

World view



By Alexandra L. Phelan

How climate law can help to prevent the next pandemic

Countries seeking to effect real changes in global health can learn from climate treaties.

Two of the biggest crises humanity faces – pandemics and climate change – are intertwined. Climate change boosts many health risks, including the likelihood that new viruses will spill over to cause dangerous outbreaks. But although efforts to control climate change are bolstered by a network of international treaties and legal agreements, such tools have not been fully applied to global health. Those gathering for the World Health Assembly in Geneva later this month should push to change this.

I am a lawyer and researcher specializing in the governance of pandemics and climate change. I've seen international lawmaking produce political commitments such as national emissions targets. Since 1992, a network of treaties, including the United Nations Framework Convention on Climate Change (UNFCCC), have erected protocols to build consensus. Progress has been slow, but real.

This is exemplified by the 2015 Paris Agreement. Yes, it is inadequate: countries set their own, non-binding targets. Nonetheless, presidents and prime ministers have made pledges to reduce emissions and are now publicly accountable. Countries have also explicitly recognized that changes in climate (such as extreme heat, droughts and flooding) can infringe on the right to health by contributing to crop failure, infectious diseases and other disasters. The agreement captured political momentum to get countries to make prominent commitments that increase over time.

Pandemics lack any equivalent scaffolding to support complex global cooperation. The International Health Regulations, which were last reworked in 2005, have significant gaps. Although they are legally binding, enforcement is weak and they are largely ignored. The global health community, often loath to seem 'political', has underused the potential of international law to build compliance norms.

In 2021, the World Health Organization's member states established a formal negotiating body to explore international law for pandemic prevention, preparedness and response. When it sought input last month, I made two points. First, that pandemic law should engage countries' existing legal obligations by acknowledging how climate change will exacerbate outbreaks. Second, that a pandemic treaty could be modelled on climate law to make countries transparent in and accountable for reaching commitments. The specifics – of viral surveillance, information sharing and so on – are less urgent than the process, with one exception. Pandemic law should learn from failures of climate law, and ensure that attention is paid to justice and equity across and within countries.

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The UNFCCC was written to spur action. A framework convention is a treaty that sets out high-level, legally binding principles and obligations to support faster negotiation and adoption. It can distil political momentum into national commitments, including governance structures and processes. It also allows for protocols, such as the Kyoto Protocol or Paris Agreement, that can be refined in parallel or over time, so negotiators can build on past progress and create detailed obligations for specific issues, such as technology transfer or equitable vaccine distribution.

The power of the UNFCCC lies in how it establishes institutions and processes to support collective action and accountability. Conferences of parties (COPs) are the clearest example. Recall how COP26 in Glasgow last year captured the world's attention and pushed leaders to set more-ambitious goals. COPs exist to assess, clarify and reiterate obligations. Non-governmental organizations, advocacy organizations and other components of civil society use COPs to hold governments accountable. Citizens can also hold governments to account for failures to take sufficient action, as is happening with class action climate lawsuits in more than 35 nations. Indeed, the fact that there are so many strong global public-health organizations could make such mechanisms more powerful.

The key point is not to look at any single treaty, accord or policy as the outcome – there have been so many disappointments. We should look at how these mechanisms function together. Financing and capacity building are key to efficacy under the UNFCCC, the Paris Agreement and decisions of the COPs. Accountability and transparency is also crucial. Pandemic law must, for example, protect the rights of whistle-blowers, including health workers.

Better than punitive measures, which can erode cooperation, are mechanisms to encourage compliance. For instance, the compliance committee established by the Paris Agreement helps countries to make progress on emissions targets by identifying non-compliance, providing expert guidance on requirements and deadlines, and enforcing plans.

The Intergovernmental Panel on Climate Change produces regular reports that provide reliable updates and syntheses of available evidence. Similarly, an effective pandemic treaty would establish an independent process for collecting and synthesizing scientific evidence for preparedness and response. This would guide investments in building capacity and developing technologies, and would inform policy for mitigating outbreaks.

International climate law is far from sufficient: countries have not yet lowered emissions enough to avoid a hotter and sicker world. But they have enabled climate action. Any pandemic treaty will be imperfect. But taking difficult, imperfect steps is the only way to build momentum.