
Effective Global Action on Antibiotic Resistance Requires Careful Consideration of Convening Forums

Zain Rizvi and Steven J. Hoffman

Introduction

The nature and effectiveness of any international legal agreement is heavily shaped by the forum in which it is negotiated and implemented.¹ This includes both the substantive content that global policymakers agree upon and the subsequent state compliance with those provisions. Forums differ in their institutional characteristics, thereby providing unique opportunities and costs for participating actors. Forums may have different mandates, capacities, cultures, members, and legal processes — all of which ultimately affect distributions of power and influence.² These differences then shape how issues are framed, the content of agreements as they are negotiated, and the incentives states have to comply with any obligations.

Academics and policymakers have called for global collective action to address the transnational challenge of antibiotic resistance (ABR), including the adoption of an international legal agreement to facilitate it.³ The use of international law — which formally represents the strongest possible mechanism through which states can commit to each other — is justified by the interdependencies across countries and needed actions on access, conservation, and innovation for antibiotics.⁴

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But through which forum should such a law be negotiated and implemented? While much has been written about *what* must be done to address ABR, far less work has analyzed *how* or *where* such collective action should be facilitated — even though the success of any international agreement on ABR depends greatly on how negotiations are convened and where the agreement is adopted.

This article evaluates the strengths and weaknesses of different global political forums that may be used to develop an international legal agreement for ABR. Based on existing mandates and legal authority, at least four forums seem plausible for developing such an agreement: (1) a self-organized venue; (2) the World Health Organization (WHO); (3) the World Trade Organization (WTO); and (4) the United Nations General Assembly (UNGA).

Of course, if adopted, any international legal agreement could be complemented by non-legal initiatives pursued through other institutions. These could include the development of an analogous institution to the Global Fund to Fight AIDS, Tuberculosis & Malaria, specifically for funding antibiotic access, conservation, and innovation initiatives. With this in mind, this article focuses on one component of the broader global response needed for ABR — that of an international legal agreement.

Forum 1: Self-Organized Venue

One route available to states is the adoption of an independent multilateral legal agreement, without the involvement of any formally constituted intergovernmental organizations. For example, the G7 or the Oslo-7 Foreign Policy and Global Health countries represent groupings that could perhaps act together, coordinating efforts using an international legal agree-

ment. Indeed, ABR was identified as a “key issue” for the 2015 G7 summit in Schloss Elmau, Germany and featured prominently in the communiqué.⁵

The flexibility afforded by an independent agreement is a key strength: by organizing a smaller group of like-minded states, conveners can ensure that provisions are meaningful, comprehensive, and not watered down to the lowest common denominator due to a need for consensus across scores of countries. The success of any early agreement with a smaller

Forum 2: World Health Organization

WHO could serve as a forum for an international legal agreement on ABR, either through the modification of its existing International Health Regulations (IHR) or the adoption of a new international legal agreement.

Revising the International Health Regulations

Binding on 196 states,⁶ the IHR could be a legal mechanism for states to promote collective action on ABR. As proposed, the emergence of resistant bac-

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group of states could also generate momentum for greater global action among larger groups of states. Bold efforts by the G7, for example, could lead to further mobilization by the G20, G77, regional bodies, and/or other groups. Additionally, independent action by the G7 could significantly address at least one part of the ABR challenge — the innovation deficit — given that their collective contributions to health research and development (R&D) represent such a large proportion of the world’s total investment in the area. Although admittedly, focused action on innovation (to the exclusion of action on access to and conservation of antibiotics) would not require an international legal agreement.

A self-organized international legal agreement may be promising, but without early institutional buy-in and support, it may be difficult to mobilize a wide cross-section of states towards collective action. There may be questions of legitimacy, particularly given the sensitive nature of an ABR agreement. In the long run, addressing gaps in antibiotic access, conservation, and innovation probably require a near-universal effort, such that an independent multilateral legal agreement could only be a stepping-stone at best. Nonetheless, robust efforts of a small group of states like the G7 could provide a strong catalyst for broader global action.

teria could be considered a public health emergency of international concern, which would require states to notify WHO of its occurrence.⁷ More ambitiously, the IHR could be revised to require additional state actions that address the threat of ABR.

