

SYMPOSIUM ON GLOBAL HEALTH AT A CROSSROADS PART II*

AT THE CUSP OF CHANGE: AGENDA SETTING IN GLOBAL HEALTH LAW BY EMERGING ECONOMIES

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Introduction

Global health law as a field has been deeply unequal, reflecting colonial histories, geopolitics, and power plays. The current turmoil and fundamental shifts occurring in international politics has uncertain outcomes for global public health. Looking at the field from the prism of recent and ongoing global health negotiations serves to illustrate the unpredictability of the direction the governance of global health can take. Recent global health law reforms in the aftermath of COVID-19 have aimed to create obligations governing health emergencies. While much of the discussions have unfolded in the realm of health emergencies, many of the resulting legal obligations will have a normative impact on the field. Some of these new obligations are considerably caveated and weakened compared to what was originally articulated by some member states of the World Health Organization (WHO).

The way these negotiations unfolded, and the associated politics of contestation reveal the changing nature of power in the field. Who attempts to set the agenda and to what extent are they successful? How do such efforts encounter and contend with the kinds of resisting forces that protect the status quo? The making of global health law in recent years illustrates these tensions.

While efforts to challenge the status quo in global health, by way of these negotiations, have been met with modest success, the resulting process has brought to light, small, but significant indications on the potential direction of the governance of the field.

Stung by the inequities in the response to the COVID-19 pandemic, developing countries of diverse sizes and interests have played a significant role in challenging the status quo in the governance of health emergencies. At the World Trade Organization (WTO), negotiations on the TRIPS waiver¹ lasted nearly four years (2020–2024²). The TRIPS waiver was a bold proposal at the WTO, brought by South Africa and India, in October 2020, seeking a limited, time-bound suspension of certain intellectual property rights to boost the production of COVID-19 medical products to swiftly address the pandemic. In its wake, it galvanized more than one hundred developing countries, civil society organizations, scholars, Nobel Laureates, among others.

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¹ Ministerial Decision on the TRIPS Agreement, Adopted on June 17, 2022.

² PRITI PATNAIK, *THE TRIPS WAIVER NEGOTIATIONS AT THE WORLD TRADE ORGANIZATION: WHEN INTELLECTUAL PROPERTY TRUMPED GLOBAL HEALTH* (Geneva Health Files 2024).

In parallel, the two-track negotiations at the World Health Organization, on the amendments to the International Health Regulations³ and the Pandemic Agreement,⁴ overlapped for much of the last four years (2021–2025). This piece examines the TRIPS waiver negotiations at the World Trade Organization, and the Pandemic Agreement negotiations at the World Health Organization, analyzing their role in changing power dynamics.

Geopolitics and Global Health Lawmaking

Vast changes in geopolitics make this an unpredictable time. In a period in which key developed countries, some of whom are significant players in global health, face uncertain transitions at the domestic level, it is the emerging economies, big and small, across the world that could come together in pushing the boundaries toward shaping the future for global health. To be clear, emerging economies are exercising their interests driven by political and commercial considerations. Despite the elevation of defense-related interests in geopolitics in the Western World, health continues to be a large concern for domestic constituencies across countries contributing to the need for greater control over supply chains during health emergencies.

This also coincides with a period of rampant disinformation, and a general tendency toward short-termism in many countries in an unpredictable period in international trade. Unilateral trade measures, notably by the United States, are upending rules and are elevating bilateral relationships. Global health negotiations show that developing countries not only came to the table with the intention to wrest equity in the aftermath of the COVID-19 pandemic but have also demonstrated their keenness and tenacity for much of this period.

Developed country diplomats have admitted in interviews to *Geneva Health Files* that they had not expected such resistance from countries in the Africa Group. For example, rich country negotiators said that they had expected poorer countries to buckle faster during the negotiations, particularly on issues of technology transfer or the Pathogen Access and Benefit Sharing discussions—key provisions in the Pandemic Agreement. There were visible frustrations on the part of some of the developed country diplomats about the slow pace of negotiations and the lack of “sufficient” compromise by some of the world’s poorest countries. While it shows WHO as a multilateral platform for global health—however imperfect—is still working, it also revealed the reluctance in acknowledging an incipient emerging world order.

