



Clare Wenham

Mark Eccleston-Turner

Harry Upton

December 17th, 2024

The WHO's proposed pandemic treaty raises more questions than answers

Member states of the World Health Organization (WHO) are in the process of negotiating a new pandemic treaty to help tackle future pandemics. Yet as Clare Wenham, Mark Eccleston-Turner and Harry Upton explain, it remains unclear how the treaty will integrate with existing legal instruments.

In 2021, member states of the World Health Organization (WHO) began simultaneously negotiating two overlapping (and potentially conflicting) instruments – targeted amendments to the **International Health Regulations** (IHR) and negotiating a novel instrument, the Pandemic Agreement. The Pandemic Agreement is to be a convention, agreement or other international instrument under the Constitution of the World Health Organization, intended to “strengthen pandemic prevention, preparedness and response”.

Substantively, a particular challenge has been around ensuring harmonisation between the two instruments, to ensure that they complement one another and, more importantly, do not come into conflict. This is particularly important given that the membership of these instruments is likely to be quite different – the IHR can expect *near* universal adoption by WHO member states, but this is unlikely to be the case for the Pandemic Agreement.

While the amendments to the IHR were agreed at the most recent World Health Assembly in May 2024, negotiations on the Pandemic Treaty continue in earnest, with the Intergovernmental Negotiating Body (INB) now due to complete its work “as soon as possible”. A final report on progress is expected no later than the next World Health Assembly in 2025. With the text of IHR now fixed, the negotiators have an opportunity to ensure proper harmonisation across the two instruments.

Pandemic emergencies in the Pandemic Treaty

Throughout the Pandemic Treaty negotiations, there has been sporadic reference to the notion of a “pandemic emergency”, with the first references appearing in the draft texts in June 2023. In many of these references, it appears that the determination of a pandemic emergency by the WHO Director-General (a power afforded them by the 2024 IHR) would act as a trigger for certain actions or activities to be undertaken in the context of the Pandemic Treaty.

The **March 2024 draft** contained twelve references to pandemic emergencies, spread across six articles. Some of these references related to measures designed to improve response to a pandemic-style event when it occurs, such as requiring investment in “interdisciplinary emergency health teams” capable of being deployed during a “pandemic emergency” or efforts around protecting the safety and security of healthcare workers during a pandemic emergency.

Further articles sought to place obligations upon the World Health Organization to “work towards the improvement of access to pandemic-related products, especially during pandemic emergencies, through transfer of technology and know-how, including through cooperation with relevant international organisations”.

Other articles sought to guide States Parties around best practice relating to government-funded purchase agreements for “pandemic emergency response-related products” and to strengthen their regulatory authorities and processes for the deployment of countermeasures during a pandemic emergency, including in respect of “no-fault compensation mechanisms and strategies for managing liability during pandemic emergencies”. These were all major barriers to ensuring equitable access to medical countermeasures during the COVID-19 pandemic and will likely be again in future pandemics.

Further provisions sought to ensure greater transparency around government funded research and development for medical countermeasures during a pandemic emergency, and efforts to develop “agreements promoting equitable and timely access to such products during a pandemic emergency”.

The final reference to “pandemic emergency” in the March 2024 draft related to research and development, where it noted that States Parties to the treaty shall promote “sustained investment... and support for research institutions and networks that can rapidly adapt and respond to research and development needs in the event of a pandemic emergency”. It is noteworthy that each of these references mentions the pandemic emergency explicitly, and not a “**public health emergency of international concern**”, which is referenced elsewhere as a separate trigger for certain actions under the Treaty.

However, the picture is complicated by the fact that **a revised draft of the Pandemic Agreement**, produced just a month later in April 2024, contains no references to “pandemic emergency” or “pandemic emergencies”. The implication is that in the space of one month, the negotiators

switched from having a working draft that had a clear operational link to the pandemic emergency system incorporated into the revised IHR, to a draft that seemingly abandoned this link altogether.

Remarkably, the draft text presented to the World Health Assembly in May 2024 restored the pandemic emergency language to the text of the treaty. As a result, the extent to which the new pandemic emergency mechanism in the IHR will have any legal or practical link to the new Pandemic Treaty is unclear.

The need for consistency

The removal and re-insertion of the pandemic emergency language from the Pandemic Treaty drafts creates a large amount of uncertainty about the relationship between the treaty and the newly amended IHR.

It is clear from the earlier drafts that negotiators had envisaged an important operational role for the pandemic emergency concept within the agreement, but its “overnight” removal from the text raises questions about the extent to which the declaration of a pandemic emergency will have any bearing on the operation of the Pandemic Treaty.

This uncertainty is made worse by the sudden re-appearance of the pandemic emergency language in the May draft of the treaty. Given the IHR’s status as the key international legal instrument relevant to health emergencies, it is crucial that the INB produces a draft text that has a clear relationship to the IHR and works *with* rather than against it.

Note: This article gives the views of the authors, not the position of EUROPP – European Politics and Policy or the London School of Economics. Featured image credit: [nikonka1 / Shutterstock.com](#)



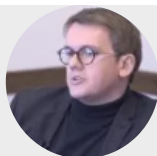
Subscribe to our newsletter

About the author



Clare Wenham

Clare Wenham is an Associate Professor of Global Health Policy in the Department of Health Policy at the London School of Economics and Political Science.



Mark Eccleston-Turner is a Senior Lecturer in Global Health Law in the Department of Global Health and Social Medicine at King's College London.



Harry Upton

Harry Upton is a PhD Candidate in the Department of Global Health and Social Medicine at King's College London.

Posted In: EU Foreign Affairs | Politics



© LSE 2025