International Health Law in Perspective

Background paper 16

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The Independent Panel FOR PANDEMIC PREPAREDNESS & RESPONSE

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The views expressed are those of the authors and do not necessarily reflect the views of the Independent Panel for Pandemic Preparedness and Response.

1. Summary

Any reset of the international system will require reform to existing international governance for pandemic preparedness and response. This includes adopting new international legal instruments and/or reforming existing international instruments. Reform using legal instruments is an opportunity to address gaps identified in the international response and clarify responsibilities between States and international organizations, establish and reinforce legal obligations and norms, and institute new governance structures (such as a global health security taskforce and mechanisms for financing, research and development, technology transfer, and capacity building).
This background paper sets out the range of options available. However, a Framework Convention – Protocol approach has the potential to capitalize on political will and facilitate the necessary governance reforms. This can be done in coherence with the broader international legal system, including under, or separate to, the auspices of the World Health Organization and with, or without, reforms to existing global health law, such as the International Health Regulations (2005).

2. Objectives

The ultimate objective of any international health reform is to prevent pandemics. While outbreaks may not be preventable, pandemics, and the scale of human lives, health, social, and economic disruption that they cause, are preventable. While pandemics of highly transmissible and virulent infectious diseases are of primary concern, as COVID19 has demonstrated, our responses to emerging infectious diseases cannot depend on fully understanding the impact of a novel infectious disease in the immediate days following detection. Any governance framework must be sufficiently ambitious and flexible to address the range of potential risks to global health security, while sufficiently specific and certain to ensure implementation and compliance with obligations. Finally, the success of any new global governance arrangements for a more prepared and responsive international system will depend on ensuring global participation and equity, and sustainability built on recognition that the absence of pandemics after its implementation is a marker of success.

To meet these objectives, reforms must aim to:

(1) **Strengthen the rapid detection, reporting, alert, and response to potential pandemic threats,** including ensuring minimum public health capacities for surveillance and rapid and timely information sharing, and appropriate rapid and evidence-based national and international responses to international alerts of pandemic threats.

(2) **Address global inequities in access to vaccines, therapeutics, diagnostics, and essential supplies** that reinforce and entrench global disparities from the impacts of pandemics, divert resources from where they are most needed, lengthen the period of a pandemic, and undermine multilateral solidarity.

(3) **Secure predictable large-scale funding** to ensure global sustainable and sufficient funding for pandemic preparedness and response.

(4) **Enhance rapid and comprehensive sharing of public health data, genetic sequence data (GSD), and samples**, necessary to detect, understand, and respond to pandemic threats. This sharing is essential for surveillance of known and newly emerging diseases, informing the implementation of public health measures, and necessary for the development of diagnostics, treatments, and vaccines.

3. Reform Requirements for Achieving Objectives

Since the new millennium, many major infectious disease outbreaks have been followed by the adoption of new international instruments or governance mechanisms. With the exception of the revision of the IHR in 2005 following SARS – which marked comprehensive reform to the international preparedness and alert system – these changes been largely iterative, addressing specific, narrowly defined issues. This has also meant that key issues have been left unresolved and fragmentation between areas of international law have developed, with implications for pandemic preparedness and response.[1]

As a result of weakening norms and gaps in the international law and governance of the current international systems, achieving these objectives must involve:

(1) **Improving compliance and accountability**, by explicitly setting out the principles, duties, and minimum standards on states and other international actors, where appropriate through **binding legal obligations**. As a process, a reset will contribute to stating and strengthening norms for compliance and accountability, supported post-reform with the inclusion of monitoring and evaluation procedures.

(2) Taking the lessons of COVID-19 and **building a revised set of minimum pandemic preparedness and response core capacities and capabilities**, supported by political will and commitment at the highest levels of governments.

(3) **Removal of current barriers to the equitable sharing of diagnostics, therapeutics, and vaccines,** including, where appropriate, intellectual property and by facilitating large-scale global technology transfer and increased manufacturing capacities.

(4) **Strengthen coordination mechanisms across the international system**, including between United Nations bodies and with non-United Nations international organizations, including the World Trade Organization.

(5) **Ensure coherence with other international legal regimes as a system**, including international human rights law, environmental law, and facilitate One Health, and Planetary Health, approaches to pandemic preparedness and response.

4. Potential Reform Pathways

A significant and substantial reset of the international system will likely need to be supported by new or revised governance arrangements and international legal instruments. Regardless of whether in single or multiple legal instruments, as a whole, any reset should consider principles and mechanisms for:

(1) incentives and/or enforcement to improve compliance;
(2) rapid notification and sharing of information, sequence data, and samples;
(3) the equitable sharing of Dx, Tx, Vx, and other essential goods;
(4) financing for research and development, preparedness and response capacities;
(5) removing legal barriers and increasing research and development capacities for Dx, Tx, Vx;
(6) coherence with other international instruments (including IHR, Nagoya Protocol, TRIPS, and any future treaties);
(7) periodic independent review of national, regional, and international public health capacities; and
(8) a secretariat and conference of parties (COP) to govern the implementation, functioning, and continual building and progressive development of capacities, norms, and obligations post-adoption.

[1] For example, despite the entry into force of the Nagoya Protocol (2014) and the adoption of the Pandemic Influenza Preparedness Framework – an access and benefit sharing instrument for the rapid and comprehensive sharing of pathogens and equitable distribution of benefits (such as Dx, Tx, and Vx) for pandemic influenza – no such instrument exists for other pathogens. This has implications not only for delayed sharing of pathogen samples and potentially genetic sequence data, but also highlights the absence of a multilateral mechanism for the equitable distribution of Dx, Tx, and Vx.

4. 1 Format

There are a range of formats that reform could take. Each are set out below and supported by additional analysis in respective annexes.

Format 1: Framework Convention on Pandemic Preparedness and Response. The framework convention would contain high-level legally binding principles and commitments, allowing for rapid negotiation and adoption, capturing ambitious political agreements and current momentum. The framework convention could establish high-level commitments to guiding principles, such as participation and equity; mechanisms, such as financing and technology transfer; institutions, such as a secretariat, recognition/incorporation of a Global Health Threats Council and regular Conference of Parties; and processes for adopting issue-specific protocols, negotiated in parallel and/or subsequently.

A more detailed examination of the benefits of a framework convention – protocol model is contained in Annex 1. Details of how a framework convention can set governance for an international system reset, using lessons from climate change, are contained in Annex 2.

Potential Protocols

The Panel may decide to suggest protocols to a framework convention on critical issues that require international commitment, legally binding obligations, or governance. A number of these protocols link closely with existing obligations under the IHR. As a result, they could also be included in any IHR Reform process, however if IHR Reform remains unpalatable or insufficient, the adoption of these issues in a specific protocol/s would provide an opportunity to reset obligations and norms of compliance. It is possible that the IHR itself could be recognized as a protocol under any framework convention, however this is not necessary a requirement for cohesion between instruments.[2]

(1) Information, genetic sequence, and sample sharing
Under the IHR, countries have legal obligations to rapidly notify the WHO of potential public health emergencies of international concern and share associated public health information.

(2) Research & development innovation for Dx, Tx, Vx and other essential goods
This could include the governance structures for any ACT-A or similar multilateral equitable distribution mechanism, with technology transfer and capacity building requirements, coordination with international trade, including non-UN entities like WTO, and IP matters. This could also establish a multilateral access and benefits sharing mechanism that decouples the sharing of genetic sequences and pathogens from equitable benefits sharing, in a manner consistent with the Nagoya Protocol.

(3) Zoonotic risk
To address the emergence of novel zoonotic risks that pose a threat to human health. Similar proposals on aspects of this have been proposed by independent groups (e.g. FMSTAN) and the need for more rapid and comprehensive information sharing referenced in the literature. This could facilitate better co-ordination between WHO/OIE/FAO, but also researchers and the scientific community.

(4) Responses to a PHEIC declaration
Following the declaration of COVID-19 as a PHEIC on 30 January 2020, international actors (including nations and international organizations) failed to take rapid and appropriate action. The IHR currently do not set out any substantive response obligations on States Parties or coordination for other international actors, including in the UN system, following a PHEIC declaration. This could include requirements to undertake national risk assessments upon a declaration, non-pharmaceutical intervention minimum standards, the use and limits of travel restrictions, or other triggers for financial or procedural mechanisms (like

[2] Under Article 57 of the IHR, the IHR and other international legal instruments, such as a new framework convention, are to be interpreted so as to be compatible, and expressly does not restrict States Parties from adopting additional treaties to support the IHR. Given that all WHO Member States are IHR States Parties, there may be limited utility in expressly pulling in the IHR as a protocol (which could otherwise be used to require states become parties).

multilateral Dx, Tx, or Vx distribution platforms). Any dependencies on a PHEIC declaration would have to be weighed for the unintended consequences it may have on delaying international alert declarations.

Format 2: Standalone Convention on Pandemic Preparedness and Response.
This would capture both high-level legally binding principles and commitments, and more detailed provisions, covering key requirements to achieve the objectives of an international reset. A standalone convention may be useful for ensuring momentum does not get lost post-pandemic, particularly on critical issues where international consensus may be difficult. However, this may mean some States do not become Party because of specific issues, despite commitment to broader principles. However, as demonstrated by the operation of the Ottawa Treaty (Mine Ban Treaty), with 164 parties and 33 non-signing countries (including the majority of UN Security Council permanent members), significant action can still be achieved and party-status is not determinative of substantive compliance with implementation obligations.[3]

Format 3: Series of Standalone Conventions on specific gaps in pandemic preparedness and response, such GSD sharing and equitable sharing of diagnostics, therapeutics, and vaccines. While this would solve the issues with Format 3, it does risk potential fragmentation and the loss of a centralized governance, such as a single COP, secretariat, and other institutional mechanisms.

4.2 Forum

The international system provides significant flexibility for the forum in which any of the above formats could be adopted. Different forums will have advantages and disadvantages, dependent on the broader strategic goals and considerations of the Panel.

Forum 1. Under the auspices of WHO
The WHO Constitution sets out the World Health Assembly's (WHA) law-making powers. A framework convention, protocols or standalone convention would be an instrument falling under the "treaty power" in Art 19 of the WHO Constitution.[4] To date, the WHA has adopted one treaty under this power – the WHO Framework Convention on Tobacco Control (FCTC).[5] Treaties adopted under this article would reinforce the WHO's authority on global health matters, and benefit from the subject-matter and practical expertise of the WHO system. This would not preclude a separate secretariat from being established for any convention, similar to the FCTC. It is possible that the high levels of political commitment may be diluted if within the WHA forum, however the most recent WHA indicates that political leadership may now be more willing to participate.

Forum 2. Within the broader UN system
This could include adoption within an existing forum (such as authorized through UN General Assembly resolution processes, like the Biological Weapons Convention) or separately, such as at an international summit (e.g. the UNFCCC at the Rio Summit). This would utilize the general sovereign power of States to adopt multilateral treaties. This may enable a broader engagement of cross-sectoral expertise, and coordination of the broader UN system and bodies, reflecting the multi-faceted impacts of pandemics beyond health matters. However, this may dilute inputs from subject-matter expertise and lose specificity needed, depending on how delegations are composed. There is also a risk that this would be seen as a criticism of WHO, which may not be accurate or useful in the current political climate.

[3] This is similarly the case with the United States, a non-party to the Convention on Biological Diversity, but with substantive domestic biodiversity and conservation laws that meet minimum standards and objectives of the treaty.
[4] Arguably, the IHR already extend beyond the constitutional mandate of "quarantine and sanitary requirements" for regulations under the WHO Constitution, Art 21 Regulations power.
[5] Further details about the WHO FCTC can be found in Annex 1.

4.3 Reform of Existing International Law

Regardless of the reset option, there will likely be gaps that need to be addressed in relation to the IHR, **warranting reform of the IHR** (alone or in addition to a new instrument) or inclusion of necessary reforms in the new instrument. IHR reform has a set process, involving the IHR Review Committee and States Party willingness to adopt amendments. Many of these amendments do not require reopening the entire IHR for renegotiation. The critical reforms for the IHR relevant to, or despite, a new treaty are discussed further in Annex 3.

Framework Convention Models

A.1. What is a framework convention?

A framework convention is a type of legally binding treaty that establishes high level principles and broad commitments for its parties, leaving specific obligations and targets to be contained in additional, more detailed agreements, known as protocols. This allows parties to capture political will in a high-level binding agreement that establishes governance and institutional arrangements, such as principles, financing mechanisms and procedures, as well as timelines and subject-matter for adopting protocols. This enables an incremental approach to law-making that attempts to keep momentum from the initial high-level political commitment of the framework convention.

A.2. What is the format?

There is no fixed model or requirements for a framework convention-protocol approach. Some framework conventions may focus on the governance arrangements with processes to negotiate further protocols,[6] while others may contain more substantive obligations, leaving specific matters for protocols.[7] While a treaty does not need to be expressly called a "framework convention" to be one,[8] the use of the term demonstrates Parties' intent to create an agenda for further legal commitments.

A.3. What is the legal impact?

Once a framework convention enters into force, it is legally binding on its parties, just like any other treaty under international law. Similarly, any protocols adopted under its auspices are also legally-binding treaties on their respective parties once entering into force. Even where a framework convention does not contain specific substantive obligations, it is still legally-binding

A.4. Advantages

The framework convention-protocol approach may capture political will into binding commitments more rapidly than could be possible if negotiating a single detailed comprehensive agreement. Protocols may be negotiated and adopted in parallel to ensure momentum is also translated into specific duties. The protocol model also allows for areas of potential contention to be deferred to protocols, carving out roadblocks to high level commitments, and allowing framework convention parties that are not yet ready – or do not want – to become party to certain subsets of obligations to still commit to fundamental obligations. While States may be more willing to join a framework convention as a high-level political agreement with potentially limited substantive obligations, the momentum of negotiations of protocols and regular conferences of parties can build norms and trust and propel the broad adoption of the regime.

A.5. Disadvantages

A framework convention-protocol approach contains similar disadvantages to any legally binding international instrument, including the time and financial costs of negotiations which may take longer than the period of political momentum. Anecdotally, the week-long final negotiations of the

[6] e.g. Convention on the Conservation of Migratory Species of Wild Animals (**Bonn Convention**), with seven protocol agreements on specific species and regions.

[7] e.g. United Nations Framework Convention on Climate Change (21 March 1994) 1771 UNTS 107 (**UNFCCC**), with protocols Kyoto Protocol and Paris Agreement.

[8] Since the express use of the concept of "framework convention-protocol" approach has increased, a number of treaties with protocols or subsequent agreements may be considered framework conventions. For example, the Convention on Biological Diversity (29 December 1993) 1760 UNTS 79 (**CBD**) and its protocol agreements, including the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (12 October 2014) UNEP/CBD/COP/DEC/X/1 (**Nagoya Protocol**).

FCTC text in 2002 cost US$1 million per day. States may be hesitant to invest in a process that they know will have an initial outlay and subsequent protocol negotiation costs. In addition, compared to other treaties, framework convention-protocol approaches risk capturing – and effectively constraining – political will in an instrument without sufficient specificity or detailed obligations. This is a risk if States rush to reach high-level consensus without including substantive obligations and general commitments, or without charting an iterative path to protocols (in parallel or subsequent).

A.6. Examples

The express use of a framework convention-protocol approach is relatively new under international law. It has largely been used in international environmental law and more recently for global health. Two prominent examples are discussed below.

WHO Framework Convention on Tobacco Control (FCTC)

The WHO's Framework Convention on Tobacco Control (FCTC) is the first and only international treaty adopted by the WHA under the WHO Constitution's Article 19 treaty power.[9] There are currently 182 Parties to the FCTC. The FCTC was negotiated over a number of years. In 1996, the WHA adopted a resolution to begin the mandate for a framework convention, however it was not until 1999 that a working group to begin drafting the text began. In 2000, negotiations on the draft text began and took two and a half years. The FCTC was adopted by the WHA on 21 May 2003 and entered into force less than two years later in February 2005.

Framework Convention Scope

The FCTC governing body is a Conference of Parties (COP), which establishes subsidiary bodies (including for negotiating protocols) and determining assessed contributions of Parties. The FCTC has an independent Convention Secretariat that assists Parties in implementing the FCTC and the Protocol, including supporting the functioning of the COP and subsidiary bodies, conducting the biennial reporting cycle on Parties' progress in implementing the FCTC, preparing progress reports on implementation, and managing the coordination platform of policies, best practices, advice, technology and legal expertise transfer, and coordination with other international organizations. In addition to separate protocols, the FCTC COP has adopted eight non-binding Guidelines for implementation of specific articles under the FCTC.

