



GLOBAL HEALTH CENTRE | 2023

**IMPLEMENTATION AND COMPLIANCE IN
INTERNATIONAL LAW:
IMPLICATIONS FOR PANDEMIC RULEMAKING**

WORKSHOP SERIES REPORT

**GENEVA
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This publication was developed as the outcome of the workshop *“Implementation and Compliance in International Law: Implications for Pandemic Rulemaking,”* which took place on 6 July 2023 at the Geneva Graduate Institute.

Co-convenors of the workshop: European Union, Government of India, International Geneva Global Health Platform, Global Health Centre at the Geneva Graduate Institute.

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EXECUTIVE SUMMARY

The workshop “Implementation and Compliance in International Law: Implications for Pandemic Rulemaking” took place on 6 July 2023 at the Geneva Graduate Institute in a hybrid format. Building on a discussion paper entitled “Implementation and compliance in international law: implications for pandemic rulemaking”, the workshop sought to provide members of Geneva-based permanent missions, and government officials from capitals, with theoretical and practical tools for approaching implementation and compliance mechanisms. Both the discussion paper and the workshop are oriented in view of ongoing negotiations of a *WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response* (hereafter, *WHO CA+* for brevity) and the proposed amendments to the *International Health Regulations (IHR)* (hereafter, *IHR amendments*).

In the first session (‘Outcomes: Session 1’), Gian Luca Burci and Carmen Dolea laid the groundwork for the workshop. Gian Luca Burci provided an overview of current proposals concerning implementation and compliance mechanisms in the *Bureau’s text* of the *WHO CA+* and in the *IHR proposed amendments*. Carmen Dolea presented existing implementation and compliance mechanisms under the *IHR* and summarized key issues in ongoing discussions. In the second session (‘Outcomes: Session 2’), Fuad Zarbiyev provided an introduction to theories of compliance in international law. The presentations were followed by a panel discussion focused on comparative analysis of implementation and compliance mechanisms across three international regimes. Stefania Di Stefano provided insights from the human rights regime; Sophie Meingast from the anti-corruption regime, and Elena Cima from the international environmental law (IEL) regime.

Speakers agreed on the importance of dialogical and facilitative, rather than punitive, compliance and implementation mechanisms, the linking of compliance mechanisms with the provision of financial and technical assistance required to meet obligations, and the need to harmonize implementation and compliance mechanisms across the *WHO CA+* and the revised *IHR* in order to avoid reporting fatigue. Speakers highlighted the breadth of options for implementation and compliance mechanisms (e.g. self-reporting, peer-review, expert committees, and compliance committees) and emphasized the need for multiple, interacting options rather than one-size-fits-all solutions.

THE WORKSHOP: IMPLEMENTATION AND COMPLIANCE IN INTERNATIONAL LAW: IMPLICATIONS FOR PANDEMIC RULEMAKING

INTRODUCTION

Implementation and compliance mechanisms are a vital part of international law. However, the exact functioning of such mechanisms can differ depending on the needs and objectives of a specific international legal regime.

The workshop offered a comprehensive overview and assessment of implementation and compliance mechanisms across different international regimes and the lessons that can be drawn from them within the context of the ongoing negotiations of the *WHO CA+* and the *IHR amendments*. By way of comparative analysis, the workshop aimed to provide the participants with a breakdown of ingredients that can be employed to establish an effective implementation and compliance mechanism.

OUTCOMES: SESSION 1

PRESENTATION: CURRENT PROPOSALS IN THE BUREAU'S TEXT AND THE PROPOSED AMENDMENTS TO THE INTERNATIONAL HEALTH REGULATIONS (IHR)

By Gian Luca Burci, Global Health Center, Geneva Graduate Institute

The opening session provided an overview of implementation and compliance mechanisms proposed in both the *Bureau's text* and the *IHR amendments*. Professor Burci emphasized the increased attention to implementation and compliance mechanisms in the context of ongoing negotiations.

Implementation and compliance proposals in the *Bureau's text* appear in four draft articles in particular: Articles 8, 20, 21, and 22. Article 8 on preparedness monitoring and functional reviews deals most substantively with reviews and contains two alternative proposals: 1) a universal preparedness peer-review mechanism, which leverages existing monitoring and evaluation tools and 2) the Universal Health and Preparedness Review (UHPR) whose pilot phase was announced by the WHO Director General in November 2020. Oriented towards institutional governance, Article 20 proposes to integrate the Conference of the Parties (COP) of the *WHO CA+* within the structure of the World Health Assembly (WHA) as a hypothetical third committee. Article 21 on periodic reporting to the COP requests specific reporting on constraints or difficulties encountered in the implementation of the *WHO CA+* and implementation support received under the *WHO CA+*. Finally, Article 22 proposes the establishment of an Implementation and Compliance Committee as a COP subsidiary body, without providing details on the role of experts and the nature of this committee. The prevailing orientation leans towards a facilitative approach, prioritizing collaboration over antagonism. This approach takes into account national capacities, addresses systemic problems within the instrument's operation, and promotes synergy with parallel mechanisms under the *IHR amendments*.

