Safeguarding the Pandemic Agreement from Disinformation

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The world’s governments set the 2024 World Health Assembly, convening May 27 to June 1, as the deadline to approve a treaty, often referred to as the Pandemic Agreement, to bolster humanity’s preparedness and response to future infectious disease threats.¹

This timeline was always ambitious, but also urgent given the likelihood of another devastating health emergency following the COVID-19 pandemic.² Matters looked grim given that just hours before the scheduled deadline of May 10, negotiators remained unable to reach consensus on many of the agreement’s core issues.³

At the eleventh hour, they agreed to add a final week of talks.⁴ Onlookers are now cautiously optimistic that a proposed treaty will be delivered in time for the World Health Assembly. Nothing less than global health security and equity is at stake.

Complicating matters has been a sustained disinformation campaign worldwide to undermine the agreement by making and amplifying spurious assertions about what it intends to accomplish and how it will do so. Central to the disinformation campaign are erroneous claims about national sovereignty and forcible takings of pandemic countermeasures. Further,
legitimate and unfounded unease concern weakened intellectual property (IP) and speech rights.

Having followed the negotiations and provided technical assistance\(^5\) to the World Health Organization’s (WHO’s) leadership over the last three years, our team is here to set the record straight.

**The Pandemic Agreement Does Not Give WHO Control Over Member State Health Policies**

One of the most pernicious and unfounded claims circulating is that the Pandemic Agreement would cede state sovereignty to the WHO. The narrative is thriving among United Kingdom parliament members aligned with the independence (UKIP) and conservative (Tory) parties and legislators in other nations\(^6\)—but the claim is categorically false.

The agreement expressly recognizes the sovereign right of member states to adopt and implement legislation within their jurisdiction.\(^7\) Nowhere in the agreement is the WHO granted the power to direct countries’ health policies, such as lockdowns, business closures, and vaccine or mask mandates. Moreover, the WHO’s constitution confines its jurisdiction to international health work,\(^8\) meaning that it cannot usurp domestic powers.

A basic rule of international law is that countries are required to consent to agreements to be bound by them.\(^9\) Moreover, countries may issue reservations and declarations as part of their ratification processes. These statements signal to the rest of the world how that nation interprets the treaty. A challenge arises when one country interprets commitments differently than another, resulting in a collapse of mutual expectation. However, the ability to issue reservations helps preserve sovereign preferences when multiple interpretations are possible.

Even if ratified, many countries may still require additional legislation for a treaty to have practical effect. For example, the U.S. Supreme Court has held that a treaty “constitutes an *international* law obligation ... but not all international law obligations automatically constitute binding federal law enforceable in United States courts” (emphasis in original).\(^10\) Instead, “only if the treaty contains stipulations which are self-executing, that is, require no legislation to make them operative” will domestic courts be required to enforce them.\(^11\)

**The Pandemic Agreement Does Not Force Countries to Hand Over Vaccines**

Nowhere in the draft agreement is the WHO given power over member states’ vaccine stocks. The UK *Telegraph* has been falsely claiming that 20% of British vaccines would be forcibly taken from the public and donated to other countries under the agreement,\(^12\) piggybacking on a damaging campaign launched by former UKIP leader Nigel Farage to stop the agreement altogether.\(^13\)

This disinformation is related to the new system for pathogen access and benefit sharing (PABS) the agreement intends to establish. What the most recent official draft actually says is
that “manufacturers that use PABS materials”—pathogen samples and sequencing information made available through the multilateral PABS system—would, in the event of a pandemic, reserve 20% of their real-time production of products like vaccines for the WHO—10% as a donation and 10% at affordable prices.\textsuperscript{14}

In other words, only manufacturers that retrieve PABS material from a WHO laboratory would be subject to the supply commitment. It is a dramatic overstatement to claim that 20% of all British vaccines would be wrenched away from the UK or any country that signed the treaty. Unfortunately, this exaggeration has resulted in a UK red line to this cornerstone component of the agreement. In fact, many low- and middle-income countries, often led by the Africa Group, feel that the treaty text does not go far enough to ensure equity.