Financing

At present, the FCTC relies on a combination of assessed and voluntary contributions. However, given the urgency of scaling up financing to assist FCTC implementation, the Convention Secretariat has proposed the establishment of a WHO FCTC Investment Fund. It is proposed that the fund would be hosted independent from the COP and Convention Secretariat, with US$ 50 million, and a 5-10 year investment cycle, with an annual net return of 4.5% (an estimated annual revenue stream of US$2.5m).

Reporting obligations

The FCTC requires all Parties to submit to the COP reports on implementation of the convention every two-years, through a synchronized universal periodic review process coordinated by the Convention Secretariat.

Protocol

To date, the FCTC has adopted one protocol: The Protocol to Eliminate Illicit Trade in Tobacco

[9] The International Health Regulations (2005) and Nomenclature Regulations (1967) are legally-binding international instruments adopted under WHO Constitution, Article 21. Together with the WHO Constitution, these four agreements comprise WHO's treaties.

Products. The Protocol was negotiated over several years and adopted in 2012. The Protocol builds more specific obligations related to Article 15 of the WHO FCTC on the means for countering illicit trade in tobacco products. On 25 September 2018, the Protocol entered into force after receiving the requisite 40 signatories. It currently has 62 Parties and is governed by its own Meeting of the Parties (MOP).

UN Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC) was opened for signature at the 1992 UN Conference on Environment and Development (Rio Summit) and entered into force in 1994. It currently has 197 Parties. The UNFCCC has been described as "reflect[ing] a compromise between those states which were seeking specific targets and timetables emission reductions, and those which wanted only a 'bare-bones' skeleton treaty which could serve as the basis for future Protocols".

Framework Convention Scope

The framework convention establishes its objectives, key definitions, and principles to guide Parties in national implementation. The ultimate objective of the UNFCCC is to stabilize greenhouse gas concentrations in the atmosphere "at a level that would prevent dangerous anthropogenic interference with the climate system".[10] The UNFCCC also sets up a range of institutional arrangements, including a Conference of the Parties (COP),[11] a secretariat,[12] a subsidiary body for scientific and technological advice,[13] a subsidiary body for implementation,[14] and a financing mechanism.[15]

In addition to these institutional arrangements, the UNFCCC contains specific obligations on Parties, including general commitments to take certain measures to address climate change, taking into account "common but differentiated responsibilities and circumstances" (CBDR-RC).[16] The CBDR-RC principle categorizes Parties based on their economic development under specific Annexes, which impacts the scope and nature of certain obligations under the framework convention and protocols.

The general commitments under the UNFCCC require Parties to: develop national inventories of emissions, implement national programs to mitigate climate change (including emissions reduction) and facilitate adequate adaptation to climate change, promote and cooperate in technology transfer, promote sustainable management and conservation, and cooperate in preparing for adaptation to the impacts of climate change.[17]

Financing

The framework convention also establishes a financing mechanism to assist LMICs and places specific additional financial and technology transfer obligations on HICs. The UNFCCC explicitly states that the financing mechanism does not need to be separately established by the COP, but that it can be entrusted to one or more existing international entities. The COP has adopted a number of funds, including the Global Environmental Facility, to serve as operating entity of the financing mechanism. In 2010, the COP established the Green Climate Fund and designated it to serve as a financial mechanism.

[10] UNFCCC, Art 2.
[11] UNFCCC, Art 7.
[12] UNFCCC, Art 8.
[13] UNFCCC, Art 9.
[14] UNFCCC, Art 10.
[15] UNFCCC, Art 11.
[16] UNFCCC, Arts 4(1) & 3.
[17] UNFCCC, Art 4.

Reporting obligations

The UNFCCC establishes broad reporting obligations on States Parties, including information on UNFCCC implementation, national inventory of anthropogenic emissions by source, and description of steps taken to implement the UNFCCC. HICs and LMICs have different reporting obligations based on their economic categorization, while reporting obligations on LMICs are effectively linked to the financial obligations of HICs.

Protocols

There are two protocols to the UNFCCC. The first, the Kyoto Protocol, was adopted in 1997 but did not enter into force until 2005 due to complex ratification requirements and has 192 Parties. The Kyoto Protocol operationalizes the UNFCCC's goal to avoid dangerous levels of greenhouse gas emissions by extending the UNFCCC's broad commitments to require HICs and Economies in Transition to limit and reduce greenhouse gas emissions. The Kyoto Protocol's initial commitment period ran from 2008-2012. In 2012, the COP adopted the Doha Amendment to the Kyoto Protocol, establishing a second commitment period from 2013 until 2020, however it did not get the minimum number of Parties accepting the amendment until 31 December 2020.

The Paris Agreement is the second protocol to the UNFCCC and was adopted in 2015, entering into force on 4 November 2016. The protocol was a significant turning point in a long decade of lengthy negotiations, with the time between adoption, ratification, and entry into force relatively fast. Like other protocols, the Paris Agreement is a legally binding international treaty in its own right, with 196 Parties. Despite this, many of the obligations under the protocol are non-binding or soft obligations, with permissive rather than compulsory language. From 2020, *all* Parties are required to take increasingly ambitious climate action, including submitting non-binding nationally determined contributions (NDCs) for emissions reduction to achieve the Paris Agreement's goal of limiting warming to below 2ºC or ideally 1.5ºC. The Protocol reaffirmed the financing mechanisms, and establishes frameworks for implementing other mechanisms, such as the Technology Mechanism, to enable capacity building and technology transfer. The UNFCCC, its Protocols, and its role in governance of the international system for climate change, is discussed in greater detail in Annex 2.

Lessons from International Climate Law

The international climate system provides a model for multilateral governance of a global issue requiring international and national coordination, commitments, financing, and technological solutions. As a model, international climate law may have utility for formulating a system reset for pandemic preparedness and response that includes not only international coordination and leadership, but also legally binding national commitments and reporting, as well as financing and technology mechanisms. The international climate system was not adopted in one single reset moment but has developed over time reflecting political will, urgency of action, growing scientific evidence, and technological developments. This provides a framework for processes to build ongoing norms around collective action as well using pivotal political moments that may be instructive in identifying elements of a governance framework for pandemic preparedness and response.

A.1. Resetting the System: the Rio Summit and Framework Convention

The United Nations Conference on Environment and Development (UNCED) in 1992 (the "Rio Summit") was a pivotal moment in resetting the international governance of a range of environmental matters. The Rio Summit brought together UN Member States and resulted in a suite of non-binding political declarations, such as Agenda 21, as well as the adoption of legally binding treaties, including the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change (UNFCCC).

The UNFCCC is fundamental to the international climate change law regime, entering into force in 1994 with currently 197 States Parties. Its primary goal is to stabilise greenhouse gas concentrations in the atmosphere "at a level that would prevent dangerous anthropogenic interference with the climate system".[1] While this is not defined under the UNFCCC, subsequent scientific evidence has determined that 2ºC warming, or ideally 1.5ºC, above pre-industrial levels is point of dangerous interference. This has subsequently been expressly incorporated into Protocol agreements (in particular, the Paris Agreement) demonstrating how the broader UNFCCC model allows for high-level principles to be translated into more specific legal obligations in later legal instruments as scientific evidence develops and changes. The UNFCCC objectives include not only mitigating climate change, but implicitly also recognizes the inevitable reality of needing to adapt to climate change, particularly for those most vulnerable to climate change's impacts. While the first protocol to the UNFCCC – the Kyoto Protocol – focused on mitigation through emissions reduction – the second protocol – the Paris Agreement – expressly includes adaptation efforts with reference to the Convention's objectives. This demonstrates how a dual-objective approach – i.e. mitigation and adaptation, preparedness and response – can embed a longer-term relevance and sustainability as crises unfold.

UNFCCC general obligations on all Parties

The UNFCCC not only captures these high-level political objectives, but also includes binding legal obligations on Parties. A number of these are particularly relevant to a possible Framework Convention on Pandemics, demonstrating the type of general commitments that can be captured in an overarching framework treaty, directing national obligations, future work of convention bodies and mechanisms, and protocols. Under the UNFCCC, this suite includes ten commitments on all Parties to:

(1) Develop, update and publish national inventories of anthropogenic emissions (methodologies set by the Conference of Parties);

[1] Art 2, UNFCCC.

(2) Create, implement, update and publish national (and regional) programs to mitigate climate change (including emissions reduction);
(3) Promote and cooperate in the development and diffusion of technology transfer (hard technology and know-how) for technologies that control, reduce, or prevent greenhouse gas emissions;
(4) Promote sustainable management and conservation;
(5) Cooperate in preparing for adaptation to the impacts of climate change;
(6) Consider climate change in social, economic and environmental policies, including using impact assessments with a focus on minimizing adverse effects on economy and public health;
(7) Promote and cooperate in research (including data sharing) to understand the causes and impacts of climate change;
(8) Promote and cooperate in full, transparent, and rapid information sharing (scientific, technological, socio-economic, and legal information) related to climate change and social and economic consequences;
(9) Promote and cooperate in education, training, and public awareness of climate change, including involving NGOS; and
(10) Report and communicate to the Conference of Parties.

For a potential Framework Convention on Pandemics, similar general commitments could include minimum preparedness and response activities, rapid and transparent data sharing, technology transfer, non-state actor participation, reporting obligations, and health-in-all policies approaches.

UNFCCC specific obligations on High Income Countries

Under the UNFCCC, implementation of these obligations is to take into account "common but differentiated responsibilities and circumstances". This principle categorizes Parties based on their economic development under specific Annexes, impacting the scope and nature of general obligations, as well as a suite of additional obligations for high income countries, under the framework convention and protocols. These additional obligations on high income countries include more detailed and specific measures that demonstrate such countries are "taking the lead in modifying longer term trends in anthropogenic emissions". The application of this principle, and differentiated responsibilities, seeks to recognize that high income countries have benefited the most developmentally from emissions over the 20th century, and have contributed the most to anthropogenic climate change. This attempt to redress inequity is controversial given the need for both international equity and for any development to be sustainable and not contribute to accelerating climate change. High income countries also have additional financing obligations, including financing technology capacities and transferring technology to address climate change. For pandemic preparedness, this parallels potential obligations for high income countries to not only provide financing generally and financing for building pandemic tool research, development, and manufacturing capacities but also to facilitate technology transfer of both hard and soft technology for pandemic tools.

A.2. Building an International Climate System through Institutions and Governance

Conference of Parties: crucial for inter-crisis periods and continuous norm-building

The UNFCCC establishes the institutional arrangements for the international climate system. This includes a Conference of the Parties (COP) for Parties to the Convention, with the 26th COP scheduled for 2021. Since 1995, the COPs have been instrumental in bringing Parties together annually for decision-making,

reviewing reports and setting the agenda for the international climate system. This has included political declarations developing mechanisms established under the UNFCCC to meet the financing and technology transfer obligations. In addition to substantive direction, each of these political declarations have served as critical moments in the development of norms towards the adoption of binding obligations under the Paris Agreement. For example:

- at COP7 in Marrakesh in 2001, the COP adopted The Marrakesh Accords: Development and Transfer of Technologies (Marrakesh Framework),[2] which defined government actions to create enabling environments for public and private sector technology transfer, including the removal of legal and administrative barriers, which was defined to include the protection (not dilution) of intellectual property rights.
- At COP13 in Bali in 2007, the COP adopted The Bali Action Plan to address, *inter alia*, developing countries' concerns that effective, measurable and verifiable examples of the transfer of technologies for climate change had not occurred, leading countries to refuse to agree to post-Kyoto Protocol emissions reductions targets. This timed with the release of the IPCC's Fourth Assessment Report (AR4) with the publication of the then most recent state of climate science.
- At COP15 in Copenhagen in 2009, the COP adopted the Copenhagen Accord, and agreed to establish a legally binding protocol treaty for obligations post-Kyoto. The COP also made steps towards building up the Financing Mechanism with the Green Climate Fund and set up the Technology Mechanism for technology transfer, and its two pillars – the Technology Executive Committee and the Climate Technology Centre and Network.
- At COP16 in Cancun in 2010, the COP adopted commitments towards establishing the US$100b Green Climate Fund and detailed the operations and objectives of the Technology Executive Committee and Climate Technology Centre and Network.
- At COP17 in Durban, in 2011 the COP agreed to begin negotiations for what would become the Paris Agreement, and built upon the financial and technology mechanism components.
- At COP18 in Doha in 2012, the COP adopted the Doha Amendment to the Kyoto Protocol, providing a second emissions reduction commitment period from 2012 until 2020 and began discussions on loss and damage. However, the Doha Amendment did not get the minimum number of Parties accepting the amendment until 31 December 2020.
- At COP21 in Paris in 2015, the COP adopted the second legally binding protocol to the UNFCCC, the Paris Agreement, marking a significant shift in the decade long lengthy negotiations for national obligations under the UNFCCC. The Paris Agreement crystalized negotiations on commitments for all parties, including both mitigation and adaptation obligations, as well as establishing more specific obligations for technology transfer (intellectual property law remained a contentious issue in negotiations) and detailing a framework for the financial mechanism to assist LMICs in mitigation and adaptation efforts.

As this selection of key events demonstrates, the COP plays a critical role in ongoing negotiations, interpretations and governance matters, the negotiation of protocols, and the building of norms. This is one major gap in the International Health Regulations (2005) which does not have a COP-like mechanism beyond reporting at the annual World Health Assembly. For global pandemic preparedness and response, a COP mechanism for a Framework Convention would assist in addressing the cycle of panic and neglect that burdens existing global efforts.

[2] 4/CP.7, FCCC/CP/2001/13/Add.1

Financing Mechanism

Global and national implementation of the obligations and objectives of the UNFCCC are dependent on financing. The UNFCCC includes a range of financial obligations on Parties, including the costs of mitigation, adaptation, research, technology development and transfer, and the operations of the UNFCCC institutions and bodies. The UNFCCC also includes specific obligations on high-income countries to assist LMICs to meet their obligations and to promote, facilitate, and finance the transfer of environmentally sound technologies and know-how.

To that end, the UNFCCC establishes a Financial Mechanism for receiving funds and distributing them on a grant or concessional basis. The mechanism has equitable and balanced representation and transparent governance, with its operation guided by the COP. The UNFCCC explicitly states that the financing mechanism does not need to be separately established by the COP, but that it can be entrusted to one or more existing international entities. The COP has adopted a number of funds, including the Global Environmental Facility, to serve as operating entity of the financing mechanism, and in 2010, the COP established the Green Climate Fund, designating it to serve as a financial mechanism. The Green Climate Fund had a goal of US$100b by 2020, however by February 2020 only US$10.3b had been pledged. This target is likely to be a central negotiation point at the upcoming COP26 in Glasgow in 2021.

For a Framework Convention on pandemics, this demonstrates how a framework convention can set the high-level structure and goals of a financing mechanism, while enabling the designation of existing or separately established funds to serve as the treaty's mechanism. As seen with the Paris Agreement, this fund can be supplemented by new lines and objectives in subsequent protocols.

Technology Mechanism

Climate change mitigation and adaptation is dependent on innovation and development of new environmentally sound technologies that produce less, or reduce, emissions and minimize impacts on the environment. Moving from greenhouse gas intensive industries and energy production will require global access and distribution of renewable energy sources, while technological innovation may allow for reducing existing emissions, as well as technologies for societies to be able to adapt to the inevitable impacts of climate change.

The UNFCCC contains a number of express obligations on Parties to facilitate technology transfer, however disputes over intellectual property have persisted during COP negotiations. The establishment of technology transfer bodies under the UNFCCC by the COP (namely, the Technology Executive Committee and the Climate Technology Centre and Network) have developed this but not at the necessary speed or scale. A number of LMICs and civil society have pointed to insufficient flexibilities with intellectual property law in achieving this goal. While some scholars have suggested patent waivers and pools for the international climate system, these have not yet been adopted.

