

## The health of international cooperation and UNGA Resolution 74/274

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### 1. *Introduction*

COVID-19 and the unprecedented crisis that it brings offers an opportunity for the strengthening and advancement of international cooperation. States, however, have reacted, at least initially, answering primarily to national interest instead of recognizing a common threat to humanity that calls for a united response.

On 20 April 2020, the United Nations General Assembly (UNGA) adopted resolution 74/274 on ‘International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19.’<sup>1</sup> At a time in which States were acting unilaterally to contain the virus, by invoking international cooperation the UNGA sent an important message. A closer look at the resolution in the global context, however, reveals a worrying photograph of international cooperation, one in which States seem unwilling to commit to coordinated action.

This article will argue that: COVID-19 offers an opportunity to enhance international cooperation (2); States have been unwilling to enhance international cooperation (3); the UN has offered mixed signals (4); UNGA resolution 74/274 is an important statement for the enhancing of international cooperation (5); UNGA resolution 74/274 reveals the poor health of international cooperation (6).

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<sup>1</sup> UNGA Res 74/274 (20 April 2020).



2. *Amidst the horror, hope: COVID-19 as an opportunity to enhance international cooperation*

COVID-19 is the first threat to humankind that demands a contemporaneous and immediate global response.<sup>2</sup> The UN Secretary General (UNSG) defined the historical moment as a ‘global health crisis’ and as a ‘human crisis.’<sup>3</sup> What distinguishes this ‘unprecedented situation’<sup>4</sup> from other similar events in human history is that there seem to be no safe harbours. The issue is no longer one of containing the spread to avoid the virus from entering other States.<sup>5</sup> The issue has become that of containing the virus contemporaneously everywhere and immediately to ensure the livelihoods of our societies. As such, for once in human history, the world tackles a problem that does not see it divided in factions. There is no war opposing the interests of one State to the interests of another. There are no ‘affected’ States as a counterbalance to ‘non-affected’ ones.<sup>6</sup>

While the immediacy and globality of the virus has overwhelmed our social order, forcing humanity to retreat behind closed doors, a focus on the commonality of the threat could be an opportunity for social change for the better.<sup>7</sup> The international community as we know it, based on the principles of sovereignty and of equality of States, is the product of ‘the scourge of war’<sup>8</sup> and the common will of founding a global order to avoid conflict. The virus does not see conflicting States but confronts humanity

<sup>2</sup> While climate change would require an immediate and coordinated global response, as of now it has not been treated as such. It is approached as allowing strategic planning and not emergency responses. See G Thunberg, *No one is Too Small to Make a Difference* (Penguin 2019).

<sup>3</sup> UN Secretary General, ‘Shared Responsibility, Global Solidarity: Responding to the socio-economic impacts of COVID-19’ (March 2020) 1 <<https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf>>.

<sup>4</sup> *ibid* 1.

<sup>5</sup> Cf art 2 of the 2005 International Health Regulations <[www.who.int/ihr/publications/9789241596664/en/](http://www.who.int/ihr/publications/9789241596664/en/)>.

<sup>6</sup> Cf UNSC Res 2176 (15 September 2014); and UNSC Res 2177 (18 September 2014). The SC named the States affected by Ebola.

<sup>7</sup> See UNGA ‘Elements Paper – General Assembly COVID-19 Omnibus Resolution’ (15 May 2020) presented by the Co-coordinators of the GA on COVID-19-related initiatives, 18 May 2020, in which there is a call on Governments and a commitment to ‘build back better.’

<sup>8</sup> Preamble UN Charter.



in its entirety.<sup>9</sup> It is a global concern. As such, the virus could lay a foundational stone for a global society that stems from recognizing humanity as one, based on a ‘we the People’ of the world. The virus could allow a shift in current international law, from a law of coexistence to a law of international cooperation.<sup>10</sup>

However, to reach such change, a political and social plan based on a vision of the world as a unity facing ever multiplying global threats is needed. Such a vision would allow for a global response based on pulling together the strengths of each State and targeting their specific needs.<sup>11</sup> An inspired UNSG recognized and emphasized that we are facing a human problem that calls for a global and coordinated response,<sup>12</sup> for creativity and cooperation for a ‘rebirthing of society as we know it.’<sup>13</sup> The SG’s call to action defines a new kind of international cooperation by setting the common good as a goal common to humanity and not only to States; and thus by directly calling to action all actors, ‘governments, academia, business, employers and workers’ organizations, civil society organizations, communities and individuals,’ toward the common good.<sup>14</sup>

The title of the SG’s plan encapsulates the foundation of his message: ‘Shared Responsibility, Global Solidarity.’ In other words, international cooperation based on the recognition of a common goal; and on the recognition by all actors of their shared responsibility to reach it.

