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The new pandemic treaty: Are we in safer hands? Probably not

Independent monitoring of the pandemic treaty is a non-negotiable, write Nina Schwalbe, Elliot Hannon, and Susanna Lehtimäki

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Last week, a new draft of the pandemic treaty was released to member states with various revisions.¹ When negotiations began more than two years ago for an international agreement on pandemic preparedness and response, it was hoped that this new treaty could lead to greater accountability from governments. Yet the treaty's new sections outlining governance are a far cry from these aspirations and are a step backwards from previous versions.

The Independent Panel for Pandemic Preparedness and Response recommended that pandemic governance should be led by heads of state to ensure it receives the political attention it deserves.² Yet in the new text, oversight of treaty compliance is left to member states through a “third committee” of the World Health Assembly (WHA), the main decision making body of the World Health Organization (WHO).³ This third committee would supplement the existing two, “Committee A,” which oversees programmes, and “Committee B,” which is responsible for financial and administrative matters. All member states participate in these committees, but they are mostly attended by a technocrat or diplomat, who is very distant in the hierarchy from a head of state.

Similar to past treaty drafts, and although still open for debate, the current text proposes that an Implementation and Compliance Committee would review and provide recommendations on the implementation of and compliance with the treaty. What is different is that this subsidiary body has now been demoted to reporting to a subsidiary of the WHA, rather than to a so-called conference of the parties (akin to the climate agreement model), which would sit above or adjacent to the WHA.⁴ Instead of acting as an independent mechanism of accountability, the Implementation and Compliance Committee's role would “be facilitative in nature,” with an aim to “promote compliance” in a way that is “non-adversarial.”¹

The Implementation and Compliance Committee's access to information would be limited since it is only able to consider information from bodies that have been established under the agreement, or information provided from or through the WHO. There is no provision for any type of shadow reporting or for the committee to gain information from other sources—a standard, key practice that other human rights instruments follow in their monitoring processes.⁵

The Implementation and Compliance Committee's remit to carry out “periodic” reporting, currently provisioned for the third committee to review potentially only every three years, is also a deviation from best practice. Without frequent reporting (that

requires continuous monitoring) and defined reporting requirements, history has shown that states' attention drifts when competing demands are made on their time and resources.⁶

A self-policing echo chamber

The most puzzling aspect of the treaty's setup is that it, in effect, leaves ministers of health, technocrats, or diplomats to police themselves on whether their countries are living up to their national commitments. Giving this role to health ministries assigns them a task “above their pay grade” because they have little real influence over their own governments' actions in related sectors. It also reinforces an exclusive focus on the health aspects of pandemic prevention, preparedness, and response, rather than the multisectoral collaboration it requires.²

This current structure sidesteps any provision for truly independent monitoring and review, which has proven essential in promoting state compliance with other treaties. The fact that so many governments were caught on the back foot when covid-19 struck,⁷ despite being party to the International Health Regulations, underscores why we need more independent scrutiny on compliance.²

With so much evidence on what works in treaty compliance,^{5,8} it is hard to understand why the Intergovernmental Negotiating Body, which has been tasked with drafting the pandemic agreement, has landed here. Countless examples show that it is feasible to independently monitor international legally binding obligations. From agreements on human rights to atomic weapons, we've seen how accountability mechanisms can promote compliance, including data triangulation, shadow reports, direct inquiries, and on-site visits.⁸

Instead of focusing on holding governments to account for their obligations to comply with the agreement, the text emphasises the ability of a proposed Scientific Advisory Committee to fill implementation gaps. It is tasked with a wide range of functions—from assessing scientific knowledge to forecasting risks to making recommendations on stockpiling, supervising research, preparing guidelines, and even monitoring genetic research. This committee would be reliant on WHO to function, becoming a central part of the existing architecture for pandemic response, rather than independent of it.

New treaty, same problems

The pandemic treaty was meant to look at the ways in which the International Health Regulations failed us during the covid-19 pandemic and resolve these

problems, but the latest draft repeats them,⁹ starting with putting an agency with an exclusive mandate on health—with little to no influence on the true levers of political and economic power in the international system—in the driver's seat. Even the provision for establishing a global system for peer review, which was perceived as a friendly way for member states to interact with and be accountable to one another, has been cut.

Independent monitoring of the pandemic treaty is non-negotiable.¹⁰ This argument is based on solid evidence from other treaties, as well as on the history of inadequate compliance with the International Health Regulations.⁸ For an existential threat that may centre on health but relies on coordination with multiple sectors, independent monitoring is indispensable, but it also requires political state leaders at the highest level, not the WHO, to carry the decision making responsibility for compliance.¹¹

With just a few weeks before negotiations are expected to conclude, there has as yet been no meaningful discussion of these governance or compliance mechanisms. This oversight must be corrected. A treaty without a robust compliance mechanism built in is simply a well meaning piece of paper.

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