In fact, emerging economies countries with production capacities and markets,⁵ have often been seen by some developed countries as the biggest “problems” in these negotiations. As founder of *Geneva Health Files*, I have reported during these negotiations that many smaller economies, particularly in Africa, allegedly faced pressure from the highest political levels not only from international organizations in Geneva, but also in their capitals. This reveals the power dynamics and contestation in the reform of global health. But even so, recent global health negotiations suggest that many developing countries want to be rule makers, rather than remain rule takers.

The TRIPS Waiver Negotiations at the World Trade Organization

At the height of the COVID-19 pandemic, in October 2020, South Africa and India brought a proposal to the WTO to temporarily suspend intellectual property rules to boost manufacturing capacities to produce medical products that would swiftly address global demand for vaccines, therapeutics, and diagnostics. More than one

³ WHO, [INTERNATIONAL HEALTH REGULATIONS \(2005\)](#) (as amended in 2014, 2022, and 2024, September 2025).

⁴ WHO, [PANDEMIC AGREEMENT](#) (May 20, 2025).

⁵ Priti Patnaik, *“No One Wins” A Path Towards Consensus? Positions Remain Taut in the Pandemic Agreement Negotiations*, *GENEVA HEALTH FILES* (Dec. 3, 2024).

hundred developing countries pushed for such measures for nearly four years. A handful of developed countries, with vast manufacturing capacities and that house leading originator companies, blocked the proposal. In 2022, after two years of tortuous negotiations, the WTO agreed on an unusable mechanism to produce vaccines that came too little, too late⁶ into the COVID-19 pandemic. In June 2022, WTO members adopted⁷ the clarifications to the use of TRIPS flexibilities and a partial waiver of a single provision. It was effectively a narrow legal mechanism, limited to developing countries, where they could override a patent related to the production of COVID-19 vaccines without the consent of the rights holder. The mechanism clarified the issuance of compulsory licenses. This was expected to help exports of vaccines among eligible countries.

Specifically developed countries, led by the United States undertook long domestic consultations on the feasibility of extending the TRIPS Declaration to COVID-19 tests and drugs.⁸ However, this process was ultimately stalled at the WTO. Despite efforts by developing countries, by 2024, their efforts to secure production of therapeutics and diagnostics were abandoned by developed countries.⁹

The limited real-world outcome on the TRIPS Waiver negotiations, meant that developing countries had failed to secure their objectives to protect people from the COVID-19 through greater access to therapeutics and diagnostics. However, the contentious discussions changed the field of global health. The tenacity of emerging countries ultimately made an impact by galvanizing the developing world and varied stakeholders. This shaped the agenda for reforms in the health emergencies architecture that was negotiated at the WHO in the following years.

The TRIPS waiver negotiations created space and circumstances for a more contested, layered, and persistent approach to discussing and negotiating intellectual property matters in public health—at the WHO. Prior to these negotiations, observers say it was far from easy to discuss intellectual property issues in global health in any substantive manner. The TRIPS waiver negotiations, although limited in impact, created political space for subsequent negotiations at the WHO, that saw a continued push from developing countries as lead actors in defining the contours of the debate on public health and intellectual property rights, and the impact on the access to medicines.

Two-Track Negotiations at the World Health Organization

In 2021, the United States began leading efforts to reform the International Health Regulations (IHR).¹⁰ The IHR (2005), had their genesis in the 1951 International Sanitary Regulations, to collectively manage public health events, while minimizing disruption to travel and trade. They have 196 states parties, comprising all 194 WHO member states plus Liechtenstein and the Holy See. The rules were revised in the aftermath of the SARS (Severe Acute Respiratory Syndrome) outbreak in the early 2000s.

