

Seventh Meeting of the Intergovernmental Negotiating Body (INB) (6th - 10th November 2023) Geneva

You can follow proceedings for yourself at https://apps.who.int/gb/inb/e/e_inb-7.html. We have included the time stamps in brackets for ease of accessing the individual speakers. Note that the session is split into two parts.

Introduction

In the opening session of the INB, which took place on Monday 6th November, the Member States along with relevant stakeholders were invited to consider and comment on the Bureau's proposal for negotiation text of the WHO Pandemic Agreement. (https://apps.who.int/gb/inb/pdf_files/inb7/A_INB7_3-en.pdf)

The opening session was publicly webcast.

The Bureau claimed they took the inputs of the countries from both formal and inter-sessional informal sessions into account when producing the legally formatted and streamlined proposed negotiating text of the WHO Pandemic Agreement. Ultimately, only the ideas that “they”, the Bureau, believed to be relevant were included.

Over sixty (60) individual Member States (some commenting on behalf of wider groups of Member States) and over forty (40) relevant stakeholders commented on the proposed negotiating text during a meeting that lasted over six (6) hours.

MEMBER STATES

Developing Countries

The main themes from the developing countries were as follows:

- equity to be operationalised via legally binding obligations;
- the re-instatement of “common but differentiated responsibilities” (CBDR); and

- for text around “recovery” to be re-instated.

However, it is apparent from the proposed negotiating text that the Bureau has ignored their requirements. Again!

Bangladesh (Part I: 48:40)

Bangladesh (on behalf of the SE Asian countries and aligned with the countries of the Group for Equity: Argentina, Bangladesh, Botswana, Brazil, China, Colombia, Dominican Republic, Egypt, El Salvador, Eswatini, Ethiopia, Fiji, Guatemala, India, Indonesia, Iran, Kenya, Malaysia, Mexico, Namibia, Pakistan, Palestine, Paraguay, Peru, the Philippines, South Africa, Tanzania, Thailand, Uruguay) pointed out that equity remains an issue and that it must be reflected in Articles 9, 10, 11, 12, 13, 16, 19, and 20 and be “implementable”.

Ethiopia (Part I: 51:24)

Ethiopia (on behalf of the forty-seven countries of the African Region) stated that the negotiating text falls short of addressing operationalisation of equity as language was aspirational only. Furthermore, they claimed the text takes a framework approach and relegates important elements such as access-benefit sharing and financing to being determined at a later date: *“Nothing is agreed until everything is agreed. As such, we propose that the key elements that are missing in the negotiating text are incorporated into the current draft before textual negotiations can commence.”*

South Africa (Part I: 55:12)

South Africa, on behalf of the twenty-nine (29) countries of the Group for Equity (listed above) also stated that the text falls short and lacks important elements regarding equity saying that “Common but differentiated responsibility and respective capabilities” was removed without full discussion in the INB yet the principle enjoyed extensive support from many countries. Consequently, CBDR should be retained as it is essential to equity and offers a method to operationalise the same.

Namibia (Part I: 1:59:14)

Namibia stated, *“The draft negotiating text before us takes the same approach that has been taken on international health law since 1951. This is since the adoption of the sanitary regulations in 1951. We have again before us a text that attaches far greater importance to the pillars of prevention and preparedness with legally binding obligations proposed for provisions that would operationalise these pillars while the provisions on equitable response are presented in aspirational language, in framework formats or promises to be achieved through the goodwill of individual Member States.*

We ask ourselves, if the Bureau really wanted to produce a balanced text, why did the Bureau not present aspirational or non-binding language for the provisions that seek to operationalise the pillars of prevention and preparedness?

Why did the Bureau not suspend the development of important issues under Articles 4 and 5 to a later date as they have done for Articles 12 and 20?

The text, while acknowledging the different levels in the capacities of States and the peculiar situations of developing countries, fails to apportion an appropriate degree of responsibility on those with more resources to provide the necessary support to developing countries to implement obligations and [can't work out this word] under the Pandemic Treaty or to strengthen their health systems.

In developing the text, the Bureau also omitted to take into consideration the fact that developing countries have limited human resource capacities. Major equity proposals that enjoyed the support of more than 60 developing countries were simply ignored. Developing countries, who already have stretched human resources, have now to gather themselves again to seek the incorporation of stronger provisions on equity in the negotiating text, which carries enormous persuasive value even you classify it as a living document. We would therefore consider the draft text as a basis for further work and will work with others to improve the text.”

Fiji (Part I: 2:14:53)

Fiji stated, *“Lack of equity is the biggest gap in the collective response however, while all Member States support the theoretical concept of equity in the Pandemic Agreement, there is clear divergence between developed and developing countries with regards to operationalising equity including concrete, legally binding obligations in the instrument.”*

DEVELOPED COUNTRIES

Protection of intellectual property rights (IPR) and concerns regarding the text on tech transfer and financing were the main themes of the developed countries.

