

COVID-19 AND THE INTERNATIONAL RESPONSE: AN INQUIRY INTO THE POSSIBILITY OF A GLOBAL PANDEMIC TREATY

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We are currently living in an unprecedented time where the global COVID-19 pandemic has caused havoc to everyday life and claimed innumerable fatalities. Rightly, the world is seeking answers and truths during a time when there have been more unknowns than knowns regarding the virus. States are attempting to curb the virus, regain control, and most importantly, protect the lives of as many citizens as possible. While each State has the responsibility to protect its own citizens by implementing a range of domestic measures, there have also been international prohibitions on foreign travel, previously been unseen by many people. However, neither a single State nor an organisation can overcome the pandemic alone. This is where the academic attention turns towards public international law to shed light on the situation and gain insight into the international legal response. This is due to the decentralised nature of the international legal system that is vastly fragmented. International law and norms do not seamlessly fit together like a jigsaw and instead they often highlight gaps between regulations. The paper seeks to address whether the international legal regime is robust and effective enough to address these concerns. The paper addresses the role and response of the World Health Organisation, the United Nations Security Council, the United Nations General Assembly, and domestic courts, to the pandemic. The paper concludes that while international law is reactive to the societal needs, the legal regime does have the ability to adapt following the current pandemic. Thus, it argues that conducting an international deliberation and the formation of a 'Pandemic Treaty' would clearly display the potential and the possibility for international law to be effective during a future pandemic.

TABLE OF CONTENTS

<i>I. Introduction</i>	83	<i>A. Hierarchy and Legal Sources of International Law</i>	86
<i>II. The Current Problem and the Fragmentation of International Law</i>	85	<i>B. Fragmentation And International Law</i>	87

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III. <i>International Institutions and their Response to the Pandemic</i>	90	C. <i>Domestic Courts</i>	100
A. <i>The World Health Organisation</i> .	91	IV. <i>The International Inquiry</i>	101
B. <i>Other United Nationsmandated Bodies</i>	95	A. <i>The Call for an International Inquiry</i>	101
1. <i>The United Nations Security Council</i>	95	B. <i>The Outcome: The Who Report 2021</i>	102
2. <i>The United Nations General Assembly</i>	98	V. <i>The Future Possibility of a Pandemic Treaty</i>	105
		VI. <i>Conclusion</i>	110

I. INTRODUCTION

It has now been over two years since the Director-General of the World Health Organisation (‘WHO’) declared the COVID-19 virus as a pandemic.¹ The pandemic has undoubtedly changed the world and affected every aspect of life. The sheer magnitude of the ramifications, both individually and legally, is extremely significant and stretches throughout the world, reminding us of the interconnected international community we live in. During the initial stages of the virus outbreak, there were many uncertainties that had gripped the world in fear and are still causing immeasurable loss of life.² States have declared national emergencies and lockdowns, while individual citizens have faced limitations on their freedoms due to travel restrictions and quarantine policies.³ Mass testing, wearing face masks and social distancing have become the ‘new normal’ to curb the spread of the virus.⁴ However, at the time of writing, there is optimism for the future in curbing the pandemic due to the various scientific and medical advances.⁵

Following the expanding discussion and academic attention around the area, there is no doubt that public international law and its response has been put into the spotlight.⁶ Though it ignores the far-reaching question – how robust

¹ The World Health Organisations, *WHO Director-General’s Opening Remarks at the Media Briefing on Covid-19—11 March 2020*, available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (Last visited on July 20, 2022).

² For a brief timeline on the development of the COVID-19 pandemic, see *A Timeline of the COVID-19 Developments*, January 2, 2021, *The American Journal on Managed Care*, available at <https://www.ajmc.com/view/a-timeline-of-covid19-developments-in-2020> (Last visited on July 20, 2022).

³ Joelle Grogan, *States of Emergency*, VERFASSUNGSBLOG, May 26, 2020, available at <https://verfassungsblog.de/states-of-emergency/> (Last visited on July 20, 2022).

⁴ Mingwang Shen, *Mass Testing – An Underexplored Strategy for COVID-19 Control*, Vol. 2(2), INNOVATION CHAMB., 1 (2021).

⁵ For instance, see Simiao Chen et al., *Curbing the COVID-19 Pandemic with Facility-Based Isolation of Mild Cases: A Mathematical Modeling Study*, Vol. 28(2), J. TRAVEL MED., 1 (2021).

⁶ For instance, see Oona A. Hathaway et al., *The COVID-19 Pandemic and International Law*, Vol. 54(2), CORNELL INT’L L. J., 149 (2021); Oona A. Hathaway, *COVID-19 and International Law Series: Introduction*, JUST SECURITY, November 10, 2020, available at <https://www.justsecurity.org/73304/covid-19-and-international-law-series-introduction/> (Last visited on July 20, 2022).

and effective is international law in addressing this extreme global health crisis? At a time when the whole world is searching for answers, the first assumption is that international law has a clear framework and legal response to such a situation.⁷ However, the international community has lacked an effective response during this pandemic.⁸ While there are regulations in place, the intricate and delicate nature of international law has been exposed. The international legal system is fraught with inherent weaknesses that include regulation challenges, limited co-operation, and a lack of enforcement that is reinforced through the dominance of State-based approaches.⁹ Thus, the challenges of fragmentation of international law have been highlighted for all to witness.¹⁰ Fragmentation is an inherent feature of the international legal regime.¹¹ It is where the legal regime is split and regulated into specialised fields which claim relative autonomy from each other.¹² The international legal regime consists of many specific fields which have their own institutions and bodies regulating them.¹³

At the heart of the pandemic the international healthcare natural takes the primary focus. The pandemic has also affected nearly every other aspect of societal life, which is also applies for the legal remit. For instance, the pandemic has raised concerns surrounding international peace and security. This is demonstrated by the United Nation ('UN') Secretary-General appealing for a global ceasefire to limit the suffering and devastating loss from COVID-19.¹⁴ Further examples of affected legal sectors are politics, aviation, and economy which depicts the diverse range of legal fields that are at play.¹⁵

⁷ Gian Luca Burci et al., *Envisioning an International Normative Framework for Pandemic Preparedness and Response: Issues, Instruments and Options*, GENEVA GRADUATE INSTITUTE, available at <https://www.graduateinstitute.ch/library/publications-institute/envisioning-international-normative-framework-pandemic-preparedness> (Last visited on July 31, 2022).

⁸ *Id.*

⁹ For instance, see J. GOLDSMITH & E. POSNER, *THE LIMITS OF INTERNATIONAL LAW*, 14 (Oxford University Press, 2007).

¹⁰ For a general discussion on the challenges to fragmentation, see Gerhard Hafner, *Pros and Cons Ensuing from Fragmentation of International Law*, Vol. 25(4), *MICH. J. INT'L L.*, 856 (2004).

¹¹ The International Law Commission, *Study Group of the International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, A/CN.4/L.682 (April 13, 2006).

¹² *Id.*

¹³ Hafner, *supra* note 10, at 849.

¹⁴ The United Nations, *Secretary-General's Appeal for Global Ceasefire*, March 23, 2020, available at <https://www.un.org/sg/en/content/sg/statement/2020-03-23/secretary-generals-appeal-for-global-ceasefire> (Last visited on July 20, 2022).

¹⁵ Organisation for Economic Co-operation and Development, *COVID-19 and the Aviation Industry: Impact and Policy Responses*, October 15, 2020, available at <https://www.oecd.org/coronavirus/policy-responses/covid-19-and-the-aviation-industry-impact-and-policy-responses-26d521c1/> (Last visited on July 20, 2022); McKinsey & Company, *The Coronavirus Effect on Global Economic Settlement*, June 29, 2022, available at <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/the-coronavirus-effect-on-global-economic-sentiment> (Last visited on July 20, 2022).

This line of thought then leads to the fundamental question – how can a policy-driven society have gaps in such a vital area of legal protection? This fundamental question then advances to the corresponding question – is it not the purpose of international law to enforce international regulations and hold States and international institutional bodies accountable? The answer is, of course, yes. However, is the attribution of blame and demanding reparations or compensation the way forward? Unfortunately, the answer to this is in the negative. This is because it hinders the idea of developing and progressing the international legal framework.

Hence, this paper instead aims to consider the need to strengthen the said frame work and learn from the current mistakes. The purpose of this paper is to primarily encourage discussion around the importance of creating a strong international framework. The paper seeks to show that while there exist limitations to the general international response, the international legal framework has the remarkable ability and an opportunity to change and become effective. However, it does not aim to provide an all-encompassing ‘answer’ but would demonstrate the complexity of an international response to a pandemic.

In Part II, the paper briefly outlines the nature and context of international law and the current problems and limitations of the fragmented nature of international law. Part III of the paper addresses the responses from international institutions. This covers the WHO, the UN Security Council (‘UNSC’), the UN General Assembly (‘UNGA’), and briefly mention of domestic routes through the lens of the International Court of Justice (‘ICJ’). The paper then moves to Part IV which discusses the requirement of an international inquiry into the pandemic to be undertaken. Furthermore, it also outlines the WHO report issued in 2021 on the origin of the COVID-19 virus. In Part V, the paper outlines the possible future developments and highlights how an effective way forward may be through a ‘Pandemic Treaty’. Part VI offers concluding remarks.

II. THE CURRENT PROBLEM AND THE FRAGMENTATION OF INTERNATIONAL LAW

Before the paper addresses the responses to COVID-19 from different international institutions and examines the international inquiry, it is first imperative to outline the foundations of how the international legal system functions as a regime. Understanding the legal regime will assist in highlighting the complexities surrounding the international response to a pandemic. This part will initially outline the legal sources of international law along with the inherent drawbacks of the regime. It will thereafter go on to address the fragmented nature of the international legal remit.

