



## **The Pandemic Accord: Actualizing Ambition in 2023**

*It has been nearly three years since the emergence of the COVID-19 pandemic and one year since the 194 Member States of the World Health Organization decided to develop a new international agreement to strengthen global cooperation on pandemics. Since then, Member States of the newly created Intergovernmental Negotiating Body (INB) have exchanged many ideas about what such a legal agreement should achieve. As they move into the formal negotiation phase in February 2023, it will quickly become clear if the ambition of such an agreement can garner the necessary political support in a global climate increasingly characterized by geopolitical tensions and compounding crises.*

### **A Global Agreement for Better Cooperation on Pandemics**

Since the COVID-19 pandemic erupted in early 2020, world leaders, global health experts, and advocates condemned the lack of global cooperation to fight an infectious pathogen that abided no borders. In particular, the inequitable and untimely distribution of pandemic response products came to characterize the global response at several stages of the COVID-19 pandemic. Recognizing this moral and technical failure of the global response, Member States of the World Health Organization are seizing a once-in-a-generation opportunity to enhance international cooperation through this new agreement.

From scientific research to surveillance and sample sharing, Member States have identified many possible strategies to ensure future threats are better addressed by coordinated efforts. That is why in early December 2021, in a Special Session of the World Health Assembly (only the second ever in the history of WHO), WHO Member States agreed to establish an Intergovernmental Negotiating Body (INB) to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response. Since its launch in February 2022, this Member State group – led by a bureau consisting of one representative from each of the six WHO regions – has systematically and comprehensively collected the viewpoints of thousands of stakeholders to inform the development of a new international legal instrument on pandemics.

In July 2022, after considering different potential pathways, the INB decided to move forward developing an agreement under Article 19 of the WHO Constitution, which would include both legally binding and non-binding elements, while also requiring ratification by countries to enter into force (“opt in”). The Framework Convention on Tobacco Control was concluded under Article 19 and is frequently cited as a precedent in Member State discussions. Ultimately, the World Health Assembly, not the INB, will determine which article of the constitution is utilized. Some Member States, including the U.S., do not wish to foreclose the possibility of adopting the new instrument under Article 21, which is an “opt out” agreement like the International Health Regulations.

Finally, after nine months of consultation and cultivation of ideas, the INB produced a [conceptual zero draft](#) for the instrument, which was considered by the group at their December 2022 meeting. The conceptual zero draft is not yet a legal text that can be negotiated. Rather, it is a preparatory document that synthesizes many varied concepts and solutions proposed by a range of stakeholders throughout the initial generative phase.

## **The Conceptual Zero Draft**

The conceptual zero draft lays out a comprehensive vision that addresses the spectrum of prevention, preparedness and response needs and obligations to safeguard against pandemic threats. It clearly recognizes the need for “whole of society” and “whole of government” approaches, which have been acknowledged as lacking in the current pandemic response policies.

The draft also recognizes the interdependence of pandemic preparedness and response (PPR) with both One Health and Universal Health Coverage, and the need for both local and global approaches to pandemic readiness. Above all, the conceptual zero draft places clear emphasis on equity, treating it as a “principle, indicator and outcome” in the text. To operationalize equity principles, the draft includes provisions aimed at enhancing global supply chains, improving access to technology, democratizing research and development, and strengthening Access and Benefit Sharing mechanisms for genetic sequence data and samples. While there are some frameworks and agreements already in place to address these issues, the pandemic accord seeks to add complementary value and increase coherence across existing instruments.

To be truly complementary and additive, the instrument must successfully incent and obligate whatever measures are eventually agreed upon. Meeting new obligations and responsibilities will be much more likely if related financing is made available to support countries who require additional resources to meet new obligations. Since the inception of the INB, some Member States have been vocal about the need for their responsibilities to correspond with their capacities and resources. The environmental law principle of *Common But Differentiated Responsibilities* (CBDR) utilized in the United Nations Framework Convention on Climate Change, has been invoked in the draft text to convey that obligations cannot be the same for all countries, and this has already proven to be a flashpoint in debate.