European Union (Part I: I:05:03)

The EU raised the following “serious” concerns:

- lack of specificity and clarity in the text which fails to allow for effective implementation of binding obligations;
- many key issues are pushed out to the future for determination by the Conference of Parties (COP); and
- provisions around IPR, etc transfer and financing.

Ireland (Part I: 1:23:28)

Ireland aligned itself with the EU and included the following concerns:

- a lack of clarity around mandatory obligations;
- that WTO (World Trade Organisation) and WIPO (World Intellectual Property Organization) must be respected on IPR as appropriate forum;
- that it is unacceptable for financing to be an unknown amount and be managed by the COP (Conference of the Parties); and
- the COP’s ability to amend the agreement post adoption is unacceptable.

United Kingdom (Part I: 1:37:58)

The UK stated that it cannot accept waivers of IPR pointing out that WTO is the appropriate forum to discuss obligations on Intellectual Property (IP). The main points raised by the UK delegate are as follows:

“The United Kingdom remains firmly committed to working with others to negotiate a legally binding Pandemic Accord while of course respecting Member State’s sovereign right to make domestic decisions on nation public health matters.”

“We should, co-chairs, aspire to a world in which most of this agreement is never needed because we can prevent pandemic threats before they take hold.”

United States of America (Part I: 2:38:47)

USA remarked that they cannot agree to the elimination of IPR protections and expressed concerns around financing.

Switzerland (Part II: 25:36)

Switzerland appealed, “for the instrument to reflect the WHO mandate and focus on world health and respond to gaps and needs identified during the Covid-19 crisis.” Like many countries, they argue that the instrument currently includes provisions that fall within the competence scope of the international institutions, such as trade and IPR, and therefore Switzerland cannot support those discussions within the framework of the WHO.

Saudi Arabia (Part II: 28:43)

Saudi Arabia stressed the importance of sovereign states being in a position to manage national public health matters.

Summary

There was broad consensus amongst the Member States of the following:

1. that the Bureau's proposed negotiating text should be used as the basis for textual negotiations as a "living document" with many countries reserving the right to add additional text and pointing out that "nothing is agreed until everything is agreed";
2. that text based negotiations should begin immediately between Member States directly (rather than via the Bureau);
and
3. that the mandate of other organisations must be respected.

Very few Member States mentioned human rights.

There remain divisions, evidenced in previous INB meetings, with respect to process between developing countries and developed countries. The former maintain that inter-sessional informal meetings prejudice the smaller delegations thereby compromising transparency. This is in contrast to the majority of developed countries who support the inter-sessional sessions using the tight timeframe as justification.

RELEVANT STAKEHOLDERS

Following the comments from the Member States, the floor was opened up to the relevant stakeholders who, for the first time, were invited to have one delegate physically present at the plenary meeting.

Over 40 relevant stakeholders took the opportunity to comment with the vast majority making statements that aligned with their mission. For example, those organisations connected to animals all expressed strong support for One Health with many stating the language should be strengthened and One Health put at the core of the agreement.

WIPO (Part II: 1:25:21)

World Intellectual Property Organisation (WIPO) were keen to point out that any outcome of the INB process should not impact already existing IPR regulations.

Panel for a Global Public Health (Part II 2:04:33)

Barbara M. Stocking M.A. Dame Commander of the British Empire represented the Panel for a Global Public Health Convention and commented that it is essential the May 2024 deadline be met as otherwise a global Pandemic Agreement is unlikely. She expressed concerns that many Articles put too great a burden on “low income” countries, that the funding mechanism is not appropriate as there is an existing financing mechanism linked to PPR which can be used and that accountability without compliance means nothing. She advocated for “independent assessment” of compliance to, firstly, build trust between countries and, secondly, to allow Parliaments and citizens to hold their governments to account.

Gavi (Part II 1.30.14)

Gavi stated they are a “fully committed partner in preventing preparing for and responding to outbreaks and pandemics...however, we are concerned with the omission of routine immunisation in the negotiating text. Immunisation is fundamental for outbreak prevention, surveillance and supply chain strengthening. It serves as a platform to reach marginalised communities and it is therefore critical for the continuum of prevention, preparedness and response to pandemics. In addition to our strong recommendation to retaining immunisation throughout the Preamble and the functional Articles of the draft, we also urge Member States to (1) ensure that any financing mechanism in the Pandemic Accord includes at risk contingency funding available from day zero to support search capacity for a coordinated global response to any future pandemics and (2) define a clear role for specialised agencies, like Gavi, in the development and the implementation of the mechanisms proposed throughout the negotiating text alongside the WHO. Thank you so much.”

