

The Impending Impediments of International Pandemic Treaties: A Stalemate to Combat Global Health Emergencies

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ABSTRACT

The coronavirus outbreak of 2019, revealed fundamental deficiencies in worldwide health administration systems, highlighting the necessity of establishing mandatory legal structures to ensure equitable, just, and resilient responses to future pandemics. In response, the International Treaty on Pandemic Prevention, Preparedness, and Response, proposed by the World Health Organization (WHO), and backed by 194 member nations, seeks to establish a robust international mechanism to safeguard public health while upholding fundamental human rights. However, tensions surrounding sovereignty, resource allocation, and enforcement mechanisms have hindered progress in finalizing and implementing this treaty.

This paper critically examines the human rights implications of treaty-based pandemic responses, with a focus on lessons from the Pandemic Treaty and International Health Regulations (IHR). The discussion explores the scope, objectives, and legal complexities of these frameworks in ensuring universal access to healthcare, equitable vaccine distribution, and protection of vulnerable populations. A key challenge lies in reconciling state sovereignty with international obligations, particularly in balancing public health measures with civil liberties. Additionally, concerns over intellectual property rights, equitable sharing of medical resources, and disparities in healthcare infrastructure remain unresolved, particularly for low- and middle-income countries (LMICs).

The study hypothesizes that a human rights-centered approach to pandemic governance, grounded in equity, justice, and international solidarity, is essential for fostering global health resilience. It argues for a "Framework Convention + Protocol" model, ensuring transparency, accountability, and fair resource distribution through strengthened international cooperation and legal enforcement mechanisms. By learning from past shortcomings, the international community must strive toward a pandemic treaty that prioritizes public health without compromising human rights, fostering a more inclusive and sustainable global health system. The paper

concludes with policy recommendations for enhancing human rights protections in pandemic responses, calling for a multi-stakeholder approach to ensure the treaty's success.

INTRODUCTION

Public health matters have evolved into essential elements of state protection strategies, economic stability, and sustainable development, yet it was largely overlooked in international relations until the impacts of globalization became undeniable. The COVID-19 pandemic, which began in December 2019, highlighted this reality, causing widespread devastation by crippling economies, overwhelming healthcare systems, and shaking global security. More importantly, it served as a powerful reminder that in an interconnected world, no one is safe until everyone is safe.²

The emergence of infectious diseases as transnational threats has fundamentally transformed the landscape of international law and global governance. The rapid spread of pathogens across borders challenges traditional notions of state sovereignty and demands unprecedented levels of international cooperation. Historical precedents, from the 1918 influenza pandemic to more recent outbreaks of SARS, MERS, and Ebola, have demonstrated that isolated national responses are insufficient to contain global health emergencies.

The legal architecture governing international health security has evolved considerably since the establishment of the World Health Organization in 1948. However, the COVID-19 pandemic exposed critical lacunae in existing frameworks, particularly the International Health Regulations (2005), which lack binding enforcement mechanisms and adequate provisions for equitable resource distribution. This crisis has catalyzed discussions around a more robust legal instrument - the

proposed International Treaty on Pandemic Prevention, Preparedness, and Response.

The human rights dimension of pandemic governance has gained particular prominence in recent discourse. The pandemic's disproportionate impact on vulnerable populations, including ethnic minorities, women, children, and socio-economically disadvantaged communities, has underscored the necessity of integrating human rights principles into international health law. This imperative extends beyond mere access to healthcare to encompass broader questions of dignity, non-discrimination, and social justice in times of crisis.

The International Health Regulations (IHR), which have been in place since 2007, were designed to improve global health security through better surveillance, reporting, lab capacity, public health infrastructure, and international coordination. But the COVID-19 pandemic exposed serious weaknesses in how the IHR worked in practice. Problems like weak enforcement, political hesitation, unequal capacities between countries, global tensions, and the spread of misinformation made it clear that the system wasn't strong enough. These failures have pushed the global community to consider a pandemic treaty that could strengthen cooperation, improve transparency, and fill the structural gaps left by the IHR.³ The pandemic revealed deep flaws in global health systems, with the WHO hampered by limited resources and support. Its slow response showed how unprepared the world was for a major crisis. This has sparked calls for stronger, more cooperative global health governance, with leaders pushing for fair and unified rules to better prevent and respond to future pandemics.⁴

¹ King, Martin Luther Jr. *Strength to Love*. Philadelphia: Fortress Press, 1963.

