

WILL THE WORLD UNITE?

Embracing fairness and safety in the future Pandemic Accord

With less than four months to go before the final deadline set by State Parties to submit a definite proposal text for the Convention, Agreement or other International Instrument under the Constitution of the World Health Organization to strengthen Pandemic Prevention, Preparedness and Response (WHO CA+, often referred to as the Pandemic Accord or Pandemic Treaty), State Parties are still struggling to reach a consensus on the main equity-related provisions of the draft, resulting in stalled negotiations and growing frustrations between countries.

At this point, it is unclear whether negotiators are deliberately trying to run down the clock until the May 2024 deadline or if, despite several rounds of negotiations, some issues are simply too intractable for a common position to be found.

Overcoming the equity clash in the Pandemic Accord talks

If anything has characterised the numerous rounds of negotiations, it has, undoubtedly, been the long-standing geopolitical divide between high income countries (HICs) and low-and-middle income countries (LMICs). This has been particularly true on matters related to global health cooperation since the onset of the Covid-19 pandemic¹, which exacerbated existing inequalities, and saw a failure to distribute pandemic-related products. Ultimately, this resulted in a clear divide between higher and lower-income countries².

Indeed, LMICs have been advocating for the inclusion of equity-enhancing provisions, such as temporary Intellectual Property waivers, data and products sharing, to ensure universal access

¹ <https://views-voices.oxfam.org.uk/2023/05/the-pandemic-treaty-must-put-people-before-big-pharma-profits/>

² <https://www.devex.com/news/big-pharma-slammed-for-executive-payouts-that-nearly-match-r-d-budget-106389>

to vaccines and other related products should another pandemic emerge. The Group for Equity³ has been calling for the introduction of legally binding measures around the core equity provisions to guarantee the implementation of a stronger, fairer, and effective global pandemic regime⁴. This position is also rooted in an implicit criticism of the behaviour of high-income countries which, during the pandemic, opted for a “me-first” approach to vaccines rather than ensuring global access⁵.

Yet, while the demands from several LMICs are very much in line with the Treaty's main ambition, i.e. to deliver an instrument that will be guided by the principles of equity and solidarity, several State Parties have been opposing their counterparts' demands. Indeed, they are reluctant to back most of the equity-related provisions regarding Intellectual Property rights and licences, patents regulations, access to knowledge and data sharing, as well as shared benefits of pandemic-related products. These provisions technically aim to enable a fairer distribution of medical countermeasures, and to empower developing countries to strengthen their capacities in terms of PPPR. Similarly, the notion of transparency, although included in the treaty as a general principle, remains confined to a passing mention and fails to be transversally incorporated into most of the provisions, resulting in the absence of legally binding provisions to hold entities and organisations accountable⁶. This is clearly a missed opportunity to fully include the WHA Resolution 72.8,⁷ and to further amplify the call for improved transparency across the medical countermeasures market.

Furthermore, in light of the broader context and ambition of the treaty, it raises the question as to whether some countries are deliberately trying to restrain the scope of most Articles in order to maintain the hegemony enjoyed by their own pharmaceutical industries⁸.

The dilemma of economic gains vs. public health

Intrinsically associated with the Global North-Global South divide, the ongoing negotiations echo the friction between the promotion of public health interests and the pursuit of economic gains, inherently connected to the area of PPPR. Indeed, the balance between public health and economic interests is highly sensitive and has been proven complex to address, especially in light of the enormous profits “Big Pharma” made thanks to their Covid-19 products during the

³ The Group for Equity is composed of: 1. Argentina, 2. Bangladesh, 3. Botswana, 4. Brazil, 5. China, 6. Colombia, 7. Dominican Republic, 8. Egypt, 9. El Salvador, 10. Eswatini, 11. Ethiopia, 12. Fiji, 13. Guatemala, 14. India, 15. Indonesia, 16. Iran, 17. Kenya, 18. Malaysia, 19. Mexico, 20. Namibia, 21. Pakistan, 22. Palestine, 23. Paraguay, 24. Peru, 25. The Philippines, 26. South Africa, 27. Tanzania, 28. Thailand, 29. Uruguay.