For a Framework Convention on pandemics, technology transfer is central to the global equitable development and distribution of diagnostics, therapeutics, vaccines and other goods. In contrast to the climate system, intellectual property barriers and technology transfer mechanisms under ACT-A are more developed, yet still insufficient. A Framework Convention (including as a specific Protocol) could take the lessons from the international climate system failings of technology transfer and incorporate a more comprehensive mechanism that also prioritizes building global capacities and considers unique urgency of pandemics for intellectual property.

Building a Scientific Evidence-Base

The lack of a sufficient global evidence-base, particularly on non-pharmaceutical interventions, was identified prior to the pandemic and as a critical gap in global and national responses to the COVID-19 pandemic. In addition, appropriately robust understanding of the nature of future global health risks is

currently absent. The UNFCCC establishes two permanent subsidiary bodies to the COP: The Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI). The international climate change regime is a standout leader in systematic review of the existing scientific evidence for cause and attribution of climate change and its impacts, and identifying gaps in the evidence that can inform funding and future research directions. This is led by the Intergovernmental Panel on Climate Change (IPCC) and its assessment reports. The IPCC was established in 1988 by the World Meteorological Organization and the United Nations Environmental Programme to provide governments with scientific information to develop climate policies and to inform negotiations at COPs under the UNFCCC by examining and consolidating the evidence-base on the physical science basis of climate change, climate change impacts, adaptation and vulnerabilities and mitigation of climate change. The IPCC assessments are written by hundreds of expert scientists around the world, undergoing multiple rounds of drafting and review, and IPCC methodologies are incorporated into Party obligations under the Paris Agreement. The SBSTA links the IPCC with the COP, with the SBSTA requesting specific information and reports from the IPCC.

At present, there is no comparative process for global health and pandemic risks, which could otherwise inform pandemic preparedness and response. While the IPCC was not established under the auspices of the UNFCCC, a framework convention on pandemics could incorporate a similar institution for pandemic preparedness and response, or global health threats more broadly.

Reporting and Review

The UNFCCC imposes regular reporting on Parties on their anthropogenic emissions which had set target limits for certain countries under the Kyoto Protocol. Rather than external emissions targets, the Paris Agreement requires all Parties to take increasingly ambitious climate action, including submitting non-binding nationally determined contributions (NDCs) for emissions reduction to achieve the Paris Agreement's goal of limiting warming to below 2ºC or ideally 1.5ºC from 2020. While non-binding, these NDCs allow for external scrutiny and assessment. From 2023, the Paris Agreement will implement a Global Stocktake on progress towards mitigation, adaptation, implementation, and equity, conducted every five years.

A.3. Lessons for an International Reset of Pandemic Preparedness and Response

International climate law demonstrates how a complex governance, financing, technology system can be facilitated by an appropriately tailored Framework Convention and Protocols. There are common challenges between climate change and pandemics, including the global nature of the threat, the need for national core capacities and global coordination, urgency and scale of financing, importance of technology transfer and role of intellectual property, international equity and gaps and reliance on critical scientific evidence. In addition, the UNFCCC system demonstrates the importance of regular reporting, negotiations, and meetings to build norms and high-level commitment to a common goal.

Reform of the International Health Regulations (2005)

The International Health Regulations (2005) (IHR) are the primary international legal instrument for global health security preparedness, detection, alert, and response. The IHR are a unique under international law, with all WHO Member States becoming States Party to the treaty unless they expressly opt-out, in accordance with Articles 21 and 22 of the WHO Constitution. As a result, the IHR are widely adopted, with 196 States Parties, which includes all 194 WHO Member States. Under the IHR, States Parties have a suite of legally binding obligations for preparing, detecting, and responding to potential public health emergencies of international concern (PHEICs). This includes establishing minimum core public health capacities for surveillance, notification, and at ports of entry. Despite obligations to ensure that States Parties meet these minimum core capacities, compliance has been inconsistent and extensions for meeting capacities repeatedly extended. To assist countries in assessing their compliance, the Joint External Evaluation (JEE) process provides external and independent expert review of States Parties' core capacities. However, in light of COVID-19, the adequacy of these metrics in assessing preparedness have been questioned, with particular gaps relating to governance and decision-making.

States Parties also have legally-binding obligations in case of a potential PHEIC, and must report all potential PHEICs to the WHO within 24 hours of detection by the national surveillance system.[3] Following notification, States Parties must continue to share all relevant public health information, including clinical and epidemiological data, with the WHO.[4] The revised IHR empowered the WHO to request verification of information from States Parties based on media reports or other States Parties. However, there are significant gaps in the powers of WHO to assist States Parties and obtain information (and the types of information) in the early stages of outbreaks.

The process for alerting the international community to public health emergencies, through the declaration of PHEICs, has also come under scrutiny, including the process, timing, and criteria for declarations, the transparency of decision-making, and State responses to declarations, including compliance (or lack of) with temporary recommendations and preparing national public health systems.

A number of these gaps would need to be addressed through reform of the IHR. Alternatively, in some cases, inclusion of new obligations under a Framework Convention on Pandemics, which incorporates the IHR, e.g., as a protocol or in express reference, can reinforce norms into binding obligations and address matters beyond the scope of the IHR.

A.1. Notifications, Information and Sample Sharing

Immediate outbreak response saves lives and relies upon the rapid and comprehensive sharing of epidemiological and clinical data to conduct risk assessments and formulate responses. Similarly, the rapid and comprehensive sharing of genetic sequence data and pathogen samples (perhaps less critically with advancements in viral synthesis and global transmission) is critical. In the initial weeks of COVID-19, the sharing of clinical and epidemiological data, sequences, and pathogen samples was reportedly delayed.[5] Such information and samples are critical for conducting risk assessments for the international community, as well as initiating the development of diagnostics, therapeutics, and vaccines. States have differing interpretations on the scope of sharing obligations under the IHR, WHO powers to request information, as well as express gaps in data sharing obligations.

[3] IHR, Article 6 and Annex 2.

[4] IHR, Article 6.2.

[5] "China Delayed Releasing Coronavirus Info, Frustrating WHO." *AP NEWS*, June 2, 2020. https://apnews.com/3c061794970661042b18d5aeaaed9fae.

States Parties have a binding obligation to share clinical and epidemiological data for a potential PHEIC under the IHR.[6] However, compliance has been dependent on States Parties' willingness to share, as well as technical capacities and State Parties' compliance with WHO's verification requests. As has been seen in previous outbreaks, States Parties may be hesitant to share data if concerned about the economic impacts of travel and trade restrictions that other States may impose in response. Given the broad use of travel and trade restrictions during COVID-19, despite WHO temporary recommendations that expressly did not recommend them, the risk of delayed notifications is now heightened post COVID-19. In addition to re-establishing the norm of rapid and comprehensive reporting – and potentially considering new incentives or disincentives – the IHR need to be updated to consider advances in technology. While some States Parties interpret the obligation to share data under the IHR to also include genetic sequence data of pathogens, this is not express obligation or universally agreed interpretation. The IHR also do not contain an obligation to share pathogen samples. Depending on domestic legislation, pathogen sample sharing may be governed by the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Use (2014) (Nagoya Protocol).[7] States are currently considering revising the Nagoya Protocol to include genetic sequence data (digital sequence information), however it has not yet been negotiated. These overlapping regimes, interpretations, and potential gaps risk undermining preparedness and response in future outbreaks. Reforming the IHR information sharing provisions and considering how global health law – including the IHR or any future Framework Convention on Pandemics – intersects with access and benefit sharing international laws, including the sharing of benefits like diagnostics, treatments, and vaccines, is critical.

A.2. Periodic Review of Compliance & Investigations

Under the IHR, States Parties are required to meet IHR core capacities, with self-assessed reporting of implementation and progress. While not a binding obligation under the IHR, the JEE process is an independent external voluntary evaluation of core capacity implementation. Moving to a compulsory regime for assessing preparedness and response capacities – such as a universal periodic review – would require the adoption of new binding obligations, either through reform of the IHR or under a new Framework Convention. In addition, there is scope for the metrics to assess compliance to be revised and updated, particularly in light of lessons from COVID-19.

Under current international law, the WHO can request verification of reports of events, and can share that information if there appears to be a public health threat to other countries, but cannot conduct investigations into an outbreak without the permission of the allegedly affected country. There have been calls to grant the WHO investigatory powers to send in inspectors to assess an outbreak, taking lessons from disarmament regimes, such as the Chemical Weapons Conventions verification process or the United Nations Secretary-General's Mechanism (UNSGM) for investigations into alleged uses of chemical and biological weapons. The implementation of such powers would require either reform of the IHR or new obligations under a novel instrument. However, given the sensitivity and potential implications of investigations, States may reject the proposal completely or still require prior consent for any investigations such as the COVID-19 origins investigation. Alternatively, States may require any investigations to be run through bodies such as the UNSC which would ensure access to any veto powers. The potential negative public health impact of punitive approaches – and unintended consequences such as less transparent reporting – should be carefully considered against the potentially limited benefits of investigations mechanisms for outbreaks and public health.

[6] Article 6, IHR.

[7] Rourke, Michelle, Mark Eccleston-Turner, Alexandra Phelan, and Lawrence Gostin. "Policy Opportunities to Enhance Sharing for Pandemic Research." *Science* 368, no. 6492 (May 15, 2020): 716.

A.3. Declarations Process

Under Article 12 of the IHR, the WHO Director-General alone is empowered to declare an event a PHEIC. This decision must be based on a range of criteria which includes advice from the Emergency Committee as to whether an event constitutes a PHEIC. The Emergency Committee must determine if an event is extraordinary, constitutes a public health risk to other states through the international spread of disease, and potentially requires an international response.[8] However, in past declarations, considerations not under the IHR have been included in the Emergency Committee's decision-making process – such as whether there is a benefit to a PHEIC declaration or the risk of retaliatory travel measures – [9] which has been scrutinized by global health legal scholars as weakening the norms and legitimacy of PHEIC declarations.[10]

Particularly evident during COVID-19, despite the role of PHEICs in alerting the international community, States have failed to appropriately respond to PHEIC declarations. On January 30, 2020, the WHO Director-General declared COVID-19 a PHEIC, following the advice of the Emergency Committee.[11] Temporary recommendations were also issued, including advice that "all countries should be prepared for containment, including active surveillance, early detection, isolation and case management, contact tracing and prevention of onward spread of 2019-nCoVinfection [sic], and to share full data with WHO", expressly not recommending travel or trade restrictions.[12] Despite the PHEIC declaration and temporary recommendations, States largely failed to react by initiating national preparedness, and even response, measures.

Despite a PHEIC declaration on 30 January, there has been significant political scrutiny over the WHO's hesitation to use the term pandemic to describe COVID-19 until March 11, 2020.[13] However, unlike a PHEIC declaration, the WHO or WHO Director-General is not specifically legally empowered to "declare" a pandemic. The inclusion of the PHEIC declaration power in the IHR was considered a significant grant of authority to the WHO Director-General, reflecting Member States' increasing WHO's powers in responding to global health threats following SARS in 2003.[14] This was coupled with limits on the use of the PHEIC power, such as the criteria to be used in assessing events. The inclusion of additional declaration powers – such as declaring a pandemic – would likely require reform of the IHR or inclusion in a new instrument with substantial States by-in given its potential economic and political capital implications for countries where outbreaks originate. Furthermore, as the term "pandemic" is a descriptive term used for the spread of a disease globally or across a substantial part of the world, such as two or more continents,

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[8] Articles 1 and 48, IHR (2005).

[9] Gostin, Lawrence, Alexandra Phelan, Alex Godwin Coutinho, Mark Eccleston-Turner, Ngozi Erondu, Oyebanji Filani, Tom Inglesby, et al. "Ebola in the Democratic Republic of the Congo: Time to Sound a Global Alert?" *The Lancet*, February 4, 2019. https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)30243-0.

[10] Fidler, David P. "To Declare Or Not To Declare: The Controversy Over Declaring A Public Health Emergency Of International Concern For The Ebola Outbreak In The Democratic Republic Of The Congo." *Asian Journal of WTO and International Health Law and Policy* 14 (2019): 287–330.

[11] World Health Organization. "Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-NCoV)." accessed January 30, 2020 https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov).

[12] World Health Organization. "Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-NCoV)." accessed January 30, 2020 https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov).

[13] World Health Organization. "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19," March 11, 2020. https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

[14] Burci, Gian Luca, "Shifting Norms in International Health Law", 98 *American Society of International Law Proceedings* 16 (2004) at 18.

the declaration of a pandemic is likely to be too late to be of maximal utility for pandemic preparedness, although may serve some role in triggering certain response measures (such as extraordinary funding, mechanism activation or legal waivers).

A.4. Travel Restrictions

The IHR seek to balance preventing the international spread of disease without unnecessary interference with international travel and trade.[15] Following the declaration of a PHEIC, the WHO's temporary recommendations to States Parties did not recommend international travel and trade restrictions. The rationale for these recommendations is multi-faceted: travel restrictions (1) can disrupt the distribution of medical goods and services to impacted regions, (2) given the extent of global travel in pre-pandemic times and usual application only to certain countries, are typically inadequately tailored to prevent importation of cases, (3) as a result, can give a false sense of security leading to inadequate domestic public health preparedness, (4) can usually be bypassed in multiple ways by travelers, such as using intermediate countries, losing an important contact tracing and opportunity to provide public health information, and (5) can disincentivize countries from reporting future outbreaks out of concerns about the economic impacts. However, COVID-19 has demonstrated that there may be an important role for appropriately tailored travel restrictions, with sufficient national public health measures, to slow (and in some circumstances, substantially impede) the spread of a respiratory disease.[16] This new evidence needs to be considered as the basis for potential reform of the IHR in relation to travel restrictions, as failing to develop guidance or new obligations to address this could result in delayed notifications of future outbreaks.

A.5. Research, Development, and Access to Pandemic Tools

A major gap in the current international legal framework for pandemic response is the international investment in research and development for diagnostics, therapeutics, or vaccines, as well as obligations to ensure equitable access and equitable distribution of diagnostics, vaccines, treatments and other critical goods such as PPE. If the IHR are reformed to address genetic sequence data and pathogen sharing gaps, this is an opportunity to consider equitable benefits sharing, and the potential role of the IHR as a specialized instrument for the purposes of the Nagoya Protocol's access and benefit sharing obligations. However, arguably the IHR are already pushing the extent of the power the IHR were adopted under within the WHO Constitution, which is limited to adopting binding regulations for quarantine and sanitary purposes.[17] As a result, it is likely that a Framework Convention could serve as a better instrument for addressing these current gaps in responding to PHEICs.

A.6. Review Conferences/Conferences of Parties

Since the IHR entered into force in 2005, the norms that underpin States' legal obligations have weakened, from implementing core capacities and to appropriately responding to WHO advice and PHEIC declarations. States Parties have been reportedly hesitant to reopen the IHR for renegotiation despite issues that have arisen over WHO's investigatory powers, duties of confidentiality, PHEIC declarations, and the IHR's mandate to avoid unnecessary international travel and trade restrictions. Scholars have argued that failing to address the conflicting expectations on WHO's exercise of power

[15] See, e.g. IHR, arts 2, 17, 43, and Annex 2.

[16] Grépin, K. A.; Ho, T.-L.; Liu, Z.; Marion, S.; Piper, J.; Worsnop, C. Z.; Lee, K. Evidence of the Effectiveness of Travel-Related Measures during the Early Phase of the COVID-19 Pandemic: A Rapid Systematic Review. *BMJ Global Health* **2021**, *6* (3), e004537. https://doi.org/10.1136/bmjgh-2020-004537.

[17] Article 21, WHO Constitution.

and State compliance with the IHR may have eroded the normative weight and thus future compliance with the IHR.[18]

One technique for rebuilding norms, reiterating State commitments, clarifying expectations on international organizations, and updating laws for technical developments, is the use of regular review conferences or conferences of parties. These mechanisms are used in other international legal regimes and may provide more proactive opportunities for States to commit to the IHR and negotiate interpretations of obligations without renegotiating the treaty. For example, under the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons (1975) (BWC), the rapid pace of technological developments and highly political debates means that regular meetings of parties are critical. The BWC incorporates annual political meetings of parties, expert meetings, and formal review conferences every five years. The use of regular review conferences for the IHR – as well as inclusion in any future Framework Convention – could provide an opportunity for States Parties to discuss scientific, technological and political developments, assess emerging health threats and the status of preparedness, expectations on WHO, and any potential conflicting interpretations of IHR obligations.[19].

