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## **FROM NEGOTIATION TO IMPLEMENTATION: CRAFTING EFFECTIVE GOVERNANCE FOR THE WHO PANDEMIC AGREEMENT**

Interviews with Juliette Voinov Kohler, Malgosia Fitzmaurice and  
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# FROM NEGOTIATION TO IMPLEMENTATION: CRAFTING EFFECTIVE GOVERNANCE FOR THE WHO PANDEMIC AGREEMENT

## INTRODUCTION

This publication was prepared as part of the lead-up to the 29 October 2024 workshop, "From Negotiation to Implementation: Crafting Effective Governance for the WHO Pandemic Agreement," organized by the Global Health Centre (GHC), in partnership with the Permanent Mission of Australia to the United Nations Office and other International Organizations in Geneva, and the Permanent Mission of The Philippines to the United Nations Office and other International Organizations in Geneva.

The workshop explored key steps in the treaty-making process, including the critical phase of moving from negotiation to effective implementation. To enhance the discussion and prepare for the event, GHC staff members interviewed the expert speakers invited to the workshop. Their responses have been captured in writing and are included in this document.

# SESSION 1: THE LEGAL ARCHITECTURE OF COMPLEX TREATY REGIMES: THE BASEL, ROTTERDAM, AND STOCKHOLM CONVENTIONS

*Interview with Juliette Voinov Kohler, Senior Legal Advisor at the Secretariat of the Basel, Rotterdam, and Stockholm Conventions*

## **1. Could you outline the legal architecture of the Basel, Rotterdam, and Stockholm Conventions? What are the ancillary instruments to complete the framework of the conventions? E.g. annexes, protocols, guidelines etc.**

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemicals and Pesticides in international trade (1998) and the Stockholm Convention on Persistent Organic Pollutants (2001) are three global multilateral environmental agreements (MEAs) that aim to protect human health and the environment from the negative impacts of hazardous chemicals and wastes. The conventions have nearly universal participation, with 191 Parties to the Basel Convention, 166 Parties to the Rotterdam Convention and 186 Parties to the Stockholm Convention. The legal architecture of each convention is similar with a preamble, substantive provisions, governance provisions, final clauses, and annexes.

The substantive provisions of the conventions are tailored to the objective of each convention: some of those provisions have common features in all three conventions, such as the obligation for Parties to transmit information, while the provisions setting out environmental obligations vary from one convention to another.

The governance provisions of the conventions also have similar features with a universal governing body bringing together all the Parties to the conventions and with the authority, among other things, to establish subsidiary bodies, to adopt amendments, and to adopt new or amend existing annexes. The three conventions have both standing and *ad hoc* subsidiary bodies. Under the Rotterdam Convention, for instance, standing subsidiary bodies include the Chemical Review Committee (CRC) and the Compliance Committee. Under the Basel Convention, *ad hoc* subsidiary bodies include a variety of Small Intersessional Working Groups, Expert Working Groups, and Multistakeholder Partnerships working on specific issues. As each convention is legally autonomous, only the Parties to the respective convention have decision-making authority on matters within the scope of the convention.

The Basel, Rotterdam, and Stockholm Conventions are dynamic instruments, constantly being further developed. Developments within the scope of the conventions are agreed through the adoption of decisions by the COP, for instance, through the development and adoption of policy or legal guidance or technical guidelines that clarify provisions or support their implementation. The further development of the conventions is realized through the adoption of amendments, protocols, amendments to existing annexes, or the adoption of new annexes.



## 2. Could you explain how they function together?

Due to the interlinkages in the scope of the Basel, Rotterdam and Stockholm Conventions, and in order to facilitate the implementation of the conventions, the COPs have over the years adopted a series of decisions aiming at enhancing cooperation and coordination among the conventions. Thus, a framework for the so-called synergies process has been established.

Important elements of the synergies are that the three Secretariats administered by UNEP are under joint management. The meetings of the COPs take place at the same time over a two-week period: the three meetings are opened and closed simultaneously, and over the two-week period, sessions are either convention-specific (to tackle issues specific to each convention) or joint (to cover issues of interest to two or more conventions). This ensures that each convention can progress as per the wishes of its Parties and that, for issues of relevance to another convention, policy coherence is promoted (adoption of substantively similar decisions or immediate action under one convention to capture a relevant development under another convention). The scientific bodies and the compliance committees also regularly meet back-to-back with the possible convening of joint sessions.

