

30 March 2023

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Your Excellency,

I write concerning the WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response ("[WHO CA+](#)") and to share our ideas about its development, particularly:

- I. how the future WHO CA+ could become more compelling and better enforceable at international public law,
- II. how contracting parties could act to trigger a minimum level of cooperation by states that will not become contracting parties, and
- III. how a model law annexed to the WHO CA+ could assist its effectiveness.

The Regulatory Institute is a non-profit think tank which identifies, develops and promotes best regulatory practices. We aim to improve regulation globally so that regulations benefit us all. We do this through research into good law-making and regulatory techniques, and pro bono consultancy to governments, legislatures, international and regional organisations, and other NGOs.

I.
Conventions often fail because contracting parties do not fulfil the obligations they agreed upon. Classic international public law is unable to address this problem: even where the International Court of Justice has stated an infringement of a convention, there is, for most international conventions, no authority to enforce the ruling and the convention. As the WHO CA+ will also apply to pandemics potentially extinguishing humankind, we see a need, and also an opportunity to go a step further. We suggest establishing a protocol, to be signed voluntarily by the contracting parties, which could empower contracting parties to sanction each other. Where contracting parties fail to fulfil their obligations, economic sanctions and the non-application of other international agreements giving them a favour (like the WTO's Technical Barriers to Trade) would apply.

Rationale:

- Even if only the well-intentioned and cooperative states sign the protocol, the protocol is valuable because today's cooperative state may not necessarily be so during a pandemic due to a change of government or even regime for example. Thus the empowerment to sanction might indeed bring states back to compliance in the future.
- Given the importance of protecting humankind, at least some states might accept a reduction of their sovereignty by authorising peers to sanction them in case of non-compliance, particularly as they do not expect themselves to be non-compliant. For a government that aims to be compliant, endorsement of the sanction protocol is rational as they can only benefit.

II.

Pandemics, including those caused by artificially designed organisms, can also spread from states that do not sign the WHO CA+ or that withdraw from the convention (“third states”). The convention should either set out counter-mechanisms to be applied by all contracting parties or at least create a legal basis for counter-measures against non-participating third states, taken by individual contracting parties, where a pandemic threatens humankind. These mechanisms or measures would find their legitimacy in the fact that the existence of humankind has a higher value than national sovereignty. Such doctrine already exists in many legal orders where property or other lower legal values have to step back where lives or other higher values are at stake. The mechanisms or measures would also be legitimate in view of the legal principle of legitimate defence: by their non-activity, the third states are contributing to the spreading of the pandemic which threatens humankind and thus also the contracting parties.

The inclusion of counter-mechanisms or counter-measures could increase the interest of third states to become a contracting party: as contracting parties would be better protected against measures than as third states, particularly if the WHO CA+ was to include an arbitration procedure, which we recommend.

III.

(a) To operationalise the WHO CA+, it should ideally have a model law as annex. Supplementing conventions by model laws ensures a better implementation of the conventions. It is thus best practice and already done in some conventions¹. See also the very successful international anti-trafficking and anti-money-laundering policy which is mainly based on the dissemination of model laws.

(b) The model law on pandemics should help contracting parties to transpose the WHO CA+ into their respective national legal and administrative systems in the most efficient way by highlighting a variety of regulatory techniques useful at the national level. The model law might also contain good pandemic countering practices that contracting parties cannot agree upon as part of the convention text. This is advantageous because at the end of the negotiation process, important regulatory elements can only be disseminated via a parallel pandemic model law and not by the convention as such. To give the utmost value to a parallel pandemic model law, it should be annexed to the WHO CA+.

(c) The Regulatory Institute has particular international, cross-sector knowledge on how to implement and enhance policies by regulatory techniques, see its [Handbook](#). In addition, the Regulatory Institute has developed several modular and adaptive model laws with comprehensive lists of empowerments and other implementation measures. Two of these model laws are thematically close to the topic of pandemic prevention, see the ones on “[research and technology risks](#)” and “[emergency management](#)”. Therefore the Regulatory Institute could contribute substantially to the effectiveness of the future convention, by helping to formulate a draft model law to be annexed to the future convention or instrument.

¹ Examples of conventions with a model law or uniform law include:

(a) Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (<https://www.unidroit.org/instruments/international-sales/ulfc-1964/>);

(b) Convention Providing a Uniform Law for Cheques (<https://www.jus.uio.no/english/services/library/treaties/09/9-03/law-cheques.xml>); and

(c) Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (<https://www.jus.uio.no/english/services/library/treaties/09/9-03/bills-exchange-notes.xml>).

Please let us know whether you would be interested in such a draft from our side or if we could support the drafting team in that regard. We would be honoured to contribute in either way to the future WHO CA+.

We would of course be delighted to develop our thoughts further on the three points above if you were interested in them.

Yours faithfully,

A handwritten signature in blue ink that reads "V Thomas". The signature is written in a cursive style with a large initial "V".

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