

# GOVERNING PANDEMICS: **TURNING HEALTH PRODUCTS INTO GLOBAL COMMON GOODS**

## *Key Findings*







**The key findings presented in this document result from an analysis of the unprecedented situation caused by the Covid-19 pandemic, focusing on the identification and presentation of the overall response to the pandemic (from January to September 2021).**

The objectives of the research project, led by the Economics Center of the Sorbonne Paris Nord University, were to show how the conditions under which the therapeutic tools for the fight against Covid-19 were produced and made available, allowed, or not, their distribution and access to the greatest number. The research, conducted under the direction of Benjamin Coriat assisted in particular by former and current DNDi employees and by Fabienne Orsi (IRD-LPED)

from **January to September 2021**, concluded with a report covering, on the one hand, the **lessons that can be drawn from the fight against Covid-19**, as it was conducted; on the other, the **elements on which to rely and from which to build a different model** of production and access to make health products against pandemics real common goods. It is clear, at the end of this research, that instituting the common cannot be done without the installation of new global governance of public health.

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## Key Findings

### > LESSONS LEARNED FROM THE FIGHT AGAINST COVID-19

#### 1. The power and ambivalence of the US model

The first lesson is that, contrary to the prevailing perception, **a model to fight pandemics did exist** and it came into action as soon as the pandemic was identified in the first quarter of 2020.

This model, which includes mostly a set of provisions for R&D funding and management, was built in two successive stages:

The **first stage** was the creation in the US of a **new intellectual property (IP) regime**. This new regime was characterised by a number of new elements, including in particular: i) the extension of IP and patentable subject matter to living organisms (Chakrabarty ruling); and ii) the patentability, and its exploitation by the private sector, of the results of publicly

funded research (Bayh Dole Act). These two elements explain the rise of companies specialising in a new type of research (biotechnology), which became all the more powerful as changes in financial regulations and the Nasdaq allowed pension funds to enter the capital of risky and economically unprofitable companies. All of these changes have had a powerful impact on the organisation of R&D in the pharmaceutical industry with a new division of labour between biotech and large pharmaceutical companies. This model came into its own in mRNA research and vaccine development.

The **second period** began in 2001 after the anthrax attacks that followed those against the World Trade Center. Reflections and initiatives against the dangers of bioterrorism reached an all-time high and, following events such as Hurricane

Katrina, Ebola, H1N1 and SARS Cov-1, pandemics were taken more and more seriously. This led to major initiatives, with votes on different versions of the Pandemic All-Hazards Preparedness Act (PAHPA), and the creation of the BARDA government agency which plays a decisive role in financing and supporting research on vaccines and other health products against COVID-19.

**The highly ambivalent effect of this model must be stressed.** There is no doubt that it accelerated the development of vaccines and explains why they arrived faster than anticipated. However, by making the patentability of publicly funded research products and the transfer of their exclusive rights the rule, it created the conditions for glaring inequality in access to vaccines as soon as they became available.



## 2. International pandemic preparedness: much ado about nothing

The COVID-19 crisis confirmed the inability of global public health governance to ensure a coordinated, effective and ethically responsible response to the pandemic. The failure of instruments in place to provide equitable access to the tools and therapeutics needed to fight the pandemic has been unmistakably demonstrated.

Despite numerous and often rich exchanges for several years within or around the WHO, the emergence of the pandemic took everyone by surprise, even though it had been deemed inevitable. None of the mechanisms set up in a hurry to respond to this crisis (COVAX, ACT Accelerator, C-TAP) truly worked as intended. The emergency and health nationalism also relegated to the background CEPI, the main instrument founded in 2000 following the initiative of the WHO after the Ebola

crisis, and whose mission is to promote research into products (vaccines) needed in an emergency to deal with epidemics. Among other reasons for the failure, underfunding of the new instruments (CEPI, ACT-A, COVAX, etc.) hindered the coordination of the international response and prevented the actors from playing their role to respond to a global health crisis.

## 3. Dwindling role of the WHO and global governance dominated by private foundations

The COVID-19 crisis highlighted the weakened authority of the WHO as coordinator of global public health. The post-HIV/AIDS crisis of the 2000s had raised awareness of the failures of global governance, particularly on the issues of innovation and access, and numerous mechanisms had been created to fill this gap. However, the multiplicity of agencies, funding mechanisms and incentives thus created,

along with the emergence of new R&D institutions working outside the traditional models of the pharmaceutical industry did not have the intended effect. To this must be added the strong hold on global public health of private operators such as the Bill & Melinda Gates Foundation (BMGF), as a funder present in most decision-making bodies. Together, these initiatives weakened, fragmented and outsourced the authority of existing bodies, and of the WHO in particular, further accentuating the deregulation already underway.

This constellation of institutions, which do not always meet the rules of transparency and accountability applied to all public actors, weakened the political leadership of the WHO. Over time, this organisation became incapable of playing its role as coordinator and instigator of norms and principles imposed on all, a role which is essential in times of pandemic.



#### 4. Failure of COVAX, caught between vaccine nationalism and a philanthropic model

The failure of COVAX is probably the most spectacular of all. This institution, set up in the second half of 2020 and announced as the great instrument capable of ensuring equity in access to vaccines and other health products, totally failed in its mission. In the face of vaccine nationalism deployed by the major powers which buy directly from the producers, COVAX was marginalised and reduced to playing only a very secondary role. As high-income countries stockpiled sometimes up

to three times the number of doses needed to vaccinate their populations, COVAX was able only to distribute (as of 27/09/2021) just over 311 million doses to 143 participating countries, i.e. 4.5% of the 6.9 billion doses administered worldwide.

