South Centre Comments on the Draft Annotated Outline of a WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response

24 June 2022

The South Centre welcomes the opportunity to provide comments on the draft annotated outline of a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response.[1] Comments are provided with respect to the process and the content.

1. Process:

1.1 The draft annotated outline should remain open for continuing cultivation of elements and themes for the instrument.

1.2 The "parking lot approach" in the outline would not be appropriate at this point. Such approach (to place some themes in a separate standing in the outline) could be perceived as de-prioritizing certain themes or pre-judging agreement on others, when at this stage of non-negotiation, the aim should be to be inclusive of all proposals.

1.3 As an alternative to the "parking lot approach", for themes that may have a close relationship with the implementation of the International Health Regulations (IHR) 2005 or the targeted amendment process, a note can be made on the side (cross-reference) signaling the same.

1.4 None of the additions proposed to the outline by member States should be removed from the subsequent updated draft annotated outline. Rather, the revised draft should reflect all additional elements proposed.

1.5 The INB Bureau can make itself available to have meetings with individual and/or groups of member States. These meetings should be available for all member States and the process for convening them clearly informed to all of them.

[1] Draft annotated outline of a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response, A/INB/1/12, 14 June 2022.

1.6 Sufficient time should be provided for member States and observers to receive and review the revised draft annotated outline prior to the subsequent meeting of the INB.
1.7 Discussions based on the outline does not foreclose introducing additional elements at a later stage once the drafting and negotiation stage of the work of INB begins.
1.8 The determination of elements of binding or non-binding nature is to be made at the negotiations stage.

2. Content:

2.1 WHO member States will be the parties to the new instrument, regardless of the form of the instrument that is selected. Accordingly, the implementation of the instrument should focus on member States, while the measures included may be directed at regulating, curbing, promoting actions by stakeholders including private sector actors, public health and other agencies, as it is the case in the WHO Framework Convention on Tobacco Control (WHO FCTC).
2.2 The Preamble should recognize the leading coordination role of the WHO within the global health architecture.
2.3 The objective and scope of the instrument should cover public health threats and emergencies with pandemic potential including outbreaks of infectious diseases.
2.4 An additional objective of the instrument should be to support the strengthening of national and regional capacities and capabilities of developing countries for pandemic prevention, preparedness, response and recovery. Related language in general obligations needs to be developed further, in more specific terms than “commit to long term development cooperation” (2.7). The experience in implementation of Article 44 of IHR informs the need for more specific commitments and targets in the instrument with regards to “cooperation” with developing countries.
2.5 General obligations can include the strengthening of health systems, improving primary care and health workforce.
2.6 The General obligation (47) to develop, implement, periodically update and review, comprehensive multisectoral national pandemic prevention, preparedness, response and recovery strategies, including for One Health and antimicrobial resistance, should be maintained”. This obligation should be linked to other obligations to fulfill the objective of strengthening the capacities of developing countries (2.4 above).
2.7 It is adequate to maintain the classification of prevention, preparedness, response and recovery, and under each the cross-cutting sub-categories of equity, governance and leadership, systems and tools, and financing
2.8 The sub-sub categories of access, transfer (sharing) of technology including know-how, co-ordination, collaboration and cooperation, multilateral action, governance should be included for elaboration of measures under all categories.
2.9 In addition to the principles currently included in the draft outline, the principle of *common but differentiated responsibilities and respective capabilities, in the light*

of different national circumstances, already proposed by the African Group, should be included. The principle is well established in international environmental law including in the Paris Agreement (2015), and should be adapted for the purposes of the instrument.

2.10 After "General obligations", it is adequate to maintain the headers in the outline as "measures for" in the areas of prevention, preparedness, response and recovery. This will help to guide the discussion towards identification of specific actionable measures that need to be defined under each category – the "how?".

2.11 In "measures for response", a sub-category to be included is the area of cooperation for research and development to allow for equitable access to medical countermeasures (i.e., diagnostics, medicines, vaccines) as global public goods. Some of the specific measures that can be included are:[2]

2.11.1 Obligation to inform WHO prior to undertaking advance purchase commitments in order to comply with WHO guidance on equitable allocation across countries and avoid supply shortages

2.11.2 Commit to support equitable governance and inclusive decision-making in any global health agencies involved in supporting development, procurement and/or supply of medical countermeasures

2.11.3 Minimum financial allocation by developed countries for pooled procurement and equitable distribution of countermeasures for pandemic response (through a multilateral system that builds on the lessons from the ACT-Accelerator)

2.11.4 Sharing with WHO information regarding purchase agreements (e.g., quantities, prices, delivery timetables) in a timely manner.

2.11.5 Commitments to enhance public investment in research and development and share results of publicly financed research.

2.11.6 Commitments to introduce access conditions in grants and contracts (bilateral or multilateral) and other direct public or multilateral funding for private sector (multilateral initiatives, banks, donors). WHO can be tasked to provide guidance on model provisions for contracts.

2.11.7 Pool financing through a global research and development fund to support research and sharing of results, including support for open science, prioritizing involvement of developing country institutions and researchers.

2.11.8 Incentives as part of the global research and development fund to stimulate collaborative R&D with developing country public and private sector labs, universities and firms.

2.11.9 Waiving of intellectual property held by parties supported by public financing or by any global R&D fund

2.11.10 Commitment to sustained investment in regional infrastructure and expertise for diagnostic, medicine and vaccine production.

2.11.11 Financial and technical support for regional procurement mechanisms, regional supply chains and regional transfer of technology hubs

[2] The South Centre | Research Paper 147, 28 February 2022, Can Negotiations at the World Health Organization Lead to a Just Framework for the Prevention, Preparedness and Response to Pandemics as Global Public Goods? Viviana Munoz Tellez

2.11.12 Encourage use of TRIPS flexibilities to promote access to medical countermeasures

2.11.13 Support for multilateral and regional mechanisms to facilitate transfer of technology and know-how

2.11.14 Mandates to disclose information, including:

2.11.14.1 Transparency in clinical trial design, raw data and results

2.11.14.2 Transparency in government contracts for research and Development and contracts for procurement, including advanced purchasing agreements

2.10.14.13 Transparency of private R&D investments broken down by specific costs

2.10.14.14 Transparency in prices, including pre-purchase Agreements

2.10.14.15 Transparency of public financing provided to stimulate research and development in the form of grants, direct payments, subsidies, tax exemptions, and other incentive mechanisms, and the eligibility for such incentives

2.10.14.16 Transparency in national regulatory frameworks

2.11 Parts VII – X can be merged with other parts of the outline, rather than as stand-alone themes that would suggest there are prioritized.

2.12 “A comprehensive approach to One Health, promoting coherence among all relevant actors, instruments and initiatives” (Part VII) can be moved to the preamble. The specific elements to be introduced in the outline, where appropriate.

The South Centre will continue to provide comments to the INB.

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