Beyond these governance aspects, the implementation of the conventions benefits from the synergies process through the technical assistance activities of the Secretariat. For instance, support for the development of legislation to implement the Stockholm Convention will also cover aspects of the Basel Convention, ensuring that persistent organic pollutants wastes are managed in line with its requirements.

## 3. How has the legal architecture of the Basel, Rotterdam, and/or Stockholm Conventions evolved to address emerging issues?

As mentioned above, the three conventions are dynamic. Under all three conventions, the chemicals/wastes falling within the scope of the conventions are listed in annexes, and provisions and processes are in place to add new chemicals/wastes. Central to triggering this process is an action taken by a Party: a proposal to amend annex I, II or VIII under the Basel Convention, a final regulatory action under the Rotterdam Convention which may lead the CRC to recommend that the COP list a chemical in annex III to the convention, or a proposal to list a chemical in annexes A, B and/or C of the Stockholm Convention, which may lead the Persistent Organic Pollutant Committee to recommend that the COP list the chemical. At each one of their meetings, the COPs to the Rotterdam and Stockholm Conventions consider listing new chemicals, upon recommendation from their respective scientific committee. Under the Basel Convention, the waste constituents and streams listed in the annexes were broad from the start, but the COP has recently further broadened the convention's scope in relation to the emerging issues of plastic wastes (2019) and e-wastes (2022).

The content of the annexes to the conventions is framed by the substantive provisions set out in the conventions. Therefore, for each annex, including the annexes listing the chemicals or wastes falling within the scope of the convention, there is a corresponding substantive provision in the convention. Any additional annex is limited to procedural, scientific, technical or administrative matters. In the event a new annex is associated with new rights and obligations under the convention, corresponding amendments to the substantive provisions will be needed.

The conventions embed traditional provisions in relation to the adoption and entry into force of amendments to the convention text and to its annexes, namely: consensus with the possibility to vote as a last resort (2/3) for an amendment proposal to be adopted, the need for a certain number of Parties (three-fourths) to express consent to be bound by amendments to the convention before it enters into force and, in relation to amendments to annexes or new annexes, the possibility for each Party to make a declaration of non-acceptance within the specified deadline (6 months

under the Basel Convention, one year under the Rotterdam and Stockholm Conventions). The different approaches regarding the entry into force of amendments to the convention (« opt-in » approach) and amendments to the annexes to the convention (« opt-out » approach) is explained by the content of the text of the convention (embeds rights and obligations) as opposed to its annexes (mainly technical and procedural in nature).

In addition to these traditional amendment provisions, the Rotterdam and Stockholm Conventions have special provisions. Under the Rotterdam Convention, any amendment to annex III to list a new chemical is to be adopted by consensus, and this decision is legally binding on all Parties. Under the Stockholm Convention, Parties may, in their instrument of ratification, acceptance, approval or accession, declare that, with respect to it, any amendment to annex A, B or C shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

Other notable developments under the conventions have been the adoption of compliance procedures and mechanisms, first under the Basel Convention in 2002 (although not envisioned by the text of the convention), then under the Rotterdam Convention in 2019 (through the adoption, by voting, of a new annex), and finally under the Stockholm Convention in 2023, after more than fifteen years of negotiations.

The conventions have so far only been the subject of one amendment: the Ban Amendment to the Basel Convention. Adopted in 1995, it entered into force in 2019.

There is only one protocol under the three conventions, the Basel Convention Protocol on Liability and Compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes. The development of the protocol is mentioned in Article 12 of the convention, and it was adopted in 1999 after six years of negotiations. However, as of today, 12 of the required minimum 20 consents to be bound have been expressed and the protocol is therefore not in force.

#### **4. What future amendments or governance innovations could enhance their effectiveness? Are some of them being negotiated at this moment?**

In addition to proposals to amend the annexes under the three conventions to be considered by the COP in 2025 (revisions to annex IV to the Basel Convention listing the disposal operations, 4 new chemicals and 6 returning chemicals under the Rotterdam Convention, and 3 new chemicals under the Stockholm Convention), there is currently one proposal to amend Article 6 paragraph 1 of the Basel Convention with a view to setting a time limit within which a Party must respond to a proposed transboundary movements of wastes, and one proposal to amend Article 16 of the Rotterdam Convention to establish a financial mechanism.