In the proposed amendments to the IHR, draft Articles 5, 11, 43, 53A, 53 bis-quater, and 54 bis have bearing on implementation and compliance. Article 5 on surveillance proposes a periodic review of core capacities through the UHPR. Article 11 would allow the Director General of the WHO to provide information to Member States, including on non-verification of information, as a form of alerting the membership on potential issues with compliance. Article 43 on Additional Health Measures/National Health Measures contains a proposal to report to a new implementation committee on the implementation of the Emergency Committee recommendations. The *IHR amendments* contain three alternative approaches to review. Article 53A proposes an Implementation Committee and peer-review, focusing on facilitative and supportive functions. Article 53 bis-quater proposes an expert Compliance Committee with a mix of facilitative functions and verification in instances of non-compliance. Article 54 bis proposes that implementation and compliance is conducted in the WHA, through a biennial review and a facilitative approach.

Burci drew out several key patterns in ongoing negotiations around compliance and implementation. Firstly, there is a notable inclination towards either a peer-review mechanism (Article 8 *Bureau's text* / Articles 5, 53A and 54 bis *IHR amendments*) or an expert-review

approach (Article 22 *Bureau's text* / Article 53 bis-quater *IHR amendments*). The latter approach bears resemblance to the monitoring system established within the Human Rights regime. Secondly, a specific focus is articulated around preparedness and the development of core capacities, requiring a dedicated review process (Article 8 *Bureau's text* / Article 5 *IHR amendments*). Thirdly, there is a marked interest in avoiding fragmentation, redundancy, and reporting fatigue by fostering linkages to existing tools (Article 8 *Bureau's text* / Article 53A *IHR amendments*) and coordination with new or existing IHR mechanisms (Article 22 *Bureau's text*). Fourthly, proposals seek to integrate functions within the WHA as part of WHO's governance in lieu of creating new bodies (Article 22 *Bureau's text* / Article 54 bis *IHR amendments*). Furthermore, the proposals exhibit a widespread emphasis on facilitation and open dialogue (Article 22 *Bureau's text* / Article 54 bis *IHR amendments*), with detection of instances of non-compliance emphasized only in Article 54bis-quater of the *IHR amendments*. Lastly, there is emphasis on self-reporting (Article 21 *Bureau's text* / Article 54 bis *IHR amendments*) as well as reporting serving as a means to induce compliance (Articles 11 and 43 *IHR amendments*).

