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## **A GLOBAL PANDEMIC TREATY: INTERNATIONAL COMMUNITY'S RESPONSE TO CONTEMPORARY SECURITY THREATS**

*Assuming that the security issue has gained additional complexity and importance due to the COVID-19 disease that pandemically marked our time, the basic goal of this paper is to emphasise the benefits of establishing an adequate international treaty regime on pandemic preparedness as a response to this ongoing health and safety challenge of global proportions. The establishment of an international pandemic treaty framework under the auspices of the World Health Organization could enable individual countries to improve their capacity to act more productively in terms of preparedness and responsiveness to new security threats. The results of this research will show that the adoption of such a universal legal instrument would contribute to the greater transparency and accountability of the international response to security threats of this kind, as well as to more coordinated action of the international community in terms of early detection, warning and response to future pandemics.*

*Keywords: international community, pandemics, security, World Health Organization (WHO), international pandemic treaty.*

### **1. INTRODUCTORY REMARKS**

An *epidemic* is a sudden outbreak of a disease that is new to an area or a sudden increase in the number of new cases of previously endemic disease (Youngerman, 2008, p. 5). The difference between epidemic and pandemic is a matter of degree. When an epidemic rapidly spreads around the world, or over a large part of the world, and strikes a large part of the population, it is called a pandemic (*Ibid.*, p. 6). The COVID-19 pandemic has been an unprecedented catastrophe and challenge for the global community that has tested our national political systems and laws when it comes to making urgent solutions for emergency situations.

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According to Duff *et al.*, pandemics, which by definition „span international borders”, present „a threat to the health and wellbeing of societies”. They also underline that „the COVID-19 pandemic has made collective action to achieve optimal prevention, preparedness, and response to these events a global imperative” (Duff *et al.*, 2021, p. 428). The main goal of this paper is to point out the need and advantages of establishing an adequate international treaty regime on pandemic preparedness as a response to the health and safety challenges of global proportions. The adoption of an international treaty mechanism on pandemic prevention and preparedness could strengthen our national, regional and global capacities and resilience to future pandemics, other major health emergencies and, perhaps, even worse threats that may come afterwards. This paper will try to present the activities of the World Health Organization and the European Council, which are aimed at the creation of an international treaty regime on pandemic preparedness and response.

## 2. ACTIONS OF THE WORLD HEALTH ORGANIZATION IN THE CONTEXT OF THE COVID - 19 PANDEMIC

The World Health Organization (WHO) plays a key role among all intergovernmental organizations involved in tackling pandemics, and it is the only source of legal authority in this field (Kuznetsova, 2020, p. 2). With its 194 member states, the WHO directs and coordinates health-related activities within the UN system (Zamfir & Fardel, 2020, p. 25). The Constitution of the WHO was signed in New York on 22 July 1946. It entered into force on 7 April 1948, when the 26th of the 61 Member States deposited its ratification. World Health Day is celebrated each year on 7 April (Beigbeder *et al.*, 1998, p. 12). The WHO was established as a specialized health agency of the United Nations (Charter of the United Nations, Article 57). The *Constitution* of the WHO defines the objective of the Organisation in Article 1: ”The objective of the WHO shall be the attainment by all peoples of the highest possible level of health”. Article 2 grants the WHO extensive normative powers to carry out its mission, authorizing the World Health Assembly (WHA) to adopt “conventions, agreements and regulations and make recommendations with respect to international health matters” (Gostin *et al.*, 2015, p. 2). The Constitution of the WHO is specific in terms of the scope and breadth of the agenda it sets for the Organisation itself. Actually, the Constitution sets out 22 tasks for the Organisation, which cover almost every conceivable activity linked to the promotion of health (Clift, 2013, p.7).

The Constitution of the WHO created an institution with extraordinary powers (Gostin *et al.*, 2015, p. 2). The Organisation contributes to international public health through the activities aimed at disease prevention and control, promotion of good health, by addressing disease outbreaks, through the initiatives to eliminate diseases (e.g., vaccination programs) and development of treatment and prevention standards (Yadav, 2017, p. 27). The WHO is responsible for providing leadership on global matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends (Zamfir & Fardel, 2020, p. 25). As Kuznetsova pointed out (2020, p. 2), the core functions of the WHO related to pandemics prevention and control include the following: “supporting Member States

in developing national capacity to respond to pandemics, supporting training programs, coordinating Member States for pandemic and seasonal influenza preparedness and response, developing guidelines, and strengthening biosafety and biosecurity”.

The Independent Panel for Pandemic Preparedness and Response (IPPR) was established by the WHO Director-General in response to the WHA resolution 73.1.<sup>89</sup> The primary mission of the Independent Panel is “to provide an evidence-based path for the future, based on the lessons of the present and the past, to ensure countries and global institutions, including particularly WHO, effectively address health threats”.<sup>90</sup> The Panel held its first meeting on 17 September 2020 and agreed to focus on three main themes of enquiry. The first research topic relates to the analysis and vision for a strengthened international system that would be ideally equipped for pandemic preparedness and response. Another research topic focuses on providing a review of the response to the COVID-19 pandemic from its initial phase to the present one, including the review of global warnings, the spread of a pandemic, country responses and its impact on society. Under the third theme, an attempt is to be made to present lessons learned on why SARS-CoV-2 spread globally and had such devastating impact, including an understanding of the characteristics of the virus and governmental and institutional responses at all levels.<sup>91</sup>

The Independent Panel began its impartial, independent and comprehensive review in September 2020, and presented its final report at the 74th World Health Assembly on 25 May 2021<sup>92</sup>, which we will discuss in the third part of this paper devoted to the activities of the EU and the WHO towards the adoption of an international treaty on improving pandemic preparedness and response.

