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The World Health Organization's pandemic treaty

Global equity underpins the first draft and must remain a key priority

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The covid-19 pandemic showed that gross inequities in population morbidity, mortality, and access to medicines persist between nations, reflecting the colonial histories and current political status of international governance. These patterns of inequity emerge directly from colonialism's racism, violence, resource extraction, and exploitation. It is therefore welcome that "equity" underpins the World Health Organization's call to action to its member states, as they negotiate a new international instrument to advance collective action for pandemic prevention, preparedness, and response—the pandemic treaty.[1] The treaty aims to create legally binding obligations between countries and to establish new global mechanisms for pandemics under the auspices of WHO. On 1 February 2023, WHO released a *Zero Draft of the Pandemic Treaty* for its member states' consideration at the meetings of the intergovernmental negotiating body in February and April 2023.[2]

Decolonising international law

The draft contains several provisions that seek to operationalise equity through international law, including redistributing resources. This could be the first step towards decolonising international law for infectious diseases, a specialism that has largely retained a 19th century colonial framework of international cooperation for disease control. As the sociologist and medical historian Alexandre White wrote, the International Health Regulations—the current international law for public health emergencies of international concern—"position Europe and more broadly the West as the sites that must be protected from the infectious disease threats of the rest of the world."[3] The International Health Regulations prioritise notification of potential public health emergencies at risk of spreading internationally,[3] focus on containment over prevention,[4] and are relatively silent on response measures.[5] This places a disproportionate burden on low and middle income countries and invariably favours high income countries with greater resources, including those disproportionately accumulated through colonialism, which reinforces global inequity, racism, and injustice. Whether the pandemic treaty perpetuates this framing—creating an unjust world more vulnerable to pandemics—or begins to diverge from the coloniality that underpins international infectious disease law will depend on negotiations of the draft text and certain critical provisions.

The epidemiological use of the term "pandemic" usually describes the worldwide spread of an epidemic. The WHO draft's definition of pandemic is much narrower: encapsulating the "global spread of a pathogen that . . . overwhelm[s] health systems with severe morbidity and high mortality . . . causing social and economic disruptions." This narrowed scope will limit the operation of some of the treaty's equity provisions to circumstances that are oriented to the interests of high income countries and exclude health emergencies such as localised epidemics of Ebola virus disease, Marburg virus disease, or mpox, or pandemics that do not overwhelm health systems but disproportionately affect vulnerable populations. Careful drafting of what occurs in the periods between pandemics might tackle these concerns.

Inclusion of "common but differentiated responsibilities" is a principle well established in international environmental law, which recognises that some states hold more resources than others globally and should bear a commensurate degree of differentiated responsibility. High income countries have indicated an unwillingness to incorporate this principle into global health law, arguing that it is inconsistent with universal obligations for pandemic preparedness and response.[6] But having "common but differentiated responsibilities" is about achieving universality by placing special obligations on parties with resources—including those obtained through colonialisation—to achieve global equity.

A range of operative provisions seek to tackle global inequities in accessing diagnostics, vaccines, and therapeutics. These include establishing a predictable global supply chain that ensures global supply of pharmaceutical raw materials and ingredients; reinforcing multilateral mechanisms to incentivise the transfer of technology and knowledge; and excluding indemnity clauses of indefinite or excessive duration from supply and purchase contracts.

Most significant for international law is the inclusion of proposed procedures for a "pathogen access and benefit sharing" system. Access to, and benefit sharing of, genetic resources—including microbial genetic biological material—was expressly developed in international environmental law to tackle historical and ongoing colonial exploitation and extraction of genetic resources by wealthy nations that then benefited further from the use of those resources. Decolonisation has been intimately tied with sovereign control over genetic resources and equitable distribution of their economic benefits.[7] In the draft treaty, pathogen access and benefit sharing would apply in pandemics and in between them, with the intent of establishing a multilateral, fair, equitable, and timely system for accessing pathogens with pandemic potential and their genomic sequences and for the equitable sharing of benefits that arise from their use. This includes real time access by WHO to 20% of pandemic related product volumes, such

as vaccines, distributed on the basis of public health risk and needs, especially to developing countries. Although there is no broad prohibition of the use of advance purchase agreements to secure national vaccine supply,[8] the draft text requires countries with manufacturing facilities to commit to securing such minimum supply to WHO.

Effective participation is necessary but not sufficient

Whether member states reinforce equity in the pandemic treaty draft text—or water down provisions—will have direct repercussions for the next pandemic. This requires member states and WHO to guarantee effective participation of all member states, strong civil society engagement, and transparency in the processes.[9] New treaties risk simply replicating history, further embedding colonialism in the development of international law.[10] Incorporating legal measures aimed at decolonisation such as common but differentiated responsibilities and pathogen access and benefit sharing into the pandemic treaty is one step towards reframing international law for infectious diseases and realising global equity. This is not only a matter of justice; a more equitable world is one that prevents the conditions that give rise to pandemics, is more prepared, and is more able to respond when outbreaks become pandemics.[11]

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