insights

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# Building the Ship while Sailing: The Unexpected Journey to a New WHO Pandemic Agreement

## Introduction

On May 20, 2025, the 78th World Health Assembly adopted the world's first Pandemic Agreement.[1] The Agreement marks only the second time in the World Health Organization's (WHO) history that the Health Assembly has used its classical treatymaking authorities under Article 19 of the WHO Constitution. Culminating more than three years of negotiation in the state-led Intergovernmental Negotiating Body (INB), the Agreement aims to "prevent, prepare for, and respond to pandemics," guided by high-level principles such as equity, solidarity, human rights, sovereignty and scientific knowledge.[2]

Realizing the potential of the Agreement, however, is likely several years away. Opening the Agreement for signing hinges on the adoption of an Annex that details a multilateral system for Pathogen Access and Benefit-Sharing (PABS).[3] PABS refers to the provision of access to pathogen samples and genetic sequence information and the equitable sharing of benefits that arise from their use (including, e.g., diagnostics, vaccines, or treatments), between countries, laboratories, and companies. The system aims to address long-standing global inequities in how pathogen-derived knowledge and products are shared, especially during health emergencies. The Agreement can only enter into force thereafter and once it is ratified by at least 60 states.[4]

This *Insight* recaps key normative innovations in the adopted Pandemic Agreement. It also describes the legal architecture of the instrument, including as it relates to the PABS

Annex and the work ahead in moving from consensus text to active commitments. Operational efforts to prevent and prepare for future pandemics must continue, even as new international commitments are being forged. In this respect, the making of the Pandemic Agreement is not unlike building a ship as it is sailing.

**Negotiating Ambition and Ambiguity in the Adopted Pandemic Agreement**

First launched in a special session of the Health Assembly in 2021,[5] it took thirteen rounds of formal negotiation, numerous informal consultations, as well as extended, late-night, and 24-hour sessions to finalize the text of the Agreement. With financial support for global public health receding dramatically in recent months, directly and indirectly from the United States' planned withdrawal from WHO,[6] the adoption of a legally binding global framework on pandemics has been heralded as proof that multilateralism still functions.[7] The feat is especially noteworthy when considering it took nearly a decade to reach consensus on WHO's only other opt-in treaty, the Framework Convention on Tobacco Control (FCTC).[8] Legally binding obligations in global health are rare, and under the auspices of WHO, rarer still.

Structurally, the Agreement spans 35 articles and is parsed into three chapters, with the first chapter setting high-level objectives and principles, some of which have been codified for the first time in a legally binding instrument of global health security, such as equity and solidarity.[9] In its second chapter, the Agreement addresses a broad array of new pandemic-related issues, including prevention and One Health, health system resilience and primary care, the health and care workforce, communication and public awareness, sustainable financing, and whole-of-society and whole-of-government approaches to pandemics. Chapter 2 also sets obligations relating to the life cycle of pandemic-related health products, such as regulatory systems for authorization and approval, as well as obligations relating to research and development, local production, procurement and distribution, licensing, transfer of technology and know-how, supply chains, and PABS. The final chapter of the instrument deals with "institutional arrangements and final provisions."

As with most other treaty negotiations, many provisions have been watered down from the ambitions of earlier drafts. The adopted text of the instrument is peppered with

couched and hortatory language, limiting enforceability, and clauses that defer legal obligations to local resources, contexts, and laws. On technology transfer, for instance, the term "mutually agreed" was vehemently debated in the final hours of negotiations,[10] with some European states pushing for the qualifying addition of "voluntary" and several Global South countries concerned that atypical additional language could undermine existing rights, such as compulsory licensing under the TRIPS Agreement (the WTO-administered treaty that governs trade-related aspects of intellectual property rights). This resulted in a footnote defining the term as "willingly undertaken and on mutually agreed terms, without prejudice to the rights and obligations of the Parties under other international agreements."[11]

Overall, many commitments in the Pandemic Agreement amount to legally binding obligations of the softer and aspirational variety.[12] This is a common feature of norms in global health law. However, soft commitments can prove just as—if not more—influential than firm ones.[13] For comparison, the FCTC is similarly characterized by tentative language but has given rise to and been shaped by a robust community of practice that has mobilized in response to the harms of tobacco consumption.[14]

**Legal Architecture of the Pandemic Agreement**

The legal architecture of the Agreement prescribes, *inter alia*, the conditions under which it can open for signature and ratification, how the instrument interacts with other international legal agreements, and when it may enter into force. Beyond these conditionalities, key points of governance require further development, including arrangements for the Conference of the Parties (COP),[15] and linkages between the Pandemic Agreement and the International Health Regulations (IHR), as amended in 2024.[16] For over a century, the IHR (and its precursor agreements) was the only legally binding instrument that expressly required countries to cooperate to prevent, detect, and respond to public health risks that have the potential for international spread.

