Pandemic Non-proliferation Agreement:
Argument for Implementation

Presented by

Pandemic Mitigation Project[1]

I. Covid 19 has proven that the current, cooperative approach to international public health threats is inadequate.

International public health currently relies on mutual cooperation and the initiative of individual governments to address epidemics and potential pandemics. If there is an identified outbreak in a country, there no enforceable obligation on any state to notify others in a timely fashion. WHO can request information and to send specialists, but there is no enforceable obligation on any state to provide the requested information or allow third-party specialists access to affected territories. Other countries can offer assistance, but there is no obligation by any state to accept that help.

Since WWII, this cooperative model has largely succeeded. International public health and international public health entities have improved remarkably in the last 50 years. Nations affected by epidemics historically welcomed a rapid response from international specialists when faced with easily transmittable pathogens, such as Ebola. This cooperative model failed with Covid 19.

Covid 19 first impacted China. The next pandemic event might involve an Arab Gulf state suffering an outbreak of MERS; Mexico with an occurrence of H1N1 or a similar pathogen; or, one of several African states where a hemorrhagic fever such as Ebola might impact a population.

"Lessons learned" from this current crisis instruct that a cooperative, discretionary model that lacks an enforcement mechanism is inadequate. There are models in the fields of international security, economics, and non-proliferation that provide useful precedent for a new approach. The global community needs to take this precedent and fashion an enforceable and effective treaty to mitigate pandemics.

II. International economic, military and non-proliferation treaties and conventions offer precedent.

Historically, governments have responded to global military and economic crises by developing tailored, responsive international agreements, organizations or structures to reduce the risk that the problem would recur. Following the devastation of WWII, for example, nations worked collaboratively to establish the UN, the World Bank, the IMF and NATO. All of these developments sought to mitigate the risks of instability and conflict that might generate another global crisis.

With respect to more discrete threats, such as the proliferation of nuclear, chemical and biological weapons, governments have negotiated agreements specific to these risks. These particular agreements – focused on defined threats -- offer models for a means of better mitigating pandemics.

The nature of threats from epidemics or pandemics is fundamentally different from those presented by nuclear, biological and chemical weapons. Unlike those emanating from man-made weapon systems, pandemic threats are not necessarily the product of government initiative. Pathogenic contagions can occur naturally and will occur with greater frequency as urban centers expand, travel increases, and markets become more global and interconnected.

[1] The Pandemic Mitigation Project is a French non-governmental organization the purpose of which is to advocate for the adoption of a pandemic mitigation treaty with enforceable notice and grant of access provisions.

The proposed Agreement would address only epidemics or pathogenic events that occur naturally, not those resulting from government initiatives, such as biological weapon development efforts.

III. Common elements of non-proliferation agreements and conventions.

Non-proliferation agreements often contain similar elements:

(1) articulation of the agreed-upon hazard requiring mitigation;

(2) standards for compliance.

(3) means of inspection and verification;

(4) remediation of non-compliance; and

(5) enforcement.

Each element varies by agreement with respect to its strength, efficacy and historic compliance. Fully successful or not, each non-proliferation agreement represents international efforts to mitigate the identified threats.[2]

IV. Key elements of a proposed pandemic non-proliferation agreement

The proposed Agreement would address only two crucial issues: notification and access. It would not encompass more complex questions that accompany a pandemic, such as attribution of the pathogen. Addressing the limited issues of notification and access is intentional. A focused and straightforward agreement is more likely to find consensus and support.

Using elements derived from non-proliferation agreements, the proposed Agreement would provide the following obligations or rights:

1. **Notification of Health Event**. Requiring immediate notification of other signatories of an outbreak of a pathogenetic, infectious and transmittable disease (as defined by the Agreement).

2. **Permitted Access**. Requiring a state to grant immediate access by a designated response team established per the Agreement.

3. **Assistance and Cooperation**. Requiring the provision of reasonable assistance and cooperation.

4. **Ratification and Implementation**. Requiring ratification other legal measures within a year of signing.

5. **Establishment of Response Team Roster**. Causing each state to review and accept or reject specialists nominated by state parties and/or the WHO Director-General.

6. **Enforcement**. Allowing each state individually or jointly to take measures in response to non-compliance.

See Pandemic Non-proliferation Agreement Concept-Draft.

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[2] *See generally* Treaty on the Non-Proliferation of Nuclear Weapons https://www.un.org/disarmament/wmd/nuclear/npt/; Chemical Weapons Convention https://www.opcw.org/chemical-weapons-convention; and Biological Weapons Convention https://www.un.org/disarmament/wmd/bio/.

V. Need for private industry and private initiative

Governments took the lead to mitigate man-made proliferation dangers presented by nuclear, chemical and biological weapons. The efforts took decades.

Unlike nuclear, chemical and biological weapons, naturally occurring pandemics – such as the immediate pandemic that has devastated lives and economies – are not under governmental control. They can and will occur with no prior planning. A proper mitigation effort needs to reflect this difference.

Nationalism and frayed alliances have fractured the international community. In this environment, it is unlikely that governments can succeed -- by themselves -- in achieving this mitigation. That effort will require rethinking international health agreements to develop a new framework that would provide an enforceable obligation for prompt notification and grant of access.[3] The Project believes it will be difficult for governments to do this alone. Private industry and private parties need to shoulder into the effort to push the matter forward, providing countries the support required to make this change. Among the many global industries affected by Covid 19, aircraft manufacturers, airlines, travel industry participants, insurers, and other stakeholders should be directly involved in this effort.

