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INTRODUCTION

In July 2020, United Nations Secretary-General António Guterres called for a 'New Social Contract and a New Global Deal' in response to exacerbated international inequalities made glaringly apparent during the COVID-19 pandemic.[1] We argue that the COVID-19 pandemic and its economic, political and social crises illuminate the need for a revamped social contract on access to essential medicines and health technologies (including, eg, vaccines and diagnostics). The current social contract, which focuses on the nation-state's responsibility for its population's access to essential medicines and health technologies, struggles to sufficiently address the global provision of pharmaceutical products during an international health crisis. Indeed, the limits of the social contract can be observed in the real-time deployment of COVID-19 vaccines, where wealthier countries have purchased large orders of COVID-19 vaccines for the majority of their populations while lower resourced governments struggle to secure even paltry vaccine supplies.[2 3]

The COVID-19 pandemic is this generation's canary in the coal mine, underscoring the ongoing and far-reaching global inequities that have been known to the access to medicines community since before the 2000s HIV/AIDS epidemic. Addressing this profound global injustice will require embracing a global model of the social contract, based on a set of principles grounded in global cooperation. Here, we present the shortcomings of the current social contract model for the transnational governance of essential medicines and health technologies, and we argue for a global social contract rooted in the health security and sustainable development agendas.

SUMMARY BOX

- ⇒ The COVID-19 pandemic illuminates the need to move away from the current social contract, which focuses on the nation-state's responsibility for protecting the health of its own population, including by providing essential medicines and health technologies.
- ⇒ We argue for embracing a global social contract, which is a governance concept that lays the foundation for how states should act as members of the international community, as regulators of the private pharmaceutical industry and as guarantors of public goods benefiting people worldwide.
- ⇒ A global social contract should be based on a set of four principles: collective state stewardship of the pharmaceutical and health technology; equity and the protection of health as a human right; an effective global polity; and governmental transparency and democratic accountability.
- ⇒ This foundation can serve as a basis for a future pandemic treaty and as a model to address the much broader global crisis of inequitable access to medicines and health technologies for infectious and non-communicable diseases.

THE SOCIAL CONTRACT AND ITS APPLICATION TO MEDICINES AND HEALTH TECHNOLOGIES ACCESS

The concept of the social contract originates from Jean-Jacques Rousseau's 1762 On the Social Contract; or, Principles of Political Right ("The Social Contract").[4] It describes the implicit agreement between the individual and state, wherein the state attains the authority to govern through the collective consent of its citizens. This mutually beneficial 'contract' enables and requires the state to protect the rights of citizens in return for its monopoly on power and control. The protection and promotion of public goods, such as public security and public morals, are essential elements in the pact. Public security and other civil rights (eg, the right to life or the right to obtain and impart information)

are distinct yet highly interdependent on social rights (eg, right to health). Ensuring public security is also dependent on public access to 'goods' in the collective interest, such as safe and effective medicines, clean air and fresh water. For the social contract to operate effectively, state commitment and action to better society through the creation, protection and promotion of these public goods is needed. Moreover, the stewardship (and in some cases, production) of these public goods demands social cooperation.[4] Essential medicines and health technologies are central to attaining health security and the maintenance of functioning health systems.[5] Under social contract theory, the state is thus the primary actor responsible for shaping the political, economic and regulatory conditions required to ensure that medicines and health technologies are available, safe, effective, of assured quality and affordable for all.

WHY IS A GLOBAL SOCIAL CONTRACT NEEDED?

Today, equitable access to essential medicines and health technologies on a global scale cannot be effectively promoted or guaranteed by a single state. Often this is because the state alone, as an individual unit, cannot sufficiently regulate or incentivise the transnational private pharmaceutical industry, which is an instrumental actor that assists states in fulfilling their obligations towards medicines under the social contract. The persistent challenges of disproportionate research and development (R&D) investments into diseases of the rich compared with poverty-associated diseases, regulatory capture, a lack of price and clinical data transparency and unethical drug promotion all belie the limits of a social contract focused on the nation-state.[6–9]

The global nature of the pharmaceutical and health product supply chain, as well as the sizeable role of the private sector in the R&D and production of these goods, requires high-level governance, often beyond what one or a small collection of domestic governments can muster in terms of both authority and resources. Therefore, transnational oversight and coordination is needed to move towards equitable global access to essential medicines and health technologies.