### 3. *Reality: unwillingness of States to enhance international cooperation*

International cooperation has been defined as ‘the effort of States to accomplish an objective by joint action, where the activity of a single State

<sup>9</sup> UN Secretary General, ‘Shared Responsibility, Global Solidarity’ (n 4) 1.

<sup>10</sup> R Wolfrum, ‘International Law of Cooperation’ in Max Planck Encyclopedia of International Law (2010) para 1.

<sup>11</sup> See G Brown, ‘Foreword’ in R Baldwin, SJ Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won’t Work* (2020) (CEPR Press VoxEU.org eBook) ix.

<sup>12</sup> UN Secretary General, ‘Shared Responsibility, Global Solidarity’ (n 4).

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid* 23; Cf UNSG, ‘Secretary-General’s Remarks to the Security Council on Ebola’ (18 September 2014), in which the UNSG refers to States, proposes the creation of an international mission (UNMEEER) and only welcomes aid by the ‘business community’, but does not address it as a responsible actor in the common struggle. Also UNSG, ‘Remarks on Sustainable Development and Climate Change’ (Islamabad, 16 February 2020).

cannot achieve the same result.<sup>15</sup> Accordingly, the duty to cooperate is ‘the obligation to enter into such co-ordinated action so as to achieve a specific goal’ and ‘international organizations represent areas where the duty to co-operate has been established and institutionalized.’<sup>16</sup> Article 1(3) of the UN Charter includes achieving international cooperation amongst the purposes and principles of the UN.

The origin of international cooperation in global health dates back to the 19<sup>th</sup> century, favoured by the interest of States and non-State actors to reduce the interference with international trade caused by national quarantine legislations.<sup>17</sup> States, therefore, convened international sanitary conferences to depart from national quarantine measures.<sup>18</sup> Today, public health is recognized as a purpose for cooperation in the UN Charter<sup>19</sup> and is structured around the World Health Organization (WHO). Pursuant to Article 1 of the WHO Constitution, the objective of the organization is: ‘the attainment by all peoples of the highest possible level of health.’ The Preamble of the WHO Constitution defines health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.’

The normative function on global health is largely concentrated in the WHO.<sup>20</sup> The World Health Assembly is empowered to issue both legally binding regulations and recommendations.<sup>21</sup> To facilitate the effectiveness of international cooperation in global health law, according to Article 22 of the WHO Constitution, regulations enter into force automatically after publication, except for States that exercise the right to opt out.

The (2005) International Health Regulations (IHR) represent a milestone for international cooperation in global health. They originate and substantially depart from the international sanitary conferences and

<sup>15</sup> Wolfrum (n 11) para 2.

<sup>16</sup> *ibid* paras 2 and 4.

<sup>17</sup> MM Mbengue, ‘Public Health, International Cooperation’ in Max Planck Encyclopedia of International Law (2010) para 1; DP Fidler, ‘From International Sanitary Conventions to Global Health Security: The New International Health Regulations’ (2005) 4 *Chinese J Intl L* 325-392, 329.

<sup>18</sup> DP Fidler (n 18) 328-333.

<sup>19</sup> Art 13(b) of the UN Charter.

<sup>20</sup> LO Gostin, MC DeBartolo, R Katz, ‘The Global Health Law Trilogy: Towards a Safer, Healthier, and Fairer World’ (2017) 390 *The Lancet* 1918-1926.