The evaluation of the effectiveness of the Stockholm Convention is a built-in mechanism, requiring a complete evaluation every six years. The last evaluation took place in 2023 and led to the adoption of a series of decisions by the COP to improve its effectiveness. Under the Rotterdam Convention, work has been taking place over the years to enhance its effectiveness. Under the Basel Convention, the evaluation of its effectiveness takes the form of strategic plans or frameworks, with goals, objectives and indicators. A new strategic framework for 2025-2031 will be considered by the COP during its 2025 meeting.

# SESSION 2: THE PREPARATORY PROCESS

*Interview with Prof. Malgosia Fitzmaurice, Professor of Public International Law, Queen Mary University of London*

## **1. What is a Preparatory Process for the entry into force of a multilateral treaty, and what is its goal?**

The primary objective of the preparatory process is to ensure the treaty's readiness for implementation. This process requires overseeing a wide range of tasks, which are commonly administered by a Preparatory Commission (PrepCom). The PrepCom functions as a provisional governing body for the treaty prior to its formal entry into force.

It is important to emphasize that the PrepCom serves in an advisory capacity, with the final authority to establish or decline the formation of a governing body, for example, resting solely with the COP. The mandate of the PrepCom is limited in duration and concludes upon the entry into force of the treaty.

To facilitate the treaty's entry into force, the PrepCom must undertake several critical tasks, which, drawing from an analysis of multiple treaty regimes, typically encompass the following:

- **Preparation of the agenda** for the inaugural session of the COP;
- **Drafting the rules of procedure** governing the COP;
- **Formulating budgetary recommendations** to ensure the financial viability of the treaty's implementation;
- **Providing recommendations regarding the structure and operational role** of the Secretariat;
- **Studying and proposing arrangements for the treaty's headquarters** and finalizing the headquarters agreement with the host country;
- **Drafting the requisite rules, regulations, and procedures** to facilitate the effective functioning of the convention (i.e. financial rules, rules on the role of the chairperson(s) and vice-chairperson(s));
- **Addressing financial considerations** related to the establishment of Secretariat services and proposing the creation of subsidiary bodies as necessary.

In essence, the PrepCom must ensure that all administrative and procedural elements are comprehensively established to enable the seamless operationalization of the convention. Based on precedents from analogous treaty regimes, it is anticipated that the PrepCom will require a minimum of two to three sessions, each lasting two weeks, to adequately address all preparatory requirements.

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<sup>1</sup> Treaty bodies may decide to adopt the financial regulations and rules of the host organization, with modifications. For example, the WHO Framework Convention on Tobacco Control's Conference of the Parties applied the WHO's financial regulations and rules, making necessary adaptations for its specific context. This practice helps streamline administrative processes by leveraging existing frameworks rather than creating new ones from scratch.



The rules of procedure governing the PrepCom are generally adopted by a resolution of the body that adopts the convention, such as the UN General Assembly, for instance, for treaties negotiated under the UN's auspices. These rules are often highly detailed, covering aspects like participation, the selection of chairperson(s), interim secretariat arrangements, and the administration of trust funds.<sup>2</sup>

## **2. Who establishes it? Who participates? What about other stakeholders besides states?**

The PrepCom is typically established through the final act of a conference or negotiating body that adopts the treaty. When the treaty is ready for adoption, the conference issues a final act that includes the establishment of the PrepCom. In instances where this is not feasible, the PrepCom may be created during the meeting of the body that adopts the treaty. In the context of the WHO Pandemic Agreement, the specific details regarding the PrepCom's establishment could potentially be finalized in the resolution of the World Health Assembly adopting the treaty.

Regarding membership, all state signatories to the treaty are automatically granted membership in the PrepCom. In practice, under UN procedures, it is common for the work of the PrepCom to be open not only to treaty signatories but also to other UN Member States, or to members of the host organization under whose auspices the treaty was negotiated. While these signatories do not possess full party status until the treaty enters into force, they retain a seat at the table during the preparatory process.