Global supply shortages create a tension between the state's social contract to protect and provide essential medicines to its domestic population, and its duty under international human rights law to assist other states to access these same products. The existing social contract focuses on the power of individual states and legitimises 'my-nation-first' approaches during international health crises, even though this can run contrary to national public health interests over the long term. The COVID-19 pandemic illustrates how access to the very public goods that the social contract seeks to protect within national borders (eg, human health, public security) are inextricably linked to the health of all people and the eradication of (infectious) diseases beyond its borders. The ongoing risk to global public health with SARS-CoV-2 variants such as Omicron demonstrates this loud and clear. It is for this reason that a global social contract for the provision of health for all, through which states collaborate with each other in a coordinated fashion, is essential to ensuring equitable access to essential medicines and health technologies.

WHAT DIFFERENCE WOULD A GLOBAL SOCIAL CONTRACT MAKE?

A global social contract specifically centred on the provision of goods in the interest of global health, rather than national public health, could ensure that individual state interests and incentives are aligned with long-term global health security, and more generally, with advancing the sustainable development goals related to health.

WHAT ARE THE KEY FEATURES OF A GLOBAL SOCIAL CONTRACT TO ENSURE ACCESS TO MEDICINES AND HEALTH TECHNOLOGIES?

Central to a global social contract is the notion that it should address the provision of undersupplied global public goods.[10] Accordingly, we propose four key features of a global social contract for global health security and sustainable development. The first two features describe critical content of a global social contract, and the last two features describe the governance of such a contract.

1. Collective state stewardship of the pharmaceutical and health technology industry is needed to ensure global health security and sustainable development. Historically, the role of the state in pharmaceutical R&D has been largely defined as a reactive hand correcting market failure.[11] While many states and regions currently focus on maximising the economic growth and the competitiveness of their domestic economies, there is an urgency to consider the direction and impact of that growth and wealth distribution on the international stage. Part of rethinking the role of governments globally should include empowering states to both individually and collectively steward the private pharmaceutical industry to attain global health goals. Crucially, collective state stewardship requires states to finance and otherwise incentivise the R&D of medicines and health technologies in the public interest, including in disease areas that disproportionately affect impoverished populations.[12 13] Collective stewardship requires ensuring that all public incentives for researching, developing and producing medicines and health technologies should be granted conditional on terms that safeguard public return on investment. These terms should include licensing requirements for sharing intellectual property, knowledge, know-how and data. These requirements should ensure that these medicines and health technologies can be collectively managed, produced and distributed if/when the private sector is unable to do so to guarantee health security and protection from public health threats that harm sustainable development objectives. Finally, in recognition of the social function of intellectual property, the international community of states should agree to the

principle of a temporary, global intellectual property (IP) waiver on medicines and health technologies needed to protect public health during times of acute public health threats.

2. The principles of equity and the protection of health as a human right should guide how states act towards one another. The equitable global distribution of medicines and health technologies and investments (ie, delivery based on public health need and state capacity to protect public goods such as health security, not the wealth and power of a state) is critical for the promotion of health security and sustainable development. Such an approach is also rooted in the Universal Declaration of Human Rights and the legally binding International Covenant on Economic, Social and Cultural Rights: every person has a right to the enjoyment of the highest attainable standard of health and a right to enjoy the benefits of scientific progress.[14]

   A global social contract also implies that states respect the 'do-no-harm' principle, by ensuring that the individual health policies pursued by states do not threaten the equitable global provision of access to medicines and health technologies.[15] The principle of 'do-no-harm' delegitimises my-nation-first strategies and in doing so, guides a global agreement and mechanism for equitably allocating health resources.