[18] Fidler, David P. "To Declare Or Not To Declare: The Controversy Over Declaring A Public Health Emergency Of International Concern For The Ebola Outbreak In The Democratic Republic Of The Congo." *Asian Journal of WTO and International Health Law and Policy* 14 (2019): 287–330.

[19] Katz, Rebecca. "Pandemic Policy Can Learn from Arms Control." no. 7782. *Nature* 575, no. 7782 (November 12, 2019): 259–259.

International Treaties

This policy paper emanates from the mandate of the Independent Panel for Pandemic Preparedness and Response ("Independent Panel") and is delineated in its Program of Work.[37] Key among the issues that the Independent Panel will address are the complexity of the international system, ways by which states commit to common interests, and methods of greater cooperation and coordination by States.

This Annex examines how a range of current international legal frameworks govern obligations and compliance between states, comparing international treaties to assess a range of models that use different mechanisms to improve compliance with international obligations. Ten treaties were selected for this assessment covering the fields of civil aviation, weapons prohibitions, the environment, and human rights.

The focus of this paper is to examine the 'architecture' of international treaties in a few sectors, and to assess particular aspects of these treaties that may have the effect of encouraging better implementation and greater compliance. The factors assessed in these treaties are however not the sole arbiters of compliance and effectiveness. There is no dearth of international law and international relations literature in relation to the reasons for treaty compliance, which are varied.[38] Multiple factors affect choices made by states in following through on treaty obligations, including geopolitics, reciprocity, and national interest. The ten treaties selected for this study are examined based on their legal framework and provisions in the treaty text – this may not however account for the actual practice by states in implementation of the treaty, which is a matter for future assessment.

A.1. Survey of Treaties

Ten treaties have been chosen for this comparative analysis, and their selection is based on a few reasons. The first is on the basis of primary and secondary research, indicating that particular treaties had stronger compliance measures and were more effective, which narrowed down the vast pool of treaties which could potentially be examined. Secondly, it was important to choose diverse subject areas of regulation to compare within sectors and across sectors, to assess commonalities and differences in treaty architecture. Third, there is a specific focus on treaties that prohibit weapons including biological and chemical weapons, as these have been referred to in the context of the pandemic as potential models.[39] Lastly, some treaties have more complex provisions relating to compliance, indicating a need to examine them in more depth.

The treaties chosen for this study, per sector, are:

- International civil aviation

[37] Section 4.2, "The International System", Program of Work, October 2020, The Independent Panel for Pandemic Preparedness and Response, available at: https://theindependentpanel.org/wp-content/uploads/2020/10/The-Independent-Panel-Program-of-Work-October-20-2.pdf

[38] *See*, Guzman, **"**A Compliance-Based Theory of International Law"**,** *California Law Review,* Vol. 90, No. 6 (2002), pp. 1823-1887; Chayes and Chayes, "On Compliance", *International Organization*, Vol. 47, No. 2 (1993), pp. 175-205; Howse and Teitel, "Beyond Compliance: Rethinking Why International Law Really Matters", February 2010, NYU School of Law Public Law & Legal Theory Research Paper Series Working Paper No. 10-08; Simmons, "Compliance with International Agreements", *Annual Review of Political Science* 1 (1998), pp. 75-93; Vorderbruggen, "A Rules-Based System? Compliance and Obligation in International Law", *E-International Relations,* October 2018, available at: https://www.e-ir.info/2018/10/09/a-rules-based-system-compliance-and-obligation-in-international-law/ ; Pickering, "Why Do States Mostly Obey International Law?", *E-International Relations,* February 2014, available at: https://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/.

[39] Council on Foreign Relations, Independent Task Force Report No. 78, "Improving Pandemic Preparedness - Lessons From COVID-19", Council on Foreign Relations, p. 91 (footnote 120), available at: https://www.cfr.org/report/pandemic-preparedness-lessons-COVID-19/pdf/TFR_Pandemic_Preparedness.pdf

- Convention on International Civil Aviation ("Chicago Convention")[40]: This treaty relates to the obligations on states in relation to international airlines, in order to ensure the highest standards of international flight safety.

- Weapons treaties
  - Convention on Cluster Munitions ("CCM")41: This treaty prohibits the production, stockpiling and trade in cluster munitions, and has near universal ratification.
  - Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the "Chemical Weapons Convention" or "CWC")[42]: The CWC is to assure the destruction of chemical weapons, and to prohibit means to develop, stockpile, and use this category of prohibited weapons.
  - Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction ("Biological Weapons Convention" or "BWC")[43]: The BWC is nearly universally ratified and consists of measures to ensure that biological and toxin weapons are eliminated, and not developed, produced, and stocked.

- Environmental treaties
  - Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES")[44]: This convention aims to prohibit the trade in endangered species listed.
  - The Paris Agreement, 2015 ("Paris Agreement")[45]: This treaty is to follow on from the obligations of the UN Climate Change Convention, with the goal of limiting global warming.
  - Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol")[46]: This agreement is to protect the ozone layer of the earth, by phasing out the chemicals that deplete it.
- International human rights/International criminal law

[40] International Civil Aviation Organization (ICAO), Convention on Civil Aviation ("Chicago Convention"), 7 December 1944, (1994) 15 U.N.T.S. 295, (entered into force 4 April 1947), available at: https://www.icao.int/publications/Documents/7300_cons.pdf

[41] Convention on Cluster Munitions, adopted 30 May 2008, Dublin Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, Doc. CCM/77, (entered into force 1 August 2010), available at: https://www.clusterconvention.org/the-convention/convention-text/

[42] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, adopted 3 Sept. 1992, 1974 U.N.T.S. 45 (entered into force 29 April 1997), available at: https://www.opcw.org/chemical-weapons-convention

[43] Convention on the Prohibition of the Development, Production, and Stockpiling, of Bacterio-logical (Biological) and Toxin Weapons, 25 Feb. 1972, 26 U.S.T. 583 (entered into force Mar. 26, 1975), available at: http://disarmament.un.org/treaties/t/bwc/text

[44] Convention on International Trade in Endangered Species of Wild Fauna and Flora, 3 Mar. 1973, 993 U.N.T.S 243 (entered into force 1 July 1975), available at: https://cites.org/eng/disc/text.php#XIII

[45] Paris Agreement to the United Nations Framework Convention on Climate Change, 12 Dec. 2015, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (entered into force 4 November 2016), available at: https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement

[46] Montreal Protocol on Substances that Deplete the Ozone Layer, 16 Sept. 1987, 1522 U.N.T.S. 29, 34, (entered into force 26 August 1989), available at: https://treaties.un.org/doc/publication/unts/volume%201522/volume-1522-i-26369-english.pdf

- International Convention on the Elimination of All Forms of Racial Discrimination ("CERD")[47]: This convention seeks to ensure the elimination of racial discrimination and has an expert body that interprets the provisions of the treaty.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture" or "CAT")[48]: This convention prohibits the use of torture or similar treatment.
- Rome Statute of the International Criminal Court ("Rome Statute")[49]: This treaty establishes an international court for the purpose of prosecuting individuals for international crimes such as war crimes, crimes against humanity and genocide, if states are unwilling or unable to do so.

There may be differences of approach, based on the aims of each of the treaties, which impacts the architecture of the treaty. For instance, treaties that are prohibitive in nature (such as the weapons treaties) may be structured differently from those that seek to encourage certain behaviour (such as airline safety or climate change). **Table 1** in this document provides a brief synopsis of the ten treaties as well as the IHR, mapped against the metrics of assessment detailed in section 3 of the paper. Additional details regarding each of these treaties, including specific provisions, are provided in the **Annex** to this document.

A.2. Assessment Metrics

There are specific metrics that need to be assessed in more detail, to gain a more comprehensive view of the functioning of these treaties.

There are many theories as to the reasons for compliance of states with treaty obligations, but there is a lack of clarity that would lead to favouring one particular factor over another. Given the different theories and approaches to the question of compliance, while not the whole picture, the approach and structure of treaties themselves would have an impact on obligations as well as adherence to the treaty. Within this, there are six specific metrics that have been chosen for the purpose of this assessment.

These are:

(1) Governance of the treaty: this relates to the organization structure of the treaty – what are the decision-making bodies, and is the governance of the treaty envisaged to have an impact on implementation and compliance?
(2) Review Conference: What is the role of a review conference, and might this impact better implementation of the treaty?
(3) National implementation (including legislation): Are there obligations in the treaty architecture to ensure domestic implementation, including administrative and legislative measures?
(4) Compliance measures (incentives and sanctions): What are the means to ensure compliance – either by means of incentives provided to state parties, or by means of sanctions for non-compliance?
(5) Reporting and inspection: Are there obligations on states parties to report on implementation and compliance, and are there also means to conduct inspections/verifications to assure compliance?

[47] International Convention on the Elimination of All Forms of Racial Discrimination, 21 Dec 1965, 660 U.N.T.S. 195, 212, (entered into force 4 January 1969), available at: https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx
[48] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec 1984, 1465 U.N.T.S. 85, 113 (1984), (entered into force 26 June 1987), available at: https://www.ohchr.org/en/professionalinterest/pages/cat.aspx
[49] Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 90, (entered into force 1 July 2002), available at: https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf

(6) Dispute resolution: How do treaties cater for disputes, and what are the means to be employed to resolve disputes between parties?

A.3. Key Observations

Based on the treaty survey, and with additional details in the attached ***Appendix 1***, a few key observations based on the metrics stipulated above:

(1) Governance

A key aspect to be assessed relates to the governance of the treaty – what are the means to assure, at least in theory, oversight in the implementation of the treaty in order to meet its aims. Governance here refers to the framework stipulated in the treaty that provides for a supervisory body with the powers to ensure implementation, and the ability to delegate some of these functions.

Typically, the supervisory body or the principal organ that carries out the governance functions for most treaties are the states parties as a collective. The treaties surveyed here all have governance bodies that consist of regular meetings of states parties or assemblies of states parties, most of which have oversight functions relating to the implementation of the treaty. The convening of these bodies is regular, yearly in some cases such as the Montreal Protocol, the Rome Statute and the CCM, and biennially in the case of other treaties such as CAT and CERD. In most of the treaties assessed, broad powers are vested in the governance bodies by virtue of treaty provisions. For example, in relation to treaty implementation, the Assembly of states parties of the Chicago Convention is tasked with taking action on infractions based on reports from a subsidiary body, which is also to inform it of any failure to carry out recommendations by a contracting party.[50] In overseeing the implementation of the respective treaties, the CWC conference of states parties can "act" and the CITES conference of states parties can "make recommendations" to improve effectiveness of the treaty.[51] The CCM parties are to "take decisions" relating to the application or implementation of the convention.[52]

In relation to compliance with treaty obligations, half of the treaties surveyed permitted a range of measures by governance bodies. These include: the suspension of particular privileges;[53] revocation of membership under certain conditions in the Chicago Convention;[54] issuing of cautions;[55] the ability to amend the treaty, in CITES, CAT and the Paris Agreement;[56] as well as more stringent measures in accordance with the CWC, where in cases of "particular gravity" the UNGA and the UNSC may be informed.[57]

[50] Article 54 (k) and Art. 49 (g), Chicago Convention.
[51] Article VIII (19) & (20), CWC; Article XI (3), CITES.
[52] Article 11, CCM.
[53] Article XII (2), CWC.
[54] This is possible by virtue of Article 94 (b) of the Chicago Convention, where if the member state does not ratify an amendment within a certain period of time. However, this power has not been utilized.
[55] Article 8 (9), Montreal Protocol.
[56] Article XI (3), CITES; Article 29(1), CAT; and Article 22, Paris Agreement.
[57] Article XII (4), CWC.

By way of comparison, for the International Health Regulations, the World Health Assembly ("WHA") carries out the governance function.[58] The WHA is empowered to review reports relating to the functioning of the IHR (via a review committee) and can also adopt amendments to the IHR.[59]

Overall, the basic function of governing the treaty – and therefore implementation – sits squarely with the states parties. This is the norm and is adhered to in all the examples assessed. However, variation in the types of actions that governance bodies can take is instructive – the more robust the functions, the better the ability of the governance bodies to address issues of non-compliance, in theory. These may not be used at all, or very rarely used in practice though.

(2) Review conference

A review conference is typically a process of reassessing particular aspects of a treaty or the implementation of the treaty in its entirety, by all States Parties, at periodic intervals. This has been addressed specifically due to suggestions that a review conference is a key determinant of compliance for treaties and as such, should be a part of treaty architecture.[60]

Among the ten treaties surveyed, a review conference is provided for only in four treaties. In the three conventions relating to the prohibition of chemical, biological and cluster munitions – CWC, BWC and CCM – a review conference has been provided for to assure that the purposes of convention are being realized,[61] and to review "operation" of the treaty.[62] In the Paris Agreement, the "global stocktake" provided for in Article 14 (1), akin to a review conference, is to assess the collective progress towards achieving the purpose of the agreement and its long-term goals. The first global stocktake is scheduled for 2023, and every five years thereafter, unless decided otherwise, and will determine national implementation and global cooperation.[63]

However, for the remainder of the treaties that do not provide for this mechanism, the specific functions of a review conference are carried out in the regular meetings or assemblies of states parties. These functions include amendments, assessing compliance, among others. For instance, the conference of states parties per CITES meets to review implementation, adopt amendments, consider reports, among other activities, and can make "recommendations for improving the effectiveness" of the convention.[64]

Similarly, the assembly of states parties of the Chicago Convention meets every three years, and per Article 49 (j), has the power to recommend modifications and amendments to the convention, with specific procedures to be followed in this regard.[65]

[58] Article 54, IHR.
[59] Article 55, IHR.
[60] Council on Foreign Relations, Independent Task Force Report No. 78, "Improving Pandemic Preparedness - Lessons From COVID-19", Council on Foreign Relations, p. 91 (footnote 120), available at: https://www.cfr.org/report/pandemic-preparedness-lessons-COVID-19/pdf/TFR_Pandemic_Preparedness.pdf
[61] Article XII, BWC.
[62] Article VIII (22), CWC and Article 12(2)(a), CCM.
[63] Art. 14 (2) & (3), Paris Agreement.
[64] Art. XI (3)(a)-(e), CITES.
[65] Chapter XXI of the Chicago Convention contains Article 94, the procedure for amendments of the convention.

The IHR does not have a comparable review conference process. It does however have provision for a review committee. So far, four reviews have been convened.[66] Article 54 provides for the review committee to review the IHR, no later than five years after the entry into force. The scope of the review committee is to provide technical recommendations, which are transmitted to the Executive Council and the WHA.[67] This is not equivalent to the process and functions of review conferences generally understood and described previously in the section. Based on the analysis of the treaty architecture, as long as the aim of the review conference – monitoring and implementation of the treaty – is carried out regularly, and in a collective manner, the importance of providing for a specific treaty review conference is questionable.

(3) National implementation

The international obligations undertaken by a state need to be implemented domestically. This may take place by means of legislation, as well as administrative arrangements. National implementation is an indicator of a state following through on obligations, and it is relevant to note whether and how treaty architecture supports this. Domestic legislation to give effect to the obligations of the treaty depend on the manner in which international law applies in each country, as well as on the treaty architecture.

Most of the treaties examined include provisions that specify the obligation to ensure compliance with domestic law. The obligation to take all legal and administrative measures to facilitate the implementation of the treaty is reflected in the CCM, the Rome Statute, CITES, CWC, among others.

Per the CCM, Article 9 relates to national implementation measures, obligating states to take all legal and administrative measures to ensure compliance, including penal sanctions to prevent violation of treaty. The CWC also provides for "National implementation measures", with each state party required to adopt the necessary measures for compliance with the treaty.[68] State parties shall cooperate and shall "afford the appropriate form of legal assistance to facilitate the implementation of the obligation."[69] State parties are also to inform the organization as to the legal and administrative measures taken to implement the provisions of the CWC.[70]

Another important factor to note is that many of the governance bodies of the treaties have provided detailed national implementation plans and importantly, dedicated units to support these efforts. For instance, in order to support state parties in the implementation of the CCM, the parties agreed to establish an Implementation Support Unit in 2011.[71] This has been functional since 2015.[72]

[66] Additional details in regard to the roles and details of the four review committees convened so far are available at: https://www.who.int/teams/ihr/ihr-review-committees
[67] Article 50, IHR.
[68] Art. VII (1)], CWC.
[69] Art. VII (2), CWC.
[70] Art. VII (5), CWC.
[71] Second Meeting of States Parties, Beirut, 12-16 September 2011, Final Document, CCM/MSP/2011/5, available at: https://www.clusterconvention.org/files/2011/05/2MSP-Final-Document.pdf
[72] For more details on the Implementation Support Unit of the Convention on Cluster Munitions, see: https://www.clusterconvention.org/isumandate/

In the case of the trade in endangered species, CITES Article VIII requires reports on "legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention", and the CITES secretariat has been empowered to establish a "National legislation project", which includes support to state parties in matters such as drafting legislation.[73] The resolution of the CITES conference of states parties details powers for the national legislative project, due to half of state parties not having made sufficient changes in national legislation to assure compliance with their treaty obligations.