This process can incentivize states to sign the convention; however, it is crucial to acknowledge that signing does not necessarily lead to ratification. Historically, experience in treaty law indicates that many states may eagerly sign conventions but subsequently fail to follow through with ratification. States intending to become parties to the treaty typically must have the requisite national legislation and budgetary resources in place to effectively implement the treaty's provisions. Without these measures, a state's participation may result in a breach of international law due to non-implementation.

Participation by other stakeholders is also considered, as observers—including representatives of the United Nations and civil society organizations—may be invited to attend PrepCom meetings. However, the decision to allow such participation rests with Member States. It is important to note that these observers do not have decision-making rights; they can only observe the proceedings if permitted, without taking part in the actual decisions made by the PrepCom or its subsidiary bodies.<sup>3</sup>

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2 United Nations General Assembly (2024) *Resolution adopted by the General Assembly on 24 April 2024: 78/272, Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction*, UN Doc A/RES/78/272. Available at: <https://documents.un.org/doc/undoc/gen/n24/117/55/pdf/n2411755.pdf>.

3 United Nations General Assembly (2024) *Resolution adopted by the General Assembly on 24 April 2024: 78/272, Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction*, UN Doc A/RES/78/272. Paragraph 5 states: "Further decides to invite to the commission representatives of organizations and other entities that have received a standing invitation from the General Assembly [...] to participate, in the capacity of observer [...] representatives of relevant specialized agencies, as well as other organs, organizations, funds and programmes of the United Nations system." Paragraph 6 continues: "Decides that attendance at the meetings of the commission as observers will also be opened to relevant non-governmental organizations in consultative status [...] as well as to those that were accredited to relevant conferences [...] on the understanding that participation means attending formal meetings, [...] making available their materials to delegates and addressing the meetings, through a limited number of their representatives, as appropriate." Available at: <https://documents.un.org/doc/undoc/gen/n24/117/55/pdf/n2411755.pdf>

### 3. How does it shape the long-term governance structure of the treaty?

One of the PrepCom's functions is to establish the foundational bodies and mechanisms necessary for the long-term governance of the treaty. This may include advice regarding the creation of scientific and technical bodies and committees to address specific provisions. For the WHO Pandemic Agreement, a dedicated body could be established to oversee the implementation of Article 12 on the Pathogen and Benefit Access System (PABS). Although the specifics of these provisions may not be fully developed initially, the PrepCom must be ready to adopt the necessary measures if these provisions are incorporated into the final treaty text. Ultimately, the authority to finalize these decisions rests with the COP.

One particularly sensitive area is capacity building and the transfer of technology, often a contentious issue due to its nexus with intellectual property rights. In prior treaties, such as the Convention on Biological Diversity, disputes regarding technology transfer—especially to developing nations—have posed significant challenges. Should such provisions be included in the treaty, it will be imperative to establish a corresponding body to manage and oversee their implementation.

Furthermore, the PrepCom should develop draft modalities and guidance for the operationalization of the treaty, including the establishment of mechanisms such as a Clearing-House Mechanism (CHM) that facilitates transparency and the exchange of information among states. CLMs, as exemplified in treaties like the Cartagena and Nagoya Protocols to the Convention on Biological Diversity, enable states to share information on national legislation and relevant developments. This system is vital for ensuring transparency and effective communication within the framework of the treaty.

Additionally, the PrepCom is charged with establishing interim bodies, such as a Scientific Committee, which will operate until the treaty enters into force. It is standard practice for the organ that adopts the convention to designate the interim secretariat. These bodies will be essential for ensuring continuity and coordination during the transition from the preparatory phase to full implementation.

### 4. What are the most critical tasks the Preparatory Process/Commission must prioritise in the lead-up to the first COP, and where do you expect disagreements to arise?

The primary responsibility of the PrepCom is to adopt a program of work that enables the earliest possible implementation of the convention. This program must prioritize transparency and seek to minimize the burden on smaller delegations, particularly those from states with limited financial resources. Flexibility is essential in this process to facilitate technical discussions while being sensitive to the challenges smaller states encounter in engaging in extended negotiations.

Disagreements are most likely to arise in areas such as the Pathogen and Benefit Access System (PABS), financing, capacity building, and the transfer of technology. For instance, the CLM, which is designed to align capacity-building needs with available support and facilitate technology transfer, is likely to be a contentious issue. Additionally, the CLM will play a crucial role in facilitating the exchange of know-how and fostering cooperation with relevant legal instruments, frameworks, and international bodies.