A. HIERARCHY AND LEGAL SOURCES OF INTERNATIONAL LAW

Public international law is unlike the domestic legal systems. This is because the international legal system lacks a universal legislative body which ensures compliance as well as a court system having a universal jurisdiction to interpret the international law. The unique features of international law are also underpinned by the traditional notion that international law regulates the legal responsibilities of States. Herein, the States have a dual approach which is not only to comply with all laws and legal principles, but also to ensure the compliance of other States.¹⁶ This is due to the notion of the ‘compliance pull’ wherein aspects such as norm internalisation, State’s reputation, sanctions, and limiting and withholding of other benefits until the State complies, ensures international compliance.¹⁷

Louis Henk in famously stated that “Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.”¹⁸ However, the legal system is strained by what is regarded as an ‘enforcement disability’.¹⁹ Due to the decentralised nature and the limited coercive ability of the legal regime, it is often difficult to enforce mechanisms and ensure that States are not breaching international law.²⁰ These legal hurdles have been amplified during the pandemic as there is no overarching mechanism to specifically address the crisis. Thus, States are left to their own devices to a certain degree. A clear example of this is the State’s use of national emergency powers to legalise national lockdowns and restricting domestic and international travel.²¹

It should also be noted that within the international legal system the norms or rules must be derived from one of the recognised sources which are outlined under Article 38(1) of the Statute International Court of Justice. The said provision provides,

“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

¹⁶ M. Bothe, *Compliance* in *The MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW*, 3 (Oxford University Press, 2010).

¹⁷ *Id.*

¹⁸ L. HENKIN, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY*, 47 (Columbia University Press, 1979).

¹⁹ J. d’Aspremont, *The Collective Security System and the Enforcement of International Law* in *THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW*, 130 (Oxford University Press, 2013).

²⁰ J. GOLDSMITH & E. POSNER, *THE LIMITS OF INTERNATIONAL LAW*, 37 (Oxford University Press, 2007).

²¹ Organisation for Economic Co-operation and Development, *The Territorial Impact of COVID-19: Managing the Crisis Across Levels of Government*, November 10, 2020, available at <https://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/> (Last visited on July 20, 2022); United Nations World Tourism Organisation, *COVID-19 Related Travel Restrictions*, available at <https://www.unwto.org/covid-19-travel-restrictions> (Last visited on July 20, 2022).

- a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting States.
- b) international custom, as evidence of a general practice accepted as law.
- c) the general principles of law recognised by civilised nations.
- d) subject to the provisions of Article 59, judicial decisions, and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for determining the rules of law.²²

It is important to note that this provision itself does not reflect a hierarchy between the sources.²³ Further, the list entailed in Article 38(1) is not exhaustive since there are other sources of international law that are now recognised such as *jus cogens*²⁴ and *erga omnes* norms.²⁵ This complexity highlights the challenge in the regulation of an international legal framework.

B. FRAGMENTATION AND INTERNATIONAL LAW

International law has a vast domain which covers a wide range of legal issues such as human rights, international criminal law, the use of force, the conduct of war, health, among many others. It should also be noted that the international legal system is extremely intricate as not only does it operate in a magnitude of field, but it also navigates in a sphere where regional legal systems as well as domestic systems operate.

There are no universal institutional bodies, nevertheless, there are key bodies within international law which have their own mandate and jurisdictional reach. However, these bodies are dependent on the consensual agreement

²² The Statute of the International Court of Justice, April 18, 1946, 33 U.N.T.S. 993, Art. 38(1).

²³ MALCOLM SHAW, *INTERNATIONAL LAW*, 123 (Cambridge University Press, 6th ed., 2008).

²⁴ *Jus cogens* imply norms from which no derogation is permitted. For a basic understanding of the norm, see Vienna Convention on the Law of Treaties, May 22, 1969, 1155 U.N.T.S. 331, Arts. 53 and 64 (it states that a treaty is void “if, at the time of its conclusion, it conflicts with a peremptory norm of general international law” or where a new peremptory norm of general international law emerges, any existing treaty which conflicts with that norm becomes void and terminates). See also *In Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, (2006) ICJ Rep 6, ¶32 (the ICJ here explicitly referred to *jus cogens* in a majority decision for the first time).

²⁵ *Erga omnes* is the obligation owed to all States across the international community. For a basic understanding of the norm, see *Barcelona Traction Case (Belgium v. Spain)*, 1970 ICJ Rep 3, ¶¶33-34 (the ICJ observed that “an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising *vis-à-vis* another State in the field of diplomatic protection. By their very nature, the former is the concern of all States. Given the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*”).

of the member States.²⁶ The UN has different legal bodies – the UNGA, which is regarded as the policy-making organ,²⁷ the UNSC where the alleged violation of the UN Charter are addressed and where binding resolutions, as well as recommendations, can be made by the body,²⁸ and the ICJ, where disputes between States can be raised with the State’s consent to jurisdiction.²⁹ The UN also has a range of specialised agencies which are responsible for certain domains, with the most important for the current discussion being the WHO.³⁰ These numerous different bodies have a clear and separate mandate.

Against this complex backdrop of international sources and different institutions, it is certain that when turning to address the international legal response to the pandemic there would be no uniform ‘one size fits’ response which would provide sufficient answers – primarily due to the complexities and widespread nature of the pandemic.

This complexity in the inherent nature of the international legal regime has led to it being regarded as ‘fragmented’, which is defined as “the splitting up of the law into highly specialised boxes that claim relative autonomy from each other”.³¹ In other words, different legal fields or areas within the international regime are often developed and regulated by specific laws, norms and principles which have their own legal institutions and bodies, leading to a fragmented approach to regulation at the international level.³² Fragmentation is not a new phenomenon and has been discussed for the last two decades.³³ Various factors are responsible for fragmentation which includes the proliferation of international regulations, political divergences, the growing dominance of regionalisation of international law and the specialisation of regulations.³⁴ Thus, due to the different legal fields at play and their different mandate and compliance mechanisms, obtaining a single and authoritative international legal response to the pandemic is unlikely.

However, the notion of fragmentation of law is not solely a limiting characteristic as having specialised areas addressed by specialised bodies allows the law to be led by experts within that field, thus often strengthening the law and

²⁶ A. Guzman, *The Consent Problem in International Law*, available at https://escholarship.org/content/qt04x8x174/qt04x8x174_noSplash_5221402d70d7d0b5afb467a7a464009.pdf (Last visited on July 31, 2022).

²⁷ The Charter of the United Nations, October 24, 1945, I U.N.T.S. XVI, Arts. 10-17.

²⁸ *Id.*, Arts. 24-26.

²⁹ *Id.*, Arts. 92-95.

³⁰ It is acknowledged that here are a range of other international bodies and agencies. Although for the purpose of this paper it is limited to the most relevant.

³¹ The International Law Commission, *supra* note 11.

³² Fisher-Lescano & G. Teubner, *Regime Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law*, Vol. 25(4), MICH. J. INT’L L., 999 (2004).

³³ Koskenniemi, *The Fate of Public International Law: Between Technique and Politics*, Vol. 70, MOD.L. REV., 1 (2007).

³⁴ G. Hafner, *Pros and Cons Ensuring from Fragmentation of International Law*, Vol. 25, MELB. J. INT’L L., 849,850 (2004).

policy position. The key drawback evidence from the pandemic itself is the lack of communication and cooperation between different States and institutions.³⁵

Focusing back on the pandemic directly, it is clear that there are a growing range of debates regarding many different legal avenues and responses. They range from questioning the nature and origins of the pandemic and criminal sanctioning,³⁶ to the responses under the Law of Armed Conflict.³⁷ There are also debates about the role of the UN, the impact upon international peace and security, and the purpose and future considerations of biological weapons.³⁸

Furthermore while there has been a declaration of a ‘war’ on the virus,³⁹ there are many other battles which need to be fought. Following the pandemic, there has been a rise in cybercrime and a growing urgency for States to be held responsible to declare and disseminate valid and reliable information and to limit misinformation and disinformation which has vigorously spread across the world.⁴⁰ Additionally, there has been a range of growing concerns surrounding human rights breaches domestically and internationally. For instance, there have been many concerns surrounding the rights of migrants, refugees, and internally displaced people concerning border closures.⁴¹ However, there are numerous different regimes and bodies, such as the UN Human Rights Council (‘UNHRC’) and the UN High Commissioner for Refugees which oversee and regulate each are specifically. The UNHCR, International Organization for Migration, Office of the

³⁵ R. Moustafa, *Friends, or Foes? International Law and Health Nationalism During COVID-19*, THINK GLOBAL HEALTH, December, 2021, available at <https://www.thinkglobalhealth.org/article/friends-or-foes-international-law-and-health-nationalism-during-covid-19> (Last visited on July 31, 2022).

³⁶ Nina Sun & Livio Zilli, *The Use of Criminal Sanctions in Clovis-19 Response – Exposure and Transmission Part 1*, OPINIO JURIS, April 3, 2020, available at <http://opiniojuris.org/2020/04/03/covid-19-symposium-the-use-of-criminal-sanctions-in-covid-19-responses-exposure-and-transmission-part-i/> (Last visited on July 20, 2022).