² World Health Organization. Intergovernmental Negotiating Body. <https://inb.who.int/>

³ Haytham A. Sheerah et al., "Navigating Hurdles: A Review of the Obstacles Facing the Development of the Pandemic Treaty," 14 *Journal of Epidemiology and Global Health* 580-5 (2024).

Some leaders have called for a new pandemic treaty to address weaknesses exposed by the current crisis, while others suggest revising the International Health Regulations (IHR). However, the IHR's limitations, such as its lack of enforcement power and reliance on non-binding recommendations until a Public Health Emergency of International Concern is declared, were highlighted during the COVID-19 pandemic. Many countries' failure to comply with the IHR further exposed its deficiencies in managing global health emergencies.⁵

Critics argue that a new pandemic treaty could result in lengthy negotiations over data sharing and technology transfer, with wealthy nations possibly opting out of key provisions, thus weakening its effectiveness. They believe a framework convention won't address the WHO's structural and financial issues and could delay action, similar to climate treaties. This approach, they argue, distracts from urgent needs in the Global South, like access to vaccines and treatments, and wrongly blames weak global rules for the COVID-19 response. It could also undermine initiatives like the TRIPS waiver and neglect essential investments in public health infrastructure and WHO support.

"Darkness cannot drive out darkness, only light can do that. Hate cannot drive out hate, only love can do that" – Martin Luther King Jr.¹

INTERNATIONAL PANDEMIC TREATY: NEED FOR AN EXIGENT LEGAL FRAMEWORK

At the 74th World Health Assembly (WHA), member states were set to decide on starting negotiations for a new Pandemic Treaty. The European Union and other countries supported the proposal for

a Global Framework Convention on Pandemic Preparedness and Response. Three WHO bodies—the IHR Review Committee, the Independent Oversight and Advisory Committee, and the Independent Panel for Pandemic Preparedness and Response—recommended creating a new treaty. In response, the WHA resolved to develop a legally binding instrument under Article 19 of the WHO Constitution to strengthen global health security. The WHA launched the "World Together" plan, creating an Intergovernmental Negotiating Body (INB) tasked with drafting the treaty. The INB committed to delivering a "Zero Draft" by the 76th WHA in 2024, with the final draft expected for the 77th WHA. Due to the complexity of negotiations, the 77th WHA extended the INB's mandate, aiming for a finalized agreement by the 78th WHA in 2025.⁶

The proposed pandemic treaty focuses on equitable healthcare access, including timely data sharing and fair vaccine distribution. It promotes gender-sensitive policies based on equity, human rights, and global solidarity while respecting national sovereignty. The treaty aims to help low- and middle-income countries by improving access to tools, strengthening health systems, and ensuring fair data sharing. It also addresses climate impacts, enhances pandemic literacy, and advocates for greater LMIC representation in global health governance.⁷ The treaty could address national export restrictions on vaccines and medical products by promoting diversified supply chains. It could harmonize international regulations and establish global guidelines for data sharing among medical supply producers. This would provide manufacturers in developing countries with a stable regulatory framework and access to the expertise needed to scale up production.⁸

⁴ "WHO's-Pandemic-Treaty-Global-Health-Governance-Roul-FINS,."

⁵ Lucas Javier Segal, "Tamara Luciana Bustamante, Josefina del Rosario Lago, Mariana Magliolo,."

⁶ Kashish Aneja, Sam Halabi and Lawrence Gostin, "The world must strive to overcome the obstacles as the treaty is a blueprint for a more equitable and resilient global health system."

⁷ Haytham A. Sheerah et al., "Navigating Hurdles: A Review of the Obstacles Facing the Development of the Pandemic Treaty," 14 *Journal of Epidemiology and Global Health* 580-5 (2024).

