



A Window of Opportunity for the World Health Organization

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Introduction

In February 2023, the Intergovernmental Negotiating Body (INB) of the World Health Organization (WHO) published a “zero draft” of a new international agreement or instrument on pandemic prevention, preparedness, and response.¹ That same month, the Working Group on Amendments to the International Health Regulations (WGIHR) announced that it has agreed on a process to amend the current international instrument governing pandemics and provided a compilation of proposed amendments.² These recent developments suggest that countries around the world recognized the failure of the international community in properly addressing the coronavirus disease (COVID-19) pandemic and are willing to make much-needed reforms to global health law. As such, action on these parallel processes to amend the International Health Regulations (IHR) and negotiate a new pandemic accord presents a challenge for WHO.

¹ World Health Org. [WHO], *Zero draft of the WHO CA+ for the consideration of the Intergovernmental Negotiating Body at its fourth meeting*, A/INB/4/3 (Feb. 1, 2023), https://apps.who.int/gb/inb/pdf_files/inb4/A_INB4_3-en.pdf.

² World Health Org. [WHO], *Article-by-Article compilation of proposed amendments to the International Health Regulations (2005) submitted in accordance with decision WHA75(9) (2022)*, A/WGIHR/2/7 (Feb 6, 2023), https://apps.who.int/gb/wgihhr/pdf_files/wgihhr2/A_WGIHR2_7-en.pdf.

Nevertheless, it provides WHO with an opportunity to positively change global health law in ways that have positive impacts on international law more broadly.

New Amendments to IHR Would Increase WHO Power

The COVID-19 pandemic revealed to the international community the limitations of the IHR in coordinating an effective global response to public health emergencies.³ Namely, the lack of compliance and accountability for violations of member state obligations.⁴ The proposed amendments to the IHR attempt to address these limitations by increasing WHO's health emergency and bio-surveillance powers, and those of the Director-General (DG).⁵ Of note are proposals to change the currently non-binding recommendations on public health emergency countermeasures into binding recommendations.⁶ If those controversial proposals were to be approved and WHO could issue legally binding instructions, then they would have legislative powers that no other UN organ or agency has apart from the UN Security Council.⁷ Such unprecedented power could make the global response to dangerous disease outbreaks far more coordinated, but it could also threaten human rights obligations and national sovereignty.

Points of Contention in the “Zero Draft” Reinforce Divisions between the Global North & Global South

Chapter III of the “zero draft” aims at “achieving equity in, for and through pandemic prevention, preparedness, response and recovery of health systems”⁸ and is by far the most

³ Benjamin M. Meier et al., *The World Health Organization in Global Health Law*, 48 J. FOR L., MED., AND ETHICS 796, 798 (2020).

⁴ Lawrence O. Gostin et al., *Developing an Innovative Pandemic Treaty to Advance Global Health Security*, 49(3) J. OF L., MED., & ETHICS 503, 505 (2021).

⁵ Silvia Behrendt & Amrei Müller, *The Proposed Amendments to the International Health Regulations: An Analysis*, OPINIO JURIS (Feb. 27, 2023), <http://opiniojuris.org/2023/02/27/the-proposed-amendments-to-the-international-health-regulations-an-analysis/>.

⁶ Id.

⁷ Id.

⁸ *Supra*, note 1 at 13-19.

contentious part of negotiations between member states.⁹ Articles under Chapter III establish new obligations related to a new supply chain and logistics network, health systems capacity building, regulatory strengthening, access to technology and pathogens, and a benefit-sharing system.¹⁰ The inequitable distribution of vaccines is an example of some of the problems the current system produced that contributed to the negative social and economic effects of COVID-19 most pronounced in the Global South.¹¹ New obligations could change these fundamental asymmetries and injustices by ensuring access to medical countermeasures. However, points of contention that are raised by countries in the Global North stem from issues of national sovereignty and financing. Moreover, these contentious provisions could hinder the ability to draft and ratify a much-needed pandemic international agreement in a timely fashion.

Impacts on Global Health Law and International Law

While these, at times very controversial, agreements and provisions are simultaneously being negotiated, WHO members have indicated that these two processes should be complementary. Dr. Ashley Bloomfield, Co-Chair of the WGIHR, indicated that “it is important that there is consistency and alignment across the two processes.”¹² At the same time, the mere introduction of unprecedented provisions and obligations throughout these processes indicates a shift in the Overton window spearheaded by historically marginalized stakeholders. These new obligations could make the global response to public health emergencies not only more effective, but also more equitable because nations in the Global South would have access to resources that

⁹ WHO, *INB4 – Session 4: Report of the Meeting* (Mar. 3, 2023), [https://www.who.int/news-room/events/detail/2023/02/27/default-calendar/fourth-meeting-of-the-intergovernmental-negotiating-body-\(inb\)-for-a-who-instrument-on-pandemic-prevention-preparedness-and-response](https://www.who.int/news-room/events/detail/2023/02/27/default-calendar/fourth-meeting-of-the-intergovernmental-negotiating-body-(inb)-for-a-who-instrument-on-pandemic-prevention-preparedness-and-response).

¹⁰ *Supra*, note 1 at 13-19.

¹¹ Tamara Luciana Bustamante et al., *A New Treaty on Pandemics: Some Key Issues from a Global South Perspective* 8 (The South Ctr., Working Paper Nov. 23, 2021).

¹² Kerry Cullinan, *Countries Agree on Process to Amend International Health Regulations Governing Pandemics*, HEALTH POLICY WATCH (Feb. 27, 2023), <https://healthpolicy-watch.news/countries-agree-on-process-to-amend-international-health-regulations-governing-pandemics/>.

were previously unavailable. As a result, the other areas of international law would see a similar shift in power dynamics. With more equal and democratic participation in negotiation processes from countries such as India, Brazil, and South Africa, global issues such as climate change, migration, human rights, and trade could see increased collaboration and much-needed improvements.

Conclusion

The failures of the current system exposed by the COVID-19 pandemic enabled a push for reforms in global health law that would challenge the hegemony of the Global North and industry. Thus, if negotiations were to be successful for the challengers and these contentious provisions were to be adopted, then it would open the door for a complete shift in international law that reflects the growing trend of a more multipolar world.