The resumed 73rd World Health Assembly (WHA) took place virtually from 9 until 14 November 2020. The WHA adopted Resolution EB146.R10 to strengthen preparedness for health emergencies. The resolution renews the commitment to better prepare for health emergencies such as COVID-19 through “full compliance” with the International Health Regulations (2005).<sup>93</sup> The COVID-19 pandemic has underscored the importance of investing

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<sup>89</sup> According to WHA Resolution 73.1, the Independent Panel review experiences gained and lessons learned from the WHO-coordinated international health response to COVID-19, which includes: (i) the effectiveness of the mechanisms at WHO’s disposal; (ii) the functioning of the International Health Regulations(2005) and the status of implementation of the relevant recommendations of previous IHR Review Committees; (iii) WHO’s contribution to United Nations-wide efforts; and (iv) the actions of WHO and their timelines pertaining to the COVID-19 pandemic - and to make recommendations to improve capacity for global pandemic prevention, preparedness, and response, including through strengthening, as appropriate, the WHO Health Emergencies Programme. See: World Health Assembly resolution 73.1., COVID- 19 response, WHA 73.1, 19 May 2020. Available at: [https://apps.who.int/gb/e/e\\_wha73.html](https://apps.who.int/gb/e/e_wha73.html) (23 August 2021)

<sup>90</sup> About the Independent Panel see: <https://theindependentpanel.org/about-the-independent-panel/> (25 August 2021)

<sup>91</sup> Listings of WHO’s response to COVID-19. World Health Organization. Available at: <https://www.who.int/news/item/29-06-2020-covidtimeline> (15.07.2021.)

<sup>92</sup> See: <https://theindependentpanel.org/about-the-independent-panel/> (25 August 2021.)

<sup>93</sup> The first-ever International Day of Epidemic Preparedness, being held on 27 December 2020, was called for by the United Nations General Assembly to advocate the importance of the prevention of, preparedness for and partnership against epidemics. See: <https://www.who.int/news/item/29-06-2020-covidtimeline> (15 July 2021). Resolution EB146.R10 is available at: [https://apps.who.int/gb/ebwha/pdf\\_files/EB146/B146\\_R10-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/EB146/B146_R10-en.pdf)

in systems to prevent, detect and respond to infectious disease outbreaks.<sup>94</sup>

The COVID-19 Strategic Preparedness and Response Plan (SPRP) for 2021 was issued by the WHO on 24 February 2021. SPRP (2021) aims to direct coordinated action at the national, regional and global levels to overcome the ongoing challenges in response to COVID-19, address inequities and plot a course out of the pandemic.<sup>95</sup> As stated by Smith (2015, pp. 130-147), COVID-19 and previous pandemics have tested the leadership of the WHO and revealed a number of problems in its activities.<sup>96</sup> If we take into account the level of uncertainty and lack of knowledge about COVID-19 that is still present, we must recognise that the WHO has taken appropriate steps in the initial response to the pandemic that were in accordance with its basic functions and mandate. The point is that the existing measures adopted by the WHO fall within its scope and are limited, as we have pointed out, primarily by its mandate. It is quite clear that the lessons learned from the response to the COVID-19 pandemic should be further analysed and used as a basis for adopting future measures in relation to the COVID-19 virus pandemic, while the existing emergency mechanisms should be improved. We must agree with the widespread opinions of experts when it comes to the need to provide more resources for the WHO and also to expand its mandate, which will enable WHO to undertake broader actions in crisis situations. All in all, the WHO should play a greater role in the field of leadership and coordination in the future.

### 3. THE BASIC ROLE AND SIGNIFICANCE OF THE EUROPEAN UNION IN THE FRAMEWORK OF THE GLOBAL HEALTH SECURITY STRENGTHENING PROCESS

When it comes to the EU's status within the WHO, it should be emphasized that the Union has the status of an *unofficial observer*. Such status of the EU was established by an exchange of letters, which was published on 4 January 2001 in the Official Journal.<sup>97</sup> The EU has observer status in the governing bodies of the WHO. Union representatives can attend

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<sup>94</sup> It is important to emphasize that WHO works closely with the governments to support their efforts to build strong emergency and epidemic preparedness systems, as part of an overall approach to advance universal health coverage and strengthen the primary health care system. Available at: <https://www.who.int/news-room/events/detail/2020/12/27/default-calendar/international-day-of-epidemic-preparedness> (15 July 2021)

<sup>95</sup> Actually, SPRP (2021) builds on what we have learned about the virus and our collective response during 2020 turning that knowledge into strategic actions. See: COVID-19 Strategic Preparedness and Response Plan (SPRP 2021). World Health Organization. Available at: <https://www.who.int/publications/i/item/WHO-WHE-2021.02> (16 July 2021)

<sup>96</sup> The WHO response to both the 2009 influenza pandemic and the COVID-19 pandemic has been extensively criticized. The main points related to the WHO pandemic prevention and control activities that have come under criticism are as follows: a) over/underestimation of threat; b) conflict of interest and political bias; c) problems related to the IHR implementation; d) slow response; e) lack of financial resources; f) the WHO is seen as a more political and less technical organization; g) the WHO pandemic preparedness plans are ill-equipped to foresee and solve unique ethical challenges that may arise during different infectious disease outbreaks (Smith, 2015, pp. 130-147).

<sup>97</sup> The exchange contained a "Memorandum concerning the framework and arrangements for cooperation between the WHO and the Commission of the European Communities". All member states of the Union are

the WHA, the Executive Board, and the EURO regional committee meetings but can only speak after all members have spoken. This collaboration was set up through an exchange of letters, the most recent dating from 2001. A formal programmatic partnership was established between the WHO Regional Office for Europe and the European Commission in 2010 and renewed in 2015 (Zamfir & Fardel, 2020, p. 25). It is important to know that the Treaty on the Functioning of the European Union (TFEU) allows the EU to adopt legislative acts in the field of health, which ensues from the two of its provisions. Firstly, an explicit basis is to be found in Article 168 of the TFEU, which underlines that “a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities”.<sup>98</sup> Secondly, an indirect legal basis lays in Article 114 of the TFEU. According to Article 114, Union is competent to harmonize national legislation with the aim of completing the internal market, particularly in the field of health.<sup>99</sup> When it comes to the WHO financial support, the EU and its Member States are the WHO’s largest financial donors, accounting for one-third of the organisation’s income. As stated by Zamfir & Fardel, the negotiation of the international health regulations in which the EU participates have also strengthened relations between the Union and the WHO. It is also important to say that the EU supports the work of the WHO on strengthening health systems in developing countries, both politically and financially. The EU is also actively involved in the WHO emergency programmes and was among the driving forces behind the WHO reform launched in 2012 to increase coherence in global health activities by improving its programmes and its financial and governing structures (Zamfir & Fardel, 2020, p. 25).

