

What type of global governance could improve the fight against zoonotic pandemics?

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“The Panel notes that the high risk of major health crises is widely underestimated (...) Another failure to perform may necessitate the consideration of alternate United Nations institutional response mechanisms. Too often, global panic about epidemics has been followed by complacency and inaction.”

Jakaya Mrisho KIKWETE, Tanzania, Chair of the High-level Panel on the Global Response to Health Crises, “Protecting humanity from future health crises”, Report to the UN General Assembly, 2016

NOTE

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1. A RECOGNISED SYSTEMIC RISK

The emergence and spread of Covid-19 raises major questions regarding international governance, questions that are certainly not new, but which merit reassessment given the gravity of recent events and their consequences.

The establishment of the World Health Organization (WHO) has given the international community an institution with a mandate to address the pandemic risk. Given that this risk is international in scope and continual in nature, the WHO adopted renewed and strengthened International Health Regulations (IHR) in 2005, which came into force in 2007, based on experiences gained during the SARS-CoV-1 episode (2002-2003). The regulations aim “to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.”¹

The IHR set out obligations for monitoring and reporting events as well as policies for procedures and intervention. They do not, however, address the issue of zoonotic risk reduction.

Article 7 of the IHR on the communication of information in the event of “an unexpected or unusual public health event (...), which may constitute a public health emergency of international concern” is particularly explicit about the obligations of State Parties.

It should also be noted that, with regard to pandemics, both the United Nations General Assembly (UNGA) and the

Security Council may be called on to intervene. Thus, on 2 April 2020 UNGA adopted resolution 74/270 on Covid-19. For its part, after many tensions and disagreements, particularly the opposition in principle of China and Russia, the Security Council also met on 9 April 2020, but was unable to adopt a resolution.

This emulates a practice, established at the time of the Ebola outbreak, whereby pandemics are considered to have an impact on security issues, therefore justifying the involvement of the Security Council.

In the case of Covid-19, the possibility that mistakes have been made cannot be discounted, on at least two levels: preventing the occurrence of the disease; and delaying its reporting to the WHO. It also remains to be established whether the strategies implemented by the WHO once it had been alerted were appropriate.

Any such mistakes could bear comparison, all things being equal, with those observed during the SARS CoV-1 epidemic in 2002-2003, the H1N1 event in 2009² and the 2015 Ebola epidemic.

Numerous intergovernmental and non-governmental reports published on epidemics or pandemics, particularly that of the Bill and Melinda Gates Foundation,³ have highlighted weaknesses in the international system. It is also worth noting the Bill Gates interview on the state of global preparedness for health emergencies, published in the New England Journal of Medicine (NEJM) on 28 February

¹ Poulain, M. (2005). “La société internationale face au SRAS - La santé publique à l'épreuve de la globalisation”, AFRI, Volume VI.

² Fineberg, H. (2014). “Pandemic Preparedness and Response - Lessons from H1N1 Influenza of 2009”, *New England Journal of Medicine*, April 2014.

³ Gates, B. (2015). The Next Epidemic. Lessons from Ebola. *New England Journal of Medicine*, April 2015.

2020, and the latest annual report of the Global Preparedness Monitoring Board (GPMB), a joint WHO and World Bank structure. Finally, we can mention the severity of the report of the High-Level Panel on The Global Response to Health Crises, presented in 2016 to the UNGA, which included specific recommendations.

The scientific literature together with the evaluation reports have underlined the gravity of the risks and the inevitability of future epidemics, as well as the potential severity of their consequences with regard to the failings of the current system at the international level and in many State Parties.

2. CAUSAL CHAINS IDENTIFIED BY SCIENCE

These infectious diseases now represent a systemic risk that is likely to disrupt many aspects of international life; their analysis should highlight the causal chains. Virology, epidemiology, ecology and geography play a major role.

On the other hand, evaluation reports do not sufficiently address the origin of these epidemics. However, the majority of epidemics are thought to originate from interactions between human societies/wild animals/domestic animals (see Jones et al, 2008;⁴ Sicard, 2020;⁵ as well as Grancolas, Guégan, Morand, Picq).

The direct factors involved include the harvesting and trading of wildlife for food markets in urban areas, while indirect factors, in the context of global ecological change, include deforestation and factory farming, as well as the generally increasing proximity of human activities to the habitats of wild virus-carrying species, particularly through channels provided by peri-urban areas or the growth of livestock farming and agriculture. The densification of the global human population and the increase in average meat consumption are identified as underlying factors in the increase in epidemic threats.