IFPMA (International Federation of Pharmaceutical Manufacturers and Traders) (Part II: 1:37:39)

International Federation of Pharmaceutical Manufacturers and Traders (IFPMA) on behalf of the bio pharmaceutical industry was scathing of the agreement: *“...the ability of pharmaceutical companies to develop and deliver new vaccines and treatments at a speed and scale never seen before is a central lesson from the Covid-19 pandemic. This was made possible by our dedication to research and development. Rather than preserve these elements that were so vital in our pandemic response, parts of the current draft CA+ would undermine these innovation ecosystems and our ability to rapidly*

develop medical counter measures. The introduction of the PABS model and complex legal frameworks such as SMTAs (Standard Material Transfer Agreement - [https://www.who.int/initiatives/pandemic-influenza-preparedness-framework/standard-material-transfer-agreement-2-\(smta2\)](https://www.who.int/initiatives/pandemic-influenza-preparedness-framework/standard-material-transfer-agreement-2-(smta2))) risk creating unnecessary bureaucratic hurdles. These would deter the scientific research needed, particularly within the biotech sector. Moreover, the draft lacks a clear strategy for a robust procurement mechanism for low income countries and fails to adequately address trade barriers that could hinder the global distribution of medical supplies. The Covid pandemic demonstrated the negative impacts of not having immediate funding for procurements leading to unequal vaccine distribution; a mistake that should not be replicated. IFPMA shares the ambition for a pandemic treaty that improves equitable access to medical counter measures in future pandemics. The INB must look to practical solutions such as those set out by industry in the Berlin Declaration. Finally, Madame Chair, we remain committed to collaborate on how a new global framework can support improved responses to future pandemics however, as it stands, the world's future pandemic preparedness would be better served without a treaty rather than with a treaty based on the current text.”

Of course, the question arises of whether organisations with clear conflicts of interest, such as GAVI and IFPMA, be afforded a voice at all. Some of the relevant stakeholder's statements speak directly about this point.

Geneva Global Health Club (Part II: 2:44:13)

Geneva Global Health Club pointed out that the agreement must be “immunised” from industry influence and legally safeguarded from vested interests stating, “*we wonder if this negotiations intention is indeed to prepare the world to better protect everyone everywhere from future pandemics or if it is instead to enable private monopolies, mostly in the global north, to profit from a newer round of publicly funded research and immunity policies using human life as ransom.*”

Public Service International (Part II: 2:26:30)

Public Service International raised concerns around IPR stating, “*it is not so much initiative or even profit that is curtailed by the measures this would require it is [rates?] and super-profiteering from pandemics whilst this is supported with public*

funds. For example, learning from Covid-19, over 100 billion Euros was spent by governments while 61 new pandemic billionaires were made.” The goal should be “people over profit” and “health over wealth”.

Oxfam (Part II: 2:34:38)

Oxfam to the INB: “Finally, you have a lifetime opportunity to protect public health. A test of whether you are truly committed to protecting public health for the most vulnerable or the commercial interest of the few.”

Summary

A greater percent of relevant stakeholders, compared to Member States, raised concerns around human rights with several commenting they have become less robust over time and demanding that Member States re-instate the full definition of the respect for the human rights principle that was included in Article 3 of the Bureau’s text to “reference the obligation of States to respect, protect and fulfil human rights.”

Several relevant stakeholders mentioned that financing cannot wait until December 2026 and that products arising out of publicly funded research and development should be considered “global public goods”. All welcomed their (the stakeholders) inclusion at the plenary session but want greater involvement in the INB process and to be invited to the drafting sessions. Wouldn’t we all!

Conclusion

There is no doubt that in streamlining the text to create the Negotiating Text, the Bureau has watered down the agreement to the detriment of developing countries. Legally binding language is used when addressing topics such as prevention and preparedness whereas aspirational language, in Articles relating to equity, is used.

There remains division between developed and developing countries on process and this was compounded by the fact that the non-English versions of the Negotiating Text were only made available 3 days prior to INB7 whereas the English version was available several weeks prior. The developing countries, understandably, argue this puts them at a disadvantage at the negotiating table.

Consensus is a long way off and time is running short. It is hard to see how agreement can be reached by May 2024, which raises the question of whether this is, in fact, a distraction. Accordingly, it is important to remain focused on **all three** processes in this arena - the INB process, the WGIHR process and the UN's Summit of the Future.

Next Steps

INB7 continued in drafting session through to Friday 10th November. They will meet again from 4th to 6th December. The drafting sessions are "closed" which means they are not publicly webcast.

The next open session will be on 6th December when the INB will consider a draft report of the main conclusions of the INB7. This will be publicly webcast.