³⁷ Marcos Kotlik & Exequiel Heffes, *Covid-19 Symposium: Covid-19 in Conflict-Affected Areas Armed Groups as Part of a Global Solution*, OPINIO JURIS, April 4, 2020, available at <http://opiniojuris.org/2020/04/04/covid-19-symposium-covid-19-in-conflict-affected-areas-armed-groups-as-part-of-a-global-solution/> (Last visited on July 20, 2022).

³⁸ Olha Bozhenko, *Deweaponising the Biological Weapons Convention: Can an Arms Control Instrument Enhance the Global Disease Surveillance?*, EJIL: TALK!, February 20, 2020, available at <https://www.ejiltalk.org/deweaponising-the-biological-weapons-convention-can-an-arms-control-instrument-enhance-the-global-disease-surveillance/> (Last visited on July 20, 2022).

³⁹ The United Nations, *COVID-19: “We are at War with a Virus” – UN Secretary-General*, available at <https://unric.org/en/covid-19-we-are-at-war-with-a-virus-un-secretary-general-antonio-guterres/> (Last visited on July 20, 2022).

⁴⁰ M. Milanovic & M. Schmitt, *Cyber Attacks and Cyber (Mis)Information Operations During a Pandemic*, Vol.11, NAT’L SEC. L. & POL’Y, 247 (2020).

⁴¹ Sarah Gamberini & Amanda Moodie, *The Virus of Disinformation: Echoes of Past Bioweapons Accusations in Today’s Covid-19 Conspiracy Theories*, WAR ON THE ROCKS, April 6, 2020, available at <https://warontherocks.com/2020/04/the-virus-of-disinformation-echoes-of-past-bioweapons-accusations-in-todays-covid-19-conspiracy-theories/> (Last visited on July 20, 2022); Will de Freitas, *Technology Threatens Human Rights in the Coronavirus Fight*, THE CONVERSATION, May 7, 2020, available at <https://theconversation.com/technology-threatens-human-rights-in-the-coronavirus-fight-136159> (Last visited on July 20, 2022).

UNHight Commissioner for Human Rights and WHO released a joint statement which asserted that the rights and health of refugees, migrants and Stateless must be protected in the COVID-19 response.⁴²

It is evident from the above range of examples that while all fragmented regimes have the same starting point and a desire for the protection of human security, international law only offers a broad response. Thus, to gain further insights and get the desired answers, the questions that are asked need to be specific. Hence, in the following part, the paper identifies the complexities of the international regime from a general overlook of the responses from the most relevant bodies.

III. INTERNATIONAL INSTITUTIONS AND THEIR RESPONSE TO THE PANDEMIC

The international legal response has taken shape through a range of different international institutions all having different legal mandates. This part will focus on key UNmandated bodies, namely the WHO, the UNSC, and the UNGA. It will also briefly mention the possible role of domestic courts before moving on to the requirement of having an international inquiry. The rationale behind focusing specifically on the a fore said institutions is primarily due to their relevance in managing and regulating the pandemic. Both the WHO and UNSC have past experience in dealing with epidemics. The secondary rationale is due to the ability of these institutions to not only focus on attributing blame but also to act collectively and move forward. Thereby, it enables the international regime as well as the world to learn from the current situation.

It should also be noted that there are other key bodies which have addressed the pandemic and provided their respective responses. For instance, while the ICJ has published a detailed report which outlined the obligations of both States and non-State actors alike to comply with current international law,⁴³ it has been omitted from this part because of the procedural requirements. These procedural concerns include China's acceptance of the jurisdiction of the ICJ.⁴⁴ Furthermore, it is opined that it does not seem in the best interest to bring legal

⁴² The World Health Organization, *OHCHR, IOM, UNHCR and WHO Joint Press Release: The Rights and Health of Refugees, Migrants and Stateless must be Protected in COVID-19 Response*, March 31, 2020, available at <https://www.who.int/news/item/31-03-2020-ohchr-iom-unhcr-and-who-joint-press-release-the-rights-and-health-of-refugees-migrants-and-stateless-must-be-protected-in-covid-19-response> (Last visited on July 20, 2022).

⁴³ The International Commission of Jurists, *Living Like People Who Die Slowly; The Need for the Right to Health Company COVID-19 Response*, September 2020, available at <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf> (Last visited on July 20, 2022).

⁴⁴ Peter Tzeng, *Taking China to the International Court of Justice over Covid-19*, EJIL: TALK!, April 2, 2020, available at <https://www.ejiltalk.org/taking-china-to-the-international-court-of-justice-over-covid-19/> (Last visited on July 20, 2022).

cases when the international community needs to act collaboratively in order to protect lives across the world.

A. THE WORLD HEALTH ORGANISATION

The WHO faces an unprecedented challenge during the global pandemic. The WHO and its Constitution came into force in 1948 and the body now works with nineteen member States spanning over six different regions globally.⁴⁵ The mandate of the WHO is to direct and coordinate international health within the UN system.⁴⁶ The organisation also comprises a World Health Assembly that is composed of delegations from all member States.⁴⁷ Worldwide, the work of the WHO has life-changing impacts which cover health concerns and notably contagious viruses. For instance, assisting in health emergencies which include disease outbreak disasters and humanitarian crisis demonstrate the vast reach of the organisation. Notable examples to date include the Ebola outbreaks in West Africa between 2014 and 2016,⁴⁸ the outbreak in the Democratic Republic of Congo in 2020,⁴⁹ as well as outbreaks in 2021 in Guinea,⁵⁰ and in Congo in the same year.⁵¹

Another example is the Zika virus disease outbreak in 2015 in Brazil, during which the WHO supported the country's control of the disease and outlined the actions that needed to be taken.⁵² This clearly displays the vital work of the WHO at a global scale. The WHO also has had an active role in responding to the current pandemic. The WHO's Country Office in China, a few days after the origin of the virus, in January 2020, updated the Event Information System and notified about the virus.⁵³ In the following months, the WHO provided resources and information to different States and issued a Strategic Preparedness and Response Plan.⁵⁴

⁴⁵ The World Health Organization, *About WHO*, available at <https://www.who.int/about> (Last visited on July 20, 2022).

⁴⁶ The Constitution of the World Health Organization, U.N. Doc. A/RES/131 (November 17, 1947) Art. 2.

⁴⁷ *Id.*, Art. 9.

⁴⁸ The World Health Organization, *Ebola Outbreak Ebola Outbreak 2014-2016 - West Africa*, available at <https://www.who.int/emergencies/situations/ebola-outbreak-2014-2016-West-Africa> (Last visited on July 20, 2022).

⁴⁹ The World Health Organization, *Ebola Outbreak 2022 - Équateur Province, DRC*, available at <https://www.who.int/emergencies/situations/ebola-%C3%A9quateur-province-democratic-republic-of-the-congo-2022> (Last visited on July 20, 2022).

⁵⁰ The World Health Organization, *Ebola Outbreak 2021 - N'Zerekore, Guinea*, available at <https://www.who.int/emergencies/situations/ebola-2021-nzerekore-guinea> (Last visited on July 20, 2022).

⁵¹ The World Health Organization, *Ebola Outbreak 2021 - North Kivu*, available at <https://www.who.int/emergencies/situations/ebola-2021-north-kivu> (Last visited on July 20, 2022).

⁵² The World Health Organization, *Zika Virus Disease Outbreak 2015-2016*, available at <https://www.who.int/emergencies/situations/zika-virus-outbreak> (Last visited on July 20, 2022).

⁵³ The World Health Organization, *Listings of WHO's Responses to COVID-19*, June 29, 2020, available at <https://www.who.int/news/item/29-06-2020-covid-timeline> (Last visited on July 20, 2022).

⁵⁴ The World Health Organization, *2019 Novel Coronavirus (2019-nCoV): Strategic Preparedness and Response Plan*, February 4, 2020, available at <https://www.who.int/publications/i/item/>

The International Health Regulation 2005 ('IHR') which is based on the WHO Constitution and entered into force in 2007, was designed with the scope and purpose of being an international instrument focused on the prevention and control of the international spread of disease.⁵⁵ Additionally, the IHR provides an overarching legal framework and defines a country's rights and obligations in handling transboundary public health events.⁵⁶ Therefore, it seems only logical for the WHO and the IHR to be at the forefront of the inquiry into the pandemic.⁵⁷

To find a breach of the IHR, facts would need to be established and would comprise of a range of questions such as China's compliance with IHR. To address this question Part II of the IHR needs to be examined which focuses on 'information and public health response'.⁵⁸ Article 5 addresses the issue of surveillance and provides that State Parties are to "detect, assess, notify and report events in accordance with these Regulations, as specified in Annex 1".⁵⁹ With regards to the outbreak of the virus in Wuhan, China did notify the WHO. However, the main concerns arise under Article 6 of the IHR which stipulates that the States have an obligation to notify the WHO by the 'most efficient means' and within twenty-four hours of assessment.⁶⁰ This raises the questions as to whether the notification was prompt when there was evidence of human-to-human transmission and whether such acts could be termed negligent or malicious. Such facts would need to be proven. The same could pose problems when investigated and cast doubt on whether the evidence would or could still be obtained from Wuhan or whether too much time has now elapsed for establishing answers to these fundamental question regarding the origin of the virus.

Further, Article 7 of the IHR covers information sharing during unexpected or unusual public health events, whereby "irrespective of origin or sources, which may constitute a public health emergency of international concern ('PHEIC'), it shall provide to WHO all relevant public health information".⁶¹ The notion of consultation is addressed in Article 8, which states that where there is sufficient information available to a State and it does not require notification under Article 6, the State must still advise and consult with the WHO regarding the appropriate measures.⁶²

strategic-preparedness-and-response-plan-for-the-new-coronavirus (Last visited on July 20, 2022).