The ability of these viruses to spread across large geographic scales and to transfer rapidly from cities, ports and airports that connect goods and passengers to the rest of the world is also highlighted by many experts. It should be noted that many of these scientific analyses are carried out not only by ecologists, but also by epidemiologists, human and animal health researchers and virologists.

This issue of the intervention of the international community to address the transnational consequences of a national event has not escaped the attention of the international community. Thus, Principle 2 of the 1992 Rio Declaration on Environment and Development declares that: "States have, in accordance with the Charter of the United Nations and the principles of international law (...), the responsibility to ensure

⁴ Jones, K. et al. (2008). Global trends in emerging infectious diseases, *Nature*, 451 (7181) 990-993.

⁵ Sicard, D. (2020). "La transmission infectieuse d'animal à humain", *Esprit*, April 2020.

that activities within their jurisdiction or control do not cause damage to the environment of other States (...)". This principle also applies to the risk of epidemics, and it is on the basis of the same philosophy that the WHO adopted the new IHR in 2005, which includes the very strict obligations mentioned above and whose application has given rise to successive evaluations over the course of epidemics.

3. SHORTCOMINGS IN THE TRANSITION TO ACTION

The various assessment reports that have been published following the pandemics of the early 21st century have revealed shortcomings in the application of the IHR. These gaps in this specific field illustrate one of the major weaknesses of transnational risk governance: the effectiveness deficit.

As we know, any assessment of effectiveness faces the classic problem of international governance: scientific, technical, legal, financial, etc. issues are usually identified, reports are published with excellent analyses and recommendations, collective decisions are taken, including at political levels; but very often, these processes remain in a virtual state and there is a failure to implement decisions.

This is often the case with decisions aimed at achieving effective cooperation between international institutions, at increasing the obligations of State Parties, or at improving the financial capacities of organizations. The result is a sense of ineffectiveness and empty rhetoric. The process of evaluating existing arrangements is made difficult by the gap between the ambition of decisions and programmes, the activities actually implemented and the results actually achieved at the country or international level. In addition, international organizations are subject to the influence of member countries aiming to protect their national interests and of major donors. The WHO's current system of governance at the regional level does not provide the necessary guarantees of objectivity and responsiveness, as Harvey Fineberg explains in the above-mentioned article.

Contemporary international law has moved in three directions: enacting common rules; creating national obligations for the implementation of these rules; and ensuring effective compliance by creating reporting obligations and, where appropriate, sanctioning and accountability systems. It is this third direction, regarding effectiveness, which is most often lacking as regards pandemics, as is also the case in many other areas.

4. COMPARISON WITH THE LEGAL REGIME OF NUCLEAR ENERGY

It is informative, for comparative purposes, to examine the responses employed in other fields involving transnational risks,

such as nuclear accidents, by looking at the mechanism adopted by the International Atomic Energy Agency (IAEA).⁶

Pandemics have similarities to Chernobyl-type phenomena (1986), where national failures in terms of risk detection, inadequate accident management and delayed dissemination of information can have considerable international repercussions.

The failures identified from the Chernobyl accident of 26 April 1986 have led to a set of international decisions to prevent their recurrence. Within the framework of the IAEA, the international community responded by adopting three conventions. The first (1994), which concerns nuclear safety, considerably reinforces the obligations of countries with regard to the safety of installations.⁷ The second (1986) deals with the obligation to provide early notification of a nuclear accident. The third (1986) addresses the provision of mutual assistance in the event of a nuclear accident or radioactive emergency. Since 1963 there has also been a Convention on Civil Liability for Nuclear Damage.

The Convention on Nuclear Safety uses a system of peer reviews conducted by the IAEA in cooperation with the country concerned. These reviews may cover both national safety systems (Independent Safety Culture Assessment - ISCA) and the nuclear sites themselves⁸. The list of reports is published on the IAEA website. Another example that has proved its effectiveness is the monitoring system for the Treaty on the Non-Proliferation of Nuclear Weapons, also managed by the IAEA, which is able to send inspection teams to sites, such as we have seen in Iraq and Iran for example.

The major risks associated with pandemics justify the importance of learning lessons from their management over the past decades, to consider the analyses and recommendations of evaluation reports, and to draw inspiration from the international political responses for nuclear safety within the framework of the IAEA. It would also be useful to review the conditions under which the International Maritime Organization (IMO) is involved in the prevention and management of the risks of maritime oil and chemical accidents.

