

# The EU and the Pandemic Treaty: From Agenda-Setter to Troubled Deal-Maker

by Emanuela Bozzini and Daniela Sicurelli

In December 2021, the World Health Organization (WHO) established the International Negotiating Body (INB) to finalise an accord for a pandemic treaty. Negotiations continued for over two years but ended in a stalemate. Despite expectations to reach an agreement on the draft text before the WHO at the end of May 2024, negotiators were unable to do so. WHO Director-General Tedros Adhanom Ghebreyesus acknowledged that “while great progress was made during these negotiations, there are challenges still to overcome”.<sup>1</sup> At the time of writing, the World Health

Assembly (WHA) decided to extend negotiations for another year, but its prospects are uncertain.

The European Union reiterated its support for a global pandemic accord and declared to be “entirely committed” to finalise an agreement,<sup>2</sup> but areas for disagreement remain considerable and touch highly relevant topics like access to information on pathogens detected within countries and to crucial resources as vaccines.<sup>3</sup> Having outlined these premises, here we trace the debate around the pandemic treaty, highlighting the influence of the EU on the early stages of the negotiations, the constraints to its leading role

<sup>1</sup> WHO, *WHO Member States Agree to Share Outcomes of Historic IHR, Pandemic Agreement Processes to World Health Assembly*, 24 May 2024, <https://www.who.int/news/item/24-05-2024-who-member-states-agree-to-share-outcomes-of-historic-ihr--pandemic-agreement-processes-to-world-health-assembly>. For the proposal for the WHO pandemic agreement see: WHO Intergovernmental Negotiating Body to Draft and Negotiate a WHO Convention, Agreement, or Other International Instrument on Pandemic Prevention, Preparedness, and Response, *Report by the Director-General (A77/10)*, 27 May 2024, [https://apps.who.int/gb/ebwha/pdf\\_files/WHA77/A77\\_10-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA77/A77_10-en.pdf).

<sup>2</sup> AFP, “Pandemic Agreement Talks End without a Deal”, in *France 24*, 24 May 2024, <https://www.france24.com/en/live-news/20240524-pandemic-agreement-talks-come-to-the-crunch>.

<sup>3</sup> European Union, *Draft Resolution on Strengthening WHO Preparedness for and Response to Health Emergencies*, 30 January 2021, <http://g2h2.org/wp-content/uploads/2021/02/zero-draft-WHA74-resolution-on-strengthening-WHO.pdf>.

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in the drafting stage and what the implications looking towards future international arrangements may be.

### *The need for a revision of WHO law on pandemics*

The WHO has been strongly criticised for its handling of the Covid-19 crisis. The debate has highlighted various deficiencies in global health governance, prompting a re-evaluation of the current International Health Regulations (2005), the legal framework governing global health response.<sup>4</sup> Three main points underscored the debate on the limitations of the WHO's actions in combating global emergencies.

First, there have been heated discussions about timing. A case in point is the delays by national authorities in notifying the WHO of a potential health threat and the delays by the WHO in declaring a public health emergency of international concern (PHEIC): that is, to alert states of the emergence of "an extraordinary event which is determined to constitute a public health risk".<sup>5</sup> Analysis of events shows that the WHO is entirely dependent on national authorities for information on the emergence of concerning diseases and for monitoring their spread. Furthermore, investigations into the WHO's decision-making process reveal indecisiveness.

<sup>4</sup> Independent Panel for Pandemic Preparedness and Response, *Covid-19. Make it the Last Pandemic*, 2021, p. 16, <https://recommendations.theindependentpanel.org/main-report>.

<sup>5</sup> WHO, *International Health Regulations (2005)*, 3rd ed., 2005, <https://www.who.int/publications/i/item/9789241580496>.

Notably, the Independent Panel for Pandemic Preparedness and Response found that available data on the spread of the Covid-19 supported a PHEIC declaration at least one week earlier.<sup>6</sup>

Second, the authority of the WHO in steering state responses proved weak. Notably, most observers agree that countries did not react quickly to the PHEIC declaration. Effectively, February 2020 was "a lost month"<sup>7</sup> – a period when only Asian countries adopted specific and decisive actions to contain the virus. Later, most countries in Asia as well as in Europe introduced drastic measures, issuing restrictions that went beyond WHO recommendations. In this light, the capacity of WHO to raise attention, mobilise, coordinate, and provide guidance to national authorities has been severely limited, thus suggesting a lack of leadership.