⁸ Sarosh Nagar, "New international pandemic treaty: potential implications for clinicians worldwide," 98 *Postgraduate Medical Journal* 733-4 (2022).

OBSTACLES AND HINDRANCES WHILE IMPLEMENTING PANDEMIC TREATY

While the normative case for a pandemic treaty appears compelling, the practical challenges of negotiation, ratification, and implementation present formidable obstacles. These impediments are not merely technical or procedural but reflect deeper structural inequalities and competing interests within the international system. Understanding these challenges is essential for developing realistic strategies to overcome them. This section examines six critical areas where progress has been impeded, each representing a different dimension of the complex interplay between law, politics, and global health governance.

1. Lack of Political Will Hindering Effective Global Health Cooperation

Political will represents the foundational prerequisite for effective international cooperation in health emergencies. Without genuine commitment from national governments, even the most well-designed legal instruments remain ineffective.

A major challenge in establishing the pandemic treaty has been securing global cooperation and political will. While the European Union, the African Union, and many governments in Asia and South America support the treaty, several high-income countries have opposed key initiatives.⁹ Notably, they stockpiled vaccines and resisted an intellectual property waiver proposal by India and South Africa in 2020, maintaining this stance for two years during the COVID-19 pandemic.¹⁰ Numerous governments veered away from the WHO guidelines to contain COVID-19 spread, discarded the rhetoric of global unity, and restricted the export of medical resources.¹¹ The COVID-19

vaccine distribution revealed significant disparities, with developed countries having an advantage over low-income nations.

The zero draft of the pandemic treaty has been criticized for lacking clear incentives and disincentives to influence political leaders' behavior during future outbreaks. This absence raises valid concerns and calls for a critical examination of why different stakeholders may respond inconsistently in similar future scenarios.

2. Persistent Inequities in Access to Health Resources and Treatments

Political will represents the foundational prerequisite for effective international cooperation in health emergencies. Without genuine commitment from national governments, even the most well-designed legal instruments remain ineffective.

The development of institutional frameworks for the pandemic treaty should be firmly grounded in core human rights principles. These include the right to universal healthcare, the essential role of robust public health systems, and the commitment to substantive equality that addresses the varied needs of populations. However, achieving equitable access to vaccines, treatments, healthcare services, and resources remains a major challenge.¹² The COVID-19 pandemic laid bare significant disparities in the availability of critical medical supplies and services, both within and across nations. A major barrier to rapidly scaling up global vaccine production was the limited technology transfer from high-income country (HIC) manufacturers to producers in low- and middle-income countries (LMICs).¹³ In addition, some HICs stockpiled vaccine doses in excess of their population's needs, deprioritizing the COVAX initiative and undermining its effectiveness. This highlighted the need for more equity in access. In response, countries like India and South Africa

⁹ Brett D Schaefer and Steven Groves, "Why the U.S. Should Oppose the New Draft WHO Pandemic Treaty."

¹⁰ Haytham A. Sheerah et al., "Navigating Hurdles: A Review of the Obstacles Facing the Development of the Pandemic Treaty," 14 *Journal of Epidemiology and Global Health* 580-5 (2024).

¹¹ Brett D Schaefer and Steven Groves, "Why the U.S. Should Oppose the New Draft WHO Pandemic Treaty."

¹² Lucas Javier Segal, "Tamara Luciana Bustamante, Josefina del Rosario Lago, Mariana Magliolo."

¹³ Clare Wenham and Mark Eccleston-Turner, "Will the pandemic treaty make it over the line?" *BMJ* q395 (2024).

proposed a TRIPS waiver to the WTO, temporarily suspending intellectual property rights under the TRIPS Agreement to broaden access to COVID-19-related medical products.¹⁴

To address global inequities, the pandemic treaty must ensure fair distribution and promote technology transfer to boost local production. The zero draft proposes WHO receive 20% of all pandemic-related medical products; half free, half at affordable rates. Binding provisions are needed to enforce technology sharing. Governments would be responsible for tying public R&D funding to tech transfer agreements and collaborating on mandates, subsidies, and incentives to involve the private sector, regardless of public funding.¹⁵ Lastly, any new agreement on the matter should establish equitable standards to address the liability limitations imposed by the vaccine manufacturers.¹⁶ These persistent inequities are further exacerbated by the financial constraints that limit the capacity of international institutions to respond effectively.