⁵⁵ The World Health Organization, *International Health Regulations (2005)*, available at <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf> (Last visited on July 20, 2022) ('International Health Regulation').

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ International Health Regulation, *supra* note 55.

⁵⁹ *Id.*, Art. 5.

⁶⁰ *Id.*, Art. 6.

⁶¹ *Id.*, Art. 7.

⁶² The International Health Regulation, *supra* note 55, Art. 8.

Article 9 outlines that the WHO “may take into consideration reports from sources other than notifications or consultations and shall assess the reports”.⁶³ Whereas under Article 10, the WHO is required to request verification from a State Party of the reports from the aforesaid sources.⁶⁴ Furthermore, Article 11 outlines that “WHO shall send to all State Parties and as, appropriate, to relevant intergovernmental organisations, as soon as possible and by the most effective means available”.⁶⁵ There have also been concerns raised in certain States regarding the WHO acting complicit in its review of China’s actions and thereby violating these provisions.⁶⁶ These concern are an element of a politicised issue since it relates to the relationships and dialogues between the governments of the States.⁶⁷ It has been cited as an issue by the United States of America (‘USA’), which has potentially led to a downfall and limited capacity of a WHO-led inquiry into the pandemic.

In this context, it must be questioned whether the WHO would be the most appropriate body to deal with such future events. The IHR does not have a transparent monitoring or compliance system with concerns lingering regarding WHO’s response time. For instance, it took over a month for the WHO Chief to declare the COVID-19 outbreak as a PHEIC in January 2020 and it was not deemed a pandemic until months later.⁶⁸ This raises fundamental questions surrounding the functional and effective ability of the WHO to undertake the essential tasks to limit the spread of the virus and properly inform all States. Additionally, a declaration regarding the COVID-19 virus was withheld by the WHO Emergency Committee due to it being unaware about the origin of the virus.⁶⁹ Furthermore, there were also imprecise and inadequate recommendations regarding the wearing of masks which led to different approaches being undertaken across the world.⁷⁰

⁶³ *Id.*, Art. 9.

⁶⁴ *Id.*, Art. 10.

⁶⁵ *Id.*, Art. 11.

⁶⁶ *China Hits Back After US Express Deep Concerns Over WHO Covid-19 Report*, THE GUARDIAN, February 14, 2021, available at <https://www.theguardian.com/world/2021/feb/13/white-house-has-deep-concerns-over-china-role-in-who-covid-19-report> (Last visited on July 20, 2022).

⁶⁷ D. Fidler, *The COVID-19 Pandemic, Geopolitics, and International Law*, Vol. 11(2), J. INT’L HUM. LEGAL STUD., 237-248 (2020).

⁶⁸ *WHO’s Pandemic Response: From Criticism to Nobel?*, THE ECONOMIC TIMES, March 11, 2021, available at <https://economictimes.indiatimes.com/news/international/world-news/whos-pandemic-response-from-criticism-to-nobel/articleshow/81443977.cms?from=mdr> (Last visited on July 20, 2022).

⁶⁹ The World Health Organisation, *Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-nCoV)*, January 30, 2020, available at [https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)) (Last visited on July 20, 2022).

⁷⁰ (Karen Teber), *Georgetown Global Health Experts Comment on WHO’s Delayed PHEIC Decision and Wuhan Transportation Shutdown*, GEORGETOWN UNIVERSITY MEDICAL CENTRE, January 22, 2022, available at <https://gumc.georgetown.edu/news-release/georgetown-global-health-experts-comment-on-whos-delayed-pheic-decision-and-wuhan-transportation-shutdown/> (Last visited on July 20, 2022).

These failings alone question the very nature of the WHO and its ability to manage a pandemic.

To quell some of these concerns, the IHR Review Committee has analysed three areas which need to be improved under the IHR. They are –

1. Compliance with regulations
 - a. Lack of compliance of State Parties
 - b. IHR implementation responsibility for the highest level of government
 - c. To improve preparedness, international cooperation and timely notification robust accountability and improving compliance required
2. Early warning, notification, and response
 - a. Early warning essentials
 - b. Early response requires better collaboration, coordination, and trust
 - c. Applying the precautionary principle when deciding on travel-related measures
3. Funding and political pledges
 - a. Predictable and sustained financing is required in domestic and international law
 - b. International cooperation is required.⁷¹

Despite the challenges that would be faced in making changes to the IHR, such changes would be beneficial as the legal principles and foundations are already deeply embedded within the IHR. Having an early or efficient alert system and holding States accountable would not only be a deterrent to States to ensure compliance, but also, more importantly, would allow for increased protection of the global population, which is the primary aim of the IHR. Hence, strengthening and reforming the IHR may be a method to move forward and enhance the regime. For instance, a possible reform could be to amend the Constitution and allow for more robust deterrence mechanisms and ensure State compliance through sanctions. The IHR intended to encourage international cooperation and is thus heavily

⁷¹ M. Sohn et al., *The Problem of International Health Regulations in the Process of Responding to COVID-19 and Measures to Improve its Effectiveness*, Vol. 3(2), J. GLOB. HEALTH SCI., 7(2021).

dependent on State Parties. However, there are clear issues with sovereignty and the ability of the States to alert others promptly.⁷²

An alternative possibility under the WHO Constitution comes in the form of Article 75, wherein a situation could be referred to the ICJ for settlement.⁷³ Herein, the ICJ would not be driven by compensation or retribution and would instead offer a clear objective focus on the facts. This is due to the role of the court to settle legal disputes which have been submitted by States and give an opinion on the legal questions in accordance with international law.⁷⁴ However, this approach is not without its limitations. Generally, as stated earlier, there are issues concerning the consensual-based nature of the courts, which therefore would lead to a lack of jurisdiction.⁷⁵ This would lead to further problems regarding how to establish and contend that there was a breach of international law and which State would be deemed most suitable to bring the case forward. More crucially, Article 75 deals with referral of disputes concerning the interpretation and application of the WHO Constitution, and therefore, the question would arise as to what provisions of the Constitution itself were violated. Thus, instead of creating a political circus which moves away from the immediate requirements, there needs to be a coordinated international response to the pandemic.

B. OTHER UNITED NATIONS MANDATED BODIES

As there are legal hurdles that face the WHO and the IHR, attention also needs to be turned to other international institutional bodies and their responses. Naturally these institutions would be the UN bodies that would ensure a cooperative international approach. The key bodies which will be addressed in turn are the UNSC and the UNGA.

1. The United Nations Security Council

The UNSC was formed in 1945 and is one of the six principal organs of the UN.⁷⁶ Under the mandate of the UN, the UNSC's primary role is to maintain international peace and security.⁷⁷ The composition of the UNSC consists of fif-

⁷² R. Moustafa, *Friends, or Foes? International Law and Health Nationalism During COVID-19*, THINK GLOBAL HEALTH, December 6, 2021, available at <https://www.thinkglobalhealth.org/article/friends-or-foes-international-law-and-health-nationalism-during-covid-19> (Last visited on July 31, 2022).

⁷³ *Id.*, Art. 75.

⁷⁴ The International Court of Justice, *The Court*, available at <https://www.icj-cij.org/en/court> (Last visited on July 20, 2022).

⁷⁵ R. Teixeira & R. Bastos, *The Cases Where the International Court of Justice Lacked Jurisdiction: A Brief Analysis and Commentary* in TOWARDS A UNIVERSAL JUSTICE? PUTTING INTERNATIONAL COURTS AND JURISDICTIONS INTO PERSPECTIVE, 24 (Martinus Nijhoff, 2016).

⁷⁶ The United Nations Security Council, *What is the Security Council*, available at <https://www.un.org/securitycouncil/content/what-security-council> (Last visited on July 20, 2022).

⁷⁷ Charter of the United Nations, October 24, 1945, I U.N.T.S XVI, Arts. 23-32.

teen members of the UN and its five permanent members – China, France, Russia, the United Kingdoms (‘UK’) and the USA.⁷⁸

The encompassing nature of the pandemic on every aspect of daily life combined with the wider understanding of the phrase ‘security’ under international law turns the attention towards the UNSC. The term ‘security’ has moved beyond the traditional concept of being aligned solely with military threats and now relates to a wider understanding of human security.⁷⁹ Human security includes threats to seven areas,⁸⁰

1. Economic security – basic income
2. Food security – the physical and economic access to basic food
3. Health security – guaranteed minimum protection from disease and unhealthy lifestyles
4. Environmental security – protection from both short and long-term threats of nature and man-made threats and from the deterioration of the natural environment
5. Personal security – the protection from physical violence
6. Community security – the protection from the loss of traditional relationships and values from sectarian and ethnic violence
7. Political security – ability to honour basic human rights.

This displays a shift from a State centric approach and highlights the advancements towards protection of individuals within a society. It outlines why the UNSC may offer further clarification and response regarding the pandemic and deal with the aforesaid threshold outlined for health security.

The UN Secretary-General, António Guterres, on March 2020, urged the key enforcement body of the UNSC to comment on the situation by stating, “the pandemic also poses a significant threat to the maintenance of international

⁷⁸ *Id.*, Art. 23.

⁷⁹ The term ‘human security’ was coined in the United Nations Development Program’s Human Development Report, *see* The United Nations Development Program, *Human Development Report*, December 29, 2009, available at <https://digitallibrary.un.org/record/240260?ln=en> (Last visited on July 20, 2022).