The Council of the EU is composed of the representatives of the Member States at the ministerial level (Misita, 2014, p. 111). The Council is an essential EU decision-maker. Actually, when we talk about the competence of the Council, it should be emphasized that the Council is the EU’s principal legislative and policy-making institution and that it is formally charged with decision-making across virtually all areas of the Union’s activities. In fulfilling its decision-making functions, the Council as a body represents and attempts to aggregate the interests of all the member states’ governments (Hayes-Renshaw, 2012, p. 76). The European Council acts as an institutionalized practice of occasional gathering of heads of state and governments of the member states of the EU. It is a practice the origins of which are linked to the early ‘70s of the last century. The European Council entered the constitutional text on the basis of the Single European Act while gaining the formal status of an institution through the Treaty of Lisbon (Misita, 2014, p. 108). The monitoring of activities in the field of external action indicates a significant effort of the European Council to form a visible profile in the international system. Its performance shows the high frequency and intensity of its activities (Wessels, 2016, p. 240). The function of the President of the European Council is mentioned for the first time in the Treaty of Lisbon

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also members of the WHO. See: EXCHANGE OF LETTERS between the World Health Organization and the Commission of the European Communities concerning the consolidation and intensification of cooperation, Official Journal of the European Communities, (2001/C 1/04). 4.1.2001.

<sup>98</sup> Article 168 of Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012.

<sup>99</sup> *Ibid*, Article 114.

and is reflected, *inter alia*, in the representation of the Union at the international level (Misita, 2014, p. 108). Heads of state or government have turned the European Council into “the constitutional architect of the Union and the ultimate decision-maker” (Wessels, 2016, p. 240). The President of the European Council speaks on behalf of the EU in the United Nations General Assembly. A further way of representing the Union is at the G7, G8 and G20 summits, where, in addition to the leaders of the largest member states, the Union is again represented by two presidents (*Ibid.*, p. 223).

When it comes to the role of the EU in strengthening the WHO, the Council of the EU and the representatives of the governments of the Member States in the Draft Conclusions from 27 October 2020 acknowledged that “based on its mandate, the WHO has a central role to play as the leading and coordinating authority in addressing global health challenges, including preparedness for, prevention and detection of, and response to outbreaks”.<sup>100</sup> On 6 November 2020, the Council and the representatives of the governments of the member states approved conclusions from 27 October 2020 on the role of the EU in strengthening the WHO. The conclusions recognize the central role of the WHO as the leading and coordinating body in addressing global health challenges while recalling that during many pandemics the expectations placed before the WHO have often exceeded its capacity and ability to support its member states in developing strong and resilient health systems.<sup>101</sup> On 18 December 2020, the Council of the EU approved conclusions which draw on the lessons from the current pandemic and cover four important areas. When it comes to four important areas, the emphasis is on improving the EU crisis management, ensuring the supply of medical products, improving access to and sharing health data and strengthening the EU’s role in global health programmes.<sup>102</sup> In the Council’s conclusions on COVID-19 lessons learned on health, it is stated that “the year 2020 has been a year of unprecedented challenges for Member States, the EU and the entire world”, and that “the COVID-19 pandemic is a health crisis that has an unprecedented detrimental impact on our societies and economies”.<sup>103</sup> At the meeting of deputy permanent representatives to the EU, that was

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<sup>100</sup> Council of the European Union Draft Conclusions, 2020. Draft Conclusions of the Council and the Representatives of the Governments of the Member States of 27 October 2020 on the role of the EU in strengthening the World Health Organization. No. doc: 12276/20 SAN 378 DEVGEN 144 ONU 61, 27.10.2020, pp. 5-6.

<sup>101</sup> The Council and the representatives of the governments of the member states expressed their commitment to take a coordinating, proactive and leading role in an inclusive process to strengthen global health security and the WHO, in particular its capacity for preparedness and response in health emergencies. See: PRESS RELEASE – Council of the European Union, 6 November 2020. Available at: <https://www.consilium.europa.eu/hr/press/press-releases/2020/11/06/strengthening-the-world-health-organization-the-eu-is-ready-to-take-the-leading-role/> (10 August 2021)

<sup>102</sup> PRESS RELEASE – Council of the European Union, 18 December 2020. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/12/18/covid-19-lessons-learned-in-health-the-council-approves-conclusions/> (11.08.2021)

<sup>103</sup> It is also stated that “the challenges which we currently face can only be effectively tackled together”, which requires “close collaboration and coordination between Member States, the institutions of the EU, civil society and the entire global community”. See: Council of the European Union Conclusions, 2020. Council conclusions of 18 December 2020 on COVID-19 lessons learned in health. No.doc: 14196/20 SAN 485 PHARM 74 MI 587 IPCR 51 COVID 19, 18.12.2020, p. 2.



held on 23 July 2021, the Council of the European Union has reached an agreement on draft proposals to bolster the role of the European Centre for Disease Prevention and Control (ECDC) and to amend the EU law on cross-border threats to health.<sup>104</sup> The ECDC is an EU agency, and according to Article 3 of the Regulation (EC) No 851/2004, its mission is to “identify, assess and communicate current and emerging threats to human health posed by communicable diseases”.<sup>105</sup>

During the COVID-19 pandemic, the EU was given the opportunity to further strengthen its role as a global health actor and thus directly influence the improvement of health worldwide. Previous analysis has shown that the EU is trying to be a part of the process of legal reform within the WHO, which refers to possible changes in the shortcomings of the International Health Regulations (IHR 2005), as a legally binding instrument, and also in the process of adopting the international treaty on improving pandemic preparedness and response. The EU’s involvement in all significant processes and discussions concerning global health, as well as significant cooperation with the WHO during the COVID-19 pandemic, can certainly lead to an improvement of its current *observer status* within the WHO. Previous analysis has also shown that the EU and the WHO have had long-standing cooperation which is based on an exchange of letters since 2001. Over time, the EU has become a reliable partner of the WHO when it comes to improving health globally, especially given that the Union and its Member States represent the WHO’s most significant financial donors.