For the purposes of implementation of the BWC, the Sixth review conference (2006) stipulated a detailed plan for promoting universal adherence, and to update and streamline the procedures for submission and distribution of the Confidence-Building Measures (CBMs). The 6th review conference established the "Implementation Support Unit" for "comprehensive implementation and universalization of the Convention and the exchange of confidence-building measures".[74] There is an exchange of confidence building measures, as well as national points of contact designated by many states.[75]

In addition to this, treaties also contain obligations for other state parties to support national implementation efforts, as well as specific measures to aid the process including reporting and review of measures taken (such as Article 19 of CAT) and measures to review legislation (Article 9 (1) of CERD). The IHR contains provisions on collaboration between parties in regard to detection, assessment and response, as well as technical cooperation regarding public health capacities, financial resources, and formulation of laws and administrative arrangements for implementation of IHR.[76] Implementation plans are also provided for, to be able to respond promptly and effectively to public health risks and emergencies, and states may exceptionally be allowed additional time for this work.[77]

Overall, treaties not only place obligations on states to ensure national implementation, but in some cases also provide for support in the form of implementation support units, legislative drafting, as well as reporting and review of the measures taken. This more expansive approach, with sufficient support provided by a secretariat or equivalent, may contribute to more effective national implementation measures.

(4) Compliance

In order to ensure implementation and compliance with the obligations of the treaty, there are two approaches, often in the context of the same treaty. There are provisions that are in effect incentives to member states to comply with the obligations, and there are other measures that are in the form of sanction. Sometimes these provisions also go hand in hand. The term sanction is used here to include censure, 'naming and shaming', and other measures within the treaty architecture to cajole compliance of states.

[73] Resolution Conf. 8.4 (Rev. CoP15), "National laws for implementation of the Convention", available at: https://cites.org/eng/res/08/08-04R15.php

[74] Sixth Review Conference of the State Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Geneva, 20 November - 8 December 2006), Final Document, BWC/CONF.VI/6, available at: https://digitallibrary.un.org/record/604178

[75] *See*, Annual Report of the Implementation Support Unit, BWC/MSP/2019/4, 8 October 2019, available at: https://undocs.org/pdf?symbol=en/bwc/msp/2019/4

[76] Article 44, IHR.

[77] Article 13, IHR.

(5) Incentives

Incentives range from the exchange of information and materials to assistance in formulation of action plans for implementation, financial assistance obligations, expert support, and cooperation by other state parties.

The Biological Weapons Convention, in keeping with the aim of avoiding hampering developments for peaceful purposes, provides for the exchange of equipment, materials and scientific and technological information for the use of biological agents for peaceful purposes. Per Article X, parties to the treaty are to cooperate individually or with other states in relation to scientific discoveries.[78]

In order to prevent the international trade in endangered species, CITES provides technical assistance in what compliance looks like, as well as a comprehensive action plan and compliance assistance program. The CITES Guide on Compliance Procedures has been prepared, based on Article XIII of CITES.[79] This details the aims and objectives of compliance, as well as the approach, which is "supportive and non-adversarial… with the aim of ensuring long-term compliance."[80] The roles of the Standing Committee, the Conference of Parties and the secretariat in compliance matters are detailed. The measures to achieve compliance – a non-exhaustive list – include special reporting from the party, capacity building support, a written caution, in country assistance and a verification mission based on state party invitation, issuance of a warning regarding non-compliance and requesting a compliance action plan.[81] At the most recent Conference of State Parties, a new "Compliance Assistance Program (CAP)" has been commenced for those states facing persistent compliance challenges.[82]

An agreement that has a significant focus on incentives for compliance is the Paris Agreement, which establishes a "mechanism to facilitate implementation of and promote compliance with the provisions."[83] This Mechanism consists of an expert committee, reporting annually to the meeting of states parties and is facilitative in nature, functioning in a manner that is "transparent, non-adversarial and non-punitive".[84] In an acknowledgement of the different capacities of states, this committee is to take these national capabilities and circumstances of Parties into account.[85]

In addition, there are various provisions in the Paris Agreement relating to cooperation and assistance. International cooperation takes place through information sharing, strengthening institutional arrangements, scientific knowledge, and assisting developing countries.[86] Article 9 of the Paris Agreement also specifically provides that "Developed country Parties shall provide financial resources to assist developing country Parties

[78] Article X (1) & (2), BWC.
[79] Resolution Conf. 14.3, "Annex: Guide to CITES compliance procedures" (Rev. CoP18), available at: https://cites.org/sites/default/files/document/E-Res-14-03-R18.pdf ("CITES Compliance procedure resolution")
[80] CITES Compliance procedure resolution, para. 3.
[81] CITES Compliance procedure resolution, para. 29 (a) – (h).
[82] Decision 18.69, Resolution Conf. 4.6, "Compliance Assistance Program" (Rev. CoP18), available at: https://cites.org/sites/default/files/eng/dec/valid18/E18-Dec.pdf
[83] Art. 15 (1), Paris Agreement.
[84] Art. 15 (2) & (3), Paris Agreement.
[85] Art. 15 (2), Paris Agreement.
[86] Art. 7 (7)(a) – (e), Paris Agreement.

with respect to both mitigation and adaptation in continuation." This support for developing countries in order to implement the agreement is further reiterated in Article 11.[87]

Another approach taken in the Cluster Munition Convention relates to cooperative measures and requests for clarifications by state parties. Per Article 8, states parties are to consult and cooperate with each other regarding implementation of convention and may submit requests for clarification to the UNSG in case of questions regarding a particular state party, with appropriate information and with unfounded requests that are to be abstained from, to "avoid abuse".[88] If there is an unsatisfactory or no response, then the state is to forward the request to the UNSG to place before meeting of state parties, with the right to respond by the requested state.[89] The UNSG may also be requested to use good offices to facilitate clarification.[90] Ultimately, the meeting of states parties is to suggest ways to "resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law."[91] The meeting also has the discretion to adopt "such other general procedures or specific mechanisms for clarification of compliance, including facts, and resolution of instances of non-compliance with the provisions of this Convention as it deems appropriate."[92] This is an open-ended provision that may be used in a number of ways, depending on the will of state parties.

(6) Sanctions

Sanctions can take many forms, and in some of the treaties surveyed, has been left to the discretion of the governance bodies, based on the treaty provisions. Provisions pertaining to sanctions may be for relatively minor infractions or for more serious cases of non-compliance. These measures include suspension of privileges, cautions, review of violations, inquiries, mechanisms for inter-state complaints, and reference to UNGA and UNSC in serious cases. There is a range of escalating sanctions, not all of which are in every treaty.

The Chicago Convention, in Article 88, provides for the suspension of voting power in the Assembly and in the Council, as a penalty for default, and this is to be decided by the governing body, the Assembly.[93] Another provision of the convention provides for notification to the Council, which in turn is to notify all other states in case of a departure from international standards and procedures.[94]

The Montreal Protocol is more detailed by comparison and provides for the consideration and approval of procedures and institutional mechanisms to determine

[87] Art. 11 relates to cooperation and provides that all parties are to "cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties." Article 11 (3), Paris Agreement.
[88] Article 8 (2), CCM.
[89] Article 8 (3), CCM.
[90] Article 8 (4), CCM.
[91] Article 8 (5), CCM.
[92] Article 8 (6), CCM.
[93] Article 88, Chicago Convention.
[94] Article 38, Chicago Convention.

non-compliance, as well as how to treat instances of non-compliance.[95] A detailed "non-compliance procedure"[96] has been delineated and as well as measures in case of non-compliance. The "Indicative list of measures in case of non-compliance"[97] permits: (a) appropriate assistance, information sharing, etc.; (b) issuing cautions; (c) suspension of specific rights and privileges under the protocol. The non-compliance procedure provides great detail as to the steps to be taken in case of complaints of non-compliance. It has also set up the "Implementation Committee", which reviews complaints of violations per the non-compliance procedure, and reports to the Meeting of the Parties.[98] Its mode of work may include information gathering on the territory of a state party.[99]

There is also provision for suspension of commercial or all trade in specimens listed by CITES, in case which are "unresolved and persistent and the Party is showing no intention to achieve compliance". A recommendation to suspend trade is "specifically and explicitly based on the Convention and on any applicable Resolutions of the Conference of the Parties."[100]

Another important convention is the Chemical Weapons Convention. Given the nature of the prohibition, it is pertinent to note the approach taken in this treaty. The Executive Council plays a large role, including informing States Parties of non-compliance, and making recommendations to the Conference for redress and to ensure compliance.[101] Article XII relates specifically to "Measures to address a situation and ensure compliance, including sanctions". Based on the advice of the Executive council in case of failure to rectify non-compliance, the Conference of Parties can restrict or suspend privileges.[102] In case of "serious damage to the object and purpose of this Convention", the Conference may recommend collective measures in conformity with international law.[103] As a last resort and in case of "particular gravity", the Conference is to bring the issue to the attention of the United Nations General Assembly and the United Nations Security Council.[104] This is a far reaching provision, not reflected in many other treaties.

The other treaty assessed in this study that has comparable provisions for failure to comply is the Rome Statute – where a failure to cooperate and comply is referred to the governance body and the UN Security Council (but this is limited to those cases which have been referred to the International Criminal Court by the UNSC in the first place).[105] Clearly, failure to cooperate per the Rome Statute is a failure of compliance, and the provision may be viewed as a form of legal sanction. To note, the UNSC has the power

[95] Article 8, Montreal Protocol.
[96] "Annex II: Non-compliance procedure (1998)", Tenth Meeting of the Parties, Montreal Protocol available at: https://ozone.unep.org/node/2078 ("Montreal Protocol Non-Compliance Procedure")
[97] "Annex V: Indicative list of measures that might be taken by a Meeting of the Parties in respect of non-compliance with the Protocol - Fourth Meeting of the Parties", Montreal Protocol, available at: https://ozone.unep.org/node/2078
[98] Para. 9, Montreal Protocol Non-Compliance Procedure.
[99] Para. 7 (e), Montreal Protocol Non-Compliance Procedure.
[100] CITES Compliance procedure resolution, para. 30.
[101] Art. VIII (36), CWC.
[102] Article XII (2), CWC.
[103] Article XII (3), CWC.
[104] Article XII (4), CWC.
[105] Art. 87(7), Rome Statute.

to refer matters to the ICC, per Article 13(b), which is why a matter may be sent to it in case of non-compliance. So, while there is the option to send non-compliance to the UNSC, this is more limited in scope than the chemical weapons convention.
Another approach – reflected in CERD and CAT – is the inter-state mechanism for complaints, whereby one state party can complain formally against another state party to the respective committees empowered by the conventions.[106] In the case of CERD, this inter-state mechanism has recently been used for the first time, in three cases: *State of Qatar vs. Kingdom of Saudi Arabia*; *State of Qatar vs. United Arab Emirates* and, the *State of Palestine vs. State of Israel*.[107] This mechanism while provided for, has not been used in the case of CAT.

In assessing the IHR on incentives and sanctions, it clearly has the former: provisions regarding information sharing, consultation, notification and verification, as ways of ensuring compliance.108 However, it does not have any of the comparable provisions such as those detailed above, in regard to sanctions for non-compliance.

The emphasis of incentives over sanction is evident in some treaties such as the Paris Agreement, whereas in others there is more detail in regard to sanction. The cooperative rather than adversarial or prohibitive nature of the treaties plays a role in which approach is preferred.

(5) Reporting and inspection

Reporting is a component of assuring that obligations in a treaty are adhered to, and inspection or inquiry procedures are in some cases a follow-up. Reporting is a component of most treaties, as a key means to assess compliance. Some treaties also have audit, inspection and inquiry procedures, and provide for expert reviews. Inspection can be sensitive, given concerns around sovereignty, which have however been addressed in some treaties.

Regular reporting is an obligation on states parties to the Chicago Convention,[109] CERD,[110] CAT,[111] CCM,[112] among others. The requirement to report may vary in terms of time and frequency.

In the case of the Chicago Convention, given the subject matter of the treaty, there are detailed Safety audit procedures. In 1994, the Safety Oversight Program was established by Resolution AR 32-11.[113] This resolution mandated that the audit checks were to be "mandatory, systematic and harmonized", carried out by ICAO, applicable to all states parties and release results in the interests of transparency and increased disclosure. While it

[106] Article 11 of CERD and Article 21 of CAT.
[107] For details of the cases, including decisions, *see*:
https://www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx
[108] Articles 6 – 8, IHR.
[109] Article 67, Chicago Convention.
[110] Art. 9 (1), CERD.
[111] Article 19, CAT.
[112] Art. 7, CCM.
[113] "Resolution A32-11: Establishment of an ICAO universal safety oversight audit programme", Resolutions Adopted at the 32nd session of the Assembly, available at:
https://www.icao.int/Meetings/AMC/MA/Assembly%2032nd%20Session/resolutions.pdf

urged states to agree to audits, these were to be carried out with state consent, respecting the principle of sovereignty. ICAO has audited 185 Member States as of December 2017,[114] and information of the states audited, the types of audits conducted, and the results are also available.[115]

An inspection procedure is provided for in the CWC.[116] CAT also contains provisions and details relating to inquiry procedures.[117] Per Article 20 of CAT, if there are well-founded indications of systematic practice of torture in the territory of a State Party, the Committee of experts established under the aegis of the convention invites co-operation and asks the state to submit observations. If warranted, members may be designated to undertake a confidential inquiry and to report to the Committee. For this purpose, cooperation of the state party shall be sought, and the inquiry may include a visit to the territory. The proceedings are confidential and at all stages "co-operation of the State Party shall be sought." The findings can be included in summary after discussion with state in question. However, Article 28 provides that at the time of signature or ratification, a state may declare that it does not recognize the competence of the committee for the purposes of such an inquiry. This would mean the inability of the Committee to conduct such inquiries in respect of these states.

In a different approach, the Paris Agreement consists of a technical expert review of the reports submitted, to identify areas for improvement, keeping in mind flexibility based on parties' capabilities.[118]

The International Atomic Energy Agency has been highlighted as an example of robust inspection procedures. It is worth recalling that the IAEA has been established by statute exclusively to deal with implementation and monitoring of commitments of a number of nuclear treaties.[119] Thus, it is uniquely empowered to inspect and verify compliance, as a primary purpose. This also holds true for the example of the International Monetary Fund, in its surveillance and monitoring procedures.[120] The more robust procedures of these two institutions that allow for more extensive inspection and verification – that may be viewed as overcoming concerns regarding dilution of sovereignty – are precisely *because* of the primary purpose of these institutions.

Given the sensitivities around inspection, some treaties are silent on the metric of inspection and this has in fact been a point of contention in particular instances. For example, negotiations were commenced under the Biological Weapons Convention for a verification protocol, which stalled eventually due to a lack of agreement.[121]

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[114] https://www.icao.int/safety/CMAForum/Pages/FAQ.aspx
[115] *See*, "Safety Audit Results: USOAP interactive viewer", available at: https://www.icao.int/safety/pages/usoap-results.aspx
[116] Article 9, CWC.
[117] Details on the CAT Article 20 inquiry process are on the Committee's website, available at: https://www.ohchr.org/EN/HRBodies/CAT/Pages/InquiryProcedure.aspx
[118] Article 13, Paris Agreement.
[119] Statute of the IAEA, available at: https://www.iaea.org/sites/default/files/statute.pdf
[120] Articles of Agreement of the International Monetary Fund, available at: https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf
[121] Revill, "Compliance Revisited: An Incremental Approach to Compliance in the Biological and Toxin Weapons Convention", Center for Nonproliferation Studies Occasional Paper No. 31 (August 2017), available at: http://www.nonproliferation.org/wp-content/uploads/2017/08/op31-compliance-revisited.pdf

The provisions on information, notification and verification in the IHR all pertain to this category as well, and there are also obligations on WHO to provide information to states.[122]

Ultimately, while all treaties provide for reporting by states, the next steps – inspection or verification measures – are more fraught due to concerns relating to sovereignty. These concerns may be addressed by seeking state cooperation, by audits and inquiries. Given this is a contentious issue, it has been overcome in certain instances (such as the IMF and IAEA) by ensuring the structure and the *raison d'être* of the treaty relates directly to the issue of verification and compliance. This may be one approach in ensuring greater adherence to treaty obligations. This issue warrants greater scrutiny in practice and may be key to assessing greater compliance with treaty obligations.