⁸⁰ Global Development Research Centre, *New Dimensions of Human Security 1994*, available at <https://www.gdrc.org/sustdev/husec/z-categories.html> (Last visited on July 20, 2022).

peace and security – potentially leading to an increase in social unrest and violence that would greatly undermine our ability to fight the disease.”⁸¹

However, the UNSC’s inaction and silence on the pandemic again tested whether the international framework was effective in addressing this crisis or providing a global response. There was hope that the Council would act in a unified manner as it had also addressed the Ebola outbreak.⁸² In regards to that virus outbreak, the Council issued Resolution 2177 which extended their remit to cover a public health crisis by asserting that the unprecedented extent of the Ebola outbreak in Africa constituted a threat to international peace and security.⁸³ This shows the body’s broadening scope of human security and the importance of the evolving threat the world faces.

With respect to the COVID-19 pandemic, the long-awaited Resolution 2523, which was passed on July 1, 2020, backed the UN’s broader global humanitarian ceasefire call during the pandemic.⁸⁴ However, it did not have the same reach as the previous Resolution 2177 on Ebola.⁸⁵ Unlike the situation with the Ebola outbreak, Resolution 2523 omitted to state that COVID-19 was a threat to international peace and security, and instead focused on its primary mandate of conflict and humanitarian relief – rather than address the issue from an international health perspective. Further, it demanded “a general and immediate cessation of hostilities in all situations on its agenda”.⁸⁶ This then raised many questions about the difference between the two outbreaks given the severe nature of COVID-19 – being highly contagious, easily transmitted and claiming vast amounts of lives.

Therefore, Resolution 2523 was linguistically and in substance weaker. Hence, there would be limited practical steps taken after the resolution to directly address and help with the pandemic efforts. Additionally, the resolution came too late into the crisis, which seemed to purposively reduce their mandates reach. Here, it must be noted that this situation of the UNSC demonstrates the inherent political weakness of the organisation. This is caused due to the geopolitical tensions between permanent members of the Council, primarily between China and the USA, leaving a void and an ineffective international response to the pandemic.

Thereafter, the UNSC in 2021 issued a second Resolution 2565 addressing COVID-19.⁸⁷ The preamble of the resolution stated, “Reaffirming that

⁸¹ The United Nations Secretary-General, *Remarks to the Security Council on the COVID-19 Pandemic*, April 9, 2020, available at <https://www.un.org/sg/en/content/sg/speeches/2020-04-09/remarks-security-council-covid-19-pandemic> (Last visited on July 20, 2022).

⁸² S.C. Res. 2177, ¶6, U.N. Doc. S/Res/2177 (September 18, 2014).

⁸³ *Id.*, Preamble.

⁸⁴ S.C. Res. 2532, Preamble, U.N. Doc. S/Res/2532 (July 1, 2020).

⁸⁵ The United Nations Secretary-General, *supra* note 81.

⁸⁶ S.C. Res. 2532, ¶1, U.N. Doc. S/Res/2532 (July 1, 2020).

⁸⁷ S.C. Res. 2565, U.N. Doc. S/Res/2565 (February 26, 2021).

combating and sustainably recovering from the coronavirus disease (COVID-19) pandemic requires greater national, regional, and international cooperation and solidarity, and a coordinated, inclusive, comprehensive, and global international response”.⁸⁸ The resolution also recalled the obligations under international law and more specifically under the IHR. The said resolution can be regarded as more robust in character than the previous Resolution 2532, since it not only looked beyond the limited remit of conflict, but also addressed the progress of the vaccine rollout, the role and efforts of healthcare workers, as well as measures to counter and limit misinformation and disinformation across the globe.⁸⁹ In doing so the UNSC demonstrated a broader notion of security which is more adaptive to the ambit of international peace and security.

The first substantive paragraph of Resolution 2565 calls for “the strengthening of national and multilateral approaches and international cooperation”.⁹⁰ Then there are calls and demands to ensure that there are cease-fires in places of hostiles.⁹¹ Paragraph 9 outlines the national vaccination plans to ensure that the vulnerable are protected which include – “frontline workers, older people, refugees, internally displaced people, Stateless people, indigenous people, migrants, persons with disabilities, detained persons, as well as people living in areas under the control of any non-State armed group”.⁹² There is also an emphasis on the need for “solidarity, equity and efficiency and invites donation of vaccines doses from developed economies”.⁹³ This itself is important and signifies to the international community the strength of working together to overcome and manage the pandemic.

Whilst the UNSC could potentially have the flexibility within their mandate to focus on the pandemic, it is argued that the same was underutilised in dealing with COVID-19. There existed tensions between the members of the UN institutions and the overall levels of enforcement and regulation. A unified approach from the UN would be beneficial, and it would enable them to collaborate with other organisations. Having a single response which reflects the mandate and works of the UN would demonstrate a strong international perspective. This then leaves the question as to the potential role of the UNGA.

2. The United Nations General Assembly

Much like the UNSC, the UNGA was formed after the Second World War in 1945. It is the main policy-making organ of the UN. It consists of over 193 member States where each member has an equal vote.⁹⁴ This is likely to be more

⁸⁸ *Id.*, Preamble.

⁸⁹ *Id.*, ¶¶7-12.

⁹⁰ *Id.*, ¶1.

⁹¹ *Id.*, Preamble.

⁹² *Id.*, ¶9.

⁹³ *Id.*, ¶11.

⁹⁴ Charter of the United Nations, October 24, 1945, I U.N.T.S. XVI, Art. 18(1).

productive in moving forward since it decreases the geopolitical tensions between certain States and offers a level playing field. It can be contrasted to the veto power granted to the permanent members of the UNSC, which is generally utilised for political motives.

The UNGA's first response to the pandemic was outlined in the Resolution 75/4 which stipulated that the UNGA was to hold a special session.⁹⁵ Thereafter, in April 2020, Resolution 74/270 was adopted through silent procedure which addressed "Global solidarity to the fight of the coronavirus disease 2019".⁹⁶ Under this resolution, the UNGA called for the full respect of human rights and to limit discrimination.⁹⁷ The UNGA also displayed their gratitude and support to frontline health workers, medical professionals, scientists, and researchers, as well as other essential workers.⁹⁸ Thereafter, Resolution 74/274 of April 2020, which was entitled "International Cooperation to ensure global access to medicines, vaccines, and medical equipment to face COVID-19" was also adopted through the silent procedure.⁹⁹ Under the resolution, the UNGA called for States to work in partnership to ensure development of vaccines and medicines, and enhancing the technical ability to ensure the efficiency, safety, equity, accessibility, and affordability.¹⁰⁰

Additional resolutions have included Resolution 74/306 passed on September 11, 2020, by 169 member States entitled "Comprehensive and coordinated response to the coronavirus disease (COVID-19) pandemic",¹⁰¹ and Resolution 74/307 passed on September 11, 2020, by 122 member States entitled "United response against global health threats combating COVID-19".¹⁰² Given the overall majority of member States voting in favour or not signalling any objections during silent procedures, it depicts the unanimity of the international community to cooperate and work together collectively to help and support each other.

However, it is important to note that there were numerous shortfalls to the UNGA resolutions, which include the non-binding nature of the resolutions and consequently the enforceability of the recommendations presented, as well as the time it took for the organisation to pass the aforesaid resolutions.

The UNGA in December 2020 also held a special session in response to the pandemic.¹⁰³ The pandemic was described as not only the greatest

⁹⁵ G.A. Res.75/4, ¶1, U.N. Doc. A/RES/75/4 (November 9, 2020).

⁹⁶ G.A. Res.74/270, U.N. Doc. A/RES/74/270 (April 3, 2020).

⁹⁷ G.A. Res.75/4, Preamble, U.N. Doc. A/RES/75/4 (November 9, 2020).

⁹⁸ *Id.*, Preamble.

⁹⁹ G.A. Res.74/274, Preamble, U.N. Doc. A/RES/74/274 (April 21, 2020).

¹⁰⁰ *Id.*, ¶¶3-4.

¹⁰¹ G.A. Res.74/306, U.N. Doc. A/RES/74/306 (September 15, 2020).

¹⁰² G.A. Res.74/307, U.N. Doc. A/RES/74/307 (September 15, 2020).

¹⁰³ United Nations General Assembly, *Special Session of the General Assembly in Response to the Coronavirus Disease (COVID-19)*, December 3, 2020, available at <https://www.un.org/pga/75/>

global health crisis since the creation of the UN but also a humanitarian, socio-economic, security and human rights crisis.¹⁰⁴ The UNGA's focus was to unite the international community and work collectively to cooperate in a response to the pandemic. The special session, which addressed the UN's response comprised the Security General for Global Communication the Director-General of the WHO, the Executive Director of the WHO Health Emergencies Program Under-Secretary-General for the Humanitarian Affairs and Emerging Relief Coordinator, the UN High Commissioner for Human Rights, the UN Development Program, the UN High Commissioner for Refugees, the Director of the World Food Program, the Chief Executive Officer of Save the Children International and the Secretary-General of Kenya Red Cross Society.

The participation of such diverse range of UN institutions and bodies highlight how for managing a future pandemic, there needs to be a high level of collaboration across the whole UN framework. The predominant focus of the organisation has been on how to eliminate and reduce the spread globally. This approach too is replicated by the International Committee of the Red Cross, which is focusing on humanitarian efforts in war-torn countries.¹⁰⁵ This demonstrates how the international legal framework works well to respond to situations often due to the traditional conflicts, and also helps to identify weaknesses in the international regime where the law is required to be developed in order to tackle new challenges.