   Additionally, a global social contract requires mobilising funding and other resources that are needed to translate equitable distribution of medicines from ambition to reality. In particular, transferring technologies for manufacturing medicines and health technologies from high-income to low-income and middle-income countries is paramount. The international community of states has already crafted a fund for the transfer of technologies needed to preserve other types of public goods (ie, the ozone layer, in the Montreal Protocol on Substances that Deplete the Ozone Layer).[16]

3. An effective global polity is urgently required to operate and enforce a global social contract on access to medicines and health technologies. Global health governance involves a complex network of state actors, international organisations, private sector stakeholders (primarily comprised of the pharmaceutical and health technology industry) and civil society. Many of the international institutions that form part of this complex network are limited by the entrenchment of political actors and agendas.[17] Moreover, while agreements between individual actors may be enforceable through treaties or private contracts, the global governance framework, as a whole, has until now been unable to implement coordinated agreements that are binding and enforceable. Current forums for global health governance, such as the WHO, have been limited in terms of their dependence on the voluntary cooperation and financial contributions of member states.[18] Their legitimacy is thus weakened when their recommendations, intended to be for the universal benefit of all stakeholders, are found to have been unduly influenced by individual state actors or when states actively pursue policies of non-compliance.[19]

   To function optimally, a global social contract should be enshrined by a formal agreement (ideally enforceable against all states), which facilitates hard binding norms, authoritative and sufficiently resourced institutions, mechanisms for the balanced participation of states and sufficient financing to coordinate pharmaceutical supplies globally. These are elements that have been largely absent from the global conversation about access to medicines and health technologies until now.

4. A global social contract for access to medicines and health technologies requires governmental transparency and democratic accountability. Without a high level of democratic legitimacy, a global social contract to advance global health security and sustainable development cannot operate effectively. This requires residents of all nations to be regarded as the primary beneficiaries of global health governance. This also requires that the health policies pursued by individual states benefit global health, or at the very least, benefit national populations while imposing no detrimental secondary effects on the international community as a whole.

   The transparency and accountability of state stewardship of public goods, particularly with respect to state interactions with the pharmaceutical industry, is thus essential. Creating incentives and mandates for disclosing the costs of developing any publicly funded medicines or health technologies and disclosing the net prices paid for these products with public funding (or publicly funded organisations, such as the vaccines pillar of the Access to COVID-19 Tools Accelerator (COVAX)) are important steps for more transparent state stewardship.[20] Greater transparency of these aspects can also improve states' negotiating position vis-à-vis private industry, while enabling civil society members to monitor for irregularities and investigate instances of suspected corruption.[21]

WHAT IS THE DIFFERENCE BETWEEN A GLOBAL SOCIAL CONTRACT ON ACCESS TO MEDICINES AND A 'PANDEMIC TREATY'?

A global social contract is a governance concept that lays the foundation for how states should act towards one another as members of the international community, as regulators of the private pharmaceutical industry, and as guarantors of public goods (such as global health and health security) benefiting people worldwide. This foundation can serve many purposes, including as a departure point for rethinking state–state and state–industry relationships in the pharmaceutical sector. A global social contract also offers firm grounding for a global instrument on pandemic prevention, preparedness and response (colloquially known as a 'pandemic treaty'), as well as a model to address the much broader global crisis of

inequitable access to medicines and health technologies for infectious and non-communicable diseases.[22 23]

A pandemic treaty for the provision of medicines, vaccines and health technologies against pandemic pathogens is the subject of much debate. In November 2021, the member states of the WHO began negotiating a new international instrument for this purpose. Although access to medicines and health technologies for pandemics will likely be a key component of such an instrument, the overall content and contours of an agreement are being discussed. The four features of a global social contract for access to medicines and health technologies presented in this article can inform and potentially influence the development of a pandemic treaty.

CONCLUSIONS

The COVID-19 pandemic has starkly highlighted the failings of our current social contract and the lack of a global health governance system to ensure timely and equitable access to medicines and health technologies for all. A global social contract is needed to align individual state interests and incentives for the pharmaceutical industry with the global goal of protecting public health and health security. A pandemic treaty could both be shaped by this need and help create the conditions for an effective global social contract for access to medicines and health technologies.

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