⁴ <https://www.twn.my/title2/biotk/2023/btk231103.htm>

⁵ <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-022-00802-y>

⁶ <https://www.msfaccess.org/what-look-out-pandemic-accord-transparency>

⁷ https://apps.who.int/gb/ebwha/pdf_files/WHA72/A72_R8-en.pdf

⁸ <https://europepmc.org/article/ppr/ppr634593>

pandemic - around US\$ 90 billion for Pfizer, BioNTech, Moderna and Sinova⁹. It is important to remember here that several of these pharmaceutical products were developed using public money.

The negotiations around the Pandemic Treaty are an attempt to address the elephant in the room: health is, at the end of the day, a profitable business. But, as emphasised by President Macron, shouldn't some goods be placed above *the laws of the (free) market*¹⁰? In certain situations, e.g. a devastating pandemic, should health be prioritised over economic and financial interests?

Yet, reality tells a different story. If the text aims to provide, among other things, an "*unhindered, fair, equitable and timely access to safe, effective, quality and affordable pandemic-related products and services*" (Article.3, Paragraph 3, p. 7), the stances of several HICs seem to demonstrate their reluctance to fully embrace the text's ambition for equity. Indeed, while the negotiations take place behind closed doors, published analyses have reported the extent to which the positions of HICs are so very obviously aligned with that of the pharmaceutical industry. Furthermore, these written reports are underpinned by public statements, such as when Germany's Minister of Health, Karl Lauterbach, explicitly stated that any conditions amending the current IP rights regimes will not be tolerated: "*For countries like Germany and most European countries, it is clear that such **an agreement will not fly if there is a major limitation on intellectual property rights***"¹¹. Similarly, a diplomat reported to the press that the pharmaceutical industry is the "*main pressure on high-income countries*" on opposing access and benefit sharing mechanisms¹², which may ultimately trigger a broader reflection on the relationship between the Global North and its own pharmaceutical industry, and the influence exerted on the former by the latter.

At its most fundamental level, this debate sheds light on the question of appropriate balance between the State's public responsibility to guarantee and protect the right to health for all, and the private sector's quest for profit-maximisation¹³. While the scales currently appear to be tipping in favour of the latter, this debate goes beyond the sole topic of the Treaty. Nevertheless, it is currently resulting in stalled negotiations in Geneva¹⁴ and concerns are starting to emerge as to whether the outcome of the negotiations will emerge as a "*genuine*

⁹ <https://www.somo.nl/big-pharma-raked-in-usd-90-billion-in-profits-with-covid-19-vaccines/>

¹⁰ <https://www.elysee.fr/emmanuel-macron/2020/03/12/adresse-aux-francais>

¹¹ <https://www.devex.com/news/devex-checkup-new-pandemic-treaty-draft-exposes-deep-divisions-106399>

¹² <https://www.politico.eu/article/pandemic-treaty-negotiations-countries-risking-failure-covid-who-sharing-mechanism/>

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10105197/>

¹⁴ <https://www.politico.eu/article/pandemic-treaty-negotiations-countries-risking-failure-covid-who-sharing-mechanism/>

and effective pro-public health mechanism to prevent, prepare for, and respond to future pandemics”¹⁵.

Solving critical gaps in the Pandemic Accord text

Only a few days before the start of the 8th INB meeting in Geneva, key areas of the text are still hotly debated, with consensus yet to be reached. Global Health Advocates (GHA) identified three areas of PPPR, included in the Negotiating Text, and that are crucial to ensure equity and guarantee universal access to life-saving tools, *when*, not *if*, the next pandemic occurs. While we welcome the inclusion of the core components of pandemic preparedness, prevention and response, namely R&D, technology transfer and know-how and access and benefit sharing of pandemic-related products, we regret the weakness and non-binding nature of these provisions as well as the omission of concrete measures required to fully ensure equity, accountability, and transparency in PPPR.