PRESENTATION: EXISTING ARRANGEMENTS WITHIN THE IHR

By Carmen Dolea, Unit Head IHR Secretariat, WHO Health Emergencies Program

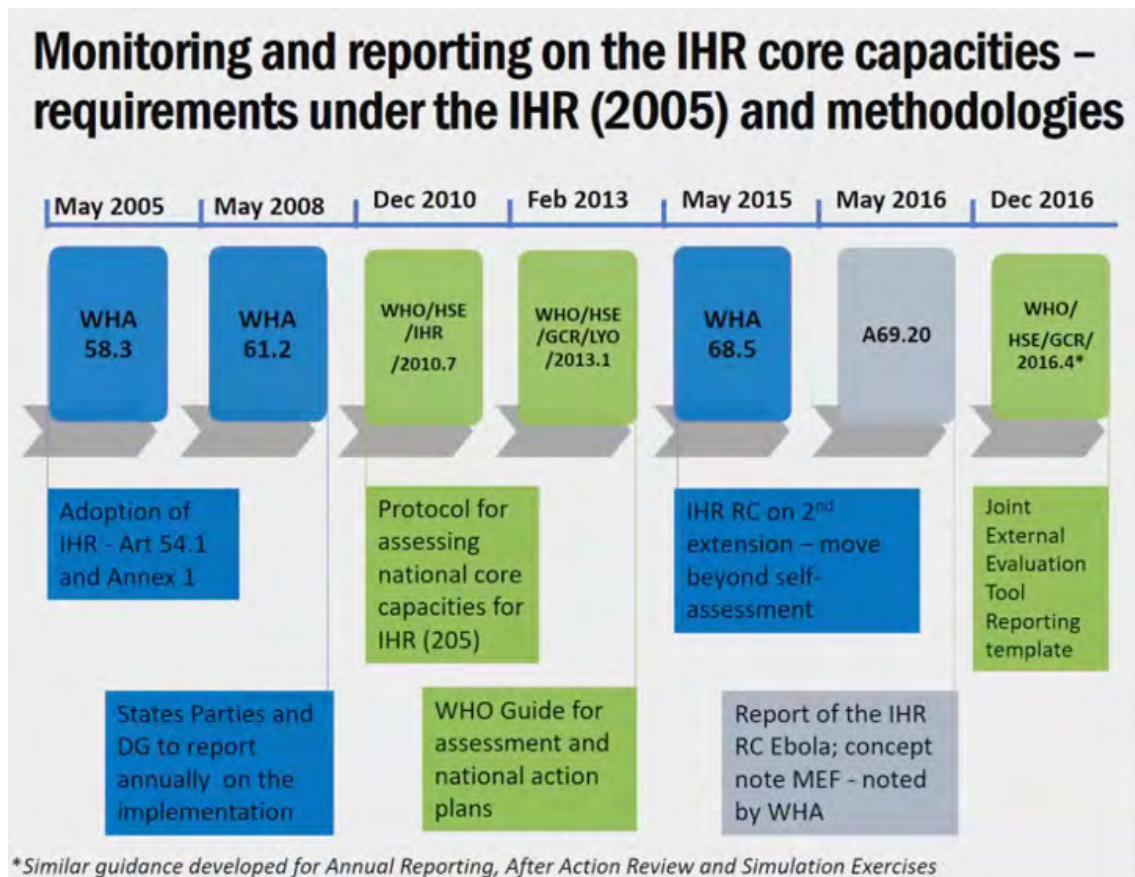
Carmen Dolea provided an overview of WHO's monitoring and reporting mandate, the history of its implementation, its current gaps, and core elements of new proposals under discussion. The WHO's mandate for reporting has evolved over time as evidenced by agreements related to the IHR reached by Member States between 2005 and 2016.

With the adoption of the IHR (2005), Article 54.1 confers to the WHA the decisional power on reporting mechanisms. In accordance with the [WHA Resolution 61.2 \(May 2008\)](#), both Member States and the Director General shall report to the WHA annually on the implementation of the IHR (2005). WHO has developed guidance, documentation, tools and mechanisms for Member States to report, including the Protocol for Assessing National Core Capacities for IHR (2005) (WHO/HSE/IHR/2010.7) and the WHO Guide for Assessment and National Action Plans (WHO/HSE/GCR/LYO/2013.1). Subsequently, in 2015, the Recommendations of the Review Committee on Second Extensions for Establishing National Public Health Capacities and on IHR Implementation (WHA 68.5) considered a need to move beyond self-assessment on core capacities in the State Parties Annual Report (SPAR). Furthermore, the *Review Committee on the Role of the International Health Regulations (2005) in the Ebola Outbreak and Response* (A69.20) in 2016 further mentioned WHO's *Concept Note on the Monitoring and Evaluation Framework*. WHO began exploring additional tools that extend beyond self-assessment reporting in SPAR, including the Joint External Evaluation Tool (JEET) ([WHO/HSE/GCR/2016.4](#)) and the *IHR Monitoring and Evaluation Framework* (IHR MEF). The IHR MEF now includes quantitative assessment through the SPAR and three more voluntary qualitative assessments through JEET and intra-action reviews and simulation exercises.

Following deliberations and consensus among Member States regarding reporting under the IHR, WHO publishes an Annual Report on the IHR Implementation during each WHA. This report contains aggregated data on specific obligations under the IHR, including:

- Contact details of National Focal Points (Article 4)
- Number of events notified to WHO or verification requests responded to by WHO (Articles 5-11)
- Public Health Emergencies of International Concern (PHEICs) declared and Emergency Committee meetings held (Articles 12-14)
- Country requirements for yellow fever vaccines

- Secretariat technical support for IHR implementation including regional report and review committee reports, if any.



Key issues raised by the speaker include that:

- Articles related to temporary recommendations are a critical area as they are defined under the IHR as WHO non-binding advice even as they are included in a binding instrument. Assessing compliance of Member States with temporary recommendations following PHEIC continues to be an issue.
- Reporting on Additional Health Measures takes place in the WHO's Event Information Site (EIS) rather than in the Annual Report.
- Although the bulk of the IHR is on monitoring core capacities, mentioned in Annex 1 and Article 5 of the IHR (2005), this is not reflected in detail in the Annual Report but published on a dedicated website.

