

Panel for a Global Public Health Convention

Submission to the INB Bureau

Introduction

The INB and its Bureau are now developing the 'Conceptual Zero Draft' of the new Instrument. It is vital that accountability is central to the Convention¹. The fundamental reason Covid 19 developed into a pandemic were the lack of preparedness of countries and the lack of accountability for active response. Without accountability, the new Convention will fail to prevent outbreaks from becoming pandemics and will fail to mitigate pandemics once they occur. Accountability is the core issue that makes the new Convention worthwhile. This has been recognized in the choice of Article 19 as its legal status. We accept that not everything in the Convention would be 'hard law' and that other matters should be included.

A question often asked is "Who are countries accountable to?". We believe this is first to their own people. The Pandemic Convention would allow parliamentarians, civil society organizations and others to hold their governments to account for what they have committed to deliver. Second, when governments require extraordinary actions from their populations, they also need to be confident that other countries are taking appropriate action. In other words, each country is providing mutual assurance to the others. The third accountability is to international systems; in this case to WHO and to the Convention related structures outlined below.

The Panel would like to set out here what it believes countries should be accountable for, the mechanisms which should be in place to ensure accountability, and the incentives for countries. In this paper we focus particularly on pandemic preparedness and response. There are other areas where there must be obligations on countries, for example, the need to ensure equity especially in global public goods. This will be crucial in the acceptance of the treaty. In due course, the ability to prevent outbreaks through 'One Health' measures may be clarified enough to require obligatory action. If other areas are included, it ought to be possible for them also to be managed through the system we are proposing, with perhaps additional expertise needed for the assessments.

What should countries be accountable for?

Preparedness

Even those countries who were rated highly before 2020 did not perform well during Covid 19. The indicators used only reviewed public health and health care systems whereas there is a clear need to review the whole of government plans. The plans must be tested through simulation exercises.

There are already systems of audit/peer review in existence. The UHPR is covering a large number of countries but other systems might initially be included in the assessment process. While we accept peer review is useful in helping countries learn from each other, we do not believe peer review is

¹ Note, we use the word Convention throughout. We believe that a Framework Convention is most appropriate, but we accept that there may be other legally binding instruments.

adequate for assessment. Independent assessment is required for rigour, and to separate the assessment from the political dynamic which can take place when countries assess each other. We believe there should be an Independent Body, described below.

Countries are at different levels of preparedness and it would be wrong to expect them all to develop to the same level immediately. We propose a system similar to the Paris Climate Change Accords so that countries can set their own realistic (yet ambitious) targets based on their starting point and the finance made available to them. The ultimate standards would be the same for all countries, but there would be differences in how fast countries are expected to achieve the goals. The independent review of each country should take place perhaps every 3 to 4 years with a rolling programme.

Transparency

Transparency is the first prerequisite to stop outbreaks becoming pandemic. There must be obligations upon countries to be transparent, and in a timely way. These obligations are already set out in the IHR but may need to be clarified and or extended given developments in genomic sequencing, social media etc. We assume that IHR as amended would become a protocol of the Convention or something similar. Transparency does not stop at immediate notification. It will need to continue throughout an outbreak or pandemic. Accountability for transparency must be a critical component of the proposed Convention.

Response

A more difficult but not intractable issue is how to hold countries to account for their response as outbreaks emerge and as pandemics develop. Countries are likely to be at different stages of precautionary action/controlling an outbreak/dealing with a full-blown epidemic. Different countries will also have cultures and histories which affect government decision making and the public's willingness to accept restrictions where needed. With new viruses there is also likely to be uncertainty in scientific knowledge.

WHO is the standard setter. With all its experience, WHO will have the ability to set standards flexibly, deciding whether actions should be recommended or obligatory. The standards it sets may be varied according to the level of outbreak or the culturally acceptable requirements in different countries or continents. Countries must then be accountable for taking these actions, and doing so in a timely way. With the speed of pandemic development, actions must be immediate – in hours and days, not weeks as we saw in 2020.

To give some examples on response measures, they are likely to include public health surveillance step up; test, trace and isolate systems as well as community action such as stopping large events.

