

Submission to INB September 2022 by the Panel for a Global Public Health Convention

Accountability

With a working draft towards the Convention/Legally Binding Instrument now available and the recommendation that it be under Article 19, the INB now has to balance delivery of a Treaty which countries are prepared to ratify with the need to make sure it is rigorous enough to stop outbreaks becoming pandemics. We believe there is a need to become more precise in a number of areas:

1. There needs to be greater definition of what Member States will be expected to deliver in the new Convention. That is, what are they prepared to be accountable for? This will require negotiation as we go through this Autumn. It will be a fine balance to get as many countries as possible willing to ratify, without weakening the Treaty.
2. Not everything in the Convention will be “hard” law. There will need to be clarity on what is “hard” and “soft” law which may be delivered not only in countries but through other mechanisms and structures.
3. Important also is the need for greater clarity on governance structures. There should, of course, be a Conference of Parties. Our Panel believes that within the Treaty structure there needs to be an independent body to assess delivery of the Convention in country preparedness and response, as well as other relevant requirements. We have proposed that this body should be at arm’s length from WHO. This would help deal with the difficulty in which WHO can find itself when it is standard setter, a friend and supporter of countries, but is also expected to hold them to account. While the independent body needs to be ongoing, not just another committee, the Conference of Parties could provide general oversight of this body’s work, though its assessment must remain independent and public.
4. We are convinced that a Convention must have compliance measures. A review of a large number of treaties across many subjects done by Professor Steve Hoffman* has shown that treaties without enforcement measures do not deliver. There will of course need to be incentives, and disincentives to non delivery.

Coherence between the New Instrument and IHR

Work is also beginning on revisions to the IHR. It is essential that this work and the development of the Convention are well co-ordinated. The Panel believes the IHR revisions should be kept as limited as possible and must be understood as being subordinate to the Convention. In particular, we must not have different compliance mechanisms. The IHR might become the core of a protocol of the Convention, although there may be other areas and issues housed within that protocol.

This is quite complex and we suggest the first actions of the INB Bureau and the IHR Review are to look at which items in IHR need significant change and should be handled at the INB level to deliver through the Convention. For example, it may be that the PHEIC mechanisms need substantial change. For years there have been discussions about a graded system of levels. The current PHEIC is not able to be called early enough in the precautionary mode required to stop outbreaks becoming pandemics. Nor are clear expectations set out about what countries should do at different stages. This is a significant problem.

Financing

While the FIF is moving fast, it is imperative that the requirements and measures used in the financing coming from FIF are aligned with what is described in the new Instrument. The World Bank and the FIF Governing Body must stay close to WHO and the INB to be able to adhere to the new Instrument.

*Hoffman S, Baral P, Van Katwyk S. Do international treaties matter? A systematic field-wide evidence synthesis of effects.

Proc Natl Acad Sci (2022), available at <https://doi.org/10.1073/pnas.2122854119>.

Dame Barbara Stocking

Chair

12 September 2022