Furthermore, several Review Committees have highlighted the absence of a distinct mechanism within the IHR to comprehensively monitor compliance across *all* obligations rather than solely focusing on core capacities. The assessments seem to be static overviews and unidirectional from Member States to WHO without a feedback loop or mechanism for WHO to understand the received reports and help or improve responses capacities. There is a lack of clarity of what WHO can do with Additional Health Measures that go beyond WHO's recommendations, other than informing and assessing the public health rationale of these measures.

Discussing the core elements of the proposals currently under discussion, both proposals contain main governance bodies, either an Implementation Committee comprising all Member States or the World Health Assembly itself as the main overarching governing body. They also include an operational body, either a bureau made up of two members from each WHO region in one of the proposals or an Implementation Committee as a subsidiary expert body of the WHA. There is significant overlap in the function of these operational bodies. Some proposals have additional functions of coordination with WHO, supporting Member States and promoting compliance, though the details of how compliance should be promoted are still unclear.

OUTCOMES: SESSION 2

PRESENTATION: WHY DO STATES COMPLY WITH INTERNATIONAL LAW? AN INTRODUCTION TO THEORIES OF COMPLIANCE

By Fuad Zarbiyev, Associate Professor of International Law, Geneva Graduate Institute

Fuad Zarbiyev provided an overview of theories of compliance under international law. Zarbiyev defines compliance as the correspondence between rules and behavior. Unlike States, international law lacks a centralized enforcement mechanism to secure compliance when the need arises. Three theories in international law serve to elucidate why States comply with international law even in the absence of enforcement measures: rational choice theory, the managerial approach, and social constructivism (or socialization).

Rational choice theory, the prevailing perspective, posits that States are driven by inherent rational self-interest to comply with international law, which includes factors such as material incentives and cost and benefit analysis to non-compliance. The three 'Rs' of compliance – Reputation, Reciprocity and Retaliation – influence State's self-interest for compliance.

The **managerial approach** assumes that international law is predominantly adhered to, with instances of non-compliance stemming mostly from lack of capacities or structural issues (such as ambiguity or lack of clarity in the obligations) rather than from a lack of intent or ill will on the part of state actors. This perspective finds reinforcement in that States themselves actively and consensually engage in the negotiation of treaties and instruments with which they are expected to comply.

Social constructivism (or socialization) emphasizes how state interests are constantly shaped and formed (rather than pre-given) in social interaction and influenced by the surrounding culture.

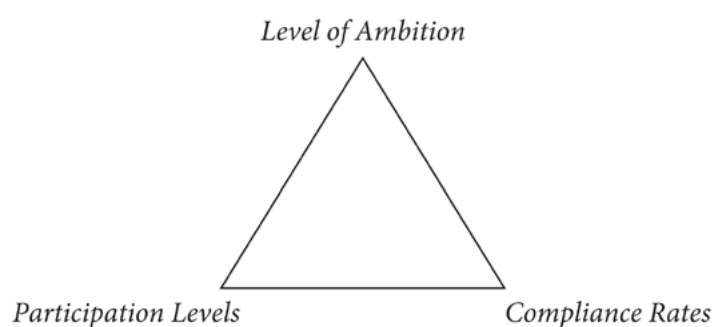
Zarbiyev questioned prevailing notions that courts, or court-like mechanisms, are ideal avenues for compliance and that self-reporting and peer-reviews are inadequate mechanisms of compliance. Courts create an adversarial setting that is not necessarily conducive to high levels of compliance. Moreover, empirical studies in the human rights field have shown self-reporting and peer-review mechanisms to be effective compliance mechanisms. This is also supported by social constructivism theory where interpersonal interactions among States (e.g. in International Geneva) make it difficult for states to ignore or overlook review from their peers. Additionally, compliance is fostered by cultural norms and expectations between Member State delegates. Zarbiyev presents the 'Compliance Trilemma'—consisting of 'Level of Ambition', 'Compliance' and 'Participation Levels'—which states that only 2 out of these three goals are ever achievable together.

DISCUSSION, COMMENTS, QUESTIONS AND ANSWERS

Workshop participants requested more information on successful cases of self-reporting and peer review in international law regimes. Zarbiyev responded with the example of the

successful monitoring bodies established by the UN arsenal of normative measures against terrorism, even as there are concerns with reporting fatigue. Zarbiyev emphasized that self-reporting and peer-reviews can work particularly well when used in combination with expert reviews, especially when expert reviews are part of a continuous dialogical learning process.