More specifically, we noted that:

- **On research and development:** The current provisions merely call for transparency of government-funded R&D agreements for pandemic-related products and stops short of further elaborating on what must be published, how strict obligations should be, etc.¹⁶. As a result, the wording of the current text fails to ensure a fair return on public investment and leaves the private sector with too many rights and too few responsibilities to ensure proper access conditions for future healthcare products developed using public, taxpayer funds. We therefore call for transparency, which is an agreed-upon guiding principle of the Treaty, to be fully implemented through concrete obligations in all publicly funded R&D activities.
- **On tech transfer and know-hows:** IP rights considerations are among the most controversial topics of the pandemic agreement. However, the current article falls short of ensuring a strong and robust framework for tech transfer and know-how, since it relies mostly on weak, non-binding language and simply “*encourages*” pharmaceutical manufacturers from developed countries to share undisclosed information, waive royalties’ payments on their patents, and participate in technology and knowledge pooling¹⁷. Recent history has shown that voluntary, non-binding approaches to knowledge and vaccine sharing do not work and are a clear path toward failed global solidarity¹⁸. Even more worryingly, it has been reported that several European countries

¹⁵ <https://g2h2.org/posts/inb-openletter-december2022/>

¹⁶ <https://msfaccess.org/pandemic-accord-msfs-comments-equity-provisions-inb-proposal-negotiating-text>

¹⁷ <https://peoplesvaccine.org/wp-content/uploads/2022/10/PVA-PPPR-report.pdf>

¹⁸ <https://msfaccess.org/pandemic-accord-msfs-comments-equity-provisions-inb-proposal-negotiating-text>

have been pushing to offload the discussions on IP at the World Trade Organisation, claiming that the WHO is not the appropriate place to discuss such topics¹⁹.

- **On access and benefit sharing of pandemic-related products:** This issue sparks intense debate as it places biological data sharing and shared access to pandemic-related products on equal footing. Indeed, it aims to promote timely material sharing (e.g. biological data) between states and their institutions as well as a multilateral benefit mechanism to ensure the fair and timely sharing of tools and products in times of pandemics between nations. In addition to donations and reduced prices, the article encourages manufacturers from Global North to collaborate with their Global South counterparts through tech transfer and know-how. This is crucial to ensure that, in times of health crisis, production can be scaled up and broadened to ensure that supplies of pandemic-related products can keep up with demand. This article should therefore not be understood as a sole “charity model” but as the implementation of the principles of reciprocity and mutuality, as laid down in the Convention on Biological Diversity²⁰ and the Nagoya Protocol²¹. Indeed, it aims to ensure that the timely sharing of biological material is logically linked with a share of the products and benefits of the research that will be developed based on the aforementioned biological materials²². Above all, the Pathogen Access and Benefit-Sharing System (PABS System) is crucial to ensure all countries’ sovereign rights over their genetic resources,²³ and acts as a stark reminder that PPPR can only be effective if rooted in a sincerely collaborative approach to global health.

In summary, the current proposal lacks concrete, binding provisions to operationalise fair benefit sharing. Moreover, the deliberate use of weak, unambitious language and unclear terms, such as “*affordable prices*”, leaves too much room for interpretation depending on the interests at stake, and therefore hampers effectiveness. Finally, it is explicitly confined to pandemic situations, neglecting the essential prevention and preparedness principles.

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¹⁹ <https://healthpolicy-watch.news/intellectual-property-negotiations-belong-at-wto-european-countries-tell-pandemic-accord-negotiations/>

²⁰ <https://www.cbd.int/doc/legal/cbd-en.pdf>

²¹ <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>

²² https://www.twn.my/title2/intellectual_property/info.service/2023/ip231102.htm

²³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10209987/>