#### 4. ACTION OF THE EUROPEAN UNION AND THE WORLD HEALTH ORGANIZATION TOWARDS THE ADOPTION OF THE INTERNATIONAL TREATY ON IMPROVING PANDEMIC PREPAREDNESS AND RESPONSE

The limitations of the current global health governance have become evident (Velásquez & Syam, 2021, p. 6). As some authors rightly noted, “improving health and addressing health inequalities and externalities requires effective international action on health that entails essential *global* health functions beyond what individual nation-states can accomplish, even with external assistance” (Ruger & Yach, 2009, p. 2). In the final report of the Independent Panel for Pandemic Preparedness and Response (IPPR), it is stated that pandemic preparedness planning is not only the responsibility of the health sector but is a core function of governments and the international system and that it must be overseen at the highest level.<sup>106</sup> The proposal for an international treaty on pandemics was firstly announced by the President of the European Council, Charles Michel, at the Paris Peace Forum in November 2020. At a virtual

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<sup>104</sup> PRESS RELEASE – European Centre for Disease Prevention and Control and cross-border threats to health: Council agrees negotiating position. Council of the European Union, 23 July 2021. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/07/23/european-centre-for-disease-prevention-and-control-and-cross-border-threats-to-health-council-agrees-negotiating-position/>

<sup>105</sup> Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control, *OJ L 142*, 30.4.2004, pp. 1–11.

<sup>106</sup> Report of the Independent Panel for Pandemic Preparedness and Response (IPPR). 2021. *COVID-19: Make it the Last Pandemic*, p. 20. Available at: <https://recommendations.theindependentpanel.org/main-report/> (27 August 2021)

summit hosted by Saudi Arabia on 21-22 November 2020, the G20<sup>107</sup> leaders expressed their strong commitment to coordinated global action, solidarity, and multilateral cooperation. In this context, the President of the European Council proposed an initiative to ensure a better global response to future pandemics, and stated that an international treaty on pandemics could help us respond more quickly and in a more coordinated manner when pandemics occur.<sup>108</sup> At the meeting that was held on 19 February 2021, the leaders of the G7 group<sup>109</sup> emphasised that the COVID-19 pandemic has shown that “the world needs stronger defence against future risks to global health security”, and that they “will work with the WHO, G20 and others, in particular through the Global Health Summit in Rome, to strengthen the global health and health security architecture for pandemic preparedness”, including through “health financing and rapid response mechanisms, by strengthening the ‘One Health’ approach and Universal Health Coverage, and exploring the potential value of a global health treaty”.<sup>110</sup> At the European Council meeting that was held on 25 February 2021, EU leaders underlined the need for global multilateral cooperation to address current and future health threats and agreed to work on an international treaty on pandemics within the WHO framework and to advance global health security. On 30 March 2021, leaders from all around the world joined the President of the European Council, Charles Michel, and the Director-General of the WHO, Dr. Tedros Adhanom Ghebreyesus, in an open call for an international treaty on pandemics.<sup>111</sup> One of the remarks made by President Michel during a joint press conference, was that COVID-19 pandemic is much more than “just a health” issue, and that it requires “a global approach and a collective commitment at the highest political level”.<sup>112</sup> When it comes to the action of the European Council aimed at the adoption of an international treaty on pandemics, it is important to emphasize that on 20 May 2021 the Council adopted a

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<sup>107</sup> The G20 is an international forum that brings together the world’s major economies. The members of the G20 are Argentina, Australia, Brazil, Canada, China, France, Germany, Italy, India, Indonesia, Japan, Mexico, the Republic of Korea, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States and the European Union. Spain is a regular guest.

<sup>108</sup> He also stated that “the treaty should be negotiated with all United Nations organisations and agencies, in particular the WHO”, because “the WHO must remain the cornerstone of global coordination against health emergencies”. See: Main results of G20 summit, 21-22 November 2020. Available at: <https://www.consilium.europa.eu/en/meetings/international-summit/2020/11/21-22/> (12 August 2020)

<sup>109</sup> The G7 is an informal grouping of seven of the world’s advanced economies: Canada, France, Germany, Italy, Japan, the United Kingdom, the United States and the European Union. See more at: Canada and the GZ, [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/g7/index.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/g7/index.aspx?lang=eng) (12 August 2020.)

<sup>110</sup> STATEMENTS AND REMARKS - G7 Leaders’ statement. European Council, 19 February 2021. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/02/19/g7-february-leaders-statement/> (12 August 2020.)

<sup>111</sup> PRESS RELEASE – EU supports start of WHO process for establishment of Pandemic Treaty: Council decision. Council of the European Union, 20 May 2020. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/05/20/eu-supports-start-of-who-process-for-establishment-of-pandemic-treaty-council-decision/> (12 August 2021.)