At a minimum, the Pandemic Agreement provides a basis on which future normative commitments may develop. While the work of the INB is now complete, operationalization of the Pandemic Agreement hinges on the adoption of the PABS Annex, described by a senior WHO official as the "engine house" of the Agreement.[17] Negotiations on the Annex

will take place in the open-ended Intergovernmental Working Group on the WHO Pandemic Agreement (IGWG) with the outcome of IGWG's work to be considered at the 79th Health Assembly in May 2026.

The IGWG has already begun its work: the first session was held 9-10 July 2025. With only nine months left to negotiate the PABS Annex, forthcoming meetings of the IGWG will invite initial textual proposals (August 10) and develop an outline of elements to be addressed by the Annex (September 15-19). IGWG negotiations will continue thereafter until agreement is reached on the Annex, with sessions planned up until March 2026.[18]

Skeptics may argue that the Annex negotiation timeline is unrealistic for an issue as complex and contentious as PABS. For comparison it took more than four years to negotiate a non-binding Pandemic Influenza Preparedness Framework—the only access and benefit-sharing mechanism currently under WHO's auspices.[19] On the other hand, while detailed provisions of the PABS System have been punted to an Annex, several core contentious issues were already resolved in the PABS articles of the main text, such as the participating manufacturers' set-aside of 20 percent of real-time production of pandemic-related products during a pandemic emergency.[20] Arguably, the time spent negotiating PABS in INB sessions provides a runway for states to reach consensus later on.

Conditioning the signature of the Pandemic Agreement on a PABS Annex also reflects the geopolitical fault lines that overshadowed negotiations. These fault lines are the predictable outcome of gross inequities in access to medical countermeasures that marred a solidaristic global response to COVID-19. A vast chasm exists between countries with strong health sectors and health product research and manufacturing capacity, and those that depend on the charity of such countries.[21] Bridging this chasm is not simply a question of redistribution, but one of restructuring and acknowledging long histories of exploitation and extraction. In this context, PABS is seen by many countries in the Global South as crucial to changing the course of systemic injustices.[22]

As noted, states will also have to determine how the new Pandemic Agreement will interact with the IHR. Amendments to the IHR were made in parallel to the Pandemic Agreement negotiations.[23] Indeed, several provisions of the Pandemic Agreement make

direct reference to shared norms in the IHR, such as the determination of a “pandemic emergency” and a “public health emergency of international concern.” While the primary mandate of the IGWG will be to finalize the PABS Annex, it is also tasked with developing the terms of reference and governance modalities for a Coordinating Financial Mechanism, prescribed under both Article 18 of the Pandemic Agreement and Article 44bis of the IHR. This work serves as an example of how the legal architecture of the two instruments will need to work together, with the IGWG timeline foreseeing close collaboration with the newly established States Parties Committee for the Implementation of the International Health Regulations, after the IHR’s entry into force on September 19, 2025.[24]

In keeping with the past practice of most other framework conventions, the implementation of the Pandemic Agreement will be overseen by its governing body, the COP. The first session of the COP will be convened no later than a year from the entry into force of the instrument.[25] The IGWG is additionally tasked with preparatory work for the COP, including developing its rules of procedure, financial rules, and potential budget. Within these decisions is the future of the COP and the Agreement to shape norms, build trust, and realize a more equitable and secure future.

## Conclusion

While there is work left to realize the promises of the Pandemic Agreement and it is unclear how the coming months will unfold, developments are historic and merit close attention by ASIL and the broader international law community. The Pandemic Agreement and its governance arrangements have the potential to convene a rich and interdisciplinary community of practice, consisting of policymakers and diplomats, health professionals, scientists, civil society, commercial entities, across the human, animal, and environmental health sectors. Indeed, INB negotiations have already gone some way towards fostering such a community. Fundamentally, however, resources—and not law—may be the biggest impediment to implementation. The Health Assembly has placed unprecedented confidence in the normative potential of WHO, even as the Organization faces historic funding shortfalls. Only the collective efforts of WHO’s Member States can ensure that the world builds a resilient framework capable of making the world safer from future pandemics.