During COVID-19, some countries were skeptical about embarking on negotiations for a new pandemic treaty. Apart from the United States, other states, including Brazil, China, Russia, and India, emphasized the centrality of the IHR in governing health emergencies. Eventually, more than three hundred proposals for

⁶ Priti Patnaik, *Trade Won, Health Did Not. A Sliver of a Waiver at the WTO*, GENEVA HEALTH FILES (June 28, 2022).

⁷ World Trade Organization, *Draft Ministerial Decision on the TRIPS Agreement*, WTO Doc. WT/MIN (22)/W/15/Rev.2 (2022).

⁸ Priti Patnaik, *A Wait In Vain? The USITC Report on the WTO TRIPS Extension Decision For COVID-19 Tests & Treatments*, GENEVA HEALTH FILES (Nov. 29, 2023).

⁹ Priti Patnaik, *WTO Members Agree to Disagree on TRIPS Extension Decision; Misfired: When the WTO Got Lovesick*, GENEVA HEALTH FILES (Feb. 15, 2024).

¹⁰ Tsung-Ling Lee & Pedro A. Villarreal, *Global Health Law: Pandemic Resilience Through A Rules-Based International Health Cooperation?*, 120 AJIL UNBOUND __ (2026).

amendments¹¹ came from more than one hundred countries around the world. Some of the boldest proposals to make targeted amendments to the IHR came from the smallest countries in the world, including those in Asia and Africa. This suggested a clear demand and a strong desire to move away from the status quo. Accordingly, two-track negotiations began at the WHO, with countries deciding to amend the IHR,¹² even as they began negotiating a new instrument to govern pandemics.

Eventually in June 2024, countries reached consensus on a set of amendments¹³ to the IHR (2005). This was adopted at the World Health Assembly. The reforms include, among other elements: recognition of equity as a principle in IHR for the first time in its history; defining a pandemic emergency; having obligations on the access to health products; establishing a new coordinated financing mechanism; and strengthening transparency and timeliness of information to govern health emergencies.

The New Pandemic Agreement

The negotiations of the Pandemic Agreement were more fraught and contested given the complexity and vastness of the instrument, compared to IHR reforms. Typical of multilateral negotiations, countries were constantly balancing their interests not only between provisions within the Pandemic Agreement, but also across the negotiations on the amendments to the IHR. (Once the amendments to the IHR were adopted in June 2024,¹⁴ one front of these two-track negotiations closed.)

The European Union, a key opponent to the TRIPS waiver proposal, led the call for a new Pandemic Treaty in 2021.¹⁵ Meanwhile, many developing countries struggled with their efforts to secure access to medical products for their populations, even as some developed countries first hoarded, then destroyed excess vaccine doses.¹⁶ Eventually all WHO member states agreed to establish an Intergovernmental Negotiating Body to draft a new Pandemic Agreement in December 2021.

After three and half years of negotiations, countries adopted the new Pandemic Agreement¹⁷ in May 2025 with several new obligations for pandemic prevention, preparedness, and response. As before, some of the most progressive provisions to challenge the status quo, and efforts to rebalance the power of the private sector with that of governments, came from developing countries. Obligations in the new Pandemic Agreement include, among others, those on research and development, sustainable production, technology transfer, supply chain and logistics, and regulatory strengthening.

While critics¹⁸ believe that many of the potentially strong provisions in the treaty were neutered by caveats and weakened by low ambition, the agreement is a starting point to reform not only the governance of global health during pandemics but also operationalize pandemic prevention and preparedness to improve outcomes for

¹¹ WHO, [Proposed Amendments to the International Health Regulations \(2005\)](#) (2022) (submitted in accordance with decision WHA75(9)).

¹² WHO, [Working Group on Amendments to the International Health Regulations \(2005\)](#).

¹³ WHO, [Amended International Health Regulations \(2005\)](#) adopted in 2024.

¹⁴ Priti Patnaik, *WHO Member States Score a Win on IHR and for Multilateralism, Bag More Time to Conclude Pandemic Agreement [WHA77]*, GENEVA HEALTH FILES (June 2, 2024).

¹⁵ Nicoletta Denticio, Remco Van De Pas & Priti Patnaik, *The Politics of a WHO Pandemic Treaty in a Disenchanted World*, GENEVA GLOB. HEALTH HUB (Dec. 2021).