Regarding theories of compliance, rational choice theory and the merits of socialization and the managerial approach were questioned by workshop participants. Zarbiyev emphasized that the interactions between delegates plays an important role in responding to recommendations. 'Reward' can be added as a 4th 'R of compliance' to create incentive-based compliance. In terms of incentives, Zarbiyev underlined how the managerial school is largely underestimated and deserves more recognition, as its starting assumption is that non-compliance is likely due to structural issues (e.g. imprecision in the legal text, lack of capacity) rather than ill will.



The compliance trilemma—'Pick two, any two'

Workshop participants requested more information on incentivizing compliance, to which Zarbiyev responded that compliance is incentivized when agreements are freely negotiated without some state parties being 'norm-markers' and others merely 'norm-takers'.

In terms of legally binding agreements and compliance, participants raised questions about the impact of specificity of a legally binding text on compliance mechanisms. Participants raised concerns that ambiguity in agreements is a recipe for lack of compliance and implementation. Zarbiyev emphasized that legally binding agreements provide additional drivers to compliance, as they implicate larger parts of the state machinery and assume formal liability if breached. However, non-binding agreements can also foster high levels of compliance and drive consensus, such as with the Business and Human Rights Guidelines adopted by the Human Rights Council.

Another issue raised by participants relates to the degree of specificity of obligations needed in legal text. Zarbiyev pointed to the 'double-edged sword' of specificity. Highly specific obligations can be difficult to implement in response to new or emerging circumstances. There is merit in providing space for compliance mechanisms to adjust and develop new standards. Low specificity can contribute to agreements where difficult negotiations are postponed and re-negotiated rather than having negotiations resolved. Deadlocks that do not resolve negotiations can empower other actors (e.g. experts, adjudicators) to resolve issues, unless drafting ensures little room for evasion from the substance or essence of the agreement.

A question was raised on periodicity of reporting. Zarbiyev emphasized the importance of striking a balance between avoiding reporting fatigue and the importance of socialization of delegates and diplomats. Low periodicity (e.g. 8 years rather than 4 years) could result in limited continuity for delegates' socialization over time, potentially hindering a process that otherwise enhances compliance. Workshop participants highlighted the need for measurability and the importance of actionable verbs in agreed-on text.

PANEL DISCUSSION: IMPLEMENTATION AND COMPLIANCE IN PRACTICE: LESSONS FROM HUMAN RIGHTS, ANTI-CORRUPTION, AND INTERNATIONAL ENVIRONMENTAL LAW

PRESENTATION: INTERNATIONAL ENVIRONMENTAL LAW

By Elena Cima, Lecturer, University of Geneva, Faculty of Law

Cima presented the key principles that shape implementation and compliance in International Environmental Law and provided an overview of different mechanisms used in practice.

International environmental law (IEL) embraces the fundamental tenets of prevention, recognizing that environmental damage tends to be irreversible, or entails significant cost and time for remediation. Consequently, the legal framework places a pronounced emphasis on preempting potentially harmful actions. This aligns closely with the managerial approach to compliance, acknowledging that instances of non-compliance often stem from lack of resources and/or capacity rather than lack of will. Implementation and Compliance in IEL is therefore non-punitive and facilitative. Different Multilateral Environmental Agreements (MEAs) function differently according to their objectives, measures and sources of funding, providing a rich landscape of options. Mechanisms include monitoring and reporting, provisions of technical and financial assistance, and non-compliance procedures.

Monitoring (the collection of information) and **reporting** (submission of reports on compliance to obligations) are approached differently across agreements, with different periodicity, levels of detail, and powers to Implementation and Compliance Committees. I&C Committees sometimes have the power to request further information or conduct verification. Verification is rare due to its interference with sovereignty.

Provisions of technical and financial assistance are generally included in the context of the negotiation process to incentivize States to commit to obligations through facilitating access to financial resources, technical assistance, capacity building and technology transfer. The *Montreal Protocol on the Protection of the Ozone Layer* is an example of a successful compliance mechanism where financial assistance facilitated compliance to obligations that incurred incremental costs.

Non-compliance procedures are facilitative, with punitive measures included only as a last resort. Non-compliance procedures are often activated (i.e. 'self-triggered') by States themselves, which opens doors for financial assistance that facilitates future compliance. When global commons are at stake, non-compliance procedures can be triggered by any state, the treaty body or the public, as with regional treaties such as the *Aarhus Convention*¹ or the *Protocol on Water and Health*². The first key goal of non-compliance procedures is to understand the reason for non-compliance and to provide technical and financial assistance when needed. If lack of will is found to be the reason for non-compliance, non-compliance procedures can sometimes move to sanctions. Sanctions can include requesting additional information, warning, 'naming and shaming', or, in extreme cases, penalties to States' ability to benefit from certain mechanisms. Dispute settlement resolution clauses are very rarely used and a last resort.