3. Financial Constraints Undermining Global Health Security

Sustainable financing mechanisms are essential for translating treaty commitments into operational capacity, yet existing international funding architectures remain inadequate for the scale of investment required. Sufficient and reliable funding is vital for developing resilient health systems, supporting research, and executing pandemic preparedness initiatives. Yet, maintaining long-term financial support for pandemic response is challenging, especially amid shifting global priorities and economic instability.¹⁷ It is broadly acknowledged that private sector investment in vaccines and treatments for future pandemics is

inadequate, particularly before an outbreak occurs. As a result, public sector involvement is essential—through policies that facilitate access to effective medical countermeasures by providing financial support, subsidies, incentives, and mechanisms to share development risks. Alternative financing approaches, such as pandemic bonds and solidarity levies, may present promising ways to secure the necessary resources.¹⁸ Financial limitations, in turn, weaken the enforcement mechanisms necessary to ensure treaty compliance, as explored below.

4 Weak Enforcement Mechanisms and Accountability Gaps

Enforcement mechanisms represent the critical link between legal obligation and practical compliance, determining whether treaty provisions remain aspirational or become binding obligations. Ensuring full compliance with the pandemic treaty is a major challenge, as it lacks a clear enforcement system. Past experiences with the International Health Regulations show that countries often fail to meet their obligations despite guidelines. This has led to calls for stronger accountability mechanisms, such as linking compliance to evaluations by institutions like the IMF. There are concerns about the treaty's impact on pharmaceutical companies, particularly around a requirement for firms to provide 10% of pandemic-related products to the WHO, which may clash with profit motives. The draft also lacks strong enforcement and dispute resolution mechanisms, potentially reinforcing existing inequalities and making it harder for low- and middle-income countries to access support during crises.¹⁹ The absence of robust enforcement mechanisms reflects, in part, the broader tension between national sovereignty and global solidarity that characterizes contemporary international relations.

¹⁴ Auriane Guilbaud, "A Stress-Test for Global Health Multilateralism: The Covid-19 Pandemic as Revealer and Catalyst of Cooperation Challenges," in A. Guilbaud, F. Petiteville, et al. (eds.), *Crisis of Multilateralism? Challenges and Resilience* 47-76 (Springer International Publishing, Cham, 2023).

¹⁵ Haytham A. Sheerah et al., "Navigating Hurdles: A Review of the Obstacles Facing the Development of the Pandemic Treaty," *14 Journal of Epidemiology and Global Health* 580-5 (2024).

¹⁶ Lucas Javier Segal, "Tamara Luciana Bustamante, Josefina del Rosario Lago, Mariana Magliolo."

¹⁷ Sarosh Nagar, "New international pandemic treaty: potential implications for clinicians worldwide," *98 Postgraduate Medical Journal* 733-4 (2022).

¹⁸ Haytham A. Sheerah et al., "Navigating Hurdles: A Review of the Obstacles Facing the Development of the Pandemic Treaty," *14 Journal of Epidemiology and Global Health* 580-5 (2024).

¹⁹ *Ibid.*

5. Tensions Between National Sovereignty and Global Solidarity

The tension between sovereignty and solidarity reflects broader debates about the appropriate scope of international authority in areas traditionally considered domestic policy domains. National sovereignty grants countries the right to manage their internal affairs, including public health, without external interference. However, during a pandemic, one country's actions can impact others, creating a tension between sovereignty and global solidarity. When countries prioritize domestic interests, such as stockpiling vaccines or enforcing travel bans, they may undermine collective efforts for fair vaccine distribution and coordinated responses. Without effective multilateral coordination, countries with limited resources are left to rely on themselves.²⁰ Global solidarity requires collaboration, resource sharing, and alignment of health measures across borders, including data sharing, equitable distribution of medical supplies, and joint action in response strategies. However, concerns over national control, reluctance to accept international oversight, and existing global inequalities often hinder cooperation. Wealthier countries may be hesitant to share resources, while others may feel unfairly burdened with supporting lower-income nations.²¹