<sup>21</sup> Arts 21, 22 and 23 of the WHO Constitution.



regulations.<sup>22</sup> Their major innovations are that: (1) they regard all diseases instead of including a closed list; (2) they include an early-stage reporting obligation by the State and allow the WHO to use reports from non-State actors alerting on potential health threats; (3) the WHO has the power of declaring a public health emergency of international concern (PHEIC) and to issue targeted recommendations; (4) they define ‘core capacities’ that States must maintain to detect and respond to disease outbreaks.<sup>23</sup> The definition of PHEIC introduces the need for international cooperation at the centre of the system.<sup>24</sup> A PHEIC is, in fact, ‘an extraordinary event which is determined [...]: (i) to constitute a public health risk to other States through the international spread of disease and (ii) to potentially require a coordinated response.’<sup>25</sup>

From this brief overview, it appears that international cooperation in global health law is structured around: (1) the conceptualization of health as a global concern and a common goal; (2) the consequent need for coordinated State action; (3) the need to involve non-State actors.<sup>26</sup> As regards States, this translates into two sets of obligations: (1) a duty to maintain and enhance core capacities and to be vigilant (inward-looking obligation);<sup>27</sup> (2) a duty to coordinate action with other States in case of a PHEIC (outward-looking obligation).<sup>28</sup>

However, through their measures, States have not shown readiness to coordinate their action, let alone to follow the UNSG’s appeal to shift from a logic of conflicting nation-States to a logic of human unity to defeat a common threat. Thus, especially States’ initial reactions to the virus have been unilateral, contradictory, uncoordinated, and disruptive of national and international life.

<sup>22</sup> Gostin, DeBartolo, Katz (n 21) 1920.

<sup>23</sup> I Hunger, ‘Coping with Public Health Emergencies of International Concern’ in HW Maull (ed), *The Rise and Decline of the Post-Cold War International Order* (OUP 2018) 65-84, 68.

<sup>24</sup> Mbengue (n 18) para 19.

<sup>25</sup> Art 1(1) IHR (2005).

<sup>26</sup> See Mbengue (n 18) para 20.

<sup>27</sup> See for example, arts 5, 6, 7, 13 IHR (2005) and also Annexes A and B to the IHR (2005).

<sup>28</sup> See definition of PHEIC in art 1(1) IHR (2005) and art 44 IHR (2005). See also art 13(5) IHR (2005).



Just to mention some examples: Italy stopped all direct flights to and from China, while other EU Member States had not;<sup>29</sup> the US, without consulting the EU or its Member States, banned the entry of non-US citizens who are from or had recently been in any EU country;<sup>30</sup> France and Germany imposed export restrictions, even towards other EU Member States, on personal protective equipment (PPE);<sup>31</sup> the EU elaborated a common plan to procure PPE and allowed export restrictions only toward non-EU States;<sup>32</sup> the UK decided not to adhere to the EU's PPE procurement scheme;<sup>33</sup> Turkey blocked at customs masks already paid for by an Italian company;<sup>34</sup> the US President accuses China for the virus' outbreak,<sup>35</sup> and has suspended funding to the WHO, while severely criticizing it.<sup>36</sup>

Several governments have shown solidarity towards the worst hit States. Russia sent planes with essential medical equipment and specialized doctors to Italy and to the US.<sup>37</sup> China, Albania, Cuba and the US,

<sup>29</sup> L Berberi, 'Coronavirus, l'Italia ferma i voli con la Cina, gli ultimi aerei sono arrivati a Roma e a Milano' *Corriere della Sera* (30 January 2020) <[www.corriere.it](http://www.corriere.it)>.

<sup>30</sup> A Salcedo, S Yar, G Cherelus, 'Coronavirus Travel Restrictions, Across the Globe' *The New York Times* (8 May 2020) <[www.nytimes.com](http://www.nytimes.com)>.

<sup>31</sup> A Tsang, 'E.U. Seeks Solidarity as Nations Restrict Medical Exports' *The New York Times* (7 March 2020) <[www.nytimes.com](http://www.nytimes.com)>.

<sup>32</sup> Commission Implementing Regulation (EU) 2020/402 of 14 March 2020; Commission Implementing Regulation (EU) 2020/568 of 24 April 2020; See 'Overview of the Commission's response', describing 4 joint procurements of PPE and medical device with Member States <[https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/overview-commissions-response\\_en#public-health](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/overview-commissions-response_en#public-health)>.

<sup>33</sup> D Boffey, R Booth, 'UK missed three chances to join EU scheme to bulk-buy PPE' *The Guardian* (13 April 2020) <[www.theguardian.com](http://www.theguardian.com)>.

<sup>34</sup> M Gabanelli, 'Coronavirus, 200 mila mascherine per gli ospedali italiani bloccate ad Ankara da 15 giorni' *Corriere della Sera* (19 marzo 2020) <[www.corriere.it](http://www.corriere.it)>; also G Chazan, 'Germany accuses US of face mask piracy' *Financial Times* (4 April 2020) <[www.ft.com](http://www.ft.com)>.

