Global Pandemic Governance: Status, Challenges and Responses--Centering on the Negotiation of the Pandemic Treaty

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Abstract: As globalization accelerates, the threat of pandemics is becoming increasingly serious. The outbreak of global public health events, such as the New Crown Epidemic, highlights the importance and urgency of strengthening the legal study of pandemic treaties. In order to effectively respond to pandemics, the international community needs to construct a more comprehensive health architecture to guide and regulate countries' prevention and control actions. Focusing on the negotiation of the Pandemic Treaty, this paper summarizes the challenges of global pandemic governance, such as nationalistic security restrictions, treaty synergy, pathogen access, and the construction of a benefit-sharing system, and that the international community should promote all parties to construct a global health architecture, ensure equitable access to relevant products, and strengthen sustainable financing.

Keywords: epidemic governance; pandemic prevention, preparedness and response; global health architecture; health equity

DOI:10.69979/3041-0843.25.01.030

1. Current status of global epidemic governance

The mission and legitimacy of the International Health Regulations, the foundational treaty of the World He alth Organization in the field of global public health governance and pandemic preparedness, are based on a lo ng history of international cooperation to minimize and prevent the international spread of disease. During the C. neoformans pandemic, there was underfunding of pandemic preparedness, poor disease surveillance, slow res ponse to emerging pandemics, challenges in procuring protective equipment, inequitable distribution of relevant products, and fragmentation of the global response . Although the IHR are considered an important part of the global health security toolkit, it is important to recognize the limitations of the IHR in terms of in-depth prevent ion of future pandemics. On 1 December 2021, the World Health Assembly agreed to initiate the process of de veloping a historic global agreement on pandemic prevention, preparedness and response by deciding to establis h an intergovernmental negotiating body (INB) to draft and negotiate a WHO convention, agreement or other i nternational instrument on pandemic prevention, preparedness and response.

Member States have reached consensus on the key elements of a pandemic treaty, and progress has been made on research and development, local production and strengthening regulatory systems. But the section on p revention, which details countries' pandemic prevention and surveillance obligations, has yet to agree on many d etails, such as building capacity to detect pathogens at the community level, routine immunization, and preventi ng zoonotic spills, measures that are a daunting task for some low-income countries. The construction of a Path ogen Access and Benefit Sharing (PABS) system is also fraught with disagreement, with negotiators discussing the possibility of including the specifics of the system and pandemic prevention in a separate annex. Technology tra nsfer, a global supply chain and logistics system, and sustainable financing remain elusive, especially the treaty's most critical provision: 20 percent of vaccines, treatments, and diagnostics produced to combat pathogens during

a pandemic will be allocated to WHO, 10 percent will be provided free of charge, and the remaining quantities will be made available on as-yet-unspecified terms, a percentage that is still hotly debated.

2. Challenges to global epidemic governance

2.1. Tension between statism and globalism

At its core, the pandemic treaty is a globalist project that seeks to improve the shortcomings of the International Health Regulations in responding to pandemics and, as envisioned in the pre-draft, seeks to improve the health of all people by achieving equity in the prevention of, preparedness for, and response to future pandemics. However, during the negotiation of the pandemic treaty, it was clear from the position papers of member States and relevant organizations, and from the statements made at the meetings, that the same bias was manifested by all countries in terms of the substantive content covered by the treaty, which was reflected in the repeated deletions and changes to some parts of the text, and in the further definition of, and the repeated discussions and negotiations on, some of the key elements of the proposed treaty. As the negotiations progressed, there was still a certain degree of confrontation between what the parties were advocating, especially when the issues in dispute related to trade and State sovereignty, which the speakers repeatedly reiterated should be respected. For a global treaty aimed at preventing, preparing for, and responding to emerging infectious diseases, with global participation, the failure to reach agreement on a comprehensive infectious disease governance system in the face of the magnitude of the new crown epidemic, the failure to achieve greater mutual accountability and shared responsibility, transparency, and fairness in deeper cooperation on the rules and norms inherent in the international system, and the impact of geopolitical and cultural divides, will be a major challenge to the international community. cultural divides, the gaps left in global disease governance will cause unanticipated harm to countries during the next pandemic, and the purpose of the pandemic treaty and the efforts of all parties to achieve it will be rendered null and void .