Third, the WHO's capacity to make states comply and fulfil their legal obligations under the current International Health Regulations (IHR) is clearly limited to moral suasion and political pressure. Kutnezova reports that in 2012 – five years after the entry into force of IHR – only 20 per cent of the 192 WHO member states had fulfilled their obligations to build core capacity requirements. By 2019, the proportion of compliant states was still only 30 per cent.<sup>8</sup> Because of

<sup>6</sup> Independent Panel for Pandemic Preparedness and Response, *Covid-19*, cit.

<sup>7</sup> Ibid., p. 29.

<sup>8</sup> Lidia Kuznetsova, "COVID-19: The World Community Expects the World Health Organization to Play a Stronger Leadership and Coordination Role in Pandemics Control", in *Frontiers in Public Health*, Vol. 8 (September 2020), Article 470, p. 2, <https://doi.org/10.3389/fpubh.2020.00470>.

such deficits in implementation and the inability of the WHO to redress the situation, the overall effectiveness and preparedness of global health regime is dubious.

In sum, there were multiple failures in containing Covid-19. Lack of transparency, indecisiveness, lack of resources, and weak authority all played a role. Yet, these shortcomings should not have surprised informed observers, as deficiencies in global health regulation were largely known after the H1N1 influenza, Ebola, and Zika outbreaks. Nonetheless, proposals to reform the current IHR 2005 advanced by experts after these past crises were not followed up on,<sup>9</sup> and momentum was quickly lost, leaving global health governance unchanged. This time, the magnitude of Covid-19 and – crucially – its relevance for Western countries elicited a stronger response. In particular, the EU stepped into global health governance.

### *The agenda-setting role of the EU*

Amidst the ongoing pandemic, EU authorities began planning to take a leading role in radically restructuring global health regulations. In November 2020, the President of the European Council affirmed, “we need to go further and learn the lessons of the pandemic”.<sup>10</sup> The marginal adjustments

to IHR proposed by the United States were largely deemed insufficient to address the deficiencies in the WHO’s capacity highlighted by Covid-19.

In February 2021, the European Council issued a statement explicitly referencing the need for a “pandemic treaty” to be discussed and negotiated immediately: “We are committed to advancing global health security, including by strengthening the World Health Organization and working towards an international treaty on pandemics within its framework.”<sup>11</sup> Even though concerns emerged within EU member states, most notably Estonia and Slovakia, about the implications of a binding treaty for national sovereignty, the EU was able to act as a unitary player in the INB and promote a common position. The EU officially called for ambitious reforms, driven by a strong commitment to multilateralism. Among the main priorities were (i) adopting a Pandemic Framework Convention within six months, (ii) strengthening WHO’s power and competencies, (iii) guaranteeing its financial independence, (iv) creating a Global Health Threats Council to monitor progress in preparedness and hold states accountable for their actions in preventing and containing health threats, and (v) adopting a One Health strategy to strengthen a holistic approach to health. The EU also suggested significantly empowering the independent monitoring capacity of the WHO, notably by providing “WHO officials and WHO-led international

<sup>9</sup> Sara E. Davies, Adam Kamradt-Scott and Simon Rushton, *Disease Diplomacy. International Norms and Global Health Security*, Baltimore, Johns Hopkins University Press, 2015.

<sup>10</sup> European Council, “Towards a World Better Prepared for Shocks”. Speech by President Charles Michel at the Paris Peace Forum, 12 November 2020, <https://europa.eu/!RU48CT>.

<sup>11</sup> European Council, *Statement of the Members of the European Council on COVID-19 and Health*, 25 February 2021, point 10, <https://europa.eu/!NK74pB>.

expert teams with support and rapid access to outbreak areas to facilitate independent investigation and assessment of outbreaks and potential health emergencies".<sup>12</sup> In short, the proposal is very ambitious and touches on sensitive areas linked to national sovereignty.