C. DOMESTIC COURTS

Another avenue that is worth mentioning, since it has been featured heavily across the media, is the increased number of claims in the domestic courts. However, a detailed analysis is omitted since it is not the primary focus of the paper. Although to outline the purpose and problematic nature of applying international law and the differing view of States, it is worth mentioning a couple of examples. To date, most domestic concerns have been predominantly from the USA.¹⁰⁶ There has also been a discussion in the Supreme Court of India, which dismissed a plea seeking direction to the Centre to approach the ICJ.¹⁰⁷

special-session-of-the-general-assembly-in-response-to-the-coronavirus-disease-covid-19-pandemic/ (Last visited on July 20, 2022).

¹⁰⁴ *Id.*

¹⁰⁵ International Committee of the Red Cross, *We're All in This Together COVID-19: A Global Crisis Requiring a Global Response*, available at https://www.icrc.org/en/download/file/115800/covid-19_icrc_global_response.pdf (Last visited on July 20, 2022).

¹⁰⁶ LAW AND CRIME (Matt Naham), *China Sued for 'Covering Up' Coronavirus Pandemic in its 'Own Economic Self-Interest'*, May 16, 2020, available at <https://lawandcrime.com/lawsuit/china-sued-for-covering-up-coronavirus-pandemic-in-its-own-economic-self-interest/> (Last visited on July 20, 2022); Matt Naham, *Larry Klayman Files \$20 Trillion Dollar Lawsuit Against China for 'Creation and Release of Covid-19'*, LAW AND CRIME, March 19, 2020, available at <https://lawandcrime.com/lawsuit/larry-klayman-files-20-trillion-dollar-lawsuit-against-china-for-creation-and-release-of-covid-19/> (Last visited on July 20, 2022).

¹⁰⁷ *Supreme Court Dismisses Plea Direction Centre to Approach ICJ Against China*, DECCAN CHRONICLE, June 18, 2020, available at <https://www.deccanchronicle.com/nation/>

However, there are apparent issues surrounding jurisdiction and immunity. As outlined previously, there may be a legal hurdle concerning jurisdiction since the ICJ needs consensual agreement from both States, which would be unlikely. Again, it must also be questioned as to whether this would be the most appropriate avenue. Would it be productive and contribute to the current international legal regime given the heightened geopolitics? Court cases generally direct blame and financial compensation, which unfortunately does not impact upon the grief of loss or heightened guilt. Instead, the basic facts should be determined since they are essential to understand how to move forward. This requires cooperation between States as discussed in the following part.

IV. THE INTERNATIONAL INQUIRY

It is evident from the responses of the different institutions outlined above that there has been no clear, strong, or a unified way forward which has led to a clear desire for an international inquiry into the origins of the pandemic and the resulting lapses by States and organisations.¹⁰⁸ This part will *first* identify the call for an international inquiry and *second* will go on to outline the WHO report of 2021.

A. THE CALL FOR AN INTERNATIONAL INQUIRY

The first preliminary concern here is who should undertake such an inquiry and examine the required independent questions? Would that be the World Health Assembly, domestic States, or another UN body as outlined above? Selecting the right investigation panel will be key to determining a fair and independent inquiry which would not only offer a comprehensive narrative but also allow for legal questions to be raised and addressed. An international inquiry provides a more welcoming approach than a litigation-focused response. Focusing on attributing blame and requiring damages to be paid would create a more hostile global dynamic. Answers must lie within an international cooperation effort and should avoid antagonising the States self-serving national narratives.¹⁰⁹

Amongst the growing global pressure it was agreed that an independent review into the global response to the COVID-19 pandemic would be

current-affairs/180620/supreme-court-dismisses-plea-directing-centre-to-go-icj-for-compensati.html (Last visited on July 20, 2022).

¹⁰⁸ EUROPOST, *EU to Call for Independent Investigation into COVID-19 Origins, Spread*, May 6, 2020, available at <https://europost.eu/en/a/view/eu-to-call-for-independent-investigation-into-covid-19-origins-spread-28671> (Last visited on July 20, 2022); Francis Elliot, *Coronavirus: UK Backs Calls for International Inquiry*, THE TIMES, May 17, 2020, available at <https://www.thetimes.co.uk/article/coronavirus-uk-backs-calls-for-international-inquiry-xwtrzxv38> (Last visited on July 20, 2022).

¹⁰⁹ Michael Becker, *Do We Need an International Commission of Inquiry for COVID-19?*, May 18, 2020, available at <https://www.ejiltalk.org/do-we-need-an-international-commission-of-inquiry-for-covid-19-part-i/> (Last visited on July 20, 2022).

undertaken. Australia was one of the first States to issue a call for a global inquiry through their Foreign Minister Marise Payne,¹¹⁰ and thereafter the European Union also highlighted the need for such an inquiry.¹¹¹ As a direct result of the mounting pressures, the World Health Assembly held their 73rd Assembly in March 2020.¹¹² The resolution was approved without objection from all WHO's 194 member States.¹¹³ However, the resolution omitted details on how the investigation would be conducted and what aspects should and would be examined to provide answers to an eagerly awaiting global audience. At that time, there were many reservations about who would be independent and impartial to perform such crucial duties.

Aside from the 'who' question, the next focus that caused contention was the 'what' question. What would the inquiry address? The main priority and focus of the States and the global community as a whole was to curb the spread and protect as many lives as possible. However, there is little knowledge surrounding the virus which lead to numerous questions and left the world to seek answers. Would the suitable body address and have the investigatory powers to examine the potential area in which the virus originated from? Would it establish whether China offered enough notification about the virus to the rest of the world? Would it consider the role of the WHO and whether the WHO acted too late? Would it even go as far as focusing on whether national States are to be blamed for the lack of preparation of vital equipment and personal protective equipment kit?

While there questions regarding the origin, it should be noted that from a legal perspective, this is not to attribute legal responsibility but to map out what improvements need to be made to the international standards and the pandemic alert mechanism. The inquiry should move forward and reflect what international law should look like, and what changes need to be made in order to improve the existing legal framework and instruments. Whilst we are looking to identify this body and establish the who, where, why, what, and how, the understanding of the pandemic has not even fully commenced. It is clear that under international law, while it is fragmented, there are regimes and frameworks in place that have the potential to attempt and answer some of these questions and create the ability to respond and deal with a future pandemic in a more robust and coordinated manner. Will this opportunity to incorporate changes be taken by the international community or will this opportunity be lost?

B. THE OUTCOME: THE WHO REPORT 2021

After a contentious and rather long wait, an international inquiry did begin. Undertaken by the WHO, after initial concerns surrounding the

¹¹⁰ Brett Worthington & Marise Payne, *Calls for Global Inquiry into China's Handling of the Coronavirus Outbreak*, April 19, 2020, available at <https://www.ejiltalk.org/do-we-need-an-international-commission-of-inquiry-for-covid-19-part-i/> (Last visited on July 20, 2022).

¹¹¹ EUROPOST, *supra* note 108.

¹¹² WHA Res.73.4, C.L.31.2020 (August 3, 2020).

¹¹³ *Id.*

investigation team being allowed entry and access to the first known location of the virus, experts were allowed to enter Wuhan to begin their investigation.¹¹⁴ The experts comprised twelve scientists encompassing epidemiologists, data scientists, safety experts, laboratory experts, veterinary epidemiologists, and animal health experts, who were approved by China and accompanied by an equal number of Chinese scientists.¹¹⁵ To many, the WHO report regarding the origins of COVID-19¹¹⁶ had been long waited. However, those anticipating a direct answer and confirmation would be disheartened as the report did not directly offer a single explanation. Instead, the report outlined four separate possibilities that ranged from scenarios which were categorised and deemed from very likely to extremely unlikely. The outcome is as follows,

1. Direct zoonotic transmission – considered possible to likely,
2. An intermediate host by zoonotic transmission – considered to be likely to very likely,
3. Introduction through cold or food chain – considered possible,
4. Laboratory incident – extremely unlikely.

The report's most likely scenario is that an infected animal transmitted the virus to another animal, which then passed it to a human being, which was then spread amongst the global population. The 120-page report was as expected a diplomatic response to the call for an international investigation.

As a response to this report, a joint statement on the origins of coronavirus from the governments of Australia, Canada, Czechia, Denmark, Estonia, Israel, Japan, Latvia, Lithuania, Norway, Republic of Korea, Slovenia, UK, and the USA was released.¹¹⁷ Whilst the statement supported the transparent and independent analysis into the origins of the COVID-19 pandemic, it expressed concerns with the WHO convened study.¹¹⁸ They assessed the need for “a robust, comprehensive, and expert-led mechanism for expeditiously investigating outbreaks of unknown origin that are conducted with full and open collaboration among all

¹¹⁴ Covid: WHO Team Investigating the Origins Denied Entry to China, BBC NEWS, January 6, 2021, available at <https://www.bbc.co.uk/news/world-asia-china-55555466> (Last visited on July 20, 2022).

¹¹⁵ Owen Dwyer, Covid-19: China Pressured WHO Team to Dismiss Lab Leak Theory, Claims Chief Investigator, BRITISH MEDICAL JOURNAL, August 1, 2021, available at <https://www.bmj.com/content/374/bmj.n2023> (Last visited on July 20, 2022).

¹¹⁶ WHA Res.73.4, C.L.31.2020 (August 3, 2020).

¹¹⁷ Foreign, Commonwealth & Development Office UK, WHO-Convened COVID-19 Origins Study: Joint Statement, March 30, 2021, available at <https://www.gov.uk/government/news/joint-statement-who-convened-covid-19-origins-study> (Last visited on July 20, 2022).