The systems required to hold countries to account

Governance

It is assumed that there will be a Conference of Parties for the new Instrument that will be at Heads of State level. The members will be those countries that have ratified the Convention. However, it is

desirable to ensure that countries that have not ratified the Convention can also be engaged in the process.

The Conference of Parties will require its own secretariat. Our panel would propose that this should be similar to the Framework Convention on Tobacco Control. That is the Convention and its secretariat are housed within WHO but independent of it.

Independent assessment

We believe that the Independent Assessment Body should be similarly at arm's length from WHO within the CoP structure. This is to strengthen WHO's role as the standard setter. WHO also has a key role as supporter and friend of countries across a whole range of health matters. As we know, it can be difficult then for WHO to criticise countries openly. It is difficult to be both a friend and an assessor of countries at the same time.

To develop the proposal for an Independent Body, we have considered a number of alternatives, e.g., the Human Rights Council, the International Atomic Energy Authority etc. Something approaching the IAEA model is appropriate.

The Conventions' Independent Body would be relatively small. It should have access to all the monitoring currently undertaken by WHO which will still be needed by WHO to monitor the development of emergencies and countries activities. Permanent staff of the new body would need to have appropriate skills in public health and evaluation methods, with the option of bringing in additional experts when required. This Body will need to be shielded from political pressures and will need to have reliable independent funding. A standing Body is required to cover both preparedness and emergencies. The Independent Body would have the following authority:

- To decide which countries to assess at which times.
- To be able to enter a county with immediate effect, and to evaluate the activities relating to the Convention obligations.
- To make independent assessments and report them in the public domain, and
- To call publicly upon the State to remedy non-compliance within a given time frame.

While the Independent Body must be completely free to evaluate and to make its own assessments, there is a case for an oversight committee within the Conference of Parties to monitor the work of the Independent Body and the behaviour of States.

An interesting feature of the IAEA is that States who are not members can still accept the 'safeguards' through acceptance of the Safeguard Agreement. A similar opportunity might be provided for the Pandemic Convention. Countries could consent and accept the requirements of a protocol on preparedness and response without ratifying the Convention itself. This provides a possible route to have compliance to some or all of the International Health Regulations by countries who do not ratify the Convention.

Incentives and disincentives

The greatest incentive for accountability is the collective risk. Preventing outbreaks from turning into pandemics is a collective responsibility and in every country's self-interest. No one country can keep us out of a pandemic. Any one country can keep us in it.

An argument sometimes made against accountability is that it breaches the sovereign right of countries to manage their public health. However, the Charter of the United Nations also makes it clear that countries have 'responsibility to ensure that activities within their jurisdiction or control do not cause damage to other States and their peoples'. (This was noted in previous INB documents).

We recognize that different countries will have different individual interests and reasons why they would accept or reject a specific area of accountability. As we develop areas of accountability, these differences will have to be understood and taken into consideration.

Incentives

We recognize that moral arguments may not be enough to influence all member states to accept accountability, but there are other incentives.

- *Finance.* Low and lower-middle income countries will need financial support for preparedness and response. Tying milestones to current and future financing may be an effective way to incentivize these countries.
- *Reputation.* It is difficult to identify incentives for rich countries that would not be entitled to financial support. The independent assessment body becomes important here. Its findings should be in the public domain. This can be an incentive for countries to comply because of the reputational consequences. The reduced trust by other countries may also lead to practical consequences.
- *Measures of financial stability.* One possible solution we have considered is the application of IMF's Article IV. The IMF may be able to hold countries to account through its periodic review of financial stability. If reviews included pandemic preparedness and response targets, countries could be incentivized to meet such targets to obtain favourable assessment. Climate change is already being considered for inclusion in these assessments and it would be helpful if the IMF could be engaged in considering the risks of pandemics. After all, pandemics threaten not only the economic stability of a country, but also the economic stability of the world, fundamental elements in the IMF's Article IV review.
- *Sanctions.* We have not explored fully the use of sanctions for two reasons. It seems unlikely that they would be accepted by member states in this public health arena. Also, the consequences of sanctions are likely to be felt most keenly by individuals in that country. Populations should not be penalised for the poor behaviour of their government. For example, stopping imports of vaccines because of a government's poor behaviour would be unacceptable.

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4 November 2022