It is also noteworthy that the current draft defers the establishment of a review mechanism for four years after the accord goes into effect. The draft proposes to establish a Conference of Parties as the governing body for the accord, but leaves space to negotiate important and potentially contentious elements related to measurement and accountability until much later. If left unresolved, this would leave Member States in an untenable position to advance the accord through their domestic legislatures.

## **Member States Reactions and Interpretations to the Conceptual Zero Draft**

On December 5-7, Member States gathered to reflect on the conceptual zero draft. The new pandemic accord’s ambition is to hold all WHO Member States to a higher degree of responsibility through legally binding measures, but their discussion provided plenty of early indications that countries will protect some of the very practices that contributed to an insufficient and inequitable response to the COVID-19 pandemic and earlier health crises. Though the commitment to equity remains high, the tactics for achieving it are politically fraught.

Access and Benefit Sharing (ABS) emerged as a clear area of focus for Member States. There were several mentions of avoiding duplication with existing ABS mechanisms that are functioning well, such as the Pandemic Influenza Preparedness Framework and the Nagoya Protocol, but there was appetite from Botswana, Canada, EU, and Kenya to use the accord as an opportunity to negotiate new rules for ABS. Member States also stated their intent to negotiate an equitable allocation framework for pandemic response products within the agreement.

The reaction to CBDR was particularly stark with attitudes with high-income countries reluctant to accept language on CBDR. Countries objecting to its use included Australia, Canada, Norway, European Union, United Kingdom, and United States, aligning with countries' development status. Proponents of CBDR language included Argentina, Bangladesh, Brazil, China, India, Indonesia, Iran, Pakistan, Namibia, and South Africa. Others, like Fiji, Paraguay, and Singapore expressed interest in learning more about the potential merits of this approach.

More nuanced signals came from Member States in their remarks on the importance of engagement under voluntary terms. The primacy of national interests shone through as Canada and Israel remarked on the importance of pathogen and sample sharing on a voluntary basis. The Russian Federation reiterated one of its regular talking points that any new capacity assessment or evaluation should be voluntary and maintain the highest respect for national sovereignty. The U.S. clarified its position that "any references to technology transfer in the document should be clear that they are voluntary and on mutually agreed terms." Kenya, Monaco, Turkey, and the U.S. requested to include options for reservations, which would allow countries to exempt themselves from certain obligations while remaining party to the agreement.

Delegations pointed out other potential roadblocks that could arise in the negotiation stage, including the need to define several amorphous terms, including 'pandemic,' 'equity,' and 'pandemic products.' The definition of these terms will shape the scope of the instrument, but delegations expressed wariness about becoming mired in lengthy discussions on definitions.

### **What Next?**

At the most recent meeting in early December, delegations gave their approval for the current text to be transformed into the zero draft. This metamorphosis requires that the ideas presently conveyed in the text in precise legal language, which is a delicate process that Member States expressed some anxiety about. The document that emerges from this process is the text that Member States will begin negotiating in February 2023.

Despite requests from some Member States to focus the zero draft on a set of prioritized elements, it was ultimately agreed to retain all the elements of the conceptual zero draft. The hard work of negotiation will take place during 2023 as Member States evaluate what merits being included, and what should be binding and/or non-binding. Tradeoffs may have to be made to ensure the new instrument is as universally subscribed as possible.

In her remarks at the closure of the December meeting, INB co-chair Precious Matsoso of South Africa, compared the INB's current moment with a lobster molting as it grows. She noted the lobster is most vulnerable when it sheds its shell. "So, what is it that we can learn from this?" she asked. "It is a time of discomfort because it is vulnerable. But it is also an opportunity for change, and we need to see this change not as a hindrance, but as an opportunity to contribute toward making a difference... a better, safer, and fairer world."

Written by: Molly Moss, Senior Global Health Policy Associate, United Nations Foundation

Updated: December 14, 2022