5. LACK OF INTER-AGENCY COOPERATION

With regard to infectious diseases that have the potential to become pandemics, a distinction should be made between the issue of information dissemination about the emergence of infectious diseases that are likely to become more serious, which should be dealt with by the WHO, and that of the prevention of such diseases, which is a more complex issue involving

⁶ We could also refer here to the responses of the International Maritime Organization to the risks of accidental marine pollution by hydrocarbons or chemicals. See the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC Convention).

⁷ The creation of the Nuclear Safety Authority (ASN) in France is an application of this convention.

⁸ For example the safety of the Civaux plant (Vienne, France) was the subject of a three-week peer review in 2019.

development policies, including their biodiversity and environmental dimensions.

Both issues presuppose the establishment of close international cooperation. This must be further strengthened in the field of prevention by including, in particular, biodiversity institutions.

Joint projects exist between the World Health Organization (WHO), the Food and Agriculture Organization (FAO) and the World Organisation for Animal Health (OIE), such as the Global Early Warning System for health threats and emerging risks at the human-animal-ecosystem interface (GLEWS). However, international institutions with expertise in the biodiversity field (UNEP, CBD, CITES, CMS⁹) are not members of this initiative, even though, in the case of CITES for example, international trade in certain wildlife species that can cause the spread of viruses (bats, pangolins) is controlled under that convention. It should also be noted that the CBD has intervened on several occasions on biodiversity and health issues, notably during its COP 12 and 13; and during its COP 14 it adopted a decision on the bushmeat trade.

However, the WHO and the CBD cooperated on the report "Connecting Global Priorities: Biodiversity and Human Health", that was published in 2015.

The One Health¹⁰ initiative launched in 2011 to address the fact that human, animal and environmental health issues are linked, has lacked substance, with the exception of research projects conducted particularly in France under the aegis of the ANSES and ANR, or as part of the European research programme. In theory, cooperation exists at many levels, but the reality is very different and, moreover, institutions concerned with biodiversity remain on the margins of such joint action.

A last partnership to consider here is the Global Health Security Agenda (GHSA), an international multi-stakeholder platform established in 2014 that includes over 65 countries. The GHSA aims to serve as a "catalyst for progress towards the vision of attaining a world safe and secure from global health threats posed by infectious diseases". In preparation for its 2024 strategy, the GHSA designated several organizations to provide technical support to its Steering Committee (WHO, FAO, OIE, World Bank) without calling on any international biodiversity institutions.

In other words, international cooperation in the area of prevention, that includes all of the relevant organizations, has yet to be established.

6. WORK PLAN PROPOSALS

In view of this first approach, various activities could be undertaken as part of a political process to be built at the European and international levels (G20 and United Nations), taking into

⁹ United Nations Environment Programme, Convention on Biological Diversity, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on Migratory Species.

¹⁰ See Romanelli, Cooper, De Souza Dias (2014). "The integration of biodiversity into One Health", *Rev. sci. tech. Off.int.Epiz*, 33 (2), pp 487-496.

account the mandate of the High-Level Policy Forum, the body responsible for monitoring the Agenda 2030 for sustainable development and SDGs.

1. Evaluation

There is no escaping the need for a new evaluation of the current system, which must consist of two components developed according to separate procedures:

- Scientific component: the aim is to summarize knowledge on the occurrence and spread of infectious diseases, to encompass health, public hygiene, biodiversity, environment, agriculture, livestock farming and their interfaces. As this is a multidisciplinary approach, it cannot be managed by a single specialized agency, such as IPBES. UNESCO could take the lead, but there is a risk this would be challenged by the United States, which is not a member. One option is to entrust it to the InterAcademy Council (IAC), an organization of science academies that carried out the IPCC evaluation in 2011; another option is to bring together the WHO and IPBES under a mandate from the UNGA.
- Pandemic governance component: this evaluation could be entrusted by the UNGA to a Brundtland-type commission. It would carry out a dedicated analysis of the Covid-19 event. It would take into account the evaluations of previous events and their possible follow-up, as carried out under the aegis of the United Nations, the WHO, academic bodies and civil society. It should address not only the issues relating to WHO communications at the outset, as well as the subsequent management of the event, but also assess the effectiveness of the UN's own interventions at the level of the UNGA and the Security Council.¹¹ It should make the necessary proposals for structuring the joint work of the UN specialized agencies.