VI. Covid 19 timeline demonstrates need for an agreement, as proposed

An agreement, as proposed, would have provided an agreed-upon framework for both notification and grant of access on which all affected countries could have relied.

WHO reports as follows with respect to the first six weeks of the outbreak:[4]

> **December 31, 2019**
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> "WHO's Country Office in the People's Republic of China picked up a media statement by the Wuhan Municipal Health Commission from their website on cases of 'viral pneumonia' in Wuhan, People's Republic of China.
>
> The Country Office notified the International Health Regulations (IHR) focal point in the WHO Western Pacific Regional Office about the Wuhan Municipal Health Commission media statement of the cases and provided a translation of it.
>
> WHO's Epidemic Intelligence from Open Sources (EIOS) platform also picked up a **media report** on ProMED (a programme of the International Society for Infectious Diseases) about the same cluster of cases of "pneumonia of unknown cause", in Wuhan."
>
> **January 1, 2020**
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> "WHO requested information on the reported cluster of atypical pneumonia cases in Wuhan from the Chinese authorities."
>
> **January 2, 2020**
>
> "The WHO Representative in China wrote to the National Health Commission, offering WHO support and repeating the request for further information on the cluster of cases."

[3] These current agreements are the Global Security Health Agenda, found at https://ghsagenda.org and International Health Regulations, found at https://www.who.int/publications/i/item/9789241580496

[4] https://www.who.int/news/item/29-06-2020-covidtimeline

WHO informed Global Outbreak Alert and Response Network (GOARN) partners about the cluster of pneumonia cases in the People's Republic of China. GOARN partners include major public health agencies, laboratories, sister UN agencies, international organizations and NGOs." (Emphases added).

January 3, 2020

"Chinese officials provided information to WHO on the cluster of cases of 'viral pneumonia of unknown cause' identified in Wuhan."

January 4, 2020

"WHO tweeted that there was a cluster of pneumonia cases – with no deaths – in Wuhan, Hubei province, People's Republic of China, and that investigations to identify the cause were underway."

January 5, 2020

"WHO shared detailed information about a cluster of cases of pneumonia of unknown cause through the IHR (2005) Event Information System, which is accessible to all Member States. The event notice provided information on the cases and advised Member States to take precautions to reduce the risk of acute respiratory infections.

WHO also issued its first Disease Outbreak News report. This is a public, web-based platform for the publication of technical information addressed to the scientific and public health communities, as well as global media. The report contained information about the number of cases and their clinical status; details about the Wuhan national authority's response measures; and WHO's risk assessment and advice on public health measures. It advised that "WHO's recommendations on public health measures and surveillance of influenza and severe acute respiratory infections still apply"." (Emphases added).

January 9, 2020

"WHO reported that Chinese authorities have determined that the outbreak is caused by a novel coronavirus.

WHO convened the first of many teleconferences with global expert networks, beginning with the Clinical Network."

January 10, 2020

"The Global Coordination Mechanism for Research and Development to prevent and respond to epidemics held its **first teleconference** on the novel coronavirus, as did the Scientific Advisory Group of the research and development (R&D) Blueprint, a global strategy and preparedness plan that allows the rapid activation of research and development activities during epidemics.

The Director-General spoke with the Head of the National Health Commission of the People's Republic of China. He also had a call to share information with the Director of the Chinese Center for Disease Control and Prevention."

VII. International Health Regulations -- without more -- are insufficient

The International Health Regulations (2005) ("IHR") to which 196 countries are State Parties present helpful precedent that supports an agreement, as proposed. *See IHR, supra note 3.* The IHR demonstrate, for example, that countries agree to the need for notice in the event of particular health events. But that agreement is within regulations that have no enforcement provisions. The lack of enforcement mechanisms reflects the particular nature of international public health, as well as WHO as an organization. Generally speaking, WHO is a directing and coordinating authority in international health, with a mandate to assist with collaborative efforts, provide assistance and serve as a center of knowledge and expertise. WHO does not have enforcement authority over member states. The absence of that authority and the intrusion that sort of authority would present likely account for many of the successes that WHO has achieved over its history. *See generally* WHO Constitution found at https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=7 .

The IHR contain provisions that mirror elements of the proposed agreement, albeit with no enforcement authority. For example, IHR Article 6, para. 1, provides that a State Party **should** notify WHO within 24 hours of identifying a public health emergency of international concern. Para. 2 of Article 6 states that State Parties **should** provide WHO with information that is accurate and sufficiently detailed. Article 10 provides that WHO can "**offer to collaborate** … in assessing the potential for international disease spread." (Emphases added).

The IHR reflect WHO's role as a consultative body that can provide assistance when notified of a public health emergency. An Agreement with enforceable provisions would appear to be inconsistent with WHO's Constitution that maintains the organization's trusted, neutral role as the leading international body providing collaborative, specialized assistance. WHO's mandate, however, fits well alongside an agreement as proposed. Accordingly, the proposal envisions reliance on WHO for certain logistic and managerial functions.

The Project anticipates that WHO would not have a role in advocating for the Agreement. Similarly, the Project expects that WHO would have no role in the event of non-compliance and potential application of enforcement provisions. That would be a matter for the signatory states.

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