Concerns exist that the pandemic treaty could give the WHO too much authority, such as declaring pandemics, enforcing treatments, or overriding national laws, raising fears about national autonomy and individual freedoms. However, the core goal of global health security is to protect people, not just borders. COVID-19 showed that prioritizing national interests over collective action delayed the response. The treaty must balance respect for national sovereignty with the need

for cooperative and equitable global decision-making. These sovereignty concerns also manifest in restrictions on data sharing and transparency, creating additional barriers to effective pandemic response.

6. Barriers to Effective Data Sharing and Transparency

Information sharing constitutes the nervous system of global health governance, enabling rapid detection and coordinated response while raising complex questions about privacy and security. An effective pandemic response depends on the prompt and transparent sharing of data to inform decisions. This includes key outbreak indicators such as infection and mortality rates, testing figures, hospital admissions, and vaccination coverage, disaggregated by age, gender, ethnicity, and socio-economic status. Specific groups like nursing home residents, prisoners, students, healthcare workers, and refugees should also be included. To improve data sharing, international negotiations have proposed the WHO Pathogen Access and Benefit Sharing System (PABS), a global framework to share pathogen materials and data, supporting public health risk assessment and ensuring fair and equitable access to resulting benefits.²²

However, past experiences in environmental law show that similar frameworks have not always led to equitable outcomes. For better results in future pandemics, some suggest focusing on building regional capacities and enabling early transfer of technology and knowledge. Relying only on benefit-sharing mechanisms in the treaty could create disincentives and conflict, instead of the cooperation needed in global health crises. Challenges like data privacy, intellectual property rights,²³ and national security also continue to hinder timely sharing of critical information.

²⁰ Tom Bernes et al., "Challenges of Global Governance Amidst the COVID-19 Pandemic."

²¹ Abha Saxena et al., "Pandemic Preparedness and Response: Key Provisions for a New Treaty."

²² Auriane Guilbaud, "A Stress-Test for Global Health Multilateralism: The Covid-19 Pandemic as Revealer and Catalyst of Cooperation Challenges," in A. Guilbaud, F. Petiteville, et al. (eds.), *Crisis of Multilateralism? Challenges and Resilience* 47-76 (Springer International Publishing, Cham, 2023).

²³ Ronald Labonté et al., "A pandemic treaty, revised international health regulations, or both?," *17 Globalization and Health* 128 (2021).

LEGAL PATHWAYS TO EFFECTIVE PANDEMIC GOVERNANCE: ADDRESSING IMPLEMENTATION CHALLENGES

Having identified the primary obstacles to treaty implementation, this section shifts focus to potential legal solutions and mechanisms for overcoming these challenges. The analysis draws upon established principles of international law, human rights doctrine, and comparative institutional design to propose concrete pathways forward. Each subsection examines a specific legal approach or mechanism that could address the impediments identified earlier, with particular attention to how these solutions can be integrated into a coherent treaty framework that balances competing interests while advancing global health security.

1. Advancing Equity and Accountability through a Human Rights-Based Approach

Human rights principles provide both normative foundation and practical framework for designing equitable and accountable pandemic governance systems. A pandemic treaty could transform global human rights by ensuring fair access to life-saving tools and protecting vulnerable populations. Focusing on transparency, accountability, and non-discrimination, it could address gaps in current systems and promote international collaboration. A human-rights-based approach is key for holding governments accountable. Its success depends on political will and enforceable agreements. The treaty could address inequalities revealed by COVID-19, especially in vaccine and treatment distribution, with provisions for licensing and

technology transfer to ensure equitable access for all nations.²⁴

Health security for all requires shared responsibility, mutual obligations, and greater solidarity. In these challenging times, good health is good politics, and international cooperation is key. Nations must strengthen the roles of the UN and WHO to build a robust public health governance system.²⁵ Solidarity functions as an ethical principle that extends well beyond mere charitable giving. The coronavirus pandemic demonstrated that simply providing vaccine donations to developing and middle-income nations proved insufficient for addressing emerging viral mutations. Medical emergencies possess the capacity to transcend geographical boundaries, necessitating that the distribution of resources, technological innovations, information, and collective accountability for advancing health fairness becomes central to international health governance systems²⁶. This human rights-based framework provides the foundation for addressing the drafting challenges and divergent perspectives that have complicated treaty negotiations.