<sup>112</sup> STATEMENTS AND REMARKS - Remarks by President Charles Michel during a joint press conference with WHO Director-General Tedros Adhanom Ghebreyesus. European Council, 30 March 2021. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/03/30/remarks-by-president-charles-michel-during-a-joint-press-conference-with-who-director-general-tedros-adhanom-ghebreyesus/> (13 August 2021.)



decision to support the launch of negotiations over an international treaty on the fight against pandemics.<sup>113</sup> The 74th World Health Assembly (WHA) commenced on 24 May 2021 and concluded its sessions on 31 May 2021. At the 74th WHA, the 194 members of the WHO have adopted the decision to discuss a new international treaty on pandemics at a special session that will be held in November 2021.<sup>114</sup>

As we stated above, the Independent Panel was established by the WHO Director-General in response to the WHA resolution 73.1. The Panel began its impartial, independent and comprehensive review in September 2020, and presented its final report at the 74th WHA on 25 May 2021.<sup>115</sup> The final report is actually the culmination of eight months of work. The Independent Panel systematically, rigorously and comprehensively examined why COVID-19 became global health and socio-economic crisis.<sup>116</sup> The members of the Independent Panel have spent eight months examining the state of pandemic preparedness before COVID-19, the circumstances of the identification of SARS-CoV-2 and the disease it causes, and responses globally, regionally, and nationally, particularly in the early months of the pandemic. The Panel has also analysed the wide-ranging impacts of the pandemic on health and health systems and the social and economic crises that it has precipitated (Sirleaf & Clark, 2021, p. 101). When we talk about the recommendations made by the Panel in the Report, it is important to say that the Panel's recommendations "flow from the diagnosis made of what went wrong at each stage of the pandemic in preparedness, surveillance and alert, and early and sustained response" (*Ibid.*, 2021, p. 103). The Panel's recommendations have two objectives. As the authors say, "first objective is to end the pandemic, and second is to prevent a future disease outbreak from becoming a pandemic" (*Ibid.*). The European Council met on 24 and 25 June 2021 in Brussels and welcomed the decision adopted by the 74th World Health Assembly to set up a special session in November 2021 to discuss a Framework Convention on Pandemic Preparedness and Response. On that occasion, it was emphasized that the European Union "will continue working towards an international treaty on pandemics".<sup>117</sup> The conclusions adopted by the European Council at this meeting which particularly refer to COVID-19, contain a statement that "the European Council reaffirms the EU's commitment to international solidarity in response to the pandemic" and that the Council "discussed the initial lessons that can be learned from the pandemic

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<sup>113</sup> The objective of the Council decision was to assure the participation of the EU in the negotiations addressing matters falling within Union competence, in view of the Union's possible accession to the treaty. The proposal to conclude a treaty on pandemics was discussed in the context of international efforts to reinforce global health security, in particular on preparedness and response to health emergencies, in light of lessons learnt from the pandemic. See more about the topic EU supports WHO process for a treaty on pandemics, at: <https://www.consilium.europa.eu/en/policies/coronavirus/pandemic-treaty/> (15 August 2021.)

<sup>114</sup> Available at: [https://www.consilium.europa.eu/en/policies/coronavirus/pandemic-treaty/\(15.08.2021.\)](https://www.consilium.europa.eu/en/policies/coronavirus/pandemic-treaty/(15.08.2021.))

<sup>115</sup> See: <https://theindependentpanel.org/about-the-independent-panel/> and World Health Assembly resolution 73.1., COVID- 19 response, WHA 73.1, 19 May 2020. Available at: [https://apps.who.int/gb/e/e\\_wha73.html](https://apps.who.int/gb/e/e_wha73.html) (23 August 2021)

<sup>116</sup> Report of the Independent Panel for Pandemic Preparedness and Response, available at: <https://recommendations.theindependentpanel.org/main-report/> (27.08.2021.)

<sup>117</sup> Main results of the two-day summit of European Council that was held On 24-25 June 2021. Available at: <https://www.consilium.europa.eu/en/meetings/european-council/2021/06/24-25/> (15 August 2021)

on the basis of the report by the Commission”.<sup>118</sup> During the COVID-19 pandemic, the EU was given the opportunity to further strengthen its role as a global health actor, and thus directly influence the improvement of health worldwide. Previous analysis has shown that the EU is trying to be a part of the process of legal reform within the WHO, which refers to possible changes in the shortcomings of the International Health Regulations (IHR 2005) as a legally binding instrument, and also in the process of adopting the international treaty on improving pandemic preparedness and response. The EU’s involvement in all significant processes and discussions concerning global health, as well as its significant cooperation with the WHO during the COVID-19 pandemic, can certainly lead to an improvement of its observer status within the WHO. Previous analysis has also shown that the EU and the WHO have had a long-standing cooperation which is based on an exchange of letters since 2001. Over time, the EU has become a reliable partner of WHO when it comes to improving health globally, especially given that the Union and its member states represent the WHO’s largest financial donors.

#### 4.1 The International Health Regulations (IHR 2005) as a legally binding instrument

According to Velásquez & Syam (2021, p. 4), one of the important steps that needs to be taken before the adoption of the international treaty on improving pandemic preparedness and response is “to inform the Member States about the legal instruments and mechanisms for pandemic preparedness and response that exist in WHO”.<sup>119</sup> When it comes to current legal regulation, it is important to say that the International Health Regulations (IHR 2005), as “the principal normative instrument that WHO currently has in order to respond to health emergencies”, were adopted by Twenty-second WHA on 25 July 1969 (Velásquez & Syam, 2021, p. 2). The IHR (2005) are a legally binding instrument “for protection against the international spread of disease”. This key global health instrument was updated in 2005, following the Severe Acute Respiratory Syndrome (SARS) epidemic in the early 2000s, to strengthen global capacity to quickly control and curb the spread of diseases.<sup>120</sup> It is also important to say that the revised Regulations were adopted by the WHO Member States at the 58th World Health Assembly on 23 May 2005 and, in accordance with the Constitution of WHO, they entered into force on 15 June 2007.<sup>121</sup> The purpose and scope of the IHR (2005) are very broad, and according to article 2 of the IHR (2005),

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<sup>118</sup> It is also stated that „the European Council invites the incoming Presidency to take work forward in the Council to enhance our collective preparedness, response capability and resilience to future crises and to protect the functioning of the internal market”. See: European Council Conclusions, 2021. European Council meeting conclusions of 24 and 25 June 2021 on COVID-19. No.doc: EUCO 7/21 CO EUR 4 CONCL 4, 25.6.2021, p. 1.