Initially, reactions were encouraging. A group of 23 states endorsed a letter of support for the EU plan, and the World Health Assembly held in May 2021 was devoted to "Ending this pandemic, preventing the next: building together a healthier, safer and fairer world." Overall, the EU was successful in setting the agenda and focusing the discussion on the need for a new international instrument at the centre of the debate.

### *Challenges to the EU leadership on the final deal*

Despite the fact that the EU had a relevant role in setting the agenda of the negotiations and was able to act as a unitary actor throughout the talks, however, it did not prove able to play a decisive role in the subsequent drafting stage of the agreement.

The end of the emergency phase of the Covid-19 outbreak certainly did not create a supportive environment for the EU-sponsored deal. It watered down the sense of urgency that was tangible in the early stages of the pandemics, and closed the window of opportunity opened by the Covid-19 for the conclusion of a multilateral deal aimed at preventing future global

health crises. The changed geopolitical context further contributed to shift the attention of the main international players. The explosion of the Russia-Ukraine (2022) and Israel-Palestine (2023) crises raised other major challenges to international cooperation in the agenda of UN bodies and ended up emphasising global polarisation.

The negotiations in the INB, in turn, highlighted the existence of crystallised cleavages between groups of negotiators. A first set of divisions emerged between emerging economies and countries belonging to the Global North. Since the early stage of the negotiations, the People's Republic of *China and Russia* have opposed EU proposals concerning enhanced sharing of information and monitoring.<sup>13</sup> Secondly, the block of Western countries was divided. The position of the EU found resistance in the *United Kingdom* and in the *United States*. The prime minister of the United Kingdom, Rishi Sunak in 2022 expressed scepticism on the effectiveness of a pandemic treaty.<sup>14</sup> He further strengthened the UK's opposition to the treaty in 2024, when he warned that the accord threatens national sovereignty by potentially subjecting the country to international regulations without sufficient oversight by democratic lawmakers. Moreover, despite President Joe

<sup>12</sup> European Union, *Draft Resolution on Strengthening WHO Preparedness*, cit., p. 6.

<sup>13</sup> Ashleigh Furlong, "China, Russia Resist Increased Scrutiny of Pandemic Response", in *Politico*, 27 April 2021, <https://www.politico.eu/?p=1687965>.

<sup>14</sup> Antony Froggatt et al., "What Are the Priorities for the New UK Prime Minister?", in *Chatham House Expert Comments*, 24 October 2022, <https://www.chathamhouse.org/node/29836>.



Biden's declarations in favour of the conclusion of the treaty, Republican Congressmen echoed Rishi Sunak's concerns. The Republican chair of the US Oversight and Accountability Select Subcommittee on the Coronavirus Pandemic even commented that "The Covid-19 pandemic showed us that the WHO is not the preeminent global health institution that perhaps it once was".<sup>15</sup> The decision of the Biden administration in April 2024 to seal a new partnership with 50 countries, mostly in Africa and Asia, aimed at identifying and responding to infectious diseases and preventing pandemics<sup>16</sup> seems to confirm the scepticism of the US administration about the likelihood that the Senate will ever ratify a binding multilateral treaty.

Furthermore, a clear North-South divide emerged in the negotiations, with delegates from the *Global South* particularly concerned about the need for the treaty to ensure equitable access to vaccines and medical supplies. On the one hand, the group condemned the Europe-first policy of the EU member states during the pandemics, and criticised them for their practices of hoarding vaccines, prioritising its own population over the needs of developing countries, implementing export controls on vaccines produced within its borders, further limiting the ability of developing countries to access

these crucial supplies.<sup>17</sup> Accusations of vaccine nationalism from the EU due to the way its member states dealt with the pandemics certainly did not help in its attempt to emerge as a credible promoter of an agreement based upon the norm of equity in the negotiations. On the other hand, the group criticised the positions of the EU as well as other high-income countries, on intellectual property rights, technology transfer, and their commitment to financially strengthening low-income countries' health systems.