One landing point for consensus could be that the 20% commitment could be triggered before an outbreak reaches pandemic proportions, for instance, when the WHO determines that the outbreak is a Public Health Emergency of International Concern (PHEIC) under the International Health Regulations. Even then, the provision would only apply to entities that elect to retrieve samples from the WHO.

**The Pandemic Agreement Will Not Weaken Intellectual Property Rights Protections**

Industrialized nations and the life sciences industry have expressed consistent worries that the Pandemic Agreement could undermine IP rights and pharmaceutical innovation by constraining prices or forcing technology transfer.\textsuperscript{15}

In its current form, the agreement emphasizes current international norms regarding IP, highlighting the TRIPS agreement administered by the World Trade Organization (WTO).\textsuperscript{16} Manufacturers are encouraged to adopt royalty and licensing terms during public health emergencies that would favor access, a stance that roughly aligns with industry’s position during the COVID-19 pandemic. IP affecting the PABS system is left to an additional agreement yet to be negotiated detailing how that system would operate, but nothing suggests that otherwise prevailing norms within WHO-managed or other agreements would have decreased relevance or applicability.

In any event, IP rights will continue to be governed by the WTO, not the WHO. Consistent with that, the Pandemic Agreement could urge low- and middle-income countries to exercise TRIPS flexibilities (measures under the Doha Declaration on the TRIPS Agreement and Public Health, such as compulsory licenses, that governments can use to address public health needs) during a public health emergency and high-income countries to respect TRIPS flexibilities.

**The Pandemic Agreement Does Not Encourage Censorship**

Nowhere does the draft agreement require countries to censor information. It recognizes the importance of countries “building trust and ensuring the timely sharing of information to prevent misinformation [and] disinformation...”\textsuperscript{17}
This language is purposive and emphasizes the importance of sharing accurate scientific information. Countries and communities have an interest in increasing scientific and health literacy and reversing declines in the confidence of scientific information and messages. The Pandemic Agreement requires countries to provide accurate, science-based information on pandemics and the efficacy and safety of medical products such as vaccines, an aspiration that ought to be noncontroversial and would, by implication, counter misinformation.

**The Process to Negotiate the Pandemic Agreement Has Been Legal**

Some observers have made process complaints concerning the negotiations, and in particular that the 2.5-year timeline has not been enough for deliberation and decision-making among all key stakeholders. In the final stretches of negotiations, civil society actors argue that they have been locked out of deliberations.

Whatever one’s opinions on how negotiations could have been enhanced, it is too far a stretch to conclude anything other than the process has been lawful. The WHO’s constitution authorizes the World Health Assembly to adopt conventions or agreements on “any matter within the competence of the Organization.” This clearly includes norms on the international spread of disease.

As long as WHO member states comply with the scope of these articles, they can use whichever normative tools the WHO constitution provides. It is also not unlawful or unprecedented to develop and elaborate the terms of a treaty during the period between its adoption and its entry into force. The UN Convention on the Law of the Sea, which was adopted in 1982 and entered into force in 1994 following a series of amendments, is a prominent example.

The world needs an effective pandemic agreement if people are to be protected from the vast and inequitable impacts of future pandemic threats. It is therefore valuable that news stories and public discussions about the instrument’s process, content, and intent are more accurate. The public is entitled to a better system formulated on evidence and good will.

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**DISCLAIMER:**

The authors lead the O’Neill Institute and Foundation for the National Institutes of Health (FNIH) project on an international instrument for pandemic prevention and preparedness. The FNIH provided funding to the O’Neill Institute for the project. Professor Gostin is the director of the WHO Collaborating Center on National and Global Health Law. He is also a member of the WHO Review Committee on the International Health Regulations. WHO is an intellectual non-financial partner to the FNIH-managed GeneConvene Global Collaborative. The views in this piece do not necessarily reflect the views of the O’Neill Institute or FNIH.


11 Id.


17 See Agreement Proposal, supra note 7, p. 5.