1 Also known as The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

2 A protocol to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

PRESENTATION: ANTI-CORRUPTION

By Sophie Meingast, Crime Prevention and Criminal Justice Officer in the Convention Support Section of the Corruption and Economic Crime Branch of UNODC

Sophie Meingast shared information and lessons learned from the operational experience of the Implementation Review Mechanism (IRM), an established compliance framework operating under the United Nations Convention Against Corruption (UNCAC), which counts 189 parties.

Article 63 of the Convention enables the Conference of the Parties (COP) to establish this mechanism to review the implementation of the convention. While the Convention entered into force in 2005, the IRM was adopted in 2009 and has been operational since 2010. The IRM is governed by Terms of Reference (ToRs) and operates in alignment with the Guidelines provided by the Secretariat. The Mechanism operates through distinct phases organized into two cycles, each of which encompasses the review of two obligations outlined within the convention. The Implementation Review Group (IRG) reviews information channeled through the IRM and matters of technical assistance to ensure the effective implementation of the Convention. The IRM is a combined peer-review and self-review mechanism. At the first step, Member States self-report on implementation with a checklist, which is shared to peer-reviewing Member States. Each State Party is peer-reviewed by two other Member States of the Convention. Reviewing experts also conduct a desk review.

Notably, the IRM reviews *all levels of obligations* equally. However, the phrasing of recommendations respects the level of obligations. The IRM produces two 'outcome documents' from the review process. The first outcome document is a 'Full Country Review Report' (up to 600 pages) which contains details on the implementation of each obligation, recommendations, and any good practices and needs for technical assistance identified through the review process. The second outcome document is the 'Executive Summary' (12-13 pages) which summarizes the full report. Meingast emphasized that the review process is confidential. Once all three Member States have agreed to the outcome documents, the 'Executive Summary' is made publicly available and the 'Full Country Review Report' is published only with the agreement of the State Party under review.

Meingast emphasizes three 'pillars' that are important in the IRM:

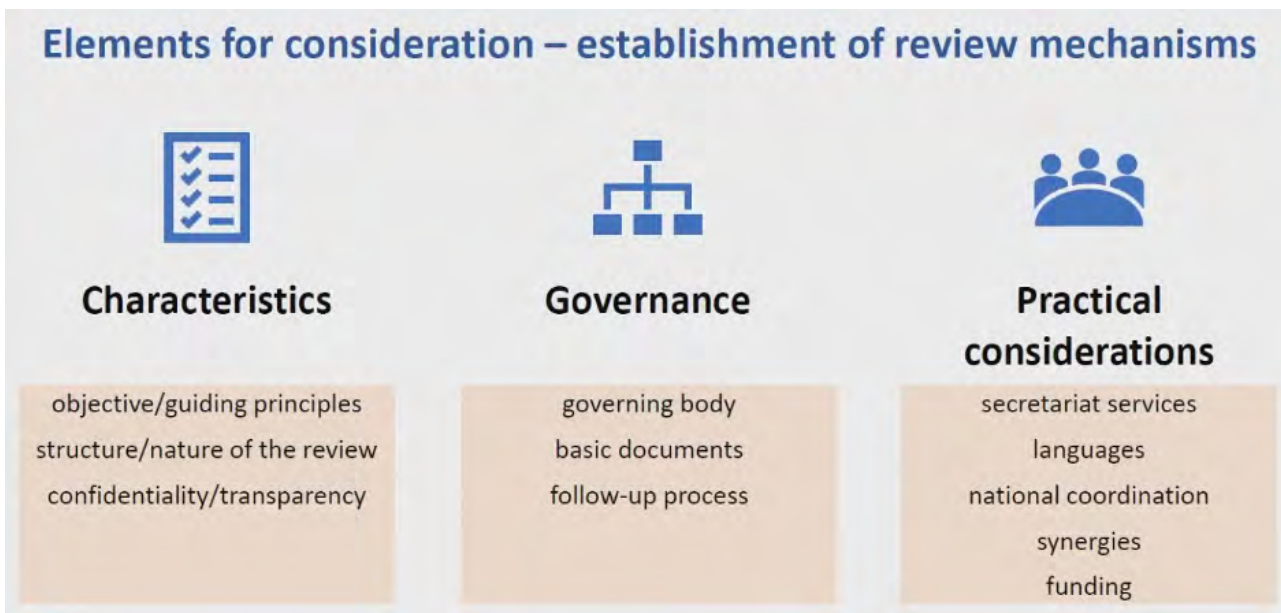
- Characteristics of the mechanism: the IRM is not a 'finger-pointing' mechanism, its main objective is to assist Member States in their compliance to the Convention. This is reflected in its guiding principles which emphasize transparency, efficiency, non-intrusiveness, confidentiality, impartiality, of a technical nature and to be non-punitive. The nature of the review mechanisms (e.g. peer-review, expert review) of the IRM is mainly inter-governmental, but has the possibility to include academia, private sector, and experts if designated by the reviewing Member States. Important considerations at this stage include deciding on publishing outcome documents, how to involve other stakeholders, or how to structure the review process (e.g. whether for all or some obligations).
- Governance: The IRM is governed by the Implementation Review Group (IRG), a subsidiary of the COP, that meets three times a year and is a dedicated forum for Member States. The IRG has prepared a Guiding Document for Member States that explains the process in a high level of detail. A third aspect of governance is a 'follow-up process' after the review is concluded. This is currently under discussion in the IRG, though Member States have, in the past, voluntarily shared information on implementing recommendations of the reviews.
- Practical Considerations: In the IRM, these include the Secretariat services, combatting reporting fatigue, training of inter-governmental experts on the mechanism, guiding national coordination, synergizing with other review mechanisms, and decisions on funding the IRM. For the latter, some elements of the IRM are funded partially by the regular budget and others by voluntary contributions.