<sup>35</sup> M Singh, H Davidson, J Borger, 'Trump claims to have evidence coronavirus started in Chinese lab but offers not details' *The Guardian* (1 May 2020) <[www.theguardian.com](http://www.theguardian.com)>.

<sup>36</sup> L Fedor, K Manson, 'Trump suspends funding to the World Health Organization' *Financial Times* (15 April 2020) <[www.ft.com](http://www.ft.com)>.

<sup>37</sup> E Covelli, 'Coronavirus: la Russia invia aiuti all'Italia' *Euronews* (22 March 2020) <[www.it.euronews.com](http://www.it.euronews.com)>; A Troianovski, 'Turning the Tables, Russia Sends Virus Aid to U.S.' *The New York Times* (2 April 2020) <[www.nytimes.com](http://www.nytimes.com)>.



amongst many others, also sent specialized aid to Italy, for example.<sup>38</sup> However, these were not coordinated actions but unilateral and voluntary ones. Also, the G-20, while acknowledging the need to facilitate trade of essential medical supplies to fight the virus, recognized that national interests may prevail.<sup>39</sup>

These actions, therefore, reveal bonds of solidarity and convenience, but are not expressions of enhanced international cooperation. The reason seems to be that, contrary to the conceptualization crystallized in the IHR, States seem to be conceptualizing the virus as a national problem common to all nations, instead of understanding the world as a unity and the virus as a global concern, that can be defeated only through joint action. This general lack of recognition of the virus as a global concern has impeded the formation of international cooperation through a common plan based on shared responsibility. State Governments seem not to recognize a responsibility towards humanity. Instead, Governments self-impose, with unnecessary emphasis, an exclusively national responsibility, by which they must act first and exclusively for their own nationals.

Today, therefore, we live a paradox. Never has it been easier to recognize that humanity as a whole is facing a common threat and thus to recognize the need for enhanced international cooperation based on shared responsibility. Yet Governments insist on measures pursuing first and foremost their national interest.

#### 4. *Reality: mixed signals from the United Nations*

The unwillingness of States to recognize their shared responsibility is also highlighted by the inaction of the UN Security Council (UNSC). The UNSC had intervened during the Ebola crisis, recognizing the risk for the maintenance of international peace and security.<sup>40</sup> Without usurping

<sup>38</sup> M Ricci Sargentini, I Soave, 'Coronavirus, la mappa degli aiuti: ecco i Paesi che hanno sostenuto l'Italia' *Corriere della Sera* (9 aprile 2020) <[www.corriere.it](http://www.corriere.it)>.

<sup>39</sup> G Adinolfi, 'Il ruolo delle politiche commerciali a fronte della pandemia da COVID-19: Brevi riflessioni alla luce del diritto OMC' SIDIBlog (20 April 2020) <[www.sidiblog.org](http://www.sidiblog.org)>. See also G20 Sherpas, *Statement on COVID-19* (12 March 2020) in which the G20 Member clearly state: 'Fighting the disease at home is our primary concern.'

<sup>40</sup> UNSC Res 2176 (15 September 2014); UNSC Res 2177 (18 September 2014).



the WHO's expert and operational role, the UNSC's involvement meant recognition of Ebola as a global issue and provided for, at least political, coordination of the response.

UNSC's resolution 2177 (2014) appears as an actual action plan. The preamble recognized: the role of the WHO and of the (2005) IHRs; the efforts of other organizations, such as the African Union; and the role of the affected States and of the international community.

In its operative part, the resolution, in particular: encouraged the affected States to continue in their efforts; called upon Member States to lift the general travel and border restrictions to end the detrimental effects of isolating the affected countries; urged States to provide resources and to implement the temporary recommendations issued under the IHR; requested the UNSG to ensure an accelerated response to the outbreak; encouraged the WHO to strengthen its 'technical leadership and operational support;' and explicitly encouraged States to 'provide all necessary support [...] including the sharing of data [...].' It was clear that the SC and thus, ultimately, the States, reclaimed political leadership.