2. Addressing Drafting Challenges and Divergent State Perspectives

The drafting process exposes essential conflicts regarding the proper equilibrium between mandatory commitments and sovereign autonomy within global health legislation. Notwithstanding its promise, initial versions of the agreement have encountered opposition from prominent human rights advocacy groups. Through a collective declaration, organizations including Amnesty International, Human Rights Watch, and the International Commission of Jurists expressed apprehensions regarding the preliminary draft. These entities identified the lack of essential human rights protections, including requirements for nations to enhance public health infrastructure,

²⁴ Katrina Perehudoff et al., "A pandemic treaty for equitable global access to medical countermeasures: seven recommendations for sharing intellectual property, know-how and technology," 7 *BMJ Global Health* e009709 (2022).

²⁵ Tom Bernes et al., "Challenges of Global Governance Amidst the COVID-19 Pandemic."

²⁶ Mina Hosseini, "Building Global Health Solidarity in a Permacrisis: Legal Impacts of a Pandemic Treaty," 34 *Irish Studies in International Affairs* 65-87 (2023).

²⁷ Article 27 UDHR: 'Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'.

²⁸ Article 15 ICESCR: (b) 'To enjoy the benefits of scientific progress and its applications'.

explicit directions for restricting personal freedoms (such as isolation protocols), and targeted measures to mitigate disproportionate effects on vulnerable populations and medical personnel. They also emphasized the need to incorporate the right to benefit from scientific progress, as articulated in Article 27 of the Universal Declaration of Human Rights²⁷ and Article 15 of the International Covenant on Economic, Social and Cultural Rights²⁸. This inclusion would help ensure broader access to scientific advancements and innovation during health crises.²⁹ Resolving these drafting challenges requires careful attention to the balance between innovation incentives and access imperatives in global health governance.

3. Balancing Innovation and Access in Global Health Crises

Intellectual property rights present a classic tension between private incentives for innovation and public needs for access, requiring careful calibration in health emergency contexts. Intellectual Property Rights are crucial for promoting innovation and investment in the health sector, but during public health crises, they can delay access to essential medical products. Strategies like voluntary and compulsory licensing, TRIPS waivers, and initiatives such as COVAX have been proposed to address this issue. There is growing recognition that reforming the IP system is necessary to balance private rights with public health needs.³⁰ Rigid IP protections can delay access to life-saving treatments, especially during emergencies. A human rights-based approach to IP law is needed, focusing on affordable access in low- and middle-income countries. The ongoing pandemic treaty negotiations present an opportunity to improve the global IP framework. The zero draft uses broad terms for cooperation, while the June 2023 bureau draft includes more specific, action-oriented language with options for binding or flexible IP waivers. It also introduces

technology transfer mechanisms and emphasizes increasing manufacturing capacity in developing countries. The October 2023, negotiating draft blends binding and flexible elements, aiming to balance national interests with global health solidarity. Clear, enforceable IP provisions in the treaty is essential for ensuring equitable access to medical supplies while fairly compensating innovators.³¹ The intellectual property framework must be complemented by robust compensation mechanisms to ensure justice for those affected by rapid medical interventions.