¹⁶ Lise Barnéoud, *The Huge Waste of Expired Covid-19 Vaccines*, LE MONDE (Apr. 4, 2022).

¹⁷ WHO, *supra* note 4.

¹⁸ WHO, *Pandemic Agreement: A Win for Multilateralism, A Missed Opportunity for Public Health?*, THIRD WORLD NETWORK INFO. SERV. (May 16, 2025).

global health, outside of emergencies. New provisions on research and development, sustainable production, technology transfer, on supply chain and logistics, and on a new Pathogen Access and Benefits-Sharing (PABS) system (currently under negotiations) were pushed by developing countries at every stage.

Until the adoption of the treaty (pending adoption of PABS Annex) in April 2025, member states weighed several provisions assessing interests at every stage across provisions, such as on prevention, PABS,¹⁹ technology transfer, and a few other elements. Eventually, some of the interlocked puzzles fell together with a combination of behind-the-scenes political and diplomatic maneuvers in the final hours of the negotiations.²⁰

Tech Transfer Negotiations as a Case Study to Understand Dynamics Between Countries

The discussion on technology transfer was one of the last topics to be resolved and serves to illustrate both the determination of developing countries to challenge the status quo and the limitations in such efforts. Some developed countries sought to codify voluntary approaches to share technology as a standard in the Pandemic Agreement. However, developing countries wanted to improve upon the obligations under the WTO TRIPS Agreement that already enable compulsory licensing to produce medicines without the consent of the patent holder. The discussion revolved around the terms of technology transfer to be Voluntary and Mutually Agreed Terms (VMAT). Developed countries wanted any transfer of technology to be undertaken on voluntary terms decided by companies. Developing countries wanted to protect policy space, so that governments could negotiate the terms of technology transfer during health emergencies. This policy space is already enshrined and protected in the TRIPS Agreement of the WTO. Ultimately, developing countries gave in.

Significant last-minute compromises on this matter²¹ ultimately led to consensus on the wider Agreement itself. While most developing countries protested and held their position on the VMAT, eventually, a compromise was negotiated²² in the final hours. Experts say this effectively perpetuated the status quo in the Pandemic Agreement—it allows companies to set the terms of technology transfer. Sources said that while many developing countries were tireless, they were ultimately not united during the final sprint, with some resigned on the intractability of this matter including in other international forums.

In the final assessment, the Group for Equity representing more than thirty developing nations, played a crucial role in contributing toward consensus by bringing a handful of developed countries closer to those countries including in the Africa Group, negotiators recounted. Often these blocs—the developed countries on the one hand, and the Africa Group on the other—had the most divergent positions on some issues. Another indication of a world order in transition is the pivotal role that many middle-income countries played in driving, sustaining, and shaping these global health negotiations.

Though less ambitious than initially envisioned by developing countries, the Pandemic treaty negotiations have now set the stage for the negotiations on a new Pathogen Access Benefits Sharing System. The negotiations and outcome of the Pandemic Agreement is not a zero-sum game because, ultimately, its success will be determined by the instrument's implementation. Before the Agreement can be implemented, it must be ratified by at least

¹⁹ Priti Patnaik, *Rancor Over Disagreement on Prevention Obligations in Pandemic Agreement Talks, Withholds Progress in Key Areas*, GENEVA HEALTH FILES (Dec. 2, 2024).

²⁰ Priti Patnaik, *Multilateralism in Global Health on the Razor's Edge: Countries Adopt New Pandemic Agreement at the World Health Assembly*, GENEVA HEALTH FILES (May 20, 2025).

²¹ Interview with Amr Ramadan, Ambassador, Egypt, and Vice-Chair of the Intergovernmental Negotiating Body, World Health Organization, in Geneva, Switzerland (June 2, 2025).