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[1] World Health Organization (WHO), *WHO Pandemic Agreement*, Annex, WHA Res. 78.1 (May 20, 2025) [hereinafter WHO PA].
[2] *Id.* Art. 2(1).
[3] *Id.* Art. 12(2) and art 31.
[4] *Id* art. 33.
[5] WHO, *The World Together: Establishment of an Intergovernmental Negotiating Body to Strengthen Pandemic Prevention, Preparedness and Response*, Decision SSA2(5), Second Special Session of the World Health Assembly, Nov. 29–Dec. 1, 2021.
[6] Matthew M. Kavanagh, WHO Withdrawal Could Be a Disaster—or an Opportunity, FOREIGN POL'Y (Jan. 24, 2025), https://foreignpolicy.com/2025/01/23/trump-us-who-withdrawal-global-health/.
[7] WHO, *World Health Assembly Adopts Historic Pandemic Agreement to Make the World More Equitable and Safer from Future Pandemics* (May 20, 2025), https://www.who.int/news/item/20-05-2025-world-health-assembly-adopts-historic-pandemic-agreement-to-make-the-world-more-equitable-and-safer-from-future-pandemics.
[8] WHO, History of the World Health Organization Framework Convention on Tobacco Control (2009), https://iris.who.int/bitstream/handle/10665/44244/9789241563925_eng.pdf?sequence=1.
[9] WHO PA, *supra* note 1, arts. 3(4) & (5).
[10] Kerry Cullinan, Will Pandemic Agreement Be Thwarted By A Handful Of Words? *Health Pol'y Watch* (April 2, 2025), https://healthpolicy-watch.news/will-pandemic-agreement-be-thwarted-by-a-handful-of-words/.
[11] WHO PA, supra note 1, art 4(5).
[12] Kenneth W. Abbott & Duncan Snidal, Hard and Soft Law in International Governance, 54 INT'L ORG. 421 (2000).

[13] *See, e.g.*, Sharifah Sekalala & Roojin Habibi, *Global Health Law: Legal Frameworks to Advance Global Health, in* GLOBAL HEALTH LAW AND POLICY: ENSURING JUSTICE FOR A HEALTHIER WORLD 39 (Lawrence O. Gostin & Benjamin M. Meier eds., 2023).
[14] Kashish Aneja, From Words to Action: Making the Pandemic Agreement Work, *Bill of Health* (July. 7, 2025), https://petrieflom.law.harvard.edu/2025/07/07/from-words-to-action-making-the-pandemic-agreement-work/.
[15] WHO PA, *supra* note 1 at art. 19.
[16] WHO, *International Health Regulations (2005)*, as amended by WHA Res. 77.17, Annex, A/77/A/CONF./14 (2024) [hereinafter IHR (2024)].
[17] Kerry Cullinan, New Body Adopts Intense Timetable For Final Pandemic Agreement Talks, *Health Pol'y Watch* (July 11, 2025), https://healthpolicy-watch.news/new-body-adopts-intense-timetable-for-final-pandemic-agreement-talks/. Under the WHO PA, annexes are considered "integral" parts of the Agreement, unless otherwise expressly provided. *See* WHO PA, arts. 28-29.
[18] *Timeline and deliverables of the open-ended Intergovernmental Working Group*, A/IGWG/1/3 Rev. (World Health Organization, July 17, 2025).
[19] David P. Fidler & Lawrence O. Gostin, The WHO Pandemic Influenza Preparedness Framework: A Milestone in Global Governance for Health, 306 JAMA 200 (2011), http://jama.jamanetwork.com/article.aspx?doi=10.1001/jama.2011.960.
[20] WHO PA, *supra* note 1, art. 12(6)(a)
[21] Greta Cranston, Understanding the Expectations, Positions and Ambitions of LMICs during Pandemic Treaty Negotiations, and the Factors Contributing to Them, 5 PLOS GLOB. PUBLIC HEALTH e0003851 (2025).
[22] Third World Network, WHO: Pandemic Agreement Adopted by Vote; All Eyes on PABS Annex, *Third World Network* (May 21, 2025), https://www.twn.my/title2/health.info/2025/hi250505.htm.
[23] Alexandra L. Phelan & Lawrence O. Gostin, *The International Health Regulations (Fourth Edition): Advancing Security, Solidarity, and Equity for a Safer and Fairer World*, 56 GEO. J. INT'L L. 385 (2025).
[24] IHR (2024), *supra* note 16, art. 54bis.
[25] WHO PA, *supra* note 1, art. 19(3).