The primary advantage with this option is that the IHR already exists; reinterpreting or revising it would not require the approval of domestic parliaments and congresses. The disadvantage is that the IHR was primarily crafted to support disease surveillance and response.⁸ Issues of access, conservation, and innovation — all vital to a global ABR strategy — would effectively remain unaddressed within this limited framework. Although the IHR could be used to bolster surveillance and response capacities as part of a broader, multi-pronged effort, state compliance with the IHR has thus far been relatively poor,⁹ limiting its potential as an implementation vehicle. Most disconcerting is the political challenge: the recent IHR revisions in 2005 were highly contentious and resulted in a delicately balanced agreement; revising the agreement may result in states wanting to renegotiate a host of complex and divisive issues.

Adopting a New Legal Agreement

Alternatively, the World Health Assembly (WHA) could develop one of two types of legal agreements. The first, enabled by Article 21 of WHO's constitution, allows the WHA to enact regulations on certain matters that become automatically binding on all WHO member states, unless a state affirmatively chooses to opt-out.¹⁰ Second, the WHA can develop a new international legal agreement under Article 19 of the organization's constitution, which enables the adoption of conventions with a two-thirds vote.¹¹ These conventions become binding once states ratify them through their respective national processes. This approach was used for WHO's Framework Convention on Tobacco Control (FCTC).¹²

An Article 21 WHO regulation has many of the same advantages and disadvantages as a WHO convention under Article 19; the forum is effectively the same. However, unlike a convention, the WHA can only enact regulations on specific issues. The most relevant in this case are regulations on "sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease."¹³ Regulations on ABR could be construed as "other procedures." However, the WHA has historically been reluctant to introduce new regulations, choosing instead to issue non-binding recommendations to address topics such as quality control of medicines, breast-milk substitutes, and malaria control.¹⁴ If introduced, an ABR regulation would have the advantage of legislating without positive consent, binding states unless they take action to opt-out.

As a whole, WHO's strength as a forum is based on its mandate of promoting human health. It intuitively makes sense to convene an agreement with significant consequences for human health under the auspices of the coordinating authority on global health. WHO is controlled by member states, it is generally regarded as a legitimate entity, and it may appeal to states as a natural forum for taking action on ABR.

But WHO has also recently faced difficulty in fulfilling its existing mandate due to resource-constraints, a situation which seems unlikely to change in the near future given the intractability of its governance challenges.¹⁵ ABR is also vitally linked to issues strictly beyond human health, including agriculture and trade. These limitations become acute when considering the political capital required to push for a new international legal agreement through WHO, an organization historically averse to utilizing international law. Moreover, even if the negotiation process was initiated, the institutional culture of WHO could make drafting a meaningful instrument difficult. Effective legal instruments require strong compliance mecha-

nisms.¹⁶ WHO's primary legal instruments — the IHR and FCTC — contain weak accountability mechanisms that rely on the willingness of states to comply.¹⁷

Forum 3: World Trade Organization

WTO could also serve as a forum for the development of an international legal agreement addressing ABR. Two avenues could be pursued.

First, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) — which sets rules for food safety and animal health standards — could be used to bolster conservation efforts.¹⁸ In fact, certain states have already imposed unilateral trade restrictions over concerns about levels of antibiotic residues on products.¹⁹ A more global effort would likely require strengthening of the standards set by the Codex Alimentarius Commission, which establish the normative platform for the SPS Agreement.²⁰

Second, WTO could develop a new international legal agreement specific to ABR. Issues involving agriculture, innovation, and trade are all within the purview of WTO's mandate.

Using WTO as a forum could benefit from the organization's culture of compliance and the strength of its existing dispute resolution mechanisms.²¹ WTO is widely heralded as an institution in which international law actually matters. Moreover, some momentum for collective action on ABR has been generated by the unilateral actions already taken by some states.

However, WTO's narrow mandate as it relates to ABR would pose challenges. Focused on agriculture, innovation, and trade, states may have different understandings of ABR, leading to uncomfortable trade-offs and compromises that would not be taken in less politically charged forums (e.g., issues surrounding access to medicines). This is particularly concerning given the history of prominent power differentials and inequalities of political influence among states at the WTO.²²

Forum 4: United Nations General Assembly

States could alternatively choose UNGA as a convening forum for a new international ABR legal agreement. The primary strength of UNGA is that it is a senior, high-profile, general jurisdiction intergovernmental forum. The negotiation of an ABR legal agreement at UNGA could place it higher on the global political agenda. This increased attention and engagement by global policymakers could increase the prioritization of ABR within domestic settings, increasing the likelihood that the agreement will be implemented.

