



Pandemic treaty negotiations: a disappointing future: Disagreements and a race against time lead to fears of failure.

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The context

The day after the ninth session of the Intergovernmental Negotiating Body ([INB9](#)), civil society organizations in official relations with the World Health Organization (WHO) and the official delegations present in Geneva are hungover: the expected negotiations have not taken place, while each coalition is sticking to its positions and constantly making new contributions to the text of the draft treaty.

In order to fully appreciate the historic moment, we are living through, it is useful to first outline the state of the negotiations at the time of the adjournment on March 28, 2024, then to look back at the origins of the pandemic treaty, and finally to highlight the issues at stake and the players at this stage of the negotiation process.

On March 28, INB9 adjourned with a sense of unfinished business at the end of two weeks of intense but fruitless work (March 18-28, 2024). Therefore, in a last-ditch effort to reach consensus, the meeting and the Drafting Group will reconvene on April 29. It will end on May 10, 2024, with seven days of negotiations (April 29-May 5), followed by five days of drafting and reporting to the 77th World Health Assembly, which will meet from May 27 to June 1, 2024.

With an eye firmly fixed on the timetable, the process of discussing, drafting and negotiating the draft pandemic treaty began at the first session of the INB (INB1) on February 24, 2022; notwithstanding the declared and hammered desire to strike while the collective [political](#) memory of the COVID19 pandemic was still warm, no significant progress has been made by the time we reach the ninth and final session of the negotiating cycle, of which the following points should be noted:

- – From March 18-28, the 37 articles that make up the draft treaty were systematically reviewed in plenary sessions, often accompanied by parallel working group meetings on specific issues. Despite these late-night weekend working sessions, it was not possible to start the actual negotiations; consequently, in order to devote the resumed session exclusively to negotiations, it was agreed that :
- – Consultative meetings would be held with each of the six WHO regions during the month of April;
- – Informal intersessional [meetings](#) on the contentious articles, namely articles 4, 5, 6, 10, 11, 12, 13, 13bis, 19 and 20, will be held from April 8;
- – Encourage the emergence of co-facilitators and cross-functional groups to help iron out differences and thus resolve the complexities surrounding this work;
- – On April 18, a “simplified convergence text”, in the words of INB co-chair Roland Driecé of the Netherlands, of 20 pages will be circulated to Member States, 90 pages less than the negotiating document of the evening of March 28, 2024;
- – The inclusion of elements for the operationalization of equity in a normative document is a major difficulty, as Driecé pointed out, and it is this feat that Member States will have to strive to achieve.

The proposal for a pandemic treaty was first raised by Charles Michel, President of the European Council, at the Paris Peace [Forum](#) on November 12, 2020. The proposal was then reiterated on December 3, 2020 at the United Nations General [Assembly](#) Special Session on Pandemic Response COVID-19. This was followed by the publication of a concept paper in March 2021, followed by a reflection paper on August 26, 2021, leading to the zero draft on February 1, 2022.

Initially perceived as a [European](#) proposal with limited added value, it eventually won over a growing number of countries that saw it as an opportunity to substantially reform the pandemic response system, particularly in the areas of [coordination](#), information sharing, access to vaccines, medicines and health products, and financing. Delegations and the Bureau set to work, full of hope for a more equitable, just and humane system. However, significant disagreements soon emerged in the process and continue to punctuate meetings to the extent that it is now accepted that the risk may be shared, but the priorities diverge.

Common risk, divergent priorities

While the risk of a pandemic is common, the priorities for dealing with it differ according to a number of criteria, including whether we belong to the Global South or the Global North. Indeed, there is a clear divide between those who advocate maintaining the status quo ante in terms of access to vaccines, medicines and health products in a pandemic situation, in the name of respecting the sacrosanct right to intellectual property, and those who advocate universal/democratized access to the products of scientific research through benefit-sharing mechanisms duly enshrined in the Treaty, based on the principles of equity, solidarity and differentiated responsibilities.

The “Global South” is composed of developing and emerging countries and regional groupings such as South Africa, Namibia, Ethiopia, Cameroon, Senegal, Indonesia, Bangladesh, Peru, Brazil, the African Union, and others. It has come together in the 88-member Equity Group.

The “Global North” is essentially made up of industrialized countries and regions that produce vaccines, medicines and health products, such as the United States, Canada, the United Kingdom, Switzerland, the European Union, led by Germany, Japan, South Korea and Australia.