PRESENTATION: HUMAN RIGHTS

By Stefania Di Stefano, Project Officer, Geneva Human Rights Platform, Geneva Academy of International Humanitarian Law and Human Rights & PhD Researcher in International Law, Geneva Graduate Institute

Stefania Di Stefano offered insights on compliance mechanisms within human rights treaties: the Treaty Bodies (TBs) and the Universal Periodic Review (UPR).

The UN Treaty bodies (TBs) are expert supervisory committees established by each UN human rights treaty to monitor its implementation and compliance. Some TB mechanisms include the possibility of considering complaints from individuals once domestic remedies have been exhausted. The mechanism is based on State reports and the submission of ‘shadow reports’ by other stakeholders. Recommendations are issued by independent expert bodies in a review that takes place every 8 years and are binding on States. The UN Treaty Bodies are being reformed at the moment due to overload of the system due to the high number of ratifications of Human Rights Treaties and the growth of reporting mechanisms across treaties. This has led to non-compliance with reporting obligations. Each Treaty Body has its own mechanisms, working methods and procedures, which has created incoherence across the system and affect monitoring implementation with human rights obligations.



The UPR is a unique process established by the Human Rights Council (HRC). It is a peer-review mechanism that considers documents submitted by Member States as well as by independent human rights experts and other stakeholders, including civil society. The review takes the form of an interactive dialogue with States in HRC sessions every 4-5 years. The UPR is a comprehensive evaluation of States using peer-review with high engagement of Member

UN Treaty bodies	UPR
<ul style="list-style-type: none"> • Committees of independent experts • Reviews include state report + constructive dialogue with Committee • Other stakeholders can submit reports (“shadow reports”) • Recommendations are issued by independent experts • Reviews take place every 8 years 	<ul style="list-style-type: none"> • Peer-review mechanisms (states reviewing states) • Reviews include several reports + interactive dialogue (all states can participate and CSOs can make statements) • Other stakeholders can submit information (OHCHR prepares Summary of Stakeholders’ information) • Recommendations are issued by states • Reviews take place every 4-5 years

States with the process and active participation from civil society. The UPR is a political process and recommendations are not binding.

Di Stefano highlighted lessons learned from the Human Rights regime that may be applicable to ongoing negotiations in global health:

- Expert input and review seem highly relevant to the subject matter of the Pandemic Treaty and this expertise may be missing in mechanisms that rely entirely on State-led reviews
- Excessive reporting requirements have weakened the UN TB system. Mechanisms under consideration (UHPR mechanism, Conference of the Parties, Implementation and Compliance Committee, Panel of Experts, etc.) could lead to similar incoherence and difficulties with compliance if complementarity between the Bureau's text and the IHR amendments isn't reached. If compliance and implementation is merged, one comprehensive report can be prepared for both compliance mechanisms to reduce the possibility of reporting fatigue.