During the current crisis, the SC has missed an opportunity to provide leadership. The closest the SC came at adopting a resolution would have been limited to a temporary global ceasefire. This resolution has so far not been adopted because of the opposition of the US to any reference to the WHO.<sup>41</sup>

The UNGA, on the other hand, has managed to adopt two important resolutions,<sup>42</sup> discuss another three draft resolutions,<sup>43</sup> and nominate two Co-coordinators for the GA on COVID-19 related initiatives.<sup>44</sup> It would seem, therefore, that the UNGA at least aims at filling the coordinating

<sup>41</sup> J Borger, 'US Blocks vote on UN's bid for global ceasefire over reference to WHO' *The Guardian* (8 May 2020).

<sup>42</sup> UNGA Res 74/270 (2 April 2020); UNGA Res 74/274 (20 April 2020).

<sup>43</sup> UNGA Draft Res, 'Declaration of solidarity of the United Nations in the face of the challenges posed by the Coronavirus disease 2019 (COVID-19)' UN Doc A/74/L.51 (27 March 2020); UNGA Draft Res 'United Response Against Global Health Threats: Combating COVID-19' UN Doc A/74/L.57 (14 April 2020); UNGA Draft Res, 'Declaration of solidarity of the United Nations in the face of the challenges posed by the Coronavirus disease 2019 (COVID-19)' UN Doc A/74/L.51/Rev.1 (16 April 2020).

<sup>44</sup> President of the UNGA, 'Appointment of Co-coordinators for COVID-19 related initiatives' (20 April 2020).



role played by the UNSC during the Ebola pandemic but left vacant on this occasion.<sup>45</sup>

The first resolution was 74/270 of 2 April 2020 on ‘Global solidarity to fight the coronavirus disease 2019 (COVID-19)’, put forward initially by Ghana, Indonesia, Liechtenstein, Norway, Singapore and Switzerland and ultimately cosponsored by almost all UN Member States.<sup>46</sup> The resolution was adopted following a particular ‘Covid-19-silence-procedure’ introduced by UNGA decision 74/544, rendered necessary by the impossibility of meeting in person.<sup>47</sup>

UNGA resolution 74/270 is not action oriented, but a declaration addressed directly to the ‘people around the world,’ mindful of their expectations. As stated in the 26 March 2020 letter accompanying the draft resolution, it was premised on the belief ‘that the United Nations system has a central role to play in mobilising and coordinating the global response to this pandemic, not only in the short term but also in dealing with the long term economic, social and developmental consequences of this crisis.’

On its face, Resolution 74/270 could be considered of crucial importance, in particular, because it is the first global response and urges for unity and international cooperation. It reaffirms and reinforces support for the UN and multilateralism; it urges for the respect of human rights and condemns racism and xenophobia in responding to the pandemic; it renews commitment to the most vulnerable; and calls upon the UN system to coordinate a global response.

<sup>45</sup> Cf UNGA Res 69/1 (23 September 2014) taken during the Ebola outbreak. In that occasion, given the UNSC’s leadership, the UNGA played a different role as it appears from its resolutions: recognising the UNSC’s action and approving the creation by the UNSG of an international mission. As discussed below, in the current pandemic, the UNGA’s resolutions appear instead to aim at calling for and coordinating action.

<sup>46</sup> Letter of 26 March 2020 transmitting Draft UNGA Res on COVID-19; UNGA Draft Res A/74/L.52 (27 March 2020); A/74/L.52/Add.1 (2 April 2020).

<sup>47</sup> Currently, the GA is exploring the possibility of taking decisions by a vote, considering criticism to the silence procedure introduced by decision 74/544. See Letter by the President of the UNGA, ‘Decision-making of the General Assembly by a vote (excluding elections) without a plenary meeting during the coronavirus disease (COVID-19) pandemic’ (23 April 2020).



### 5. *Hope, UNGA Resolution 74/274*

On 20 April 2020, the UNGA adopted a second COVID-19-related resolution following the same extraordinary silence procedure. This time the resolution is action oriented and regards a defined aspect of the fight against the pandemic.<sup>48</sup> It calls for ‘International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19.’ It was drafted by the Mexican Mission and ultimately co-sponsored by 179 countries. It answered to the call by the promoters of resolution A/RES/74/270: ‘there is scope for subsequent resolutions dealing with specific issues or operational details.’

Again, UNGA 74/274 was adopted under Agenda item 123 on ‘strengthening of the United Nations system.’ It invokes international cooperation directly in its title. In its preamble, the resolution: notes the threat and unprecedented effects posed by the virus; recognizes the efforts of health-care professionals and services; reaffirms the right to health in the same terms as expressed by the WHO’s Constitution; recognizes the risks for the poor and the most vulnerable and the repercussions on the Sustainable Development Goals.