For example, while the equity group – India, Fiji, Brazil and Bangladesh – proposes that in the event of a pandemic or public health emergency of international concern, 20% of vaccine production should be donated to the WHO; secondly, that medicines, vaccines and health products should be sold to developing countries at preferential prices; and thirdly, that patents and royalties should be lifted, the other coalition advocates in Article 12 that manufacturers give 10% of their production free of charge to the WHO and sell 10% to NGOs at cash prices, accompanied by voluntary non-financial commitments; The other coalition advocates in Article 12 that manufacturers should donate 10% of their production to the WHO free of charge and sell 10% to NGOs at cash prices, accompanied by voluntary non-financial contributions to strengthen production capacity in developing countries.

Thus, the institutionalization of the principle of equity through operational provisions is a red line that is approached differently by the coalitions involved: for the “Global South” no treaty without operationalization of the principle of equity, for the “Global North” the WHO is not the right place for such discussions and consequently no treaty containing such considerations. How, then, are we to reorganize the distribution of surveillance, preparedness and response to pandemics?

Complex, multi-level issues

The dissent is an expression of the crisis of confidence that has undermined global health and health multilateralism since the COVID19 pandemic, with underlying issues of open science, the extractivism of genetic resources, the privatization of profits from public research funding, and the increasing financialization of health, which is gradually becoming a commodity.

The intertwined issues of science and public action inherent in the subject matter of the treaty, combined with time pressure and stalled or non-existent negotiations, risk the adoption of a treaty on the cheap, stripped of all reforming substance. Such an outcome would be a clear step backwards, enshrining the “institutionalization of the status quo,” according to Nicoletta Dentico, head of the global health program at the Society of International Development (SID), a prospect described as “worse than the status quo” by K.M. Gopakumar, legal advisor to the Third World Network.

In fact, the eight articles on which there is disagreement concern the modalities for sharing global health surveillance and the conditions for responding to pandemics: Pandemic prevention and surveillance (4); One Health approach to pandemic prevention, preparedness and response (5); Preparedness, resilience and recovery of health systems (6); Sustainable and geographically diversified production (10); Transfer of technology and know-how (11); Access and benefit sharing (12); Supply chain and distribution (13); National procurement and distribution (13bis); Implementation and support (19); Sustainable financing (20).

With 14 paragraphs and 11 pages of discussion, Article 12 is the most out of tune, followed by Articles 4 (6 pages), 11, 13, 13bis and 20 (5 pages each), and is also the expression of a traumatic institutional memory linked to the COVID pandemic19; in this respect, while INB co-chair Roland Driece called for contributions from civil society and academics at the March 27 meeting, Elle 't Hoen (intellectual property lawyer and member of Medicines Law and Policy) suggested that INB9 should start with a kind of reconciliation commission.

In addition, how can we undo the extractive logic inherent in both the question of benefit-sharing and that of the One Health approach, as addressed in Article 5, with its absolute requirement for data sharing without significant compensation?

What's more, the question of financing, a major gray area in the IHR (2005), is no better elaborated in the draft pandemic treaty, whose initial stated aim was to correct its weaknesses. The proposed provisions are both voluntary and surreal, such as the suggestion that all contributions to pandemic preparedness should be housed in the World Bank's Pandemic Fund, whose reins would then be entrusted to the WHO. This is unlikely, given the banking sector's stated desire to have full control over its pandemic preparedness and response funds.

The stalemate in the INB9 negotiations is the result of a process that has been accelerated for its proponents and rushed for its critics. Two years is a short time compared to the political and

administrative time usually required to draft and mature a treaty, because political and administrative time are long periods that encourage in-depth analysis and reflection on unintended side-effects in negotiating processes. However, the INB9 lacks the time necessary for effective negotiations. Beyond the temptation of easy criticism, the majority of humanity would be at too great a risk in a pandemic situation if a treaty were adopted on the cheap.

Ultimately, the drafting of a treaty imposed by the need to respond to contemporary realities is fundamental; however, its hasty adoption, based primarily on national and regional industrial interests, is a failure of spirit; for this approach favors the construction of “chimeric empires” on the backs of the most vulnerable, who have already paid a high price during COVID19 and will continue to pay the price because of a cheap treaty. Are we, unwittingly, back in 1678 in La Fontaine’s fable of the plague-stricken animals?

At the 77th World Health Assembly, it was agreed that the pandemic accord negotiations will continue till another year.

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