(6) Dispute resolution

The relevance of dispute resolution in a treaty is to provide for some means of addressing differences in implementation and compliance of a treaty. While these may not be used in many instances, provisions on resolution of dispute are indicative of the approach of the treaty architecture, and the empowerment to resolve disputes.

All the treaties surveyed provide for some form of resolution of disputes, with many of the governance bodies tasked with consultation and resolution of the dispute. These include governance bodies part of the Chicago Convention, the CWC, and the Rome Statute.[123] CITES and CAT provide for the escalation to negotiation and/or arbitration.[124] Additionally, the BWC and CCM provide for consultation as a means of dispute resolution.[125] Of the treaties assessed, three require the establishment of a conciliation commission, with details as to composition and method.[126] Only the BWC allows for a complaint to the UNSC by a state party.[127] As a last resort in most cases, and depending on whether the state has agreed to the jurisdiction of the court, recourse to the International Court of Justice is provided for.

Per Article 56, the IHR consists of similar provisions as the other treaties, including the use of good offices of the WHO DG for disputes between states. Additionally, a dispute between WHO and a state party is to be submitted to the WHA.

Dispute resolution indicates a 'safety valve' in the treaty – a means to tackle disagreements, that may relate to the interpretation or compliance with treaty obligations. Providing for good offices and governance oversight of disputes is a way of avoiding the more onerous requirements entailed in a formal legal process. However, as a matter of last resort, these are also provided for.

[122] Articles 6 – 8, IHR
[123] Article 84, Chicago Convention; Art. XIV (3), CWC; Art. 119 (2), Rome Statute.
[124] Article 30, CAT, and Article XVIII, CITES.
[125] Art.10 (1), CCM and Art. V, BWC.
[126] Paris Agreement, CERD, and the Montreal Protocol.
[127] Article VI, BWC.

A.4. Conclusion

This study is an initial assessment of the approaches taken across different treaty regimes, in order to facilitate implementation of obligations and increase compliance. This survey across sectors provides insights into certain aspects to be kept in mind. It is however limited to how treaties have been structured and an assessment of the treaty provisions and does not delve into treaty practice. The actual practice of state parties and treaty institutions may yet result in findings of improper implementation of treaty obligations or non-compliance, based on a variety of factors.

Based on the assessment undertaken, a few key findings to note are as follows:

- In regard to governance, all treaties have governance bodies that consist of regular meetings of states parties, most of which have oversight functions. In half of the treaties surveyed, the governance bodies have powers to deal with infractions of the treaty, with a range of measures in different treaties (from suspension of privileges, cautions, and informing the UNSG and UNSC). For the IHR, much like the other treaties surveyed, the WHA carries out the governance function however is not treaty specific.
- On the facet of a review conference, this is provided for in four of the treaties, including the weapons conventions. However, in the remainder of the treaties that do not provide for this particular mechanism, the specific functions of a review conference are provided for in meetings of states parties. The IHR does not have a comparable review conference process either. However, it is unclear whether the mere convening of a separate review conference would have a significant impact on the implementation of the treaty, particularly when the same functions can be exercised albeit in a different manner.
- In relation to national implementation (which could include legislation and other administrative measures to be taken by states), implementation support units and implementation plans are provided for, as well as the obligation to report measures to implement the treaty, and the review of these reports. The IHR contains provisions on collaboration between parties in regard to detection, assessment and response, as well as technical cooperation regarding public health capacities, financial resources, and formulation of laws/administrative arrangements for implementation of IHR. Implementation plan are also provided for, and states may exceptionally be allowed additional time for this work. The key difference seems to be in the implementation support units which provide assistance, emanating from the treaty provisions, and able to provide targeted assistance and support.
- In regard to compliance, measures that provide incentives to comply, and those measures that are in the form of sanction have been addressed. Incentives include the exchange of information and materials, assistance with action plans, expert committee support, and cooperation by state parties. Sanctions include suspension of privileges, cautions, review of violations, inquiries, mechanisms for inter-state complaints, and reference to UNGA and UNSC. The IHR consists of provisions regarding information sharing, consultation, notification and verification, as ways of ensuring compliance. It has incentives and not sanctions as a way to ensure compliance.
- In relation to reporting and inspection, the former is a component of most treaties, as a key means to assess compliance. Some treaties have audit, inspection and inquiry procedures, and provide for expert reviews. The provisions on information, notification and verification in the IHR all pertain to this category as well, and there are also obligations on WHO to provide information to states. Some of the treaties assessed have more detailed and intrusive requirements of reporting and inspection.

- On dispute resolution, all treaties provide for some form of resolution of disputes, with many of the governance bodies tasked with consultation and resolution of the dispute. Other means are arbitration, negotiation, *ad hoc* compliance commissions, as well as recourse to the International Court of Justice (if agreed to by states). The IHR consists of similar provisions as the other treaties, including the use of good offices of the WHO DG for disputes between states. Additionally, a dispute between WHO and a state party is to be submitted to the WHA.
- In the overall assessment, there are varied approaches taken by different treaty regimes. Some have more onerous provisions in order to better implement the treaty, but also have more substantial support in this endeavour, including by means of interpretive bodies, implementation units and more stringent reporting and review. While treaty architecture and structure may not guarantee implementation, it is an important step in clarifying obligations and the responsibilities of states. This overview is an initial step, to indicate the areas of inquiry and the approach in negotiating treaties with a view of maximum compliance. Subsequent practice should also be taken into account, to ascertain the impact of the treaty provisions on compliance and implementation.

Overview of key provisions per treaty

Treaty	Governance	Review conference	National implementation	Compliance	Reporting & inspection	Dispute resolution
Chicago Convention	Assembly performs governance functions, takes action upon reports of Council incl. on infractions and failure to carry out recommendations	No review conference, Assembly essentially carries out same functions incl. amendments. Assembly can revoke membership, not used though	Obligation to include penalties for violations of convention; collaboration between states; Safety Oversight Program leading to Standards and Recommended Practices, and safety audit checklist.	Penalty for non-compliance, suspension of voting powers; notification to all states in case of non-compliance	Obligatory filing of reports by airlines; mandatory safety audits, with consent of states. Nearly all states audited by ICAO.	Role of Council in resolution of dispute, if states cannot settle by negotiation. Council decision can be appealed in arbitration. Also, recourse to International Court of Justice possible.
CCM	Meeting of states parties to consider status and operation of convention, held annually	Review conference for operation and status of treaty, and decisions regarding core functions of treaty	Obligation to take all legal and administrative measures to ensure compliance; implementation support unit established, creation of national action plans, assistance – material and financial	Cooperation for compliance, with requests for clarification possible as well as means to resolve non-compliance; meeting of states parties can adopt procedures for compliance clarification	Reporting on national implementation, as well as detailed information on cluster munitions, stockpiles, destruction etc., updated annually	Meeting of states parties to resolve disputes, including encouraging settlement procedures. Recourse to the International Court of Justice also possible option.
CWC	Conference of parties oversees implementation of treaty and compliance, and meets regularly	Regular annual sessions of Conference of parties, review in "special sessions" for review of "operation" of treaty, at five-year intervals	National implementation measures to be adopted, information regarding measures taken, and cooperation between parties required	Methods to assess non-compliance including redress. Suspension or restriction of privileges possible. In case of	Detailed procedure regarding clarification requests, as well as procedures for inspection and challenging inspection	Consultation and use of good offices of Executive Council. Mutual consent to refer dispute to

Treaty	Governance	Review conference	National implementation	Compliance	Reporting & inspection	Dispute resolution
				"serious damage", collective measures, and if "particular gravity", then UNGA & UNSC reference		International Court of Justice.
BWC	Meetings of states parties, regular meetings	Conference of states parties – 5-year review to assure realization of treaty and to take into account new developments (scientific and technological)	Detailed adherence plan in 6th review conference, incl. confidence building measures and implementation support unit	Exchange of information and materials, and cooperation among states	Silent on inspection, and reporting. Negotiation of compliance protocol not fructified	Consultation and cooperation; possibility for state party to complain to UNSC with evidence, and states to cooperate with investigation if initiated by UNSC
CITES	Conference of states parties to review implementation of treaty and can make recommendations to improve effectiveness	No provision for review conference	National legislation project to give effect to legislative, regulatory and administrative measures. Support for drafting legislation as most states found wanting	"CITES Guide on Compliance Procedures' – supportive, non-adversarial approach, to ensure long term compliance. Warning, caution, and possible suspension of trade in case of non-compliance. "Compliance assistance program" for most	Possibility of inquiry in case of breach of convention, needs to be authorized by state party, and reviewed by conference of states parties; reports on periodic implementation of convention required	Negotiation, and if failure, then arbitration by mutual consent

Treaty	Governance	Review conference	National implementation	Compliance	Reporting & inspection	Dispute resolution
				challenged states		
Paris Agreement	Conference of states parties of the Climate Change Convention is the meeting of states parties for Paris and is the governance body	"Global Stocktake" in effect a review conference, to take place every five years, to take stock of progress of the convention, incl. implementation	Transparency framework for action, with flexibility in implementation of provisions for developing countries	Mechanism for implementation comprising Expert committee; facilitation and cooperation measures, specific focus on developing countries	Regular information provision, which undergoes a technical expert review	Negotiation and other means, and if not settled in twelve months, then conciliation commission to resolve dispute
Montreal Protocol	Meeting of states parties, once a year, for protocol implementation	Provision for "extraordinary meetings" if necessary	Information exchange and cooperation; Financial mechanism (Multilateral fund) for assistance and implementation of protocol	Procedures for non-compliance and measures including assistance, info sharing, issuing cautions, and suspension of rights and privileges; Implementation committee to review violations	Data to be reported within three months of becoming a party	Negotiation, mediation, arbitration and recourse to International Court of Justice. Also, possibility of conciliation commission under certain conditions
CAT	Biennial meeting of states parties; Expert Committee against Torture for implementation	No review conference provision	Specific, detailed obligations to be incorporated into domestic law; review process to highlight national implementation	Inter-state complaint mechanism, not used yet; individual communications of complaint possible	Regular reporting, cooperation, and inquiry procedure provided for in case of systematic violations, based on state cooperation	Negotiation, and if unsuccessful, then arbitration. If no agreement on arbitration, then recourse to the International Court of Justice
CERD	Biennial meeting of states	No review conference provision	Obligations to incorporate into domestic law, as	Inter-state mechanism for	Regular reporting of administrative	Ad hoc conciliation commissio

Treaty	Governance	Review conference	National implementation	Compliance	Reporting & inspection	Dispute resolution
	parties; Expert Committee on the Elimination of Racial Discrimination, for implementation		well as review of law to remedy instances of discrimination	complaints, that has been used in three cases starting 2018	, legislative and judicial measures	n, based on state consent; if not settled by conciliation, or negotiation, then recourse to the International Court of Justice
Rome Statute	Assembly of States parties is the oversight body, meets once a year	Review provided for, last one held in 2010	Obligation to ensure national law incorporation	Obligation to cooperate with court, and if failure, then reference to assembly, and in some cases, to the UNSC (when situation is referred to the court by the UNSC)	No provisions for reporting	If dispute not settled by negotiation in three months, then to be settled by assembly or referred to other means, including the International Court of Justice
IHR	World Health Assembly carries out the governance function, including review of reports and functioning of the IHR (by means of a review committee), as well as amendments.	Review committee to review IHR to take place no later than five years after entry into force. Four reviews convened. The review committee provides technical recommendations on aspects of the IHR including amendment, and provides	Collaboration between parties in regard to detection, assessment and response, as well as technical cooperation regarding public health capacities, financial resources, and formulation of laws/administrative arrangements for implementation of IHR.	Requirement for implementation plan for capacity to respond promptly and effectively to public health risks and emergencies, and states may exceptionally be allowed additional time for this work.	Information sharing, consultation, notification and verification provided for in the IHR. Also, obligations on WHO to provide information to states.	Dispute to be settled through negotiation or other peaceful means, such as good offices, mediation, conciliation. If not settled, this may be referred to the WHO DG. Arbitration

Treaty	Governance	Review conference	National implementation	Compliance	Reporting & inspection	Dispute resolution
		advice to the WHO DG, who transmits this to the WHA/Exec Council. Hence, this does not function as a 'review conference' as understood				may be agreed to, and if so, conducted in accordance with the Permanent Court of Arbitration procedures specified. If there is a dispute between WHO and a state party, it will be submitted to the WHA

List of treaties and relevant provisions

Convention on International Civil Aviation ("Chicago Convention")[128]	
Governance body (interpretation, meetings)	The Assembly of state parties or the "Assembly" is the governance body of the Chicago Convention, which must meet "not less than once in three years" [Art. 48(a)]. Article 48 and Article 49 relate to the powers and duties of the Assembly. Article 50 provides details regarding the Council, which consists of 36 members of the Assembly. Per Art. 49 (j), the Assembly shall consider proposals for modification or amendment of the Convention and if approves, recommend to the contracting states. [Art. 49 (j)] The Assembly is to examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council [Art. 49 (c)], and refer to other subsidiary bodies [Art. 49 (g)] Article 54 pertains to the mandatory functions of the Council, including reporting infractions of the convention, as well as any failure to carry out recommendations or determinations of the Council [Art. 54 (j)] The Council is also to report to the Assembly "where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;" [Art. 54 (k)]
Treaty review conference	There is no treaty review conference – however the Assembly meets every three years, and per Art. 49 (j), has the power to recommend modifications and amendments to the convention, in accordance with Chapter XXI, which contains Art. 94 specifically dealing with the procedure for amendments. Per Art. 94 (a) procedure, any amendment "must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States." Per Art. 94(b), the assembly can revoke membership in the ICAO if a member state does not ratify an amendment within a certain period of time. This is a wide-ranging power of the assembly but has not been used.
National implementation (incl. legislation)	Article 3(bis)(c) obligates compliance of civil aircraft with national law and includes penalties for violation.

[128] Full text available at: https://www.icao.int/publications/Documents/7300_cons.pdf

	Per Art. 37, each state party to collaborate to ensure best practices "collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft…" In 1994, the Safety Oversight Program was established by Resolution AR 32-11.[129] As a result of this resolution emanating from Art. 33 & 37, ICAO Standards and Recommended Practices (SARPs) have been designed and include a safety audit compliance checklist.
Compliance - Incentives and Sanctions	Article 88 provides as penalty for non-conformity, the suspension of voting power in the Assembly and in the Council, for any contracting State in default under the provisions of this Chapter. This will be decided by the Assembly. In case of departure from international standards and procedures by a state, it is to notify the Council, which is to notify all other states [Art. 38]
Reporting and Inspection	Article 67 requires the filing of reports by international airlines in relation to traffic statistics, financial reports etc. with the council Per Resolution AR32-11: Para. (1)"universal safety oversight audit programme be established, comprising regular, mandatory, systematic and harmonized safety audits, to be carried out by ICAO; that such universal safety oversight audit programme shall apply to all Contracting States; and that greater transparency and increased disclosure be implemented in the release of audit results;…" para. (3) "Urges all Contracting States to agree to audits to be carried out upon ICAO's initiative, but always with the consent of the State to be audited, by signing a bilateral Memorandum of Understanding with the Organization, as the principle of sovereignty should be fully respected;" ICAO has audited 185 Member States as of December 2017,[130] and information of the states audited, the types of audits conducted, and the results are also available.[131]
Dispute Resolution	On settlement of disputes, per Art. 84, if any disagreement between contracting States relating to the interpretation or application of the Convention cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may, subject to Article 85 (which is the arbitration procedure), appeal from the decision of the Council to an *ad hoc* arbitral tribunal agreed upon with the other parties or to the International Court of Justice.

