

INTERNATIONAL LAW RESPONSES TO PLANETARY THREATS

UPDATE ON THE PANDEMIC TREATY... AND BEYOND

INTERNATIONAL LAW YEAR IN REVIEW 2025

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2024 – A BITTERSWEET YEAR FOR GLOBAL HEALTH LAW

- Global health law: a technical niche? Where is the law? Emphasis on role of health as normative value in other international legal regimes
- 2024: developments at the core of global health law and in related legal regimes. Many questions and few solutions, increasing complexity and political uncertainties
- Legal reactions to COVID-19 framed as protection of human health – focus on WHO
- Negotiations of new “pandemic agreement” and amendments to the International Health Regulations (IHR) – practical and legal challenges of parallel negotiations on related issues
- “Security” versus “equity” as faultlines of the negotiations

WHAT HAPPENED IN 2024?

I) INTERNATIONAL HEALTH REGULATIONS

- Amendments to the IHR adopted in May 2024 (entry into force September 2025).
Conservative approach maintaining technical/operational focus
- 1) “alert levels”: pandemic emergency but no early action;
- 2) National IHR Authority for government coordination;
- 3) “equity and solidarity” as principles;
- 4) Article 13 etc. – WHO’s stewardship for equitable access to health products
- 5) Assistance and financing (Art. 44 and 44 bis)
- 6) Implementation committee (Art. 54 bis)

2) PANDEMIC AGREEMENT (PA)

- Difficult and dysfunctional negotiations with high risk of failure and loss of momentum
- Missed deadline of May 2024, aiming at May 2025 with only 10 days of negotiations
- Pending issues: 1) Prevention and One Health; 2) technology transfer and intellectual property rights; 3) pathogen and benefit sharing (PABS); 4) “Peace clause”; 5) Compensation and liability; 6) Compliance mechanism; 7) Subsequent instruments and prospects for a final “package”
- Achievements despite challenges: PA breaking new ground in global health law

3) DIGITAL SEQUENCE INFORMATION (DSI) AND BIODIVERSITY REGIME

- Crucial importance of sharing pathogens for public health purposes. Impact of biodiversity regime (CBD and Nagoya Protocol) and claim of benefits in return for sharing pathogens.
- DSI as game changer. Fundamental differences with physical samples, existing network of databases with own rules, ease of sharing, difficult to track and trace, difficult to link with jurisdiction. Increasing accessibility of technology and increased use by pharma and biotech.
- Search for an ad hoc normative regime and influence on future PA: 1) CBD COP decision 15/9 (2022) on distinctive solution for benefit sharing, multilateral solution, no tracking and tracing, search for legal certainty. Decision 16/2 (2024) creating “Cali Fund” for DSI benefit sharing by benefitting sectors. Still work in progress. What implications for PABS?

SOME BROADER CONSIDERATIONS

- Peculiarities and challenges of the PA:
 - 1) Broad and ambitious scope, from deep prevention to health products allocation
 - 2) Narrow object: pandemics
 - 3) Prevention and preparedness require systemic obligations – prevention paradox and diverging political priorities
 - 4) Contrast with IHR with limited scope but broader object
- Breaking news: what will the consequences of the US withdrawal from WHO?
- Can the PA fail? With which consequences?