



BRIEFING NOTE

INTERNATIONAL TREATY FEATURES POTENTIALLY APPLICABLE TO A FUTURE PANDEMIC TREATY

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This note sets out mechanisms and tools used in global treaties in different areas of international law that are designed to facilitate implementation, which might be considered for inclusion in a prospective pandemic treaty. Many of the tools and mechanisms described form part of a treaty's provisions on supportive measures or its institutional framework, and as such are not part of the subject matter of the treaty. The note provides examples of existing treaties that feature the mechanisms described, and briefly outlines their mode of operation. It does not constitute a comprehensive overview of the existing mechanisms.

INTRODUCTION

TYPICAL STRUCTURE OF A TREATY

Many treaties have a similar structure, which can be outlined as follows:

1. Introductory part: Preamble, objectives, definitions, scope of the treaty
2. General provisions: Guiding principles, general obligations, elaboration of national plans and strategies
3. Special provisions: Core substantive obligations
4. Sharing of information, technology and resources: **International cooperation, information exchange, technical assistance, technology transfer, capacity building, funding**
5. Institutional and legal provisions: **Treaty bodies, financial mechanism, compliance, settlement of disputes**, relationship with other treaties
6. Procedural provisions: Adoption of protocols, amendments to the treaty, right to vote, signature/ratification/entry into force, reservations, withdrawal

Annexes: Detail regulation of technical and procedural issues

The features set out in this note are usually found in parts 4 and 5 of the treaty.

LEGALLY LINKED TREATIES

Where a treaty is legally linked to another treaty, the relevant features of the “parent” treaty apply also to the linked treaty, with additions or changes as dictated by the subject matter of the linked treaty.

Examples:

- The purpose of the Paris Agreement is to enhance the UN Framework Convention on Climate Change, building on that Convention. Accordingly, its institutional infrastructure and procedures are those of the Convention.

Institutional mechanisms shared by both treaties include the Conference of the Parties, the Secretariat, the Financial Mechanism, the Subsidiary Bodies for Scientific and Technological Advice and for Implementation, and the Technology Mechanism. The dispute settlement procedure is also the same.

- Protocols generally use all or part of the institutional mechanisms of the parent treaty (e.g. the WHO Framework Convention on Tobacco Control (WHO FCTC) and its Protocol on illicit trade in tobacco products, the Vienna Convention on the Protection of the Ozone Layer and its Montreal Protocol, the Convention on Biodiversity and its Cartagena and Nagoya Protocols)

TREATY FEATURES

1. NOTIFICATION OF INCIDENTS POTENTIALLY AFFECTING OTHER STATES

Some treaties that regulate substances which may constitute a hazard or risk provide for an obligation to notify potentially affected states of occurrences involving such substances.

Examples:

- IAEA Convention on Early Notification of a Nuclear Accident: This treaty was adopted following the Chernobyl accident in 1986. Its core feature is a system by which any state having sustained a nuclear accident has an obligation to notify potentially affected states and the IAEA as soon as possible, giving specified detailed information.
- Cartagena Protocol on Biosafety: Where a state knows about of a release of genetically modified organisms under its jurisdiction that may lead to unintentional transboundary movement of such organisms, it must notify the states that are or could be affected, as well as the Biosafety Clearing House and other international organizations where relevant.
- Basel Convention on hazardous wastes: Whenever an accident during a transboundary movement comes to its knowledge, a state must notify states whose environment/human health is at risk.

2. INTERNATIONAL COOPERATION AND INFORMATION SHARING

Cooperation among states is a core feature of many treaties.

Cooperation to enhance knowledge of the subject matter of the treaty: Obligation to share information and to cooperate in research and training

- Examples: Most Multilateral Environmental Agreements (MEAs); the Framework Convention on Climate Change and the Paris Agreement; the WHO FCTC and its Protocol on illicit trade in tobacco products

Cooperation on early warning systems and emergency preparedness

- Example: Paris Agreement

Some treaties have established **specialized subsidiary bodies** to facilitate technical assistance and/or information sharing.