[129] "Resolution A32-11: Establishment of an ICAO universal safety oversight audit programme", Resolutions Adopted at the 32nd session of the Assembly, available at: https://www.icao.int/Meetings/AMC/MA/Assembly%2032nd%20Session/resolutions.pdf

[130] https://www.icao.int/safety/CMAForum/Pages/FAQ.aspx

[131] "Safety Audit Results: USOAP interactive viewer", available at: https://www.icao.int/safety/pages/usoap-results.aspx

	Any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council. Article 85 delineates the arbitration procedure, and stipulates that if, when a dispute is under appeal and a party has not accepted the ICJ and cannot agree on an arbitral tribunal, each party shall name a single arbitrator who will name an umpire. If a part fails to name an arbitrator, one shall be named on behalf of the state by the President of the Council from a list. If there is no agreement in thirty days on an umpire, the President shall designate one from the list. These arbitrators and umpire will constitute the tribunal, and will establish their procedures, and decide on the basis of a majority vote. In case of excessive delays as determined by the Council, procedural questions may be decided by the council. Article 86 provides that on matters of an international airline operating in conformity with the convention, any decision by the Council remains in effect unless reversed on appeal. In other disputes, decisions on the Council if appealed will be suspended till the appeal is decided. Arbitral tribunal or ICJ decisions "shall be final and binding".

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction ("Biological Weapons Convention" or "BWC")[132]	
Governance body (interpretation, meetings)	Meeting of State Parties, which has met consistently on a nearly yearly basis since 2007.
Treaty review conference	The BWC provided for a conference of state parties five years after the entry into force of the Convention, towards **"**assuring that the purposes of the preamble and the provisions of the Convention" are being realized. The review is to take into account new scientific and technological developments of relevance. [Art. XII]
National implementation (incl. legislation)	For the purposes of implementation of the BWC, the Sixth review conference (2006) stipulated a detailed plan for promoting universal adherence, and to update and streamline the procedures for submission and distribution of the Confidence-Building Measures (CBMs). The 6th review conference established the "Implementation Support Unit" for "comprehensive implementation and universalization of the Convention and the exchange of confidence-building measures".[133] There is an exchange of confidence building measures, as well as national points of contact designated by many states.[134] There is also UN Security Council practice to consider, in particular UNSC Resolution 1540, by which all states regardless of whether they are state parties to the BWC must adopt measures to prevent nonstate actors from acquiring biological weapons.

[132] Full text available at: http://disarmament.un.org/treaties/t/bwc/text

[133] Sixth Review Conference of the State Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Geneva, 20 November - 8 December 2006), Final Document, BWC/CONF.VI/6, available at: https://digitallibrary.un.org/record/604178

[134] See, Annual Report of the Implementation Support Unit, BWC/MSP/2019/4, 8 October 2019, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/300/74/PDF/G1930074.pdf?OpenElement

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction ("Biological Weapons Convention" or "BWC")[132]	
Compliance - Incentives and Sanctions	Article X provides for the exchange of equipment, materials and scientific and technological information for the use of biological agents for peaceful purposes. Parties are to cooperate individually or with other states to scientific discoveries. [Art. X (1)] The aim of the implementation of the convention is to avoid hampering developments for peaceful purposes. [Art. X (2)]
Reporting and Inspection	The treaty is silent on issues of inspection, reporting or compliance more generally. An *ad-hoc* group was constituted for the purposes of negotiating a compliance protocol, in regard to information and access regarding dual use, but this is now defunct. The UN Secretary General's mechanism is to undertake fact-finding and assess compliance in regard to the 1925 Geneva Protocol, and does not have a direct applicability to the BWC.[135]
Dispute Resolution	The BWC provides for consultation and cooperation in "solving any problems which may arise in relation to the objective of, or in the application of the provisions of" the convention, by means of the UN Charter. [Art. V] Article VI – In case of breach of obligations, a state party may "lodge a complaint with the Security Council", and the complaint should include the evidence as well as request for consideration by the UNSC. [Art. VI (1)] State parties must co-operate with any investigation initiated by the UNSC, and the UNSC shall inform the state parties of the results of the investigation. [Art. VI (2)]

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the "Chemical Weapons Convention" or "CWC")[136]	
Governance body (interpretation, meetings)	Conference of Parties is the "principal organ of the Organization", and "shall consider any questions, matters or issues within the scope of this Convention, including those relating to the powers and functions of the Executive Council and the Technical Secretariat." [Art. VIII (19)] The Conference "shall oversee the implementation of this Convention, and act in order to promote its object and purpose. The Conference shall review compliance with this Convention." [Art. VIII (20)] The powers and functions of the Executive Council include that it "shall promote the effective implementation of, and compliance with, this Convention…" [Art. VIII (31)]
Treaty review conference	The Conference of State parties meets in regular sessions held annually [Art. VIII (11)]

[135] See, Secretary-General's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons, available at: https://www.un.org/disarmament/wmd/secretary-general-mechanism/

[136] Full text available at: https://www.opcw.org/chemical-weapons-convention

	Review of the treaty are held in special sessions, to undertake review "of the operation" of the convention. The review conferences were to be held after the 5th and 10th year of the entry into force. "At intervals of five years thereafter, unless otherwise decided upon, further sessions of the Conference shall be convened with the same objective." [Art. VIII (22)]
National implementation (incl. legislation)	Art. VII of the Convention provides for "National implementation measures" – with each state party required to adopt the necessary measures for compliance with the treaty. [Art. VII (1)] State parties shall cooperate and shall "afford the appropriate form of legal assistance to facilitate the implementation of the obligation." [Art. VII (2)] State parties are also to inform the organization as to the legal and administrative measures taken to implement the provisions of the CWC. [Art. VII (5)]
Compliance - Incentives and Sanctions	In regard to the role of the Executive Council in regard to doubts or non-compliance, certain methods have been stipulated in the Convention. These include informing all States Parties, bring it to the attention of the Conference, and making recommendations to the Conference "regarding measures to redress the situation and to ensure compliance". [Art. VIII (36)] Article XII relates to "Measures to address a situation and ensure compliance, including sanctions". Per this provision, the based on the advice of the Executive council for failure to rectify non-compliance, the Conference of Parties can restrict or suspend privileges [Art. XII (2)] In case of "serious damage to the object and purpose of this Convention" including violations of Art. I of the Convention, the Conference may "recommending collective measures to State Parties in conformity with international law" [Art. XII (3)] "The Conference shall, in cases of particular gravity, bring the issue, including relevant information and conclusions, to the attention of the United Nations General Assembly and the United Nations Security Council.' [Art. XII (4)]
Reporting and Inspection	Art. IX of the CWC relates to "Consultation, Cooperation and fact-finding". Details are provided in relation to clarification that may be requested and the procedure for requesting clarifications. Inspection and procedures to challenge inspection are also provided.
Dispute Resolution	The provision on settlement of Disputes includes using the good offices of Executive Council [Art. XIV (3)] States involved in the dispute "shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of the parties' choice, including recourse to appropriate organs of this Convention and, by mutual consent, referral to the International Court of Justice…" [Article XIV (2)] Both the Executive Council and the Conference are separately empowered, subject to UN GA approval, to ask for an advisory opinion from the International Court of Justice. [Art. XIV (5)]

Convention on Cluster Munitions ("CCM")[137]	
Governance body (interpretation, meetings)	Art. 11 stipulates the role and responsibilities of the meeting of state parties. Based on this provision, parties are to meet regularly to "consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention". These matters include "operation and status of this Convention", matters due to reports submitted, international cooperation and assistance, technologies to clear cluster remnants, submissions in regard to compliance and disputes per Art. 8 & 10, as well as submissions in regard to Art. 3 ("storage and stockpile destruction") and Art. 4 ("Clearance and destruction of cluster munition remnants and risk reduction education") [Art.11(1)(a) – (f)] Meetings of the state parties are held annually. [Art.11(2)]
Treaty review conference	Article 12 provides for a review conference five years after the entry into force, and subsequently upon the request of state parties as long as the interval is no less than five years. [Art. 12(1)] Its purpose is to review the "operation and status" of the convention [Art. 12(2)(a)], to consider the need for meetings of state parties per Art. 11, and to take decisions as to the core functions of the treaty (stockpile destruction etc., per Art. 3&4)
National implementation (incl. legislation)	Article 9 relates to national implementation measures and this obligates states to take all legal and administrative measures to ensure compliance, including penal sanctions to prevent violation of treaty In order to support state parties in the implementation of the CCM, the parties agreed to establish an Implementation Support Unit in 2011.[138] This has been functional since 2015.[139] Article 6 – international cooperation and assistance – each state party has the "right to seek and receive assistance". [Art. 6(1)] States may provide material and financial assistance for a range of activities, including removal of cluster munition remnants, and a range of other activities [Art. 6 (3) – (9)] State asking for and receiving this assistance are to facilitate entry of personnel, material and equipment in order to implement the convention [Art. 6 (10)] State parties may also ask for assistance in the creation of a national action plan, including in regard to cluster munition remnants, time taken to clear, education, etc. [Art. 6 (11)(a) – (f)]
Compliance - Incentives and Sanctions	Article 8 – facilitation and clarification of compliance – state parties are to consult and cooperate with each other regarding implementation of convention; request for clarification to be submitted to UNSG in case of questions regarding a state

[137] Full text available at: https://www.clusterconvention.org/the-convention/convention-text/
[138] Second Meeting of States Parties, Beirut, 12-16 September 2011, Final Document, CCM/MSP/2011/5, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/507/82/PDF/N1150782.pdf?OpenElement
[139] For more details on the Implementation Support Unit, see: https://www.clusterconvention.org/isumandate/

Convention on Cluster Munitions ("CCM")[137]	
	party, along with appropriate information, and unfounded requests to be abstained from, to "avoid abuse"; response to be provided in 28 days [Art. 8 (2)]; if unsatisfactory response or no response, then state to forward request to UNSG to place before meeting of state parties, with the right to respond by the requested state. [Art. 8 (3)]; pending meeting of state parties, UNSG may be requested to use good offices to facilitate clarification [Art. 8 (4)]; MSP to first determine whether to consider matter further, and if so, to suggest "ways and means further to clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law." If determination that issue is due to circumstances beyond the control of the requested State Party, MSP may recommend "appropriate measures, including the use of cooperative measures" per Article 6 (which relates to international cooperation and assistance). [Art. 8 (5)]; Discretion to the MSP to "adopt such other general procedures or specific mechanisms for clarification of compliance, including facts, and resolution of instances of non-compliance with the provisions of this Convention as it deems appropriate." [Art. 8 (6)].
Reporting and Inspection	Article 7 details "Transparency measures" and covers a range of activities. Per this provision, state parties are to report on measures taken in regard to national implementation per Article 9 [Art. 7(1)(a)] State parties are also required to provide information in regard to total cluster munitions, characteristics, status of decommissioning and destruction programs, updates on stockpiles, areas of contamination, risk reduction, international cooperation etc. [Art. 7(1)(b) – (n)] The information is to be updated annually, and this will be provided to all state parties. [Art. 7(2) & (3)]
Dispute Resolution	Article 10 – dispute resolution by consultation, to use negotiation or other means including the meetings of state parties or recourse to ICJ. [Art.10 (1)] The Meeting of state Parties may also contribute by "whatever means it deems appropriate" such as good offices and calling on states to commence settlement procedure with recommended time limits. [Art.10 (2)]

Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES")[140]	
Governance body (interpretation, meetings)	The Convention provides for the Conference of the Parties that is to meet not later than two years after the entry into force of the treaty, and subsequently at least every two years for regular meetings, and for extraordinary meetings at the request of 1/3rd of the parties. [Art. XI (1) & (2)]

[140] Full text available at: https://www.cites.org/eng/disc/text.php#XIII

	The purpose of the meetings is for parties to "review the implementation of the convention" and may adopt amendments, enable the secretariat to carry out its functions, consider reports, among other activities listed. [Art. XI (3)(a)-(e)] This includes "…where appropriate, make recommendations for improving the effectiveness of the present Convention." [Art. XI (3)(e)]
Treaty review conference	No specific provision for review conference. Falls within the purview of the Conference of Parties, per Art. XI.
National implementation (incl. legislation)	Based on the requirements of Art. VIII, which include reports on "legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention", the CITES secretariat has been empowered to establish a "National legislation project", which includes support to state parties in matters such as drafting legislation etc.[141] The resolution details powers for the national legislative project and half of the state parties do not have sufficient changes in national legislation. Per the provisions of Article XIV in regard to the "Effect on Domestic legislation and International Conventions", the state parties may adopt stricter domestic measures in regard to conditions for trade relating to CITES, as well as on restricting trade for species not included in the annexes.
Compliance - Incentives and Sanctions	Based on Art. XIII, preparation of the CITES Guide on Compliance Procedures.[142] This details the aims and objectives of compliance, as well as the approach, which is "supportive and non-adversarial approach is taken towards compliance matters, with the aim of ensuring long-term compliance." (para. 3) The roles of the Standing Committee, the Conference of Parties and the secretariat in compliance matters are detailed. In the measures to achieve compliance, which is a non-exhaustive list, these include special reporting from the party, capacity building support, a written caution, in country assistance and a verification mission based on state party invitation, issuance of a warning regarding non-compliance and requesting a compliance action plan. [Para. 29 (a) – (h)] There is also provision for suspension of commercial or all trade in specimens listed by CITES, in case which are "unresolved and persistent and the Party is showing no intention to achieve compliance". A recommendation to suspend trade is "specifically and explicitly based on the Convention and on any applicable Resolutions of the Conference of the Parties." [Para. 30] At the most recent Conference of State Parties, a new "Compliance Assistance Program (CAP)" has been commenced for those facing persistent compliance challenges.[143]
Reporting and Inspection	Article XIII of CITES relates to "International Measures", by which if there is information that there is adverse trade in the species listed or lack of effective implementation of the convention, this shall be communicated by the secretariat

[141] Resolution Conf. 8.4 (Rev. CoP15), "National laws for implementation of the Convention", available at: https://cites.org/eng/res/08/08-04R15.php
[142] Resolution Conf. 14.3, "Annex: Guide to CITES compliance procedures" (Rev. CoP18), available at: https://cites.org/sites/default/files/document/E-Res-14-03-R18.pdf
[143] Decision 18.69, Resolution Conf. 4.6, "Compliance Assistance Program" (Rev. CoP18), available at: https://cites.org/sites/default/files/eng/dec/valid18/E18-Dec.pdf

	to the state party. On receipt of this communication, the state party shall inform the secretariat of the relevant facts and propose remedial action if needed. If the state considers an inquiry is necessary, this may be carried out by those expressly authorized by the state party. Information provided by the party at either of these stages will be reviewed by the next conference of parties to take action it sees fit. "Triggering Article XIII is considered to be a serious indication of apparent systemic or structural problems with the implementation and enforcement of the Convention. An Article XIII process will often include an inquiry being carried out by the Secretariat in the country concerned, upon invitation from the Party, leading to detailed recommendations being made by the Secretariat on actions to be taken by the Party. Such recommendations will cover all issues relevant for the effective implementation of the Convention. A number of Parties have been or are subject to an Article XIII process. Parties currently subject to the Article XIII process are the following: The Democratic Republic of Congo, Guinea, Lao People's Democratic Republic, Madagascar and Nigeria."[144] The secretariat also has a specific mandate per Art. XII (2)(d) to study the reports of Parties and to request additional information "necessary to ensure implementation" of the Convention Per Art. VIII (7), periodic reports on implementation of the Convention are to be prepared by the state parties, transmitted to the Secretariat, and this is to include a biennial report on "legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention."
Dispute Resolution	Article XVIII pertains to dispute resolution. Any dispute between parties relating to interpretation or application of the treaty shall be resolved by negotiation, and in case of a failure of negotiation, then the dispute shall be submitted to arbitration by mutual consent (in particular, to the Permanent Court of Arbitration in the Hague). Parties shall be bound by the arbitral decision.