2.2. Synergies and complementarities between the Pandemic Treaty and international agreements and instruments

In the context of international law, legal treaties should be interpreted, first of all, in accordance with the principle of "mutual support", which presupposed that there could be no conflict between legal regimes. Second, potentially conflicting instruments should not be interpreted in a way that seeks to add to or subtract from rights and obligations under other treaties. However, the international legal landscape on health emergencies involves numerous instruments that have been concluded and entered into force by multiple bodies of the international system. Matters referred to in the treaties contain key elements in the field of public health that need to be considered and harmonized in terms of potential linkages and institutional articulation with the above instruments, and despite the involvement of relevant organizations at the negotiating table, harmonizing the relevant provisions to avoid negatively affecting the system of international health governance is not an easy task . The 77th World Health Assembly (WHA) adopted amendments to the International Health Regulations (IHR), with the Director-General of WHO stating that "the ability of countries to detect and respond to future outbreaks and epidemics will be strengthened by enhancing their national capacities and coordination among Member States in disease surveillance, information sharing and response". The adopted amendments remain partly within the existing framework of the IHR and are intended to strengthen or explain existing elements, and partly are more political in nature, reflecting mainly the demands of developing countries for equitable inclusion in pandemic prevention, preparedness, and response as a major priority, especially in guaranteeing access to health products, promotion of local research and development and manufacturing, technology transfer, and access to financial and other benefits. These issues impeded progress on the INB, but were eventually resolved through a number of compromises in the IHR negotiations. The pandemic treaty needs to complete the corresponding changes according to the content of the amendments, promote good institutional articulation, deal with the scope of application of the IH

R and the pandemic treaty, and clarify the positioning of the pandemic treaty .

2.3. Establishment of the Pathogen Acquisition and Sharing System (PABS system)

One of the most challenging and unresolved issues is the establishment of the PABS system. Negotiators ha ve only agreed that the system should enable the rapid and timely sharing of pandemic potential pathogen mat erial and sequence information, while sharing the resulting benefits "fairly and equitably", but the precise structu re of pathogen sharing remains unresolved. Disagreements remain on the modalities, terms and conditions for s haring relevant materials - pharmaceutical and high-income countries are urging to ensure that free access is ma intained, while low- and middle-income countries aim to establish a closer link between pathogen sharing and a ccess to benefits. Another key disagreement about benefit sharing is the actual percentage or proportion of vacc ines and medicines that are made available for free or at reduced prices in the event of public health emergen cies and pandemics of international concern. Some factions, particularly low-income countries, are pushing for a higher fixed percentage, while high-income countries say the percentage needs to remain flexible and responsive to the context and geographic location of any pandemic emergency. The revised draft removes the 20 percent of relevant products to be provided by producers to the World Health Organization, and only stipulates that in t he event of a public health emergency or epidemic of international concern, producers should provide relevant diagnostics, treatments, or vaccines in real time, with 10 percent of the total free of charge, and 10 percent at a not-for-profit price. Global charity Oxfam has criticized developed countries for pandering to Big Pharma in n egotiations rather than bridging the geopolitical divide created by vaccines. International efforts to address future global health emergencies, such as outbreak agreements, must include strong provisions and safeguards to curb these corporate interests and ensure that vital countermeasures are delivered quickly and equitably for everyon e. Parties have yet to agree on the content of benefit-sharing provisions .

How to ensure equity in relation to other disease priorities remains an issue. The use of standardized, legal ly binding contracts, user registration requirements, intellectual property rights, relationships with other national i nstruments, and equitable access to science and currency also need to be urgently addressed . It is also import ant to consider the parallel discussion on the establishment of a multilateral access and benefit-sharing mechanis m under the United Nations Convention on Biological Diversity (CBD), and whether any sharing mechanism provi ded for in the Pandemic Treaty would effectively supersede similar provisions in other international instruments, notably the Nagoya Protocol to the Convention on Biological Diversity (CBD). How to provide full access to data bases without discrimination or restriction, increased traceability system setup and transparency for users, etc. w ere also raised in the meeting, and the full operational details of the PABS system still need to be agreed upon by all parties in the negotiations. Supporting a viable system for free and rapid access to pathogens, which mu st be open and non-monopolized, and ensuring that the interests of developing countries are protected and not infringed upon after data sharing, as some of the relevant data on pathogens originate from developing countri es, are also important factors to consider in the construction of the PABS system.

3. Global Outbreak Governance Response

3.1. Co-constructing the global health architecture

The development of the current pandemic treaty requires breaking down differences to find a common solu tion through collective action and solidarity, in which all parties should prioritize the greater good and work tow ards a more just world where everyone wants to be healthy and at peace. Despite the many complex issues fa cing us, the challenges pandemics pose to all mankind is an urgent need to find solutions to deal with them. F or the sake of a better future for mankind, WHO and all relevant parties should create favorable conditions for the realization of these goals, and all parties should seek a balance in consultation and gaming in order to impr ove the text of the treaty and reach a consensus. Community international law is the international law of the f uture, not based on reciprocity in the interests of countries separated from each other and in a state of compe

titive rivalry, but transcending national interests in favor of the common good of mankind . In the face of the unprecedented public health devastation and economic and social disruption caused by the New Crown Epidemic, the harm seems to have faded from memory and public discourse, but it should not be overlooked that tens of thousands of people are trapped in extreme poverty, that a large number of countries have fragile public health systems, and that in the face of pandemics, all countries share a common destiny, and public health governance in developing countries profoundly affects developed countries, and that the public health governance of developing countries also profoundly affects developed countries at the same time. In the face of a pandemic, where all nations share a common destiny and where public health governance in developing countries has a profound impact on developed countries, time is running out and overburdened health systems will not be able to cope with the shock of another pandemic if meaningful progress is not made. All parties are called upon to build on the principles of solidarity, recognizing the differences in capacity and health governance and the shared responsibilities of countries, and that all Member States should be inclusive, transparent, and build trust and a sense of ownership in the process , allowing for a large number of developing countries and societal groups to exercise their right to express their positions . The decision-making mechanism in the pandemic convention should, while broadening the scope of decision-making, regulate and constrain the exercise of decision-making powers and facilitate the timely translation of the legitimate demands of States Parties and other stakeholders into decision-making decisions .