The final three preambular sections, firstly, recognize that the pandemic ‘requires a global response based on unity, solidarity and multilateral cooperation.’ Secondly, they identify two fundamental, but not sufficient, ingredients for tackling the pandemic: (1) ‘the availability, accessibility, acceptability and affordability of health products of assured quality;’ and (2) ‘to ensure that all States have in place effective national protective measures, access to and flow of vital medical supplies, medicines and vaccines [...]’ The first ingredient, equitable access to health products, is considered a ‘global priority.’ To achieve the second, ‘international cooperation and effective multilateralism’ is deemed important.

The resolution has five operative paragraphs. In the first one, the GA reaffirms the fundamental role of the UN system in coordinating the global response against the virus and in supporting Member States, and it acknowledges ‘the crucial leading role played’ by the WHO. In the second and fifth paragraph, the GA entrusts the Secretary General with

<sup>48</sup> P Arrocha Olabuenaga, H.E. Ambassador JR de la Fuente, ‘Mexico’s Initiative to Ensure Global Access to Medicines, Vaccines and Medical Equipment to Face COVID-19’ JustSecurity.org (29 April 2020).



two tasks. In the third and fourth paragraphs, the GA refers directly to the Member States.

Thus, first, the SG, in close collaboration with the WHO and other agencies of the UN system, is requested to

‘... identify and recommend options, including approaches to rapidly scaling manufacturing and strengthening supply chains that promote and ensure fair, transparent, equitable, efficient and timely access to and distribution of preventive tools, laboratory testing, reagents and supporting materials, essential medical supplies, new diagnostics, drugs and future COVID-19 vaccines, with a view to making them available to all those in need, in particular in developing countries;’

Second, the GA requests the SG, in close collaboration with the WHO, to ‘take the necessary steps to effectively coordinate and follow up on the efforts’ of the UN system, to consider establishing an inter-agency task force, and to brief the GA on such efforts.

Member States are, instead, first, encouraged

‘... to work in partnership with all relevant stakeholders to increase research and development funding for vaccines and medicines, leverage digital technologies, and strengthen scientific international cooperation necessary to combat COVID-19 and to bolster coordination, including with the private sector, towards rapid development, manufacturing and distribution of diagnostics, antiviral medicines, personal protective equipment and vaccines, adhering to the objectives of efficacy, safety, equity, accessibility, and affordability;’

Finally, Member States ‘and other relevant stakeholders’ are called upon ‘to immediately take steps to prevent, within their respective legal frameworks, speculation and undue stockpiling [...]’

Australia, Pakistan, the EU (alongside EU Member States, Montenegro, Albania and Serbia), the UK, Liechtenstein,<sup>49</sup> Venezuela, and the USA submitted ‘Explanations of Position.’ Generally, there was a call to improve the negotiations and consultations processes. The proliferation of draft resolutions was also criticized as undermining the call for unity.<sup>50</sup>

<sup>49</sup> Liechtenstein, Explanation of Position on Draft Res A/74/L.56 (21 April 2020).

<sup>50</sup> EU, EU Member States and aligning countries, General Statement on the Res A/74/274; UK, General Statement on Res A/74/L.56 (22 April 2020).



Only the USA, while not breaking silence, openly disassociated from operational paragraphs of the resolution. In its Explanation of Position, the USA disassociated from OP-1 because of its reference to the WHO, arguing the Organization's lack of independence and mishandling of the pandemic. The USA also verbalized its suspension of funding to the WHO. Finally, it disassociated from OP-5 arguing that 'the creation of layers of UN bureaucracy devoid of controls to ensure independence, accountability, and transparency, is both unnecessary and unwise.'<sup>51</sup>

Australia explicitly mentioned the importance of open markets, functioning supply chains, the need not to create unnecessary trade barriers and to be consistent with the WTO rules.<sup>52</sup>

The EU explicitly defined the pandemic as a 'global challenge which can only be addressed collectively' and through a 'holistic' approach. It also lamented, in particular, the absence of a commitment to 'a rights and gender equality perspective,' and of an acknowledgment of the importance of a 'strong systems and whole-of-government and whole-of-society approaches to establish and maintain effective preparedness [...] for health emergencies.'<sup>53</sup>