DISCUSSION, COMMENTS, QUESTIONS AND ANSWERS

Workshop, participants enquired about the role of experts in the implementation and compliance committees of the International Environmental Law regime. Cima noted that the common rationale for including experts is to provide independence. However, state representatives sometimes operate with a high level of autonomy, while independent experts are sometimes selected by States and have restricted independence. The presence of expertise in compliance committees very much depends on its role and function.

Participants asked why it may be necessary to include provisions on the need for technical and financial assistance in treaty bodies, especially as some parties may see this as a burden rather than a need and a necessity. Cima responded that some multilateral agreements, such as the Montreal Protocol, can be very costly to comply with, which is one of the main reasons for non-compliance. Providing this assistance will be a necessary condition to bring a number of countries into the treaty.

With regards to the Human Rights regime, participants enquired which mechanism fosters a more cooperative and collaborative approach and which mechanisms are best able to provide technical assistance. Di Stefano indicated that UPR fosters a more cooperative approach as all states review each other in the UPR, though this depends on the subject matter as human rights treaties create obligations from States to individuals rather than other States. Meingast responded that needed technical assistance that supports capacity building is identified in the review process. Some technical assistance can be provided directly by the Secretariat (e.g. guidance in reforming criminal codes around corruption) and other forms of technical assistance that require voluntary contributions. Regional platforms to facilitate the provision of technical assistance through voluntary contributions have been received for this purpose. Voluntary contributions also facilitate direct bilateral collaboration where, for example, reviewing states sometimes provide assistance to a state party under review. Donors also use Outcome documents from the review to inform their own programming.

CONCLUDING REMARKS

The importance of robust implementation and compliance mechanisms in global health instruments has been consistently emphasized in assessments of the global response to the COVID-19 pandemic. The workshop demonstrated how implementation and compliance mechanisms can vary across treaties, each tailor-made with its own combination of tools (e.g. self-review, peer-review, expert committees, etc.). As such, there are no 'one-size-fits-all' solutions for implementation and compliance. Workshop discussions highlighted the need to emphasize easy, simple and effective implementation and compliance mechanisms in ongoing negotiations, wide support for a facilitative rather than punitive approach, to discuss the role of the public and experts in implementation and compliance committees, and a desire to avoid fragmentation and incoherence. Finally, implementation and compliance mechanisms often take time to fully develop. Flexibility in their development could ensure that they are able to evolve and develop in response to needs and circumstances on the ground.

ANNEX

ANNEX 1. WORKSHOP AGENDA

Workshop | 6 July 2023 (9:15-12:30 CEST) | Room S12, Geneva Graduate Institute

PROGRAM

9:15 – 9:30	ARRIVAL & REGISTRATION
9:30 – 9:55	<ul style="list-style-type: none">• Introductory remarks from co-sponsors:<ul style="list-style-type: none">> Americo Beviglia-Zampetti (Delegation of the European Union to the UN and other International Organisations in Geneva)> Garima Paul (Permanent Mission of India to the United Nations and other International Organisations in Geneva)• Current proposals in the Bureau's Text and the proposed amendments to the International Health Regulations (IHR), Gian Luca Burci (Global Health Centre, Geneva Graduate Institute)• Existing arrangements within the IHR, Carmen Dolea (WHO)
9:55 – 10:15	SESSION 1 Why do States comply with international law? An introduction to theories of compliance Fuad Zarbiyev , Associate Professor of International Law (Geneva Graduate Institute) Moderator: Daniela Morich (Global Health Centre, Geneva Graduate Institute)
10:15 – 10:30	Q&A
10:30 – 10:50	Coffee break
10:50 – 11:40	PANEL DISCUSSION – Implementation and compliance in practice: lessons from human rights, anti-corruption, and international environmental law <ul style="list-style-type: none">• <u>Human Rights</u>: Stefania Di Stefano, Project Officer, Geneva Human Rights Platform, Geneva Academy of International Humanitarian Law and Human Rights & PhD Researcher in International Law, Geneva Graduate Institute• <u>Anti-Corruption</u>: Sophie Meingast, Crime Prevention and Criminal Justice officer in the Convention Support Section of the Corruption and Economic Crime Branch of UNODC• <u>International Environmental Law</u>: Elena Cima, Lecturer, University of Geneva, Faculty of Law Moderator: Suerie Moon (Global Health Centre, Geneva Graduate Institute)
11:40 – 12:00	Q&A
12:00 – 12:25	CONCLUDING REFLECTIONS – Applying lessons learned to pandemic rulemaking (small groups discussion) Suerie Moon and Gian Luca Burci (Global Health Centre, Geneva Graduate Institute)
12:25 – 12:30	CLOSING REMARKS (CO-SPONSORS)





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