3.2. Ensuring equitable access to vaccines, treatment, medical services and resources

The Pandemic Treaty was not drafted for low- and middle-income countries, but for all countries to ensure health security for all people - rich and poor. This is critical because pandemics do not stop at national borders and expose all national populations to similar risks. Fostering a value system that emphasizes equity, through a commitment to equal access to vaccines and therapeutic medicines for all people, regardless of who they are or where they live, including those who are citizens in fragile and humanitarian settings, proves to be at the heart of such an outcome. For this to happen, a pandemic treaty is needed to provide a clear pathway to achieve access. Local production, increasing productive capacity and ensuring diversified production were elements repeatedly mentioned by developing countries. The draft text seeks to concentrate manufacturing in a few countries of the world, and it calls on States parties to take measures and cooperate to achieve a more equitable geographical distribution and a rapid expansion of global production of pandemic-related or health-care products. This aims to increase sustainable, timely and equitable access to such products and to reduce potential gaps between supply and demand in pandemic emergencies. Achieving sustainable and diversified production will focus on empowering low- and middle-income countries to create and produce their own diagnostics, vaccines and treatments.

Ensure that scientists and research centers in developing countries and the public sector are able to participate and collaborate internationally on products related to pandemics, have equitable access to relevant research knowledge at , have access to international scientific research programs, projects, and partnerships, and share information on national research agendas, capacity-building activities, and research and development priorities. Notably, this is the first time that an international treaty has sought to make R&D on health products more equitable and collaborative. On the issue of technology transfer, the text provides that during a pandemic, parties should encourage patent holders of relevant products, especially those receiving public funding, to waive or otherwise charge reasonable royalties, consider supporting time-limited exemptions from intellectual property rights within the framework of relevant institutions, and explicitly license the technology in the terms of government-funded research and development for pandemic-related product development Recognizing the need for technology transfer, preferably on non-exclusive and voluntary terms, and affordable pricing policies Also, recognizing the right of WTO members to make full use of the flexibilities under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the use of flexibilities should be fully respected. It should be emphasized that there is

a huge gap between many countries and developed countries in a range of processes, including research, manuf acturing, production and distribution of the products concerned, and that relying on voluntary measures will not fundamentally address the issue of equity in pandemic products involving intellectual property rights. How to br eak down barriers to intellectual property rights and ensure that the development and transfer of technologies e nable rapid access by developing countries, utilizing existing mechanisms such as the Medicines Pattern Bank an d the WTO Health Technology Access Pool, are tools and related treaties that have yet to realize their full pote ntial.

3.3. Enhancing sustainable financing and financial support for technology

Adequate funding is critical to effectively respond to outbreaks, distribute vaccines and related products, hel p build health infrastructure in low-income countries, strengthen health systems and response capacity, promote research and implement measures. Providing sustainable funding for pandemic response is extremely challenging in the context of global economic uncertainty and inconsistent national priorities, especially as the treaty makes it clear that domestic funding for pandemic prevention, preparedness and response is to be considered and mai ntained or increased as necessary, without jeopardizing other domestic public health priorities. The Treaty promo tes the establishment of coordinated financial mechanisms, including a pooled fund, which is derived from mone tary contributions received as part of the operationalization of the PABS system, resource contributions from Stat es and non-State actors, and other contributions as agreed by the Conference of the Parties. WHO has been se eking and accepting voluntary contributions from member States and philanthropic institutions, the idea being to systematize donations so that the organization can be more flexible in allocating funds to agreed priorities and enjoy more "predictability" in its funding cycle. Innovative financing measures are being explored within relevant bilateral, regional or multilateral mechanisms, and new sources of funding are being sought for the developmen t of pandemic responses to meet urgent needs, as well as for other domestic health priorities. Much of the tre aty refers to the Parties providing financial and technical resources to developing countries for such things as pa ndemic prevention and surveillance, preparedness and health system recovery, and the health and care workforc e, although the provision has been modified to read: "The Parties undertake to provide financial and technical s upport and assistance to developing countries within the means and resources at their disposal. "The parties un dertake to provide financial and technical support. In the framework of the pandemic treaty, there are a large n umber of provisions for developing countries, and provisions to enhance national public health capacity are cent ered on developing countries.

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