¹¹⁸ *Id.*

stakeholders and following the principles of transparency, respect for privacy, and scientific and research integrity”.¹¹⁹

The WHO report highlights the beginning of the international search for answers, but not the end. There are numerous remaining questions such as whether China offered sufficient notification about the virus in a timely manner? Whether the WHO acted too late and thereby violated its mandate? Whether the actions of the State governments were adequate? These concerns highlight the current aspects which are weak under the IHR and need significant improvements. Such concerns were also outlined in January 2021 by the Independent Panel for the Pandemic where its report found that the WHO’s existing pandemic alert system was “not fit for purpose”.¹²⁰ The report went on to elaborate that, “critical elements of the system are slow, cumbersome and indecisive”.¹²¹

Although it also must be noted that this is just the starting point. As outlined by the WHO chief,

“This report is a very important beginning, but it is not the end. We have not yet found the source of the virus, and we must continue to follow the science and leave no stone unturned as we do. Finding the origin of a virus takes time and we owe it to the world to find the source so we can collectively take steps to reduce the risk of this happening again. No single research trip can provide all the answers.”¹²²

However, it is important to note that the chances of further research trips are unlikely as China has declined requests for such trips.¹²³ This then leads back to the previous questions outlined in this paper which were left unanswered by the WHO report. Concerns surrounding the viability of the timescale and being able to collect relevant information on the ground have added to the debate and raise concerns as to whether the report was too little, too late. Whilst it may be argued that the origin is history, ensuring that there is international cooperation is key to how the world recovers and how this impacts the current framework to

¹¹⁹ *Id.*

¹²⁰ The Independent Panel, *Second Report on Progress*, January 2021, available at https://live-the-independent-panel.pantheon.io/wp-content/uploads/2021/01/Independent-Panel_Second-Report-on-Progress_Final-15-Jan-2021.pdf (Last visited July 20, 2022).

¹²¹ *Id.*, at 6.

¹²² The World Health Organisation, *WHO Director-General’s Remarks at the Member State Briefing on the Report of the International Team Studying the Origins of SARS-Cov-2*, March 30, 2021, available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-remarks-at-the-member-state-briefing-on-the-report-of-the-international-team-studying-the-origins-of-sars-cov-2> (Last visited on July 20, 2022).

¹²³ Sutirtho Patranobis, *China Shoots Down Second WHO Probe into Origin of Covid-19 Virus*, HINDUSTAN TIMES August 13, 2021, available at <https://www.hindustantimes.com/world-news/china-shoots-down-second-who-probe-into-origin-of-covid-19-virus-101628838652082.html> (Last visited on July 20, 2022).

tackle future pandemics. It is here where the testimony and adaptability of international law plays a critical role to ensure that it will be effective to cope during future health crises.

V. THE FUTURE POSSIBILITY OF A PANDEMIC TREATY

The discussion above showcases that no one State or international body, or institution can effectively address the threat of a pandemic alone. Instead, it falls on the shoulders of the international community to take a united global response to restore normalcy. Following the step-by-step unfolding of the nature and evaluation of the pandemic, there has been a growing call for the creation of an international treaty on the pandemics. It is argued that such a ‘Pandemic Treaty’ would show that lessons from the current pandemic have been learnt and also help address the weaknesses in the current system. Under international law, treaties are categorised as hard laws which are binding on the parties involved.¹²⁴ Having a binding treaty would be a significant step forward from an international legal perspective since rights and obligations will be explicitly outlined and can be enforced before the court of law.¹²⁵

In December 2020, the President of the European Council proposed such a Pandemic Treaty. The instrument would support focus on several key aspects which include early detection and prevention of pandemics, resilience to future pandemics, ensuring universal and equitable access to medical solutions, a stronger international health framework with the WHO, and “One Health” approach connecting the health of living beings and our planet.¹²⁶ The main substantive approach of the legal instrument is to better facilitate various different areas.

Firstly, it deals with having a better surveillance system for the pandemics and associated risks. This would include monitoring of risks and knowledge, better coordination on international funding, and sharing information about new infections and diseases which would allow better collaboration.¹²⁷ *Secondly*, it includes the improvement and setting up of better alerts. This would include more levels of alerts which would enhance transparency and also enable utilisation of digital technologies and innovative tools.¹²⁸ *Thirdly*, it stipulates the formation of a better response in terms of health supplies and in research and innovation wherein

¹²⁴ For a brief discussion, see European Centre for Constitutional and Human Rights, *Hard Law/Soft Law*, available at <https://www.ecchr.eu/en/glossary/hard-law-soft-law/> (Last visited on July 20, 2022).

¹²⁵ *Id.*

¹²⁶ The European Council of the European Union, *An International Treaty on Pandemic Prevention and Preparedness*, March 3, 2022, available at <https://www.consilium.europa.eu/en/policies/coronavirus/pandemic-treaty/> (Last visited on July 20, 2022).

¹²⁷ *Id.*

¹²⁸ *Id.*

global coordination will be the primary focus.¹²⁹ *Fourthly*, it provides for better response mechanisms to limit the inequalities surrounding vaccines, medicines and diagnostics thereby preventing the prolonging of the pandemic.¹³⁰ *Fifthly*, the treaty provides for better implementation of the standards through a more robust country-reporting mechanism.¹³¹

This sentiment for change and amendment to the framework was also echoed by the WHO chief who asserted that,

“The Panel believes that the COVID-19 pandemic must be a catalyst for fundamental and systemic change in preparedness for future such events, from the local community right through to the highest international levels. Institutions across the policy spectrum, not just in health, must be part of effective pandemic preparedness and response. A new global framework is needed to support the prevention of and protection from pandemics.”¹³²

Whilst there is a clear desire to develop a treaty, there are a range of grey areas surrounding the creation of a Pandemic Treaty. This includes queries concerning what auspices or framework would it fall under – whether under the WHO or a wider UN treaty? Would such a treaty fill gaps in the IHR and act to complement the current regulation or whether the IHR itself should be amended to meet the current realities of a pandemic? Furthermore, it should be questioned whether the treaty would also have the mandate to create a new body to address and handle future pandemics or whether the WHO would remain as the primary institution to perform this role? As outlined previously with regards to the WHO and the IHR, there are broader issues and concerns regarding compliance and enforcement mechanisms. There are also political concerns between different States which may be hard to overcome. Further, as shown by the pandemic, there are broader concerns which stretch beyond just the area of health and extends to transportation and travel between State borders. A UN treaty could be more beneficial in this matter due to the ability of the body to ensure cooperation between different institutions. However, there are inherent weaknesses and drawbacks of the composition of the UN especially with respect to the permanent member States which results in geo-political tensions. Thus, would the political body be able to achieve a consensus on such a wide and encompassing treaty?

Another major issue manifested by this pandemic is with respect to the waiver of the rights under the Agreement on Trade Related Aspects of Intellectual Property (‘TRIPS’) in the context of technologies that are required for a PHEIC. Though proposals headed by India and South Africa, with the support

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² The Independent Panel, *supra* note 120.

of over 100 countries in the World Trade Organisation,¹³³ have propagated for such measures, the West, except for the USA, has rejected such proposals.¹³⁴

Waiver of intellectual property rights is especially important in order to tackle vaccine inequity during a pandemic.¹³⁵ Vaccine distribution and supply are heavily controlled by wealthy and able countries. The UNGA's call for vaccine equity has not been met in the current pandemic, with States focusing on sharing vaccines based on strategic and political interest instead of equity.¹³⁶ For instance, various high-income countries such as Australia, New Zealand, the UK, the European Union, Canada, and the USA, have reportedly secured vaccine doses that can cover over 200 per cent of their population.¹³⁷ Further, it is largely understood that such waivers are not inappropriate or radical and instead provide a balanced approach.¹³⁸ This is due to the fact that the manufactures of vaccines are heavily funded by the government through public taxes for research into COVID-19.¹³⁹ The Moderna vaccine, for instance, is by and large funded by the government of the USA.¹⁴⁰ However, the ability of a Pandemic Treaty to harness a consensus on the waiver of such intellectual property rights regarding essential technologies would be a considerably challenging, given the disagreements of the Western countries.

¹³³ The World Trade Organisation (Council for Trade-Related Aspects of Intellectual Property Rights), *Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19*, October 2, 2020, available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669R1.pdf&Open=True> (Last visited on July 20, 2022).

¹³⁴ Financial Times, *Angela Merkel Rejects US Move to Waive Patents on Vaccines*, May 6, 2021, available at <https://www.ft.com/content/76a05a85-b83c-4e36-b04d-7f44f63e57b0> (Last visited on July 20, 2022); Hannah Balfour, *Waiving COVID-19 Vaccine Intellectual Property Rights*, EUROPEAN PHARMACEUTICAL REVIEW, June 11, 2021, available at https://www.europeanpharmaceuticalreview.com/article/156412/waiving-covid-19-vaccine-intellectual-property-rights/?__cf_chl_captcha_tk__=pmd_waEA_fafMB1zLRHF0CNwbIx4CT7ZpTJ5JFYW8JeWw2M-1631377733-0-ggNtZGzNAxCjnBszQj9 (Last visited on July 20, 2022).

¹³⁵ Priti Krishtel & Rohit Malpani, *Suspend Intellectual Property Rights for COVID-19 Vaccines*, Vol. 12, B. M. J., 373 (2021).

¹³⁶ Nason Maani et al., *Avoiding a Legacy of Unequal Non-Communicable Disease Burden after the COVID-19 Pandemic*, Vol. 9, THE LANCET, 133 (2021).

¹³⁷ Launch & Scale Speedometer, *The Race for Global Covid-19 Vaccine Equity*, available at <https://launchandscalefaster.org/COVID-19> (Last visited on July 20, 2022).

