



Guest Essay: "Do We Really Need a Pandemic Treaty?"

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Priti Patnaik

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Hi,

We continue to explore and understand the need for a pandemic treaty.

While there has been growing support for the need to craft new legal measures in the wake of COVID-19, questions continue to be raised on whether there is indeed “a legal vacuum” in governing health emergencies.

This week, we bring you a guest essay from lawyers affiliated with The Third World Network. Nithin Ramakrishnan and K M Gopakumar recently authored a comprehensive report: “*Proposal for a WHO treaty on pandemics raises concerns*”.

In this piece, they elaborate on some of the key issues that need to be considered by WHO member states when discussions on the treaty resume in a few weeks.

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I. GUEST ESSAY

Do we really need a Pandemic Treaty?

By Nithin Ramakrishnan and K M Gopakumar

The Member-State Working Group on Strengthening WHO Preparedness and Response to Health Emergencies (**the working group**) met during the 15th and 16th of July 2021 and adopted its **method of work**. The 74th World Health Assembly (WHA) **decision** has mandated the Working Group to prioritize the assessment of the benefits of developing a WHO convention, agreement or other international instrument on pandemic preparedness and response, and report to the Special Session of the WHA to be held from 29 November to 1st December 2021. The Working Group is expected to start its work on this prioritised agenda.

However, there are many unanswered questions, which were left out by the proponents of the treaty during their well-choreographed campaign for a new pandemic treaty. This article brings attention to a few key questions to be considered before taking any endorsement for a new treaty to govern pandemic.

No shared understanding on what constitutes a pandemic

Although the WHA decision, commentaries and various other communications call the proposed new treaty as the pandemic treaty there is no shared understanding on this term. The logic behind the treaty as seen in the **IHR Review Committee (IRC) Report 2021** is that it may “strengthen global coordination and collaboration during global health emergencies and pandemics” (Paragraph 117).

The proponents of the treaty have so far not addressed the distinction between a global health emergency and a pandemic. There is no clarity on the usage of these terms, though WHO Director General declared COVID-19 outbreak a pandemic almost 4 weeks

later after he announced the same as Public Health Emergency of International Concern (PHEIC) under the International Health Regulations (IHR) 2005.

The IRC 2021 report records a reason as to why this second declaration was made; it has also not explained how a pandemic is distinctly understood from PHEIC. It merely says that such a pandemic declaration allowed WHO to utilize certain funds associated with WHO Pandemic Influenza Preparedness Programme (Paragraph 79). It is clear that there is no legal definition of a pandemic and also there is no shared understanding about the threshold level or legal criteria by which a PHEIC becomes a pandemic. Further, it is not clear whether the proposed treaty governs only health emergencies of pandemic potential or all health emergencies falling within the category of PHEIC.

Another confusion in the articulation by treaty proponents is the term “framework”. According to the proponents, the proposed pandemic treaty is going to be modeled as a framework convention. A framework treaty in international law sets out only the broad legal principles and the institutional mechanism to administer the treaty. Its implementation requires the translation of these broad legal principles into more concrete legal norms through the adoption of other legal instruments such as additional protocols by the Conference of Parties (COP).

This means a framework treaty is opening up a permanent negotiating forum, and may not immediately advance any new substantive law or result in an upgraded standard of health emergency response. It raises the question why Member States cannot strengthen existing mechanisms like the IHRs, which do not require any additional institutional mechanism like the Treaty Secretariat or the COP.