The UK announced additional funding to fight against COVID-19 and recalled that it is the largest contributor to the Coalition for Epidemic Preparedness (CEPI). In 'this same spirit of international solidarity' it co-sponsored the resolution and welcomed 'greater immediate co-ordination on access to medical supplies.'<sup>54</sup>

Pakistan expressed regret that the draft resolution did not include reference 'to ensure access to information, preventive and other health care for all persons arbitrarily deprived of their liberty especially those in regions under foreign occupation.'<sup>55</sup> Additionally, it noted that the resolution 'does not call for assurances of adequate financial resources to developing countries[...].'<sup>56</sup>

<sup>51</sup> USA, Explanation of Position on Res A/74/274 (20 April 2020).

<sup>52</sup> Australia, Explanation of Position on Draft Res A/74/L.56.

<sup>53</sup> EU, Explanation of Position on Res A/74/274 (20 April 2020).

<sup>54</sup> United Kingdom, Explanation of Position on Draft Res A/74/L.56 (22 April 2020).

<sup>55</sup> Pakistan, Explanation of Position on Draft Res A/74/L.56 (20 April 2020).

<sup>56</sup> *ibid.*



Venezuela called for the lifting or easing of the US sanctions immediately,<sup>57</sup> because they were: limiting vital access to medical supplies, medicines and vaccines; undermining efforts to combat the ‘common enemy;’ and ‘fostering a death toll greater than it could be in Venezuela.’<sup>58</sup>

#### 6. *Assessing the health of international cooperation amidst the pandemic*

The adoption of resolution 74/274 by the UNGA, revealing that all UN Member States acknowledge the need for international cooperation to weather this crisis, is a sign of good health of international cooperation.

Another sign of good health of international cooperation comes from not questioning one of the most important achievements of its evolution, ie the creation of international organizations and the recognition of their role.<sup>59</sup> Elements of the resolution such as the choice of Agenda item 123 and especially OPs 1, 2 and 5 reveal a strong will to strengthen the role of international organizations and in particular of the UN.

Another positive aspect of the resolution is that it strengthens an ongoing development, namely, that of involving non-State actors in international cooperation.<sup>60</sup> OP 3 invokes the need for public-private partnerships and ‘scientific international cooperation.’ OP 4 calls directly upon ‘other relevant stakeholders.’

The subject matter of the resolution also reveals the important role recognized to international cooperation, if the current pandemic is compared to the A-H1N1 (also known as swine flu) pandemic of 2009. In that occasion, international cooperation floundered at the time of the manufacturing and distributing of the vaccine, leading to speculation and to privileged access for richer countries rather than for the most vulnerable.<sup>61</sup> This resolution, therefore, reveals an evolution from the past.

<sup>57</sup> Venezuela, Explanation of Position on Draft Res A/74/L.56 (20 April 2020) para 5.

<sup>58</sup> *ibid* para 5.

<sup>59</sup> Wolfrum (n 11) para 4.

<sup>60</sup> Mbengue (n 18) para 22.

<sup>61</sup> DP Fidler, ‘Negotiating Equitable Access to Influenza Vaccines: Global Health Diplomacy and the Controversies Surrounding Avian Influenza H5N1 and Pandemic Influenza H1N1’ (2010) 7 PLoS Med available at <[www.plosmedicine.org](http://www.plosmedicine.org)>; G Yamey, M Schäferhoff, R Hatchett, M Pate, F Zhao, KK McDade, ‘Ensuring global access to COVID-19 vaccines’ (2020) 395 *The Lancet* 1405-1406. See also WHO, ‘Main



Notwithstanding these very important elements that work toward strengthening international cooperation, the resolution also reveals strains and cracks.

While the resolution mentions the WHO and its ‘crucial leading role,’ the US’ attacks on the WHO, verbalized in its Explanation of Position, disaggregates rather than unifies States.

More importantly, a significant symptom that should not be overlooked is the absence of any concrete request for action or commitment by the States that would imply actual coordinated action. Instead, there are only general calls of principle.<sup>62</sup>

Thus, notwithstanding the fact that the title of the resolution, considering the unilateral actions that were being taken by States, could have led to do otherwise, the resolution does not call upon the Member States to ensure the effectiveness of supply chains recognizing their importance to ensure access to medicines. Instead, the resolution requests the UNSG to ‘identify and recommend options.’ Equally, the GA does not take a position on export restrictions on health products, nor on import facilitations. Nor does the resolution refer to the WTO rules, let alone call upon Member States to abide by them. It is telling that Australia felt it necessary to mention explicitly supply chains, WTO rules and trade barriers.