In light of these constraints, the counter-proposal of the US to amend existing international health regulations to make them fit to potential new pandemics rather negotiating a multilateral deal from scratch appeared less costly from a political point of view. On 1 June 2024, the World Health Assembly reached a deal on a decisive package of amendments to improve the WHO International Health Regulations. The deal, in the words of the WHO, amounts to a "historic development" in the fight against pandemics.<sup>18</sup> Whether

<sup>15</sup> Ariel Cohen, "GOP Lawmakers Argue Pandemic Treaty Threatens US Sovereignty", in *Roll Call*, 5 February 2024, <https://rollcall.com/?p=740810>.

<sup>16</sup> Amanda Seitz, "Biden Administration Announces New Partnership with 50 Countries to Stifle Future Pandemics", in *AP News*, 16 April 2024, <https://apnews.com/article/11571e564eda19f091bdad50d367cbcd>.

<sup>17</sup> Yanqiu Rachel Zhou, "Vaccine Nationalism: Contested Relationships Between COVID-19 and Globalization", in Kevin Gray and Barry K. Gills (eds), *Post-Covid Transformations*, London/New York, Routledge, 2022, p. 82-97, <https://doi.org/10.4324/9781003330752-7>; David C. Horng, "The EU's Vaccine Diplomacy in the WHO", in *European Foreign Affairs Review*, Vol. 29, No. 1 (2024), p. 35-66, DOI 10.54648/eerr2024003.

<sup>18</sup> WHO, *World Health Assembly Agreement Reached on Wide-Ranging, Decisive Package of Amendments to Improve the International Health Regulations and Sets Date for Finalizing Negotiations on a Proposed Pandemic Agreement*, 1 June 2024, <https://www.who.int/news/item/01-06-2024-world-health-assembly-agreement-reached-on-wide-ranging--decisive-package-of-amendments-to-improve-the-international-health-regulations--and-sets-date-for-finalizing-negotiations-on-a>

such a deal will be complemented by another historic agreement, in the shape of a pandemic treaty, is still an open question.

As we show in a recent study on the EU's role in the pandemic treaty negotiations,<sup>19</sup> while the ambition of the EU to emerge as a champion of multilateralism could appear credible in the late 1990s, the unfavourable geopolitical context of the 2020s and the deepening divisions within the UN represent powerful constraints to the conclusion of binding multilateral agreements. The cleavages emerging in the INB closely resemble the divisions that, since the early 2000s, have hindered the consensus on an ambitious and effective multilateral deal on climate change. In the negotiations for the pandemic treaty, as well as in the climate talks, incompatible visions of sovereignty and equity have dominated the debate. In both cases, the EU's preference for treaty-based solutions to global problems appears arguably ill-suited to the reality of global politics.

### Looking ahead

Negotiations for a pandemic treaty are still not over. The World Health Assembly on 1 June 2024 made "concrete commitments to completing negotiations on a global pandemic agreement within a year, at the latest".<sup>20</sup>

proposed-pandemic-agreement.

<sup>19</sup> Emanuela Bozzini and Daniela Sicurelli, "Oops! ... EU Did It Again! The EU's Preference for Global Treaties vis-a-vis the Reality of WHO Politics", in *The International Spectator*, Vol. 59, No. 2 (June 2024), p. 112-126, DOI 10.1080/03932729.2023.2263350.

<sup>20</sup> WHO, *World Health Assembly Agreement Reached*, cit.

The outcome of these negotiations will be crucial in determining the future landscape of international cooperation in pandemic preparedness and response and the role of the EU in global health governance. By now, the resistance encountered by the European Union in the present geopolitical context indicates that it will struggle in its attempt to emerge as a deal-maker in the future rounds of the negotiations.

In this respect, the EU should adopt a communication strategy able to build global awareness of the urgency of a multilateral deal. It should frame the recent successful revision of the international health regulations as an incentive, rather than an obstacle, for the conclusion of a complementary global agreement. In order to build an agreement on pathogens information-sharing, the EU needs to provide an operational solution to the need of the countries of the Global South to have access to vaccines and medicines, namely clear conditions for technology transfer and financial commitments. Such a solution necessarily needs to be a compromise between the calls of developing countries for binding commitments and the strong preference of the global North and multinational companies for voluntary ones. In conclusion, the outcome of the talks is expected to be a key test of the capacity of the EU to assert itself as a leader in global health multilateralism.

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