The issue of technology transfer is likely to prompt considerable discussion. Should an article on technology transfer be incorporated into the treaty—as suggested by the current draft in Article 11—it is anticipated that this will promote and incentivize the transfer of technology related to pandemic health products. The specifics of its operationalization will ultimately be determined by the COP following further deliberations. This situation reflects past experiences, such as

with Part XI of the United Nations Convention on the Law of the Sea (UNCLOS). In this case, the lack of agreement regarding provisions for free technology transfer led to the adoption of an **implementation agreement** that significantly revised the original terms. Drawing from the experience of other treaties, such as the **Biodiversity Convention**, where technology transfer is a critical element, may offer some useful insights for these discussions.

## 5. What does provisional application of the treaty mean? What does it entail?

Provisional application of a treaty refers to a mechanism by which specific provisions of a treaty are implemented on an interim basis prior to its formal entry into force. This approach enables states to commence fulfilling the treaty's obligations while awaiting the completion of the ratification or accession processes. Provisional application is particularly advantageous in contexts necessitating urgent action or coordination, such as environmental, health, or security treaties that address global challenges requiring immediate response.

The specific provisions subject to provisional application, as well as the duration of such application, are typically delineated in the treaty text or determined by decisions made by the PrepCom. For instance, the PrepCom may recommend that essential administrative functions—such as the establishment of the Secretariat, the creation of a CHM, or the development of capacity-building frameworks—be applied provisionally to facilitate the effective operation of the treaty upon its formal entry into force.

It is important to note that provisional application does not equate to the treaty being fully in effect. Rather, it serves as a temporary measure, and states participating in provisional application are not necessarily bound by all the treaty's obligations until they complete the formal ratification process. Provisional application also affords flexibility, allowing states to determine which provisions they are willing to apply and permitting withdrawal from provisional application should they decide against ratification.

In practice, one of the most contentious issues surrounding provisional application pertains to funding and resource allocation. As illustrated by the tasks of the PrepCom, financing mechanisms—such as trust funds or contributions from a certain category of states—must often be established to support the participation of developing countries in provisional activities.

## 6. What are the outcomes of the process? Who takes the final decision?

The PrepCom exists until the convention enters into force and may remain operational for a brief period thereafter, specifically until the conclusion of the first COP. Upon the completion of its designated tasks, the PrepCom will be dissolved.

The primary outcome of the PrepCom process is to provide comprehensive recommendations and establish the necessary frameworks and mechanisms for the effective implementation of the treaty. This encompasses the formulation of operational procedures, the establishment of administrative bodies, and the creation of any interim mechanisms essential for ensuring a seamless transition from the preparatory phase to the execution of the treaty's provisions. As indicated earlier, while the PrepCom plays a crucial advisory role, the final decisions regarding these recommendations rest with the COP.

It is also crucial to emphasize that the role of the PrepCom is not to renegotiate or amend the terms of the treaty; rather, it is to ensure that the treaty is adequately prepared for practical application. As one delegate noted during the **PrepCom discussions** for the agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National

Jurisdiction (BBNJ): "The task of the PrepCom is not to redraft the agreement, but to translate it from the page into practice." This statement succinctly captures the essence of the PrepCom's responsibility—transforming the theoretical framework of the treaty into a functional reality.

Ultimately, final decisions regarding the outcomes of the PrepCom process are made by the states involved in the negotiations, with the COP serving as the formal body responsible for overseeing and adopting these decisions. Upon convening, the COP assumes full responsibility for the governance and implementation of the treaty.

# SESSION 3: THE LAW AND PRACTICE OF INCOMPLETE TRANSACTIONS, UNDERSTANDING THE ROLE OF THE COP

*Interview with Prof. Fuad Zarbiyev, Professor of International Law, Geneva Graduate Institute*

**1. Relying on the precedents that you are familiar with, what are the key functions and powers that the COP should have to ensure it can effectively oversee the implementation and evolution of the treaty? How can these be built into its governance structure from the outset or be left to subsequent decisions by the COP?**

It goes without saying that the parties have the full freedom to design the COP in any way they deem appropriate without feeling bound by any precedent – it is not an accident that treaties are considered to be a bastion of consensualism. That said, learning from past experiences can help avoid repeating past mistakes. To find out what powers a COP should have in order to effectively oversee the implementation and evolution of the parent treaty, it is important to pay attention to what makes a COP necessary in the context of any given treaty. Several reasons may lead the parties to the creation of a COP mechanism:

- 1) First, it may be impossible for the parties to reach a complete agreement at some point. If they do not exclude that a consensus can progressively emerge at a later point in time, a COP could be an appropriate forum in which the parties could pursue their discussions and facilitate the emergence of the necessary consensus;
- 2) Second, the state of knowledge in the relevant area may be fast expanding due to the evolution of science and technology. A COP could be a suitable mechanism in such circumstances to update the normative content of the parent treaty to make sure that the latter does not become obsolete;
- 3) Third, if the parent treaty is a “deep agreement” calling for substantial changes in the current practice of the parties, a COP mechanism could be used to monitor the proper implementation of the parent treaty. This is all the more so in cases in which lack of capacity is more likely to impede full compliance than lack of willingness.

The powers of the COP depend on the political will of the parties to have a robust mechanism to effectively address needs that have given rise to the creation of the COP in the first place. To be effective in the first and second scenarios described above, a COP is expected to have the power to complement the parent treaty or amend it when and if needed. The parent treaty should be as precise as possible regarding the procedural requirements governing the adoption and the entry into effect of protocols, annexes or amendments. While the power to issue binding decisions is not necessarily indispensable for the successful implementation of the treaty in the third scenario, the parent treaty should be as clear as possible as to how the monitoring function will be carried out (e.g., periodic reports to be submitted by the parties, a subsidiary expert body in charge of monitoring).

## **2. How can the COP be structured to effectively balance its role as the central governance body while ensuring a collaborative relationship with the World Health Organization, and what challenges might arise in maintaining this balance?**

Even though it is formally not an intergovernmental organization, a COP is an autonomous institutional structure. This means that a COP can have its own administrative structures (Secretariat, subsidiary bodies etc.) not hosted by any existing organization. However, for reasons of expediency (to avoid having to establish a fully-fledged new institution), the Secretariat of the COP is typically hosted as part of an existing international organization.

The relationship between the COP and the host organization is governed by the principle of supremacy of the COP: the powers granted to a COP can only be exercised by the COP in accordance with the terms of the parent treaty, and the host organization cannot give the COP or its subsidiary bodies instructions. To ensure harmonious and collaborative relationship with the host organization, the latter may formally acknowledge the independence of the COP. For instance, the UN Secretary-General described the COP of the Climate Change Convention as a structure having “an independent legal character” and “not a subsidiary of the General Assembly or of any other body.” (UN Doc. A/AC.237/79/Add.1, 1994).

The Secretariat of the COP hosted by an existing organization is, however, differently situated, as both the COP and the host organization have the power to instruct the Secretariat. The most important challenge in practice is to make sure that the Secretariat does not receive conflicting instructions. A familiar example is the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC), which was set up by the FCTC COP with WHA’s approval as hosted by WHO but functionally independent. WHO and the FCTC Secretariat concluded hosting terms to regulate their relationship.

## **3. Given the evolving nature of global health challenges, how can the COP ensure flexibility and responsiveness in its decision-making while still maintaining a stable and predictable governance structure for the treaty?**

Global health challenges being evolving by nature, the COP is expected to adjust the normative content of the parent treaty to changing circumstances. This mandate is indispensable to make sure that the parent treaty remains relevant even when changes that were not foreseen or foreseeable at the time of its making unfold. However, it is also important to create a relatively stable and predictable treaty framework so that the parties know what their rights and obligations are at any point in time. With its capacity to meet periodically and its secretarial support, the COP is in principle well equipped to carry out this task by effectively communicating about the treaty framework and any need to bring about changes. The importance of such communication cannot be overstated, as in an area such as global health challenges where capacity building plays a key role, compliance with treaty commitments calls for a managerial approach rather than strict enforcement measures.



# CONCLUSION

During the presentations held on 29 October 2024, as part of the workshop *From Negotiation to Implementation: Crafting Effective Governance for the WHO Pandemic Agreement*, several key themes were highlighted. These insights now form the foundation for the following concluding reflections.

The presentations emphasized crucial aspects, including the critical need for adaptable governance mechanisms, effective compliance and support structures, and strategic coordination across other instruments, all of which need to be adequately addressed to ensure cohesive, resilient and inclusive global rules for pandemic prevention, preparedness and response (PPPR).