<sup>119</sup> This implies cognition about „what are the deficiencies in such instruments and mechanisms and what are the possible alternatives to address them; what would be the relationship of a new treaty with the IHR (2005) and other international agreements; and how a treaty could ensure effective circulation and access to needed goods, services and technologies during a pandemic”. See also: Velásquez & Syam, 2021, p. 4.

<sup>120</sup> Faouzi Mehdi, *et al.* 2021. An international treaty for pandemic preparedness and response is an urgent necessity, *Blog: The MJB opinion*. Available at: <https://blogs.bmj.com/bmj/2021/05/23/an-international-treaty-for-pandemic-preparedness-and-response-is-an-urgent-necessity/> (20 August 2021)

<sup>121</sup> World Health Organization. 2009. *The International Health Regulations (2005) - Toolkit for implementation*

are as follows: “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”.<sup>122</sup> Achieving IHR core capacities by all states remains an indisputable baseline for global health security (Gostin & Katz, 2016, p. 276). While disease outbreaks and other acute public health risks are often unpredictable and require a range of responses, the IHR provide an overarching legal framework that defines countries’ rights and obligations in handling public health events and emergencies that have the potential to cross borders. The IHR are an instrument of international law that is legally binding on 196 countries, including the 194 WHO Member States.<sup>123</sup> That means that all WHO Member States are states parties to the IHR and none have opted out of the instrument.

However, in the face of a global pandemic caused by the new coronavirus, SARS-CoV-2, the IHR have proved to be a less effective tool.<sup>124</sup> As some authors say, “finding the resources to support health system capacity building has been challenging” (Gostin & Katz, 2016, p. 276). Although states parties have committed to providing domestic funding for core capacity building, “national budgets often neglect this fundamental commitment under the IHR” (*Ibid*). The point is that “many countries with limited resources have had little bandwidth to prioritize building systems for unknown threats as they have struggled to meet the everyday health needs of their populations” (*Ibid.*, pp. 276-277). According to the Independent Panel for Pandemic Preparedness and Response (IPPR) final report, “the legally binding IHR (2005) are a conservative instrument as currently constructed and serve to constrain rather than facilitate rapid action”.<sup>125</sup> As Gostin & Katz (2016, p. 281) pointed out, “the WHO is the agency charged with overseeing the IHR”. In fact, “without effective leadership, the IHR’s security framework breaks down”. In other words, “a strong treaty text is insufficient without a well-funded and robust operational response” (*Ibid*).

In accordance with the above, the most important question we have to ask is the following: *How could an international treaty contribute to greater pandemic preparedness and response?* Faouzi Mehdi *et al.* presented interesting views and explained that firstly, it should aim to mobilize political and financial commitments from the highest levels of government, something urgently needed as the COVID-19 pandemic has shown. Secondly, it should provide a legally binding framework for the establishment of the principles, priorities

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*in national legislation: Questions and answers, legislative reference and assessment tool and examples of national legislation.* Geneva: World Health Organization (WHO), WHO/HSE/IHR/2009.3, p. 6.

<sup>122</sup> World Health Organization. 2016. *International health regulations (2005)*. Third edition. Geneva: World Health Organization (WHO), ISBN 978 92 4 158049 6, p. 10.

<sup>123</sup> World Health Organization, International Health Regulations (IHR). Available at: [https://www.who.int/health-topics/international-health-regulations#tab=tab\\_1](https://www.who.int/health-topics/international-health-regulations#tab=tab_1) (1 September 2021)

<sup>124</sup> Several of the failures of the global response to the ongoing pandemic are rooted in either poor compliance with the IHR (2005) or are beyond the domain of the IHR (2005), including inadequate political leadership, governance, and financing. See: Faouzi Mehdi, *et al.* 2021. *op.cit.* (20 August 2021)

<sup>125</sup> Report of the Independent Panel for Pandemic Preparedness and Response (IPPR). 2021. *COVID-19: Make it the Last Pandemic*, p. 26. Available at: <https://recommendations.theindependentpanel.org/main-report/> (27 August 2021.)

and targets. Thirdly, it should address some of the key gaps that have been identified in the course of the COVID-19 pandemic that are beyond the purview of the IHR (2005).<sup>126</sup> States parties, in particular, have undermined the IHR's effectiveness by failing to fully comply with their international obligations (Gostin & Katz, 2016, p. 276). When it comes to the implementation of the IHR, it is important to underline that, despite clear legal obligations outlined in the IHR, most states parties do not comply with all requirements. Although countries might not adhere to the IHR for various reasons, a primary barrier to global achievement of IHR goals lies in its unenforceability (Duff *et al.*, 2021, p. 428). The issue of non-compliance with the legal obligations outlined in the IHR (2005) has been further raised in recent months precisely because of the identified need to adopt a new pandemic agreement. Namely, starting from the fact that many states parties do not comply with the obligations that are set out in the IHR, efforts are being made in order to determine the fundamental reasons for such behaviour of state parties.<sup>127</sup> Gostin & Katz noted rightly (2016, p. 291) that "meeting IHR core capacities requires mutual responsibility and accountability". It starts with governments dedicating resources to build and sustain health systems. Every state party should undergo an independent, rigorous review of its implementation of IHR core capacities, using measurable metrics and targets.<sup>128</sup>

The main role of existing global health regulations, especially the IHR (2005), as a legally binding instrument, would be to underpin a treaty and provide a foundation on which the global community can base its activities in order to enact an international instrument rooted in the constitution of the WHO. The treaty is expected to strengthen the implementation of the IHR and provide a framework for greater international solidarity.