¹³⁸ Arthur Allen, *For Billion Dollar COVID-19 Vaccines, Basic Government Funded Science Laid the Groundwork*, SCIENTIFIC AMERICAN, November 18, 2020, available at <https://www.scientificamerican.com/article/for-billion-dollar-covid-vaccines-basic-government-funded-science-laid-the-groundwork/> (Last visited on July 20, 2022).

¹³⁹ World Health Organisation, *COVID-19 Vaccination Financing and Budgeting Q&A*, April 27, 2021, available at <https://www.who.int/news/item/27-04-2021-covid-19-vaccination-financing-and-budgeting-q-a> (Last visited on July 20, 2022); Richard G. Frank et al., *It was the Government that Produced COVID-19 Vaccines Success*, HEALTH AFFAIRS, May 14, 2021, available at <https://www.healthaffairs.org/doi/10.1377/hblog20210512.191448/full/> (Last visited on July 20, 2022).

¹⁴⁰ Jonathan Saltzman, *The US Government has Now Paid Moderna 6-Billion Dollars for Vaccine Efforts*, THE BOSTON GLOBE, April 29, 2021, available at <https://www.bostonglobe.com/2021/04/29/nation/us-government-has-now-given-moderna-6b-vaccine-effort/> (Last visited on July 20, 2022).

Further, as discussed earlier, travel restrictions, with respect to people and goods, during the time of a global health emergency is also an important factor that the treaty would need to address. Although the IHR contains certain provisions regarding travel from Articles 30 to 32, the COVID-19 pandemic has manifested a lack of international cooperation regarding travel restrictions.¹⁴¹ Various difficulties have arisen regarding a standardised testing procedure, recognition of vaccinations, and rules for quarantine.¹⁴²

A recent and controversial one, was concerning the non-recognition of the Indian-made COVID-19 vaccine, Covishield, by the UK.¹⁴³ This resulted in Indians fully vaccinated with Covishield to also undergo, a ten-day quarantine upon arrival in the UK.¹⁴⁴ While the UK tried to justify this measure citing problems with vaccine certification in India, the Indian government proceeded to implement reciprocal measures for the UK nationals travelling to the country.¹⁴⁵ It was only after such measures that the UK government, followed by its Indian counterparts, retracted the quarantine rules and recognised the vaccination of each other's nationals.¹⁴⁶ In this context, it is observed that due to the absence of any enforceable obligation under the IHR, the approach towards travel restrictions is largely governed through a varied bilateral or regional approach. This imposes a significant risk to safely and effectively regulating tourism, travel, and flow of goods at an international level.¹⁴⁷ Hence, the ability of the Pandemic Treaty to mitigate these concerns and implement a uniform cooperative approach would be key to the success of the treaty.

Human rights concerns should also come at the forefront of any future Pandemic Treaty. Both UNSC and UNGA, during the pandemic, have called for a pause on hostilities and armed conflicts by the States. Further, the UNGA, with an overwhelming consensus, also called for the States to counter discrimination, sexual and domestic violence, promote the health of women and children, provide access to critical information, right to education, and provide mental health and psychological support, amongst several others. However, as highlighted

¹⁴¹ Barbara J. Won, *The International Health Regulation and the Re-Establishment of International Travel Amidst the COVID-19 Pandemic*, Vol. 27(8), J.T.M., 1, 3 (2020).

¹⁴² *Id.*

¹⁴³ *India-UK Discussion on Vaccine Certification for Travellers Offers Hope*, LIVE MINT, September 24, 2021, available at <https://www.livemint.com/news/india/indiauk-discussion-on-vaccine-certification-for-travellers-offers-hope-11632427716532.html> (Last visited on July 20, 2022).

¹⁴⁴ Naomi Canton, *Racist, Biased: Indians Slam New UK Travel Curb*, THE TIMES OF INDIA, September 21, 2021, available at <https://timesofindia.indiatimes.com/india/racist-biased-indians-slam-new-uk-travel-curbs/articleshow/86382396.cms> (Last visited on July 20, 2022).

¹⁴⁵ Suhasini Haidar & Kallol Bhattacharjee, *India Slaps Tit-For-Tat Travel Curb on UK Nationals*, THE HINDU, October 1, 2021, available at <https://www.thehindu.com/news/international/india-slaps-tit-for-tat-travel-curbs-on-uk-nationals/article36776967.ece> (Last visited on July 20, 2022).

¹⁴⁶ Sridhar Kumaraswami, *India, UK Decide to Facilitate Travel Between Two Countries*, DECCAN CHRONICLE, October 8, 2021, available at <https://www.deccanchronicle.com/lifestyle/travel/081021/india-to-issue-fresh-guidelines-for-uk-nationals-sources.html> (Last visited on July 20, 2022).

¹⁴⁷ BOSTON GLOBE, *supra* note 140.

earlier, such a consensus was reached several months after the pandemic's beginning and is largely unenforceable in nature. Hence, the Pandemic Treaty ought to enlist such binding obligations on the ratifying States to safeguard such essential human rights, specifically in a pandemic. For instance, the Pandemic Treaty can focus on the right to education and impose an obligation on the States to implement online learning as an alternative. Further, the States could be mandated to implement measures to reduce the unequal impact on the specially-abled and children belonging to the marginalised communities.

The viability of a consensus on such varied and binding treaty obligations is a big question that continues to linger. Part of this questioning has already begun to take shape as in March 2021, twenty-five heads of State and international agencies have put a joint call for an Pandemic Treaty.¹⁴⁸ It has been outlined that the treaty should be rooted in the Constitution of the WHO and develop the existing global health instruments, especially the IHR.¹⁴⁹ The call also outlined the recognition of 'One Health' where,

“The main goal of this treaty would be to foster an all-of-government and all-of-society approach, strengthening national, regional, and global capacities and resilience to future pandemics. This includes greatly enhancing international cooperation to improve, for example, alert systems, data-sharing, research, and local, regional, and global production and distribution of medical and public health countermeasures, such as vaccines, medicines, diagnostics, and personal protective equipment.”¹⁵⁰

Under the current negotiations, an agreement on 'pandemic prevention, preparedness and response' would be adopted by the WHO to enable global strength and resilience for future pandemics.¹⁵¹ The EU Council gave the green light to start negotiations on March 3, 2022.¹⁵² The next meeting is scheduled to take place in August 2022 and will deliver the progress of the report to the 76th World Health Assembly in 2023, with the aim to adopt the instrument in 2024.¹⁵³

¹⁴⁸ The World Health Organisation News Release, *Global Leader Unite in Urgent Call for International Pandemic Treaty*, March 30, 2021, available at <https://www.who.int/news/item/30-03-2021-global-leaders-unite-in-urgent-call-for-international-pandemic-treaty> (Last visited on July 20, 2022).

¹⁴⁹ The World Health Organisation Commentaries, *COVID-19 Shows Why United Action is Needed for a More Robust International Health Architecture*, March 30, 2021, available at <https://www.who.int/news-room/commentaries/detail/op-ed---covid-19-shows-why-united-action-is-needed-for-more-robust-international-health-architecture> (Last visited on July 20, 2022).

¹⁵⁰ *Id.*

¹⁵¹ The European Council of the European Union, *supra* note 126.

¹⁵² The European Council of the European Union, *Council Gives Green Light to Start Negotiations on International Pandemic Treaty*, March 3, 2022, available at <https://www.consilium.europa.eu/en/press/press-releases/2022/03/03/council-gives-green-light-to-start-negotiations-on-international-pandemic-treaty/> (Last visited on July 20, 2022).

¹⁵³ *Id.*

If such calls for a Pandemic Treaty were to gain momentum and further consensus amongst the States is achieved, this would be a welcome step. It would move the international regime forward by not only recognising the current weaknesses but also by reflecting on the adaptability of the international regime, and recognising the importance of international health and the function of the international community as a whole. Lastly, a high level international coordination and cooperation regarding a pandemic would allow the international legal response to be more effective and also benefit low-income and third-world countries that require financial, medical, and technical support.

VI. CONCLUSION

Through the above discussion, the paper has identified the intricate and complex nature of international law, as well as various areas that require improvement and greater international cooperation between States. The pandemic has demonstrated how physically interconnected the world is through the capabilities of travel and the internet. It is this nature that depicts the importance of having a robust international framework in place since a pandemic impacts everyone and all aspects of life. The paper also highlights the inherent weaknesses of international law which include a lack of universal enforcement or compliance mechanism and fragmentation. Further, it also delves into the limitations of the various international bodies and their mandates.

Assessing whether or not the international law consists of an adequate framework to tackle a pandemic amounts to a barrage of further questions. Was the framework able to navigate such broad terrain and complexities which arose? Did the international institutions and bodies have the right mandate in place to address such issues? Did the institutions have adequate enforcement and compliance mechanisms in place? Were the IHR alert systems effective in giving notice? Did the WHO act effectively and in a timely manner? Did the States respond to the pandemic with the required rigour? Did the States work in a cooperative manner?

The simple answer is that all these questions would result in the negative. The international legal framework and responses were not as effective as they could and should be. However, a key feature of international law is its fluid-like nature which is extremely adaptable and has space to develop and grow as per the societal needs. Hence, there is a need for further inquiries and a step forward would, as argued, be a dedicated Pandemic Treaty to ensure international cooperation and avoiding a future health crisis. A robust Pandemic Treaty would ensure that the international legal regime is effective in responding to a future pandemic. Overall, the ongoing COVID-19 pandemic has tested the current international legal framework and has provided with an opportunity to focus on collaboration and develop the legal regime to meet the societal needs.