²² Priti Patnaik, *Countries Choose Consensus on Pandemic Agreement, G7 Fait Accompli on Caveated Terms of Tech Transfer Compromises Policy Space for Developing Countries*, GENEVA HEALTH FILES (Apr. 16, 2025).

sixty countries. The entry into force of the Pandemic Agreement hinges on the successful conclusion of the ongoing negotiations of the PABS discussions—an annex to the main instrument.

The Negotiations on Pathogen Access and Benefit Sharing – An Annex to the Pandemic Agreement

The PABS has been seen by many as the “heart” of the Pandemic Agreement, given the commitment to share a negotiated minimum of real-time production²³ of medical products during pandemics and Public Health Emergencies of International Concern. For many developing countries, big and small, this is seen as one of the biggest equity deliverables from the Pandemic Agreement. Such a mechanism, if negotiations are successful, could potentially be a game-changer by altering not just access to countermeasures during health emergencies, but also the politics of this contested space. Tying the fate of the Pandemic Agreement to a successful completion of the PABS annex illustrates the push by some developing countries to safeguard against any flagging commitment to benefit sharing.

The proposal for a new PABS mechanism first came from the Africa Group, in addition to others such as Bangladesh and Indonesia. After initially resisting, some developed countries eventually warmed up to the idea of a PABS mechanism. Developed countries have been cautious about linking the exchange of information on pathogens to the sharing of benefits, among other concerns on the impact on innovation. After much negotiation, countries finally agreed to the principles of PABS including linking access to pathogen information with the sharing of benefits on an equal footing, as articulated under Article 12 of the Pandemic Agreement. They also have proposed bold governance mechanism²⁴ for the new system.

During these discussions, some developed countries in 2024 allegedly tried to get certain African countries to dilute some of their demands on the PABS proposal in a bid to reach a compromise position.²⁵ Such efforts were not successful. Eventually, Article 12 was negotiated amongst all WHO member states to reach a common understanding. Developing countries have been criticized by developed countries and other stakeholders of being “too transactional” in tying access to pathogenic information to the benefits they must receive. However, developing countries have stuck to their positions, and have shaped these discussions by deliberately emphasizing sovereignty, agency, and a desire for greater autonomy including toward regional and local manufacturing of medical products.

Recent submissions of PABS proposals reveal ambition, determination, and clarity on the part of many developing countries in line with these values. Some of the submissions articulate clear expectations of how the access to information on pathogens with pandemic potential is to be determined. Proposals include having clear obligations on conditional access to information in return for binding obligations on the sharing of benefits. Further, they have also outlined how the sharing of benefits will be governed under such a system, by protecting and staking claim to the access of medical products that are developed based on the information shared. How this ultimately plays out will depend on how the mechanism is conceived by the Intergovernmental Working Group.²⁶ Negotiations on the PABS Annex began in July 2025 and are expected to conclude in May 2026 as per the current schedule.

²³ Interview with Tovar da Silva Nunes, Ambassador, Egypt, and Vice-Chair of the Intergovernmental Negotiating Body, World Health Organization, GENEVA HEALTH FILES (May 7, 2025).

²⁴ Priti Patnaik, *Countries Inch Closer on Pathogen Access Benefits Sharing, Devil in the Details [Pandemic Agreement Negotiations]*, GENEVA HEALTH FILES (Apr. 9, 2025).

²⁵ Priti Patnaik, *A Turning Point? The EU & the U.S. Draw Out Four African Countries to Bridge Positions on Pathogen Access & Benefit Sharing*, GENEVA HEALTH FILES (May 26, 2024).

²⁶ WHO, Intergovernmental Working Group (IGWG) on the WHO Pandemic Agreement.

Conclusion

The post-pandemic years demonstrate the key role played by developing countries—both the smaller economies in Africa, and the big emerging economies, in pushing the boundaries in the way global health negotiations were conducted and the way they progressed. While power continues to lie with a few key developed countries, consequential new efforts by developing countries, reveal their determination and the markets they represent.

In a poly-crisis world, with shifting geopolitical tensions, the emergence of leadership amongst developing countries, suggests shifting power dynamics in multilateralism. The insistence of developing countries to negotiate PABS system reveals an unwavering conviction in shaping rules in global health law and governance.