On December 1, 2021, the World Health Assembly (WHA) of the 194 member states of the World Health Organization (WHO) met in a special session, the second ever since the founding of the WHO in 1948. Mindful of the recent emergence of the highly infectious Omicron variant in South Africa, the WHA, the governing and decision-making body of the WHO, resolved to craft a legally binding “historic global accord on pandemic prevention, preparedness and response.”1 Destined to be crafted under Article 19 of the WHO Constitution, the treaty was to see to it that the world is protected “from future infectious diseases crises.”1 The WHA plan (“The World Together”) empowered an Inter-governmental Negotiating Body (INB) to produce a draft of the treaty in question with a view towards its eventual adoption.1 According to Dr. Tedros Adhanom Ghebreyesus, WHO Director-General, the historic treaty “represented a once-in-a-generation opportunity to strengthen the global health architecture to protect and promote the well-being of all people.”1 At its first meeting on February 24, 2022, the INB affirmed its commitment to hold public hearings on the progress of its deliberations as well as to deliver a “Zero Draft” version of the pandemic treaty to the 76th WHA within a year.1 The INB further committed to submitting a revised final version of the anticipated treaty for consideration by the 77th WHA in May of 2024. In this Commentary we review the backdrop for the evolving WHO pandemic treaty as well as discuss the mixed reception thereof.

In the view of Dr. Tedros, the pandemic treaty was a must (“mission critical for humanity”) in that the “COVID-19 pandemic has shone a light on the many flaws in the global system to protect people from pandemics.”1 Note was also made of the untold human toll of the COVID-19 pandemic which was all but unprecedented.1 As reported by the Center for Systems Science and Engineering at Johns Hopkins University, a total of 676 million cases of COVID-19 were enumerated worldwide of whom over 6.9 million have died since the emergence of the virus in China in December of 2019.2 Given this unprecedented human toll, a responsive pandemic treaty would be expected to embrace foundational principles that emphasize equity as well as the sharing of data (e.g., genome sequences of emerging viruses) and of vaccines and drugs via a “WHO Global Pandemic Supply Chain and Logistics Network.”1 The Pandemic treaty would also do well to collaborate with the Global Fund, the 2023–2028 strategy of which is commensurate with the WHO plan.5 Concurrently, equal attention will have to be paid to gender-sensitive inclusion replete with provisions that “address a wider range of the gendered impacts of pandemics.”4 Issues around compliance and enforcement mechanisms, equity obligations, transparency, and technology transfer have led some nations to question the approach taken by the WHO.5

Although the Pandemic Treaty is meant to constitute a legally binding accord between states under international law, one guided by the principles of equity and solidarity, concerns as to its implications to national sovereignty have been decidedly mixed. Over 70 nations, most notably members of the United Kingdom, the European Union, and leading African nations, have come out in strong support of a legally binding international instrument. Other nations, in contrast, including India, Brazil, and Canada, proved reluctant to commit to a legally binding agreement for fear that it might undermine their sovereignty. The inability to resolve this tension and other key issues has led to a delay in the treaty’s proposed timetable. On June 1, 2024, “recognizing that the INB had achieved progress and reached initial agreement on many provisions of the proposed WHO Pandemic Agreement, and that further work needed to be done on remaining elements, the Health Assembly decided to extend the INB’s mandate to finish its work as soon as possible, and submit its outcome for consideration by the Seventy-eighth World Health Assembly in May 2025, or earlier by a special session of the World Health Assembly if possible in 2024.”6

The final legal status of the Pandemic Treaty in the United States (U.S.) remains equally uncertain. While treaties must be submitted to the Senate for advice and consent, the past decades have seen a rise in so-called “executive agreements” which do the work of treaties but do not require Senate approval. If the Pandemic Treaty must, in fact, be voted on by the Senate, its chances are hard to predict. In this regard one cannot lose sight of the reality that the U.S. has yet to ratify the only other international WHO treaty, that is, the WHO Framework Convention on Tobacco Control, which was adopted by the 56th WHA on May 21, 2003.

In keeping with standard protocol, the responsibility for interacting with the WHO is the domain of the U.S. Department of State. However, given the nature and the import of the special case in question, the U.S. delegation to the WHO also includes representatives of the Department of...
Health and Human Services, the Department of Commerce, the Department of the Treasury, and the U.S. Agency for International Development. Concurrently, a number of bills insistent on the Congressional ratification of the Pandemic Treaty were introduced by conservative members of the House as well as the Senate. As early as February 15, 2023, Sen. Ron H. Johnson [R-WI] introduced the No WHO Pandemic Preparedness Treaty Without Senate Approval Act [S.444]. A similarly minded resolution titled World Health Organization Pandemic Treaty Implementation Resolution [S.Res.81] was introduced shortly thereafter by Sen. James E. Risch [R-ID] with an eye towards assuring Senate ratification of any future WHO-negotiated Pandemic Treaty. By March of 2023, two similarly leaning House bills [H.R. 1425 and H.R. 1546] were introduced by Rep. Thomas P. Tiffany [R-WI-7] and Rep. Ronny L. Jackson [R-TX-13], respectively. As of this writing, none of these bills has been passed by either chamber of the Congress.

At the same time, President Biden also faces pressure from his political left. A March 19, 2024, letter to President Biden from Sen. Bernard Sanders and 11 like-minded members of the House of Representatives and the Senate urged the President to “push for strong, binding equitable access standards to ensure that tests, treatments, and vaccines for the next global public health threat are available to everyone who needs them as soon as possible.” The letter asks the President to extend “fair pricing” for drugs developed during public health emergencies to low- and middle-income countries through concrete obligations that attach to government funding for research, to pursue “pool[s]” (presumably patent pools) for pandemic technologies, among other pushes.

Looking forward, one can only hope that the notion of international equity, otherwise absent during the COVID-19 pandemic, can be restored by the evolving pandemic treaty. That principle must not be squandered. In this context, much could be learned from the Pandemic Influenza Preparedness (PIP) Framework, which was adopted by the WHA in May of 2011. As crafted, the PIP Framework strives to improve the sharing of influenza viruses with pandemic potential and to increase the access of developing countries to vaccines and other life-saving products during a pandemic. Notably, at no point thereafter was the sovereignty of the U.S. diminished in any way. At this critical juncture, one would do well to recall the address made by President John F. Kennedy to the UN General assembly on September 25, 1961, wherein he made note of the truism that “Political sovereignty is but a mockery without the means of meeting poverty and literacy and disease. Self-determination is but a slogan if the future holds no hope.” In that the Pandemic Treaty is being crafted by independent nations with an eye towards its implementation in accordance with extant national laws, it would seem highly unlikely that any country will be signing its sovereignty away to the WHO. The world cannot afford to wait for the next pandemic to take action.

References

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