The senior status of UNGA also extends across the UN system and other IGOs. It could be easier to facili-

tate collaboration on ABR among sister agencies with the leadership of UNGA. Though WHO is nominally the UN's coordinating health authority, the creation of both UNAIDS and the UN Mission for Ebola Emergency Response — and the expansion of health activities at UNICEF, UNFPA and others — demonstrate that this capability is often limited in practice. UNGA

drivers of ABR and appropriate responses — often raised by the agriculture sector — could also be marginalized given the minimal representation of those sectors.²³

But the measure of success for an international legal agreement is not only the strength of the text as written, but also how its provisions are implemented at a national level and how they actually influence state behavior.²⁴ Exclusively empowering the human health sector at the global level would likely fail to influence state behavior sufficiently to address ABR, primarily because it would not engender the type of multisectoral response that is needed.²⁵ It would fail to engage the national agricultural and trade sectors, which may have vastly different worldviews and priorities (e.g., food security and economic development). Convincing only Ministers of Health would probably not be enough. Ministers of Health often hold little influence in national political systems such that it can be difficult for them to persuade other officials, like Heads of Government and Ministers of Trade. And as was demonstrated in the early response to HIV/AIDS and the current response to non-communicable diseases, Ministers of Health are often “wary that multisectoralism [will] take power and money away from them.”²⁶

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has acted before on health matters, including convening special sessions on HIV/AIDS (2001, 2006, 2011), non-communicable diseases (2011, 2014), and Ebola (2014).

But an increased role for UNGA in adopting international legal agreements on health issues might also lead to fragmentation and duplication. Overlapping authority may result in inefficiencies and a lack of accountability. Furthermore, although UNGA has increasingly responded to health issues, ABR might be seen as a technical “Geneva issue,” falling within WHO's mandate, rather than a “New York issue” that may be addressed at UNGA. ABR would also have to compete with the traditional concerns tabled at UNGA related to peace, security and development, perhaps making it difficult to get traction.

Discussion

These four different forums for implementing an international ABR legal agreement present unique opportunities and challenges, particularly because of the multisectoral nature of the issue. Nonetheless, due to ABR's significant consequences for human health, many in the global health community see WHO as the natural convener. Indeed, with human health as the primary focus, like-minded Ministers of Health may make more ambitious legal commitments at WHO. Difficult questions regarding the

Engaging all relevant stakeholders at the global level – or at least having their concerns represented – is thus imperative to the success of an international legal agreement addressing ABR. A self-organized coalition of states (e.g., G7), WTO and UNGA could all facilitate inclusive discussions with a range of actors from agriculture, trade, and health, potentially leading to greater policy coherence and a more effective multisectoral response. UNGA has the added advantage of greater legitimacy, higher visibility, and broader participation. Including a range of stakeholders in the negotiating process may help avoid making the proposed international ABR legal agreement a document that is not a reflection of actual state interests and legal commitments but of aspirations – as some have claimed of WHO's FCTC.²⁷ Indeed, some state delegations made commitments during the FCTC negotiation process that went against the official positions of their national governments.²⁸

Still, WHO possesses both an inherent legitimacy and technical expertise that could be leveraged to coordinate the world's response to ABR. Its power of enacting binding regulations without positive consent is also unique among forums.

Conclusion

The complexity of both the issue of ABR and the institutional landscape suggest that an effective response may best be coordinated through multiple fora. Many of the particular challenges associated with each forum could be addressed by harnessing linkages between them. An analysis of the different permutations of forums that are possible is beyond the scope of this article, but it seems at first glance that pursuing an international legal agreement simultaneously through both WHO and UNGA represents a promising strategy. For example, UNGA could be used to develop momentum and gain higher-level political attention for a WHO regulation; or alternatively, UNGA could develop an international ABR legal agreement that delegated technical responsibilities to WHO, addressing claims of fragmentation and potentially enabling greater prioritization of health concerns. Such references would not be unprecedented: the UN-organized Single Convention on Narcotic Drugs (1961) requires that any changes to the list of narcotic substances be made upon WHO's recommendation.²⁹

Ultimately, an effective international legal agreement on ABR will require bold, creative action, along with careful consideration of the competing advantages and disadvantages of potential forums through which it could be pursued.

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- Note that for the purposes of this paper, we assume that compliance is equivalent to effectiveness (i.e., if the states agreed to enact the policies contained within the instrument, they would reduce the threat of ABR).
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