#### 4.2. The adoption of international treaty on pandemic prevention and preparedness as a way to strengthen national, regional and global capacities and resilience to future pandemics

In order to avoid the mistakes of the past, it is very important to say that "any discussion on a future framework in WHO on pandemic preparedness and response should be informed by the experience of past initiatives and reforms undertaken in the WHO" (Velásquez & Syam, 2021, p. 3). The COVID-19 pandemic clearly exposed how the existing global health infrastructure failed the world when it was needed most, with devastating

<sup>126</sup> Faouzi Mehdi, *et al.* 2021. *op.cit.* (20 August 2021)

<sup>127</sup> If we take a closer look at the content of the IHR, we can see that they do not contain an adequate penalty for non-compliance of the state parties with IHR rules. The point is that the World Health Organization has not been given the appropriate explicit powers under the IHR to impose sanctions on those Member States that do not comply with the IHR rules. Regardless of the legal obligation to respect IHR rules, in practice, it is not uncommon for Member States to fail to comply with their commitments, which results in frequent views, especially when it comes to media presentation, of the WHO's inadequacy as an organization to deal with important issues related to managing pandemics globally. It follows from the above that the WHO does not currently have the necessary powers to effectively implement the IHR, which should certainly change with the adoption of a new pandemic treaty.

<sup>128</sup> The authors stated that we must keep in mind that shared responsibilities also require technical assistance and international financing to close capacity gaps and that collective security is assured only by "fulfilling these mutual obligations to sustainably build, measure, and finance health systems". See: Gostin & Katz, 2016, p. 291.

human and economic consequences (Duff *et al.*, 2021, p. 432). As Balkhair *et al.* point out, the current COVID-19 pandemic is an “emerging beast” and “once-in-a-lifetime pandemic”. Humanity is witnessing moments of extreme uncertainty and unprecedented global health crisis. Although it is impossible to foresee where this pandemic is heading, certainly, a new chapter in the history of infectious diseases has just begun (Balkhair *et al.*, 2020, p. 123). In the final report of the Independent Panel for Pandemic Preparedness and Response (IPPR), when it comes to the Panel’s recommendations, it is stated that there is a need for “stronger leadership and better coordination at the national, regional and international level, including a more focused and independent WHO, a Pandemic Treaty, and a senior Global Health Threats Council”.<sup>129</sup> The political, economic, and societal challenges resulting from the COVID-19 pandemic and its control provide an opportunity to create an ambitious and progressive mechanism, with the mandate and requisite powers fit for purpose (Lehtimäki *et al.*, 2021, p. 14.). The High Level Independent Panel was asked by the G20 in January 2021 to propose how finance can be organised, systematically and sustainably, to reduce the world’s vulnerability to future pandemics. In the Report of the G20 High Level Independent Panel on Financing the Global Commons for Pandemic Preparedness and Response (June 2021) is stated that “the world does not lack the capacity to limit pandemic risks and to respond much more effectively than it has responded to COVID-19” and that “we have the ideas, the scientific and technological resources, the corporate and civil society capabilities, and the finances needed”.<sup>130</sup>

During the most recent Seventh plenary meeting of the World Health Assembly, held on 31 May 2021, countries agreed to convene a special session in November to consider developing a WHO convention, agreement or other international instrument on pandemic preparedness and response.<sup>131</sup> At the closing of the 74th WHA on 1st of June 2021, the WHO’s Director-General remarked:

“One day, hopefully soon, the pandemic will be behind us, but we will still face the same vulnerabilities that allowed a small outbreak to become a global pandemic [...]. That’s why the one recommendation that I believe will do most

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<sup>129</sup> In the Report is also noted that “the Panel believes the international system requires fundamental transformation in order to prevent a future pandemic”, and that it calls on political decision-makers at every level to uphold major change and to make resources available to make it effective. See: Report of the Independent Panel for Pandemic Preparedness and Response (IPPR). 2021. *COVID-19: Make it the Last Pandemic*, p. 45. Available at: <https://recommendations.theindependentpanel.org/main-report/> (27 August 2021.)

<sup>130</sup> However, as stated in the Report, “our collective task must be to better mobilize and deploy these resources to sharply reduce the risk of future pandemics, and the human and economic damage they bring”, so this will require involvement of the whole government and the whole society, and not only of health authorities and medical scientists. See: Report of the G20 High Level Independent Panel on Financing the Global Commons for Pandemic Preparedness and Response. 2021. *A Global Deal for Our Pandemic Age*, p. 1. Available at: <https://www.g20.org/wp-content/uploads/2021/07/G20-HLIP-Report.pdf> (22.08.2021.)

<sup>131</sup> World Health Organization, Special session of the World Health Assembly to consider developing a WHO convention, agreement or other international instrument on pandemic preparedness and response, Seventy-fourth World Health Assembly, Agenda item 17.3, WHA74(16), 31 May 2021. Available at: [https://apps.who.int/gb/ebwha/pdf\\_files/WHA74/A74\(16\)-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74(16)-en.pdf)



to strengthen both WHO and global health security is the recommendation for a treaty on pandemic preparedness and response”.<sup>132</sup>

Concretely, the 74th WHA decided to hold a special session from 29 November 2021 to 1 December 2021 at WHO headquarters, and to include on the agenda only one item dedicated to “considering the benefits of developing a WHO convention, agreement or other international instrument on pandemic preparedness and response with a view towards the establishment of an intergovernmental process to draft and negotiate such a convention”.<sup>133</sup> When it comes to the procedure of adopting the treaty, in accordance with Article 19 of the Constitution of the WHO: “The Health Assembly shall have authority to adopt conventions or agreements with respect to any matter within the competence of the Organization”. As stated in Article 19, “[f]or the adoption of such conventions or agreements, two-thirds vote of the Health Assembly shall be required, which shall come into force for each Member when accepted by it in accordance with its constitutional processes”. It follows from the above that the treaty on pandemics would be adopted by the WHO member states gathered at the WHA.<sup>134</sup> Lehtimäki *et al.* (2021, p. 14) think that “there is no single global mechanism that could serve as a model for reviewing and investigating pandemics preparedness, control, and response”, but, however, “there is potential to combine aspects of what already exists to develop a robust treaty to prevent or rapidly control future pandemics”.