It is important to note that the WTO rules and the importance of not introducing trade barriers were explicitly included in the first version of the draft resolution proposed by the Russian Federation (A/74/L.51). The draft resolution ultimately was not adopted.

Moreover, resolution A/74/274 does not call upon States to implement the recommendations of the WHO issued under the IHR, as, instead, had been done by the SC in Resolution 2177 (2014). The IHR are not even mentioned. Additionally, there is no attempt at recognizing a duty to cooperate, that instead had been recognized in the first version of the draft resolution A/74/L.51. The letter accompanying the same

Operational Lessons Learnt from the WHO Pandemic Influenza A(H1N1) Vaccine Deployment Initiative’, Report of a WHO Meeting (Geneva, Switzerland, 13-15 December 2010).

<sup>62</sup> Notwithstanding the UNGA’s opportunity to take a coordinating and leadership role given the UNSC silence during this crisis, the UNGA’s resolution is quite different from the action plan set out by the UNSC during the Ebola crisis. See UNSC Res 2177 (18 September 2014). However, cf UNGA Res 69/1 (2014).



draft resolution and the draft resolution itself, had gone as far as recognizing the duty to cooperate as one of the core principles of the UN Charter.

Finally, States are not called upon to ‘support by all means’ the efforts of the SG, the WHO and the UN system. Instead, there is a request to consider the creation of an inter-agency task force, ‘within existing resources.’

The only two operative paragraphs referring to Member States regard actions to be taken by States within their borders. States are encouraged to work in partnership with relevant stakeholders and are called upon to take steps to prevent ‘speculation and undue stockpiling.’ A call for cross-border collaboration is limited to the scientific community: OP-3 encourages States to strengthen ‘scientific international cooperation.’

Consequently, while the resolution strengthens the role of the UN system for international cooperation, it also reveals a fundamental absence: the absence of any reference to the States’ active engagement in international cooperation.

In this regard, the conceptualization of international cooperation intrinsic in the (2005) IHR should be kept well in mind. International cooperation arises from the recognition of a global concern (a health risk) and it imposes on States two core obligations: (i) to be prepared (inward-looking obligation); (ii) to coordinate their response (outward-looking obligation).

The reason for the States’ reluctance in taking up their share of shared responsibility could, thus, be identified in not conceptualizing the current pandemic as a global threat, but, instead, considering it a national problem common to all nations. Treating the pandemic as a global problem would shatter borders by requiring one coordinated global response.

Evidence of the States’ inability to conceptualize the threat as a global one, may be found in the fact that resolution A/74/274 falls short of describing the pandemic as a global problem. It only states that it requires a ‘global response.’ The EU’s Explanation of Position, on the other hand, aligned with the SG’s conceptualization of the current situation, clearly states that the world is facing One problem and should respond as One. Factual evidence of States not conceiving the issue as a global concern was given above mentioning their unilateral and uncoordinated initial responses.

In light of this consideration, the insistence on the strengthening of the UN system, which seemed beyond criticism, appears, instead,



hollowed. The reinforcement of the International Organizations starts appearing as a delegation of responsibility to act, instead of the coordination of a shared responsibility. However, strengthening of International Organizations should not be a substitute to the responsibility of each State to act and to coordinate their action.

The recent unfortunate discussions over a future COVID-19 vaccine are a reminder of the absence of States' commitment to their active role in international cooperation.<sup>63</sup>

As taking our temperature allows us to assess our health without certainly determining the outcome of an illness, these thoughts, in the midst of an ever-evolving present, should be taken both as a measurement of the health of international cooperation and as a call for concerted action by our States.

<sup>63</sup> See R Mine, D Crow, 'Why vaccine 'nationalism' could slow coronavirus fight' *Financial Times* (14 May 2020); J McAuley, 'France angered by suggestion U.S. would get first access to coronavirus vaccine by French pharma company Sanofi' *The Washington Post* (14 May 2020); but see also D Pilling, 'Any Covid-19 vaccine must be treated as a global public good' *Financial Times* (13 May 2020); S Wheaton, 'Chinese vaccine would be 'global public good,' XI says' *Politico* (18 May 2020).

