holds that this does not allow the injured state to obtain compensation that exceeds the damage suffered and is without prejudice to any right of recourse against the other states responsible.<sup>12</sup> Article 48 of the Articles on the Responsibility of International Organizations, similarly, holds that where an international organization and one or more states or international organizations is responsible for the same internationally wrongful act, the responsibility of each international organization or

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<sup>9</sup> Reinisch (n 8) 140-141

<sup>10</sup> Wouters, Brems, Smis and Schmitt (n 6) 11; Orakelashvili (n 7) 663; *ibid.* Other shortcomings of the responsibility of international organizations can be found in Note, 'Jurisdictional Immunities of Intergovernmental Organizations' (1982) 91(6) *The Yale Law Journal* 1167, 1182-1183; Michael Singer, 'Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns' (1995) 36 *Virginia Journal of International Law* 53, 64; Karel Wellens, 'Fragmentation of International Law and Establishing an Accountability Regime for International Organizations: The Role of the Judiciary in Closing the Gap' (2004) 25 *Michigan Journal of International Law* 1159, 1163; Kristen E. Boon, 'New Directions in Responsibility: Assessing the International Law Commission's Draft Articles on the Responsibility of International Organizations' (2011) 37 *The Yale Journal of International Law Online* 1, 9-10 <<http://www.yjil.org/docs/pub/o-37-boon-new-directions-in-responsibility.pdf>> accessed 10 June 2012

<sup>11</sup> The legal consequences of responsibility under international law are set out in Articles 28-41 of the Articles on State Responsibility (ASR (n 4)) and Articles 28-42 of the Articles on the Responsibility of International Organizations (Articles on the Responsibility of International Organizations, UNGA Res 66/100, Annex (27 Feb 2012) (Articles on the Responsibility of International Organizations or ARIO))

<sup>12</sup> ASR (n 4) art 47(1), (2)(a)(b)

state may be invoked in relation to that act. It further holds that this does not allow the injured international organization or state to obtain compensation that exceeds the damage suffered and is without prejudice to any right of recourse against the other international organizations or states responsible.<sup>13</sup> These articles do not, however, further elaborate.<sup>14</sup>

How then are remedies to those injured to be allocated between (or among) the responsible state(s) and/or international organization(s) in the instance more than one state and more than one international organization is responsible? Are remedies to be allocated on a proportionate basis or on a joint and several basis? This debate is especially germane where remedies involve monetary compensation. A proportionate basis would mean that states and international organizations are liable only for a portion of the monetary compensation owed, normally based on causal linkage to the injury. A joint and several basis means that more than one state and more than one international organization are together liable for the injury and that any one of these states or international organizations is separately liable for the full amount of the monetary compensation owed.<sup>15</sup>

A related issue is that of compensation (or contribution) in the case of allocation on a joint and several basis. ‘Compensating’ (or ‘contributing’) means that if a state or international organization is responsible and pays the full amount the monetary compensation owed on its own then it can seek compensation (or contribution) from the

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<sup>13</sup> ARIIO (n 11) art 48(1), (3)(a)(b)

<sup>14</sup> Practice and case law, in this regard, is also limited. See Ian Brownlie, *Principles of Public International Law* (7th edn, OUP 2008) 457-458; Orakhelashvili (n 7) 649, 664-665; André Nollkaemper, ‘Issues of Shared Responsibility Before the International Court of Justice’ in Eva Rieter and Henri de Waele (eds) *Evolving Principles of International Law. Studies in Honour of Karel C. Wellens* (Martinus Nijhoff 2012) 199

<sup>15</sup> See *Oil Platforms (Islamic Republic of Iran v United States of America)* (Judgment) [2003] ICJ Rep 161, Separate Opinion of Judge Simma, 358; John E. Noyes and Brian D. Smith, ‘State Responsibility and the Principle of Joint and Several Liability’ (1988) 13(2) *The Yale Journal of International Law* 225, 226; Roger P. Alford, ‘Apportioning Responsibility Among Joint Tortfeasors for International Law Violations’ (2011) 38 *Pepperdine Law Review* 233, 241; Nollkaemper (n 14) 220-222, 236-237. Cf James Crawford, *The International Law Commission’s Articles on State Responsibility – Introduction, Text and Commentaries* (CUP 2002) 272, 274.

other responsible states or international organizations.<sup>16</sup> The issue of apportioning liability cannot, therefore, be avoided whether one allocates on a joint and several basis (followed by compensation (or contribution)) or on a proportionate basis. Apportionment may be based on a variety of factors including causation, blameworthiness, remoteness, foreseeability, intent, financial participation, decision-making power, expected benefit and/or legal authority or jurisdiction over the conduct causing the injury.<sup>17</sup>

Allocating the legal consequences of responsibility under international law on a proportionate basis might better reflect the causal linkage of each responsible party to the injury and thus, seem just and fair. However, a proportionate basis runs the risk that the injured party is left without a complete remedy, if a responsible party is immune or insolvent, for example. The preferred method might then be allocating the legal consequences of responsibility under international law on a joint and several basis. This is especially the case when injured parties face hybrid public-private bodies, such as global health public-private partnerships, that do not provide straightforward avenues for obtaining remedies.

A further consideration that could be necessary, especially in the context of global health public-private partnerships, is that of allocations of legal consequences between not only states and international organizations but also among private entities, such as companies, non-governmental organizations, research institutes and philanthropic foundations. These entities do not possess legal personality under international law and are correlatively not governed by rules of responsibility under international law and, as explained in the introductory chapter,<sup>18</sup> fall outside the scope of this research. However, it is possible that these entities are responsible in the broad sense of the term and should bear the onus of a portion of the legal consequences.<sup>19</sup>

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<sup>16</sup> Noyes and Smith (n 15) 255-256, 263-264; Christian Dominicé, 'Attribution of Conduct to Multiple States and the Implication of a State in the Act of Another State' in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (OUP 2010) 281, 284

<sup>17</sup> Noyes and Smith (n 15) 239, 261-262

<sup>18</sup> See Chapter 1, Section 1.5

<sup>19</sup> See Antenor Hallo de Wolf, *Reconciling Privatization with Human Rights* (Intersentia 2011) 235-236; Nollkaemper (n 14) 232-236

The rules on how remedies to those injured are to be allocated between (or among) the responsible state(s) and/or international organization(s) in the instance more than one state and more than one international organization is responsible are, at the moment, underdeveloped.<sup>20</sup> Rules will possibly develop in the future as states and international organizations continue to collaborate however, at present, this dearth of rules poses problems on the international plane with regard to the acts of hybrid entities such as global health public-private partnerships. A party injured by a global health public-private partnership might be unable to determine against which entity the claim should be brought. Also, if a party injured by a global health public-private partnership does decide against which entity the claim should be brought, it is possible that this entity will then try to shift the blame to other entities.<sup>21</sup> The rules thus need further clarification.

In spite of the hurdles, state responsibility and the responsibility of international organizations under international law are the best options, 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. Further, the possibility of being able to hold more than one state and/or more than one international organization responsible under international law for the same conduct or damage caused by a global health public-private partnership increases the probability that a just remedy, reflecting the factual situation on the ground, will be found.

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<sup>20</sup> Brownlie (n 14) 457-458; Orakhelashvili (n 7) 664-665; Nollkaemper (n 14) 229

<sup>21</sup> See Nollkaemper (n 14) 200