For some authors, the success of the proposed treaty on preparedness lays in its specificity.<sup>135</sup> Velásquez & Syam (2021, p. 4) think that “a pandemic treaty should not create new parallel agencies or mechanisms outside the effective control of WHO and its Member States, leading to further fragmentation of the multilateral health governance structure and the consequent further marginalization of WHO”. The authors emphasize that “there seems to be a recognition of the failure of the existing global system of health

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<sup>132</sup> Behrendt, S. and Müller, A. 2021. Why the rush? A call for critical reflection on the legal and human rights implications of a potential new international treaty on pandemics, *EJIL: Talk: Blog of the European Journal of International Law*. Available at: <https://www.ejiltalk.org/why-the-rush-a-call-for-critical-reflection-on-the-legal-and-human-rights-implications-of-a-potential-new-international-treaty-on-pandemics/> (19.08.2021.)

<sup>133</sup> World Health Organization, Special session of the World Health Assembly to consider developing a WHO convention, agreement or other international instrument on pandemic preparedness and response, Seventy-fourth World Health Assembly, Agenda item 17.3, WHA74(16), 31 May 2021. Available at: [https://apps.who.int/gb/ebwha/pdf\\_files/WHA74/A74\(16\)-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74(16)-en.pdf)

<sup>134</sup> It is important to say that once adopted at the international level by the Health Assembly, the treaty would have to be ratified by a requisite number of countries in order to come into force. That means that it would only become legally binding for those countries that ratify it at the national level. Also, the existing global health instruments, especially the IHR, would underpin such a treaty, “ensuring a firm and tested foundation to build upon”. See: An international treaty on pandemic prevention and preparedness, <https://www.consilium.europa.eu/hr/policies/coronavirus/pandemic-treaty/> (27 August 2021)

<sup>135</sup> They think that the overall objectives of such a treaty, ideally rooted in the WHO constitution, can be summarized as: to strengthen national, regional, and global capacities and resilience to future pandemics by adopting an all-of-government and all-of-society approach; to prevent poor collaboration and unwillingness to share information that can obstruct future pandemic responses; and being accountable for our actions which can either secure or threaten global health security. Ultimately, as they stated, “in a pandemic no one is safe, until everyone is safe”. See: Faouzi Mehdi, *et al.* 2021. *op.cit.* (20 August 2021.)



governance”, and that “WHO has not been able to play the role it was expected to perform” (*Ibid*). We must agree with the authors that the COVID-19 pandemic has highlighted the need for a strong and independent global health governing body that will be capable of managing a global health crisis.

Some authors say that the treaty needs to be based on several core principles: “compliance to encourage state adherence to the agreement; accountability to trigger a high political response in cases of concern; independence to reduce financial and political dependencies; transparency and data sharing to ensure prompt access to information; speed to activate an investigation; assessment of capabilities including political factors and leadership; and incentives to motivate states to comply” (Lehtimäki, Allotey & Schwalbe, 2021, p. 115). We must have in our minds that identification of the main principles on which the treaty is to be based is only the first step. It will certainly be very important to establish the specific operational structures that will actualise these principles and put them into practice.

According to Velásquez & Syam (2021, p. 3) treaty on pandemic prevention and preparedness, as a new binding instrument, “should help to address some of those weaknesses and contribute to establish a stronger international health framework, with WHO as the governing authority for global health not only *de facto* but *de jure*”. The authors also state correctly that “it would be important to ensure an adequate balance of legal rights and obligations of countries at different levels of development”, and “effective participation of all countries in the negotiations” (*Ibid*).

## 5. CONCLUSION

The results of this research have shown that the adoption of such a universal instrument, with the fulfilment of all the above conditions necessary for the adoption of an international agreement, would contribute to the establishment of greater transparency and accountability in the international system, as well as to a more coordinated action of the international community in terms of early detection, warning and response to future pandemics. The COVID-19 virus pandemic is a challenge of global proportions, which requires an adequate response at the global level, and which, among other things, is reflected in the adoption of an international agreement on improving preparedness and response to pandemics. The international community has a significant task ahead of it. A significant task is reflected in need for joint action aimed at working together towards a new international treaty for pandemic preparedness and response in order to protect future generations. Given the experience so far when it comes to the COVID-19 pandemic, it is quite certain that pandemics and other major health emergencies will occur in the future, so we must be better prepared to predict, prevent, detect, assess and effectively respond to pandemics and we will have to do that in a highly coordinated way. Only if we act in this way we will be able to strengthen our national, regional and global capacities and resilience to a future pandemic and other major health emergencies that may come afterwards. Adoption of such a new international instrument as it is the treaty for pandemic preparedness and response would show that we can work and cooperate as a global community, guided by the principle of health for all in order to establish a more robust and permanent global

health architecture that will protect the future generations. The role of existing global health regulations, especially the IHR (2005) as a legally binding instrument, would be to underpin the treaty and provide the foundation on which the global community can undertake further actions in order to enact an international instrument rooted in the constitution of the WHO. The activities carried out under the auspices of the European Council indicate the readiness of the EU and its member states to make significant efforts at the global level when it comes not only to fight the pandemic but also to combat its negative consequences. When it comes to recommendations, in order to improve the WHO capacity to prevent and control pandemics, it is important that the ongoing reform of the WHO continues in the future, which primarily implies the adoption of the treaty for pandemic preparedness and response. Also, the WHO should work on improving its credibility, which was damaged during the COVID-19 pandemic, precisely because of problems with IHR implementation and because of the prevailing views that the WHO is just one more political organisation. One thing is sure, the adoption of an international treaty mechanism on pandemic prevention and preparedness will strengthen our national, regional and global capacities and resilience to the future pandemics and other major health emergencies that may come afterwards. One such universal instrument could establish better international cooperation in the fight against pandemics, but also within all phases that are of priority importance and are reflected in an adequate monitoring, warning and response to pandemics. Ultimately, an international agreement to improve pandemic preparedness and response could restore confidence in the international health system.

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