Drawing insights from multilateral environmental agreements like the Basel, Rotterdam, and Stockholm Conventions, a presenter highlighted the importance of treaties with structural flexibility, capable of evolving through annexes, protocols, amendments, policy instruments and compliance frameworks. Such governance structures are vital for ensuring responsiveness to emerging and evolving challenges through regular adaptation, evolution, and monitoring.

A presenter emphasized the necessity of preparatory processes, illustrated by examples such as the WHO FCTC, and more recently, the BBNJ agreement. These processes provide a structured pathway from negotiation to the inaugural COP. The presentation highlighted the advisory role of PrepComs, noting that all final decisions ultimately remain with the COP, which assumes full responsibility for the governance and implementation of the treaty.

The International Convention for the Prevention of Pollution from Ships (MARPOL) was also discussed as a unique example. Unlike the WHO FCTC, MARPOL did not establish a formal PrepCom. Instead, its development and implementation were guided by a series of committees and working groups within the International Maritime Organization (IMO). Another governance aspect of this convention is that when a state becomes a party to the convention, it is obligated to ratify at least Annexes I and II out of six. This illustrates a model where two annexes, fundamental to the treaty, enter into force simultaneously with the parent convention. This approach can increase universality, ensuring all parties apply key provisions. It also demonstrates how annexes can be integrated directly into the treaty as a single package, in contrast to protocols, which are considered separate instruments requiring their own adoption and entry into force processes. Finally, the governance of the MARPOL Convention, through IMO committees, offers a model of continuous oversight and amendment, which has been effective for adapting the convention over time. It was noted that adaptability built into the governance structure will be crucial to responding to evolving public health challenges like pandemics.

Provisional application mechanisms were also identified as key components that enable certain treaty elements to be implemented temporarily, allowing for immediate responses to urgent global health risks while awaiting entry into force. A provision explicitly stating which articles should be provisionally applied could be included in the text, increasing clarity and reducing ambiguity on the scope of provisional application. Conversely, this can also be achieved through a WHA decision to provisionally apply specific articles, provided there is agreement among

Member States. Alternatively, Member States can make a unilateral declaration to provisionally apply certain articles, thereby creating legal obligations for themselves. All provisional obligations cease once the treaty enters into force.

The governance structure of a treaty should be designed to foster transparency, flexibility, compliance, and capacity-building. Drawing from precedents like the Minamata Convention, presenters explored the role of compliance mechanisms, stressing that built-in structures for constructive compliance review and regular evaluation are essential to maintain the treaty's integrity over time. These mechanisms are often facilitative, cooperative and non-confrontational in nature. Additionally, presenters emphasized that once the treaty text is agreed upon, updating or amending it can be extremely difficult and time-consuming, suggesting the importance of including these critical structures during the negotiation phase.

Presenters discussed joint COPs as an approach that could foster synergy across instruments, while maintaining legal autonomy. This model offers shared efficiency and coordination, facilitating the alignment of policies, minimizing duplication, and ensuring resources are strategically deployed for unified health outcomes. This structure could address a key concern of complementarity and harmonization between the revised International Health Regulations and the WHO Pandemic Agreement.

A "catchall provision" was addressed by a presenter, underscoring that the inclusion of such a provision would allow for a treaty to remain flexible and enable it to respond to new situations that can arise over time, even if not explicitly stated in the treaty text. Examples of such a provision include article 10 in the Convention on Long-range Transboundary Air Pollution, which allows the governing body to "fulfill such other functions as may be appropriate under the provisions" of the Convention and article 23 of the FCTC that allows the COP to consider other actions, as appropriate, for the achievement of the FCTC objectives.

Another key point that emerged was the need for textual clarity within the treaty. The discussion emphasized that the authoritative interpretation of the treaty text ultimately lies with the COP, underscoring the importance of clear language while also acknowledging that meaning may evolve over time.

Presenters highlighted that the adoption of a treaty signifies the beginning, rather than the end of the process. The workshop showcased the strategic importance of crucial elements—flexible and adaptable governance, well-structured preparatory processes, and proactive compliance measures—in transforming the WHO Pandemic Agreement from a textual document into an effective and future-proof global health instrument.



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