- Examples: Biosafety Clearing House of the Cartagena Protocol on Biosafety; Access and Benefit Sharing Clearing House of the Nagoya Protocol on Access and Benefit Sharing; Subsidiary Body for Scientific and Technical Advice of the Framework Convention on Climate Change and the Paris Agreement; Subsidiary Bodies for Scientific, Technical and Technological Advice of the Biodiversity Convention

Cooperation in legal proceedings and law enforcement: Obligation to cooperate in matters such as investigation, prosecution, and extradition

- Examples: Protocol on illicit trade in tobacco products, Convention against Torture, Convention against Illicit Trade in Narcotic Drugs

3. MUTUAL ASSISTANCE

Provision of assistance is a common feature in international treaties. Treaties define different types of assistance that states are required to provide to each other.

Assistance in treaty implementation and capacity building: Obligation of developed country Parties to provide assistance to developing countries and countries with economies in transition in the implementation of the treaty. This generally includes financial and technical assistance, training, and technology transfer. Under some treaties, it extends to an obligation to encourage relevant organizations to provide assistance, and to provision of advice by the secretariat to Parties on potential sources of funding (e.g. the WHO FCTC)

- Examples: All MEAs; UN Framework Convention on Climate Change and Paris Agreement; WHO FCTC and its Protocol on illicit trade in tobacco products,

Assistance in accident response: Option for Parties affected by an accident to request assistance from other Parties (no binding obligation to respond positively!)

- Example: IAEA Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, adopted following the Chernobyl nuclear accident in 1986. Provision of assistance is the core of this treaty.

4. FINANCING TREATY ADMINISTRATION

Under many treaties, including the WHO FCTC and most MEAs, the supreme treaty body has established a system of contributions by Parties to pay for the administration of the treaty, in particular the operation of its secretariat and the meetings of the treaty bodies. This usually includes a scale of assessment, attributing a percentage of the budget to each Party based on its GNP and other defined criteria. Under the MEAs, these contributions have generally been defined as so-called voluntary assessed contributions to avoid the notion of a binding obligation, although under some treaties the supreme treaty body may decide to suspend certain rights of Parties that fail to pay their contributions. This was also the initial system of the WHO FCTC, but under this treaty the contributions were later redefined as assessed contributions.

Under treaties such as the MEAs and the WHO FCTC, calls are regularly made by the

treaty bodies to developed country Parties to provide funding for the participation of developing countries in meetings of the treaty bodies. Such contributions are fully voluntary.

5. FINANCIAL MECHANISMS

A financial mechanism is an international body that funds projects in eligible countries (generally developing countries and countries with economies in transition), using an application and selection procedure. Contributions to the financial mechanism are made by a defined category of donor countries (generally developed countries). In some funds, voluntary assessed contributions are defined through a scale of assessments, and/or regular replenishment negotiations are conducted. Others may be fully voluntary and/or may accept donations also from non-state actors.

Financial mechanism established by a treaty: Forming part of the treaty's institutional infrastructure and established under its provisions, the mechanism serves the Parties to the treaty only.

- Example: Ozone Fund, established under the Montreal Protocol on protection of the ozone layer, funded through voluntary assessed contributions

Independent financial mechanism with an institutional link to the treaty: The institution is designated by one or more treaties to serve as its financial mechanism in accordance with the treaty provisions. In addition, it also assumes functions that are independent of the treaty.

- Examples: Global Environment Facility (GEF), serving as financial mechanism of a number of MEAs in the areas of biodiversity, climate change, and chemicals, funded through voluntary assessed contributions; Crop Trust, serving as financial mechanism of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture

Free-standing financial mechanisms: Financial mechanisms with no current connection to a treaty, active in areas relevant to the prospective pandemic treaty. The option of establishing an institutional link with the future treaty (similar to the GEF and the Crop Trust) might be explored.

- Examples: Global Fund to Fight Aids, Tuberculosis and Malaria (currently funding COVID-related projects at country level); GAVI Vaccine Fund (co-leading COVAX and currently funding COVID- related projects at country level)

6. NATIONAL REPORTING AND REVIEW

Some treaties stipulate a requirement for all Parties to regularly submit to the supreme treaty body detailed reports on national data, measures taken to implement the treaty and problems encountered in so doing, using a prescribed format, for review and possible consideration when recommending measures for improving treaty implementation. The reports are compiled by the treaty secretariat.

- Examples: All MEAs, WHO FCTC and its Protocol on illicit trade in tobacco products, Convention against Torture, London Convention and Protocol on dumping of wastes at sea

Under some treaties, the supreme treaty body holds special review meetings to review and assess the national reports.