The Paris Agreement, 2015[145]	
Governance body (interpretation, meetings)	Per Article 2 (1) of the Paris Agreement, it is meant to enhance the implementation of the United Nations Framework Convention on Climate Change ("Climate Change Convention"), aiming to "strengthen the global response to the threat of climate change…" The "supreme body" of the Climate Change Convention – the Conference of Parties – serves as the meeting of states parties for the Paris Agreement. [Art. 16 (1)] The first Conference of Parties of the Climate Change Convention after the entry into force of the Paris Agreement was to serve as the meeting of states parties, and

[144] See, CITES Compliance Procedures, available at: https://cites.org/eng/prog/compliance
[145] Full text available at: https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement

	subsequent ordinary sessions of the meeting of states parties are to be held alongside the Conference of Parties of the Climate Change Convention. [Art. 16 (6)] Amendments to the Paris Agreement, shall follow the provisions of Art. 15 of the Climate Change Convention, mutatis mutandis. [Art. 22] Per Article 15 of the Climate Change Convention, any party may propose an amendment, which is to be adopted at an ordinary session of the Conference of Parties, with six months advance notice of the proposed amendment. Every effort at consensus shall be made, failing which an amendment can be adopted by 3/4th members present and voting.
Treaty review conference	The "Global Stocktake" meant to periodically take stock of the Paris Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals. This is undertaken the Conference of Parties serving as the meeting of the states parties to the Paris Agreement. [Art. 14 (1)] The first global stocktake is scheduled for 2023, and every five years thereafter, unless decided otherwise. The outcome of this process shall determine national implementation and global cooperation. [Art. 14 (2) & (3)] This in effect serves the same purpose as a treaty review conference.
National implementation (incl. legislation)	Article 13 provides for an enhanced transparency framework for action and support, "[I]n order to build mutual trust and confidence and to promote effective implementation,.." with flexibility taking into account different capacities and building on collective experience. [Art. 13(1)] The framework "shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities." [Art. 13(2)]
Compliance - Incentives and Sanctions	The Paris Agreement establishes a "mechanism to facilitate implementation of and promote compliance with the provisions". [Art. 15 (1)] This Mechanism consists of an expert committee, which is facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties. [Art. 15 (2)] The Conference of Parties adopts the working modalities working as the meeting of the parties and the mechanism shall report annually to it. [Art. 15 (3)] There are various provisions in the Paris Agreement that relate to cooperation and assistance. Art. 7 relates to international cooperation facilitation by various means, including information sharing, strengthening institutional arrangements, scientific knowledge, assisting developing countries. [Art. 7 (7)(a) – (e)] Article 9 specifically provides that "Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation."

	Art. 11 relates to cooperation and provides that all parties are to "cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties." [Art. 11(3)] All parties are to enhance developing country capacity by regional, bilateral and multilateral approaches, and regular communication in this regard. [Art. 11(4)]
Reporting and Inspection	All parties are obligated to provide information regularly in regard to an inventory on emissions, information regarding progress made on implementation on 'nationally determined contributions. [Art. 13 (7)] Such information shall undergo a "technical expert review", and for developing countries this will "include assistance in identifying capacity-building needs". [Art. 13 (11)] The review is to identify areas for improvement and consistency of information, keeping in mind flexibility in the agreement. [Art. 13 (12)] Developing countries are to be provided support in the implementation of this provision. [Art. 13 (14)]
Dispute Resolution	Settlement of disputes, per Article 24 of the Paris Agreement, is to be determined by the provision in the Climate Change Convention, Art. 14. Per Art. 14 of the Climate Change Convention, disputes shall be settled through negotiation or other peaceful means. If after twelve months of the notification of dispute, and it has not been settled, the dispute shall be submitted to conciliation. A conciliation commission shall be created upon the request of one of the parties. The commission shall render a recommendatory award, which the parties shall consider in good faith.

Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol")[146]	
Governance body (interpretation, meetings)	The Meeting of the Parties is the governance body for the treaty and the parties to the Protocol meet once a year to make decisions, aimed at ensuring the successful implementation of the protocol. [Art. 11] Meetings of the Parties are held in conjunction with meetings of the Conference of the Parties to the Convention. There is also provision for extraordinary meetings of the Parties, if deemed necessary and in line with the modalities provided. [Art. 11(2)] Art. 11(4): "The functions of the meetings of the Parties shall be to: (a) Review the implementation of this Protocol;…"

[146] Full text available at: https://treaties.un.org/doc/publication/unts/volume%201522/volume-1522-i-26369-english.pdf

Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol")[146]	
Treaty review conference	Montreal Protocol sits under the Vienna Convention for the Protection of the Ozone Layer (the 'Vienna Convention').[147]
National implementation (incl. legislation)	The Montreal Protocol has detailed provisions relating to exchange of information and cooperation in this regard [Art. 9] There is also the requirement of submission of a summary of activities to the secretariat within two years of the treaty entering into force, and every two years thereafter. [Art. 9(3)] Another innovation is the Financial mechanism, based on Article 10 of the Protocol, in order to "co-operate in promoting technical assistance to facilitate participation in and implementation of this Protocol." Based on this, The Multilateral Fund for the Implementation of the Montreal Protocol was established in 1991, under Article 10 (6) of the treaty.[148] The aim of the Multilateral Fund is to facilitate compliance with the Protocol by means of implementing agencies cooperation etc.[149]
Compliance - Incentives and Sanctions	Article 8 – Non-compliance: "The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance." A detailed "non-compliance procedure"[150] has been delineated and as well as measures in case of non-compliance. The "Indicative list of measures in case of non-compliance"[151] permits: (a) appropriate assistance, information sharing, etc.; (b) issuing cautions; (c) suspension of specific rights and privileges under the protocol. The Non-compliance procedure provides great detail as to the steps to be taken in case of complaints of non-compliance. It also set up the "Implementation Committee", which reviews complaints of violations per the non-compliance procedure. This may include information gathering on the territory of a state party (Para. 7 (e), Non-Compliance Procedure) The Implementation Committee reports to the Meeting of the Parties (Para. 9, Non-Compliance Procedure)

[147] The Vienna Convention for the Protection of the Ozone Layer, https://ozone.unep.org/treaties/vienna-convention/vienna-convention-protection-ozone-layer
[148] Multilateral Fund for the Implementation of the Montreal Protocol, available at: http://www.multilateralfund.org/default.aspx
[149] "Annex IX: Terms of reference for the Multilateral Fund - Fourth Meeting of the Parties", available at: https://ozone.unep.org/node/2091
[150] "Annex II: Non-compliance procedure (1998)", Tenth Meeting of the Parties, Montreal Protocol available at: https://ozone.unep.org/node/2078
[151] "Annex V: Indicative list of measures that might be taken by a Meeting of the Parties in respect of non-compliance with the Protocol - Fourth Meeting of the Parties", Montreal Protocol, available at: https://ozone.unep.org/node/2078

Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol")[146]	
Reporting and Inspection	Article 7 provides obligations as to the reporting of data within three months of becoming a party, relating to "production, imports and exports of each of the controlled substances" or best estimates of the data if it is not available. [Art. 7(1)] The data provision is directly corelated to the aims of the Protocol.
Dispute Resolution	There are no reservations permitted to the treaty. [Art. 18] The dispute settlement provision in Article 11 of the Vienna Convention applies to the Montreal Protocol by virtue of Art. 11(6): "The provisions of this Article shall apply with respect to any protocol except as provided in the protocol concerned." Article 11 of the Vienna Convention provides for negotiation, mediation, arbitration and recourse to the International Court of Justice. There also may be the creation of a conciliation commission at the request of one party to the dispute, under certain conditions.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture" or "CAT")[152]	
Governance body (interpretation, meetings)	Meeting of state parties takes place on a biennial basis. [Art. 17] The Committee against Torture consists of ten experts serving in personal capacity, elected by state parties for a 4-year term. Elections are held at the biennial meetings of States Parties [Art. 17 (1) & (3)] The Committee Against Torture meets twice a year in Geneva usually, in May and November. The functions of the Committee Against Torture include consideration of reports from states and the ability to comment on these reports, and interpretation of the convention. [Art. 19] Any amendments to the convention may be considered and voted upon by a conference of states parties. [Art. 29(1)]
Treaty review conference	No provision for a review conference – however amendments may be considered by a conference of states parties. [Art. 29(1)]
National implementation (incl. legislation)	Specific provisions in regard to the exercise of jurisdiction (Art. 5), as well as the obligation to undertake a preliminary inquiry into the facts in case of allegations of a potential offender from another country on the territory of the state party (Art.

[152] Full text available at: https://www.ohchr.org/en/professionalinterest/pages/cat.aspx

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture" or "CAT")[152]	
	6), and matters related to extradition (Art. 7 & 8), and the cooperation between states including the sharing of evidence (Art. 9). There are specific obligations in the treaty that need to be incorporated into domestic law – these include the training of law enforcement personnel and others involved in detention activities (Art. 10); review of interrogation rules and practices, and conditions of detention (Art. 11); prompt and impartial investigation into allegations of torture (Art. 12); the right to complain and have the case heard (Art. 13); the right to redress and the enforceable right to fair compensation and rehabilitation (Art. 14); and ruling out the use of statements made as a result of torture in any proceedings (Art. 15) The review process detailed in Article 19 is an opportunity for states to highlight national implementation and the various plans undertaken to ensure incorporation of the obligations into domestic law (if not directly applicable)
Compliance - Incentives and Sanctions	Article 21 provides for recognition of the competence of the Committee by one state party in relation to communications that may be brought against it by another state party. The provision provides details of the procedure in such an instance. This inter-state mechanism has not been used. Article 22 enables a state party to recognize the competence of the Committee to "receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention." The provision details the procedure for such consideration.
Reporting and Inspection	CAT provides for regular reporting by states, as well as cooperation, and also a role for an inquiry procedure by the Committee on Torture. [Art. 19 & 20] Within one year of the entry into force, state parties are to provide "reports on the measures they have taken to give effect to their undertakings under this Convention…" Subsequently, they are required to provide supplementary report every four years on new measures and 'such other reports' as the committee may require. These reports are transmitted to all state parties, and the committee can make comments to which the state can respond. These can be included by the committee in annual report. [Art. 19] The review process is seen as a dialogue process to effect positive change and compliance with the obligations of the convention. Per Art. 20, if there are well-founded indications of systematic practice of torture in the territory of a State Party, the Committee invites co-operate in the examination of the information and for the state to submit observations in this regard. If warranted, members may be designated to undertake a confidential inquiry and to report to the Committee. For this purpose, cooperation of the state party shall be sought, and the inquiry may include a visit to the territory. The proceedings are confidential and at all stages "co-operation of the State Party shall be sought." The findings can be included in summary after discussion with state in question. However, Art. 28 provides that at the time of signature or ratification, a state may declare that it does not recognize the competence of the committee for

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture" or "CAT")[152]	
	the purposes of Art. 20. This would mean the inability of the Committee to conduct such inquiries in respect of these states. Details on the Art. 20 inquiry process are available on the Committee's website.[153] Article 9 provides for the obligation of assistance and cooperation – "States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences…" The Optional Protocol to the CAT provides for a system of regular visits in order to prevent torture.[154] (This protocol however is not the subject of further analysis here)
Dispute Resolution	Any dispute regarding the interpretation or application of the Convention which "cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court." [Art. 30]

International Convention on the Elimination of All Forms of Racial Discrimination ("CERD")[155]	
Governance body (interpretation, meetings)	Meeting of state parties takes place on a biennial basis usually, and is responsible for the election of members of the Committee on the Elimination of Racial Discrimination ("Committee"). The Committee consists of eighteen experts serving in personal capacity, elected by state parties for a 4 year term. Elections are held at the biennial meetings of States Parties. [Art. 8]
Treaty review conference	No provision for a review conference
National implementation (incl. legislation)	The Convention places obligations on the states parties to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination", and to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;" [Art. 2(1) (c)& (d)] All within the jurisdiction of the state party must be assures of effective remedies through tribunals and state institutions. [Art. 6]

[153] https://www.ohchr.org/EN/HRBodies/CAT/Pages/InquiryProcedure.aspx
[154] https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx
[155] Full text available at: https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx

International Convention on the Elimination of All Forms of Racial Discrimination ("CERD")[155]	
Compliance - Incentives and Sanctions	Article 11 of CERD provides for recognition of the competence of the Committee by one state party in relation to communications that may be brought against it by another state party. The provision provides details of the procedure in such an instance which includes written explanation by the state, and if the matter is not settled, bilateral negotiations or other procedures. This inter-state mechanism has recently been used for the first time, in three cases: State of Qatar vs. Kingdom of Saudi Arabia; State of Qatar vs. United Arab Emirates and, the State of Palestine vs. State of Israel.[156] Article 14 of CERD enables a state party to recognize the competence of the Committee to "receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention", on the basis of a declaration. The provision details the procedure for such consideration.
Reporting and Inspection	CERD provides for regular reporting by states as to the legislative, judicial, administrative or other measures that they have adopted in order to implement the convention. The first report is to be submitted within one year of the entry into force, and after that, to provide a supplementary report every two years and whenever the Committee may request. [Art. 9 (1)].
Dispute Resolution	CERD provides a options in regard to dispute resolution, starting with the appointment of an ad hoc conciliation commission of five (who may or may not be part of the Committee). They are appointed on the basis of consent of the states concerned, and to reach an amicable settlement. In case there is disagreement on the composition of the conciliation commission, secret ballot shall be used to elect the members. [Art. 12(1)] The Commission shall consider the matter and submit a report to the Chairman of the Committee with findings on questions of fact, as well as recommendations. This shall be then communicated to the state parties to the dispute who shall indicate their acceptance or not, within three months. [Art. 13 (1) & (2)] Per Article 22, any dispute regarding the "interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

[156] For details, including decisions, see: https://www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx

Rome Statute of the International Criminal Court ("Rome Statute")[157]	
Governance body (interpretation, meetings)	Per Article 112 of the Rome Statute, the Assembly of States Parties ('ASP')[158] is the management oversight and legislative body of the International Criminal Court ('ICC'). The ASP meets once a year at UNHQ to take up matters relating to the functioning of the court and may also hold special sessions if required. [Art. 112 (6)] It should also be noted that the Judges of the ICC also have a role to play in interpretation, of the law and in regard to the proceedings before the court. But for the purposes of the treaty, the ASP is the decision-making body.
Treaty review conference	Article 123 of the Rome Statute provides for review conferences. The first was held in Kampala in 2010 to consider amendments to the treaty, in keeping with Art. 123 (1). Such a review conference may be requested by a state party subsequently, and if approved by a majority, shall be convened by the UN Secretary-General. [Art. 123(2)]
National implementation (incl. legislation)	The Rome Statute stipulates the obligation to ensure procedures available under national law for all the form of cooperation that have been specified. [Article 88, Availability of procedures under national law]
Compliance - Incentives and Sanctions	There is general obligation to "cooperate fully with the Court in its investigation and prosecution of crimes", per Article 86. When there are requests for cooperation, and a state party fails to comply contrary to the statute, "the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council." [Art. 87(7)] Clearly, failure to cooperate per the Rome Statute is a failure of compliance, and the provision may be viewed as a form of legal sanction. To note, the UNSC has the power to refer matters to the ICC, per Art. 13(b), which is why a matter may be sent to it in case of non-compliance. In specific cases, where a state has been asked to provide certain information or assistance, and if there are problems in complying, "that State shall consult with the Court without delay in order to resolve the matter." [Art. 97, Consultation] The manner of impediments are also stipulated in the provision. The Rome Statute provides the ASP "shall consider" any question relating to non-cooperation (relating to those non-party states that have entered into *ad hoc* agreements for cooperation or those that fail to cooperate, pursuant to Art. 87(5) & (7). [Article 112(2)(f)]

[157] Full text available at: https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf
[158] For more details on the Assembly of States Parties, see: https://asp.icc-cpi.int/en_menus/asp/assembly/Pages/assembly.aspx

Rome Statute of the International Criminal Court ("Rome Statute")[157]	
Reporting and Inspection	There are no provisions for reporting or inspection *per se*.
Dispute Resolution	Article 119 relates to the Settlement of disputes Disputes relating to judicial functions of the court are settled by the court [Art. 119 (1)] Disputes between states relating to the interpretation of the statute, if not settled by negotiation in three months, are to be referred to the ASP. The ASP could seek to settle the dispute or refer it to other modes of settlement, including the International Court of Justice. [Art. 119 (2)]