4. Ensuring Justice through global compensation mechanism

Compensation mechanisms serve dual purposes of providing justice to affected individuals while maintaining public confidence in rapid response measures during health emergencies. A global compensation mechanism for vaccine-related injuries is an important legal safeguard, especially during rapid vaccine development in public health emergencies like COVID-19. Though vaccines saved lives, their fast rollout underscored the need to address rare but serious side effects. A no-fault compensation program allows individuals to receive support without proving negligence, offering a fairer alternative to traditional legal claims. This builds public trust and strengthens preparedness for future crises. Yet, fewer than 30 countries currently have such no-fault systems in place.³² The U.S., through its National Vaccine Injury Compensation Program (VICP), and 16 EU countries have implemented these frameworks. On an international scale, the COVAX No-Fault Compensation Program was a step forward in addressing this gap.³³ Establishing a global vaccine injury compensation system needs strong funding and commitment from WHO member states. The pandemic treaty drafts reflect this evolving approach. The June 2023, draft suggested regional

²⁹ Luke Taylor, "Covid-19: WHO treaty on future pandemics is being watered down, warn health leaders" *BMJ* p1246 (2023).

³⁰ Reto Hilty et al., "Covid-19 and the Role of Intellectual Property: Position Statement of the Max Planck Institute for Innovation and Competition of 7 May 2021" *SSRN Electronic Journal* (2021).

³¹ Siva Thambisetty et al., "The TRIPS Intellectual Property Waiver Proposal: Creating the Right Incentives in Patent Law and Politics to end the COVID-19 Pandemic" *SSRN Electronic Journal* (2021).

³² Stefano D'Errico et al., "'First Do No Harm': No-Fault Compensation Program for COVID-19 Vaccines as Feasibility and Wisdom of a Policy Instrument to Mitigate Vaccine Hesitancy," *9 Vaccines* 1116 (2021).

or international schemes with transparency and liability protections. By October 2023, the focus shifted to national responsibility, urging countries to manage vaccine-related risks, set up compensation mechanisms, and limit broad indemnity clauses. It also called on the Conference of the Parties to implement no-fault systems within two years. Although early drafts backed a global system, later ones emphasized national frameworks due to funding and coordination challenges. Nonetheless, a fair and transparent compensation system remains vital for public trust and future preparedness. Global compensation mechanisms exemplify the principle of differentiated responsibilities that should guide broader treaty implementation.

5. Differentiated Duties and Shared Benefits in Legal Principles Shaping Global Health Equity

Legal principles of differentiated responsibility and benefit-sharing offer frameworks for addressing global inequalities while maintaining incentives for participation by all stakeholders. The COVID-19 pandemic marked a turning point for global health law, exposing major weaknesses in existing systems like the International Health Regulations (IHR) and underscoring the need for stronger global cooperation. One key concept that has gained traction in recent discussions is Common but Differentiated Responsibilities (CBDR), originally rooted in international climate change law.³⁴ In global health, the CBDR principle emphasizes that while all countries share responsibility in managing health emergencies,

wealthier nations should bear a greater burden, particularly in supporting low- and middle-income countries (LMICs). The pandemic treaty's zero draft reflected this, urging resource-rich countries to take on more responsibility. However, the June 2023 bureau draft softened this stance, offering multiple options, one of which excluded CBDR entirely, likely due to resistance from high-income countries. By the October 2023 draft, the concept was reframed as "recognition of different levels of capacity," suggesting that countries with fewer resources should receive support according to the capacities of others. Another key issue is Access and Benefit-Sharing (ABS) of pathogens, which advocates for the fair sharing of benefits from the use of genetic resources, including disease-causing pathogens, drawing from environmental law principles like the Nagoya Protocol.³⁵ Applying the Access and Benefit-Sharing (ABS) principle in a pandemic context could boost global collaboration by improving access to vital data and biological materials for vaccine and treatment development. However, its implementation is controversial, especially with opposition from parts of the pharmaceutical industry, which raise concerns about intellectual property rights and the potential impact on innovation. To effectively prevent future pandemics, the treaty must balance self-interest and material factors within a flexible framework of shared principles and goals, capitalizing on this unique political opportunity.³⁶ These differentiated approaches must be carefully balanced with market-based mechanisms to ensure both equity and efficiency in pandemic governance.

³³ WHO, 'No-fault compensation programme for COVID-19 vaccines is a world first', available at: <https://www.who.int/news/item/22-02-2021-no-fault-compensation-programme-for-COVID-19-vaccines-is-a-worldfirst>

³⁴ United Nations Framework Convention on Climate Change, 1992. Article 3.1: 'The parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.' Available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf> (20 September 2023).