More importantly, the stated objective of COVAX was only to distribute vaccines to meet the needs at best of up to 20% of the population of countries unable to provide their own funding. Faced with a global pandemic that requires a global response, COVAX soon appeared as an ineffective tool largely based on the old philanthropy model.



## > **TURNING HEALTH PRODUCTS INTO GLOBAL COMMON GOODS**

Several results help us define the conditions required to create different **modes of production and delivery of health products**, some complementary and others opposite to those already in place:

### **5. The concept of global public good is inappropriate and outdated: the commons and common goods are the new narratives of institutionalisation**

A critical review of the history of the concept of Global Public Good (GPG), and its use by various institutions and authorities, highlighted its ambiguous and ultimately inappropriate nature as a reference in matters of access to treatment for large numbers of people. Derived from the neoclassical definition of public goods, to meet the needs of a global situation with new issues (ecology, health, education, etc.), the greatest limitation of the GPG concept is that it does not imply the slightest obligation for the actors to submit to new rules other than those that prevail. Its so-called success probably stems from this very fact: using GPGs as a reference gives the illusion of calling for a different order regarding access to goods deemed essential, without imposing on any of the stakeholders the slightest change in mostly market-driven practices which are hegemonic worldwide.

**On the contrary, the reference to the concept of common good implies shared access, rights and obligations of the entities concerned, and a mode of**

**governance that oversees the compliance with rights and obligations.** The transition from the GPG narrative to the practice and institutionalisation of products considered as common goods requires new innovative practices, some of which are analysed below.

### **6. The waiver as a call to adapt the TRIPS (Trade-Related Intellectual Property Rights) Agreement to pandemic situations**

The main merit of the discussion on the waiver (temporarily lifting of IPRs on the vaccines and health products needed to fight the COVID-19 pandemic) is that it highlights the inappropriateness of the TRIPS Agreement as a global legal framework for public health, and particularly in times of pandemic. Although high-income countries (which are also home to big pharmaceutical companies) have objected to this request and so far have managed to block it, the discussion in various forums (both within and outside the WTO) highlighted the paradox of requiring that countries claim the right to use compulsory licensing provisions on their own and in isolation (through lengthy and uncertain procedures), when a pandemic and state of emergency have been declared at the global level

by the WHO, the only legitimate intergovernmental organisation to do so.

### **7. The AstraZeneca model: an original and sustainable vaccine production and distribution model that breaks away from the US one**

The AstraZeneca model, considered here as an archetype, is a very interesting example of alternative and innovative forms of production and delivery of health products. It combines three features that together form a unique ecosystem:

- an R&D organisation based on academic research, whose results were shared with a pharmaceutical company, AstraZeneca, on condition of ensuring a broad access to the vaccine;
- a cost-plus pricing method to maintain very low selling prices;
- a commitment to the transfer of technology and know-how which led to the creation of production capacities in many countries around the world.

This distinct and, crucially, opposite approach to the US model (which prevailed in the



case of Pfizer-BioNtech and Moderna vaccines) demonstrates that systems other than those based on the assignment of exclusive IP are possible, viable and sustainable.

### **8. Doing R&D differently with collaborative platforms**

Based on previous examples of clinical platforms focusing on malaria and other infectious diseases, and on the vast clinical ANTICOV trial set up in Africa, India and Brazil for moderate forms of COVID-19, it appears that the future lies in collaborative research platforms where stakeholders combine their know-how and skills to accelerate the development of the health products needed to fight the pandemic. ANTICOV initiatives such as COVID Moonshot, initiated by DNDi and its partners, prefigure what collaborative research is all about. Cooperative forms of research involving actors from endemic

countries and/or more vulnerable countries are extended by agreements to share and make research results available to all. Although the funds and resources allocated to such collaborative platforms are currently limited, their organisation is innovative and far-reaching, and appears to be particularly suited to the fight against pandemics. As such they should be strengthened.

### **9. Patent pools: learning from experience**

A comparison between the Manufacturers Aircraft Association (MAA), a patent pool formed in 1915 to boost the manufacturing of combat aircraft for WWI, and the Medicines Patent Pool (MPP) based on voluntary licensing highlights the advantages of each one, as well as their very unequal capacity to meet the objectives of sharing knowledge and know-how. In spite of all its good intentions,



the C-TAP initiated by the WHO appears ill-suited to the objectives it has set for itself. Experience shows that only a combination of incentives and obligations to be determined, which is lacking in the C-TAP project, can bring the companies and other entities concerned to collaborate. This is the price to pay to build the kind of patent pool needed to fight the pandemic.

### **10. Establishing the commons cannot be done without creating a different global public health governance**

The ultimate lesson from our

research is that the identification and deployment of the tools and instruments needed for a united response to the pandemic cannot be achieved without substantial changes in global public health governance. With the WHO considerably weakened and unable to play the role of coordinator and pilot, and over-powerful private foundations (Gates, Wellcome Trust, etc.) largely dictating the response agenda and manoeuvring to set up in an *ad hoc* manner entities to deal with emergencies (e.g. COVAX), global governance can only lead to an impasse.

There can be no defence of the common good without the

commons. But conversely, the commons can only emerge and assert itself on a large scale if concern for the common good is supported by strong institutions, capable of imposing values and instruments able to face the challenge the task of tackling a virus with a high mutation potential and bouncing around the planet for years.

This is where the fight against future pandemics will be fought. Everything will depend on our ability to build, through renewed governance, the instruments capable of providing effective responses, and whose prototypes and principles are already at work.



Photo credit: Xavier Vahed - DNDi, Ana Ferreira - DNDi ; Maneesh Agnihotri-DNDi ; Kenny Mbala - DNDi