- Examples: IAEA Convention on Nuclear Safety, IAEA Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management

Under some treaties, a special mechanism for national reporting is established.

- Example: The Enhanced Transparency Framework of the Paris Agreement, to which Parties are required to submit specified information, which is subjected to a technical expert review

7. COMPLIANCE MONITORING

There exists a wide array of methods and mechanisms for monitoring compliance with an international treaty, ranging from specialized treaty bodies (for example, committees) that provide a forum to discuss allegations of non-compliance to recourse to the UN Security Council (in the case of treaties to ban weapons of mass destruction). Non-compliance procedures may include verification and/or inspection of facilities (see below). Generally speaking, there is a strong aversion of states to the imposition of sanctions by international bodies. Accordingly, many existing mechanisms are of an advisory nature. Examples include the following:

Compliance mechanisms of MEAs: A treaty body before which a Party or the treaty secretariat can bring issues with compliance (another Party's or its own). The body may provide advice on resolution of the problem, but may not take binding decisions. The compliance mechanism of the Kyoto Protocol to the UN Framework Convention on Climate Change was one of the strongest and best developed such mechanisms in MEAs. It was composed of a Facilitative Branch (designed to assist Parties in achieving compliance) and an Enforcement Branch (which may determine consequences for Parties not meeting their commitments, e.g. obligation to establish a compliance action plan, suspension of the right to participate in the Protocol's flexibility mechanism - emissions trading, the clean development mechanism, joint implementation). Compliance measures are most effective where they are coupled with a fund to support Parties in improving compliance, as under the Montreal Protocol on protection of the ozone layer. Conversely, the compliance committee of the Paris Agreement is fully facilitative

Complaints procedures of the human rights treaties: A procedure by which complaints regarding human rights violations by a Party may be addressed to a treaty body by individuals or Parties. Under defined circumstances, the treaty body may make inquiries on its own initiative. Following a proscribed process, the treaty body issues its "opinion" or "view" on the matter, and may engage in follow-up activities with the Party concerned. An example is the mechanism established under the Optional Protocol to the Convention on the Rights of Persons with Disabilities, to which individuals or groups can make a complaint. The Committee may launch an investigation into the actions of a State Party where necessary.

8. VERIFICATION

Verification is a process by which a treaty body assesses compliance with the treaty by its Parties, based on compilation and analysis of relevant information. There exists a wide range of verification processes, mechanisms, and technologies. Tools used may include monitoring, fact-finding missions, and inspection of facilities (see below). In the areas of nuclear safety and arms control and disarmament, verification is undertaken by large specialized organizations.

- Examples of verification bodies: International Atomic Energy Agency (IAEA), Organisation for the Prohibition of Chemical Weapons (OPCW), Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), International Narcotics Control Board

9. INSPECTION

Some treaties make provision for an international body or other Parties to physically inspect relevant facilities. Examples include:

- International inspection system for places of detention under the Optional Protocol to the Convention against Torture
- Inspection of fishing vessels by port authorities under some fisheries treaties (e.g. the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing)
- Inspection of ships by port authorities under the International Convention for the Prevention of Marine Pollution from Ships (MARPOL) and its Protocol
- Inspection of facilities by a verification body under the Nuclear Non-Proliferation Treaty and the Comprehensive Nuclear Test Ban Treaty

10. DISPUTE SETTLEMENT

A process by which disputes between Parties relating to an alleged breach of treaty obligations is brought before a tribunal or similar body. There exists a wide range of relevant mechanisms.

FOLLOWING ARE TWO EXAMPLES:

Dispute settlement mechanisms of MEAs and the WHO FCTC: In the event of a dispute, Parties are required to seek resolution through negotiation or other peaceful means. If this fails, the dispute may be submitted to arbitration or to the International Court of Justice, provided the Parties involved in the dispute have accepted these options through a declaration upon acceding to the treaty in question. Under the MEAs, this mechanism has never been used and therefore has no practical significance.

Dispute settlement of the World Trade Organization: In the event of a dispute regarding trade measures, Parties are required to seek resolution through negotiation. If this fails, the complaint may be brought before a panel, which takes a decision. This may be brought to an appellate body, which takes a final binding decision.