2. Legal aspects

From a legal perspective, the following options for strengthening the obligations of countries to prevent infectious diseases, as well as their obligations to provide warnings and their accountability in case of failure, should be considered:

- Should we only involve the WHO? In this option, the WHO would either continue to work within the framework of its regulations or consider the adoption of specific conventions¹² within the WHO to give greater political and legal force to its action on pandemics. Inspired by the IAEA system, this option may however have the double disadvantage of leaving aside the biodiversity aspect and lacking political force.
- Should the CITES mandate be extended to include the

management of the species concerned at the national level, including their trade? Bearing in mind that at present, as recently highlighted by the CITES Secretariat,¹³ “zoonotic diseases are outside of CITES's mandate”. The CITES mandate should therefore be extended to cover all species likely to generate zoonotic diseases and to their trade at the local level, regardless of the fauna's geographical origin. It is highly unlikely that the parties to the Convention would easily accept this extension of its mandate.

- Another option relating to the biodiversity/pandemic interface would be the negotiation of a new protocol for the Convention on Biological Diversity; however, the United States is not a party to this convention, which may weaken the mechanism.
- Should provision then be made, within the framework of the United Nations, for the adoption of a more comprehensive, integrated and politically binding legal instrument? One example is the United Nations Convention for the Law of the Sea (UNCLOS), which is multidimensional (navigation, fisheries, marine environment, mineral resources) and has great political force. This instrument would aim to deal with the issues of prevention and management of pandemics by integrating into it the challenges of biodiversity, hygiene and public health, as well as information and cooperation obligations. It would leave the WHO with a technical implementation role within the framework of its competences, following the example of the technical role that the IMO plays in relation to UNCLOS. A two-tier system could therefore be proposed: a legal-policy tier managed by the United Nations, accompanied by technical implementation tiers that would be entrusted respectively to the WHO and biodiversity-related conventions and, where appropriate, to other agencies (WTO, ICAO, IMO and UNWTO, etc.).¹⁴
- Lastly, should there be a specific regime of liability and reparation in the event of a State's failure to fulfil its international obligations with regard to prevention and information on transnational risks of the spread of infectious diseases? This would specify, in comparison with the current general regime of State responsibility, the conditions for its implementation.

3. Operational aspects of governance

From an operational perspective, and whatever the option chosen in legal terms, it is also essential to strengthen the effectiveness of the law and the obligations of States, as well as cooperation between institutions dealing with human health and those addressing the environment.

- Strengthening inter-agency cooperation: improving intergovernmental cooperation, in particular by better connecting the organizations responsible for human health with those responsible for animal health, agriculture, trade,

¹¹ Okila, V. D. (2016). Conseil de sécurité et renforcement de la lutte contre les pandémies en vertu du chapitre VII de la Charte des Nations Unies, *Revue de droit de l'Université de Sherbrooke*, 46 (2,291-324)

¹² The WHO has already adopted a WHO Framework Convention on Tobacco Control (FCTC) in 2003.

¹³ See the official CITES Secretariat statement on Covid-19, April 2020.

¹⁴ World Trade Organization, International Civil Aviation Organization, International Maritime Organization and World Tourism Organization.

environment and transport; taking over the One Health project by making it more operational and clearly involving biodiversity-related conventions, countries and civil society.

- Strengthening cooperation with developing countries: supporting prevention policies in developing countries; undertaking an exceptional effort by the European Research Programme and the development agencies of the EU Member States to both help the countries of the South to improve their infectious disease prevention systems and develop transdisciplinary training.
- Strengthening the effectiveness of the rule of law (monitoring, compliance): creating a peer review programme on prevention policies and providing the WHO with an inspection capacity, following the example of the IAEA in cases of malfunctioning, possibly involving the Security Council.
- Reforming the WHO's institutional governance and appropriately increasing its budget (see the Gates and GPMB proposals) based on an analysis of human and financial needs.

7. PROPOSALS FOR MANAGING THE PROCESS OVER TIME

Initiatives concerning the review of scientific knowledge and governance are the responsibility of countries. The EU or the G20 could be the initiators of draft recommendations aimed respectively at triggering scientific assessments and international governance.

Pending these assessments, the legal and governance aspects according to the options proposed above, or others to be discussed, could start to be explored.

At the national level, a joint task force, involving the relevant ministries and civil society, could be set up to monitor the process.

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