³⁵ Abbie-Rose Hampton et al., "Equity in the Pandemic Treaty: Access and Benefit-Sharing as a Policy Device or a Rhetorical Device?," 51 *Journal of Law, Medicine & Ethics* 217-20 (2023).

³⁶ Suerie Moon and Ilona Kickbusch, "A pandemic treaty for a fragmented global polity," 6 *The Lancet Public Health* e355-6 (2021).

³⁷ Ma³gorzata Kozak, "Competition Law and the COVID-19 Pandemic - Towards More Room for Public Interest Objectives?," 17 *Utrecht Law Review* 118-29 (2021).

6. Balancing Market Rules and Public Health in Pandemic Governance

Competition law provides tools for preventing market abuse during health emergencies while maintaining incentives for private sector innovation and investment. The Covid-19 pandemic introduced unique challenges in the enforcement of competition law, prompting several jurisdictions—including the EU—to adopt temporary frameworks. These frameworks allowed for the inclusion of public and non-economic interests within competition law, recognizing that, in a crisis, profit-driven practices could undermine broader social welfare goals.³⁷

There is increasing recognition that competition laws should be more flexible during public health emergencies to prioritize public interest, such as equitable healthcare access. Scholars have explored how solidarity values intersect with competition law and whether it should address healthcare disparities. During the COVID-19 pandemic, many countries relaxed enforcement, allowing collaboration like joint R&D and coordinated procurement. The pandemic treaty's zero draft tackled market abuse by pharmaceutical firms and required transparency from publicly funded companies. However, later 2023 drafts removed this provision, signaling a setback for transparency and fair competition in global health crises.

CONCLUSION

The analysis presented will reveal that the path toward an effective pandemic treaty is fraught with complex legal, political, and ethical challenges. The tension between national sovereignty and global solidarity remains a defining feature of contemporary international health governance. However, the COVID-19 pandemic has created an unprecedented window of opportunity for transformative change in global health law.

The human rights-based approach advocated will offer a normative framework for addressing these challenges. By anchoring pandemic governance in internationally recognized human rights standards, the treaty can provide both moral legitimacy and legal coherence to global health responses. This approach necessitates moving beyond a purely

technocratic view of pandemic preparedness to embrace a more holistic understanding of health as a fundamental human right.

The proposed “Framework Convention + Protocol” model presents a viable pathway for balancing flexibility with accountability. This approach would allow for the establishment of general principles while enabling specific protocols to address evolving challenges such as pathogen sharing, technology transfer, and compensation mechanisms. The success of this model, however, depends critically on the political commitment of member states and the institutional capacity of international organizations.

Looking forward, the international community must learn from the failures of COVID-19 response while building on the innovations and solidarity that emerged during the crisis. The pandemic treaty represents more than a legal instrument; it embodies a collective commitment to reimagining global health governance for the 21st century. The stakes could not be higher, as the next pandemic is not a matter of if, but when.

The challenges facing the creation and execution of the international health agreement are complex and necessitate coordinated action from the worldwide community. These barriers encompass international collaboration and governmental commitment, fairness in medical resource and treatment availability, reliable funding, adherence and enforcement systems, national autonomy issues, and information transparency - representing the primary impediments to establishing this health accord. Notwithstanding these difficulties, the pressing need to address worldwide health emergencies requires decisive and unified responses. Achieving international collaboration demands collective acknowledgment of pandemics as mutual threats. Obtaining consensus on critical issues, including immunization distribution, monitoring approaches, and financial support, remains crucial for guaranteeing equitable access to medical resources and interventions. Strengthening adherence to the health agreement necessitates effective mutual oversight and evaluation systems. Furthermore, maintaining equilibrium between honoring sovereign independence and encouraging cross-border partnership proves vital for the accord's

success. Ultimately, establishing frameworks that facilitate information exchange while protecting confidentiality presents a sophisticated challenge requiring thoughtful consideration.

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