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The Federation's Pages

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Negotiating a new global health treaty: why the things are so different this time?

Following the shock caused by Covid-19, countries are now negotiating a new global instrument—a treaty as widely expected—to confront future pandemics [1]. Treaty-making is not common, but neither is it new to public health. Several health treaties, named international sanitary conventions, were adopted (and later consolidated into the International Sanitary Regulations, the predecessor of the current International Health Regulations), even before the creation of the World Health Organization (WHO) [2]. The WHO itself adopted its first global health treaty, the Framework Convention on Tobacco Control (FCTC), [3] in 2003. Why then does development of a new health treaty, and a second in WHO's history, raise so many questions? What is so different?

The pre-WHO treaties addressed then well-known, specific diseases (cholera, plague, yellow fever and some others), while a pandemic treaty would address events of fast emerging and of potentially unknown and unforeseen origins. Further, a much smaller number of countries negotiated those treaties and the power constellations were very different, and focused mainly on preventing spread of disease west- and northwards through prevailing international routes of trade and travel. Today that scope is too narrow—and obsolete for applying to pandemic risks and geopolitical realities of the twenty-first century. Similarly, while the pre-WHO conventions were the dominant, if not the sole, sources of international law concerning infectious diseases, a pandemic treaty would need to be embedded in—and largely influenced by—a large body of existing international law relevant to health,

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particularly on trade, environment and human rights, all products of the post-WW2 international order [4].

The situation vis a vis the WHO FCTC, too, is substantially different. The latter was negotiated and adopted during the so-called "Grand Decade for Global Health (1998–2008)" [5], with multilateralism much higher in global agenda. Further, the decades-long international movement for tobacco control helped to create strong civil society voice for a legally binding treaty and to bring the issue to the floor of WHO for political resolution. In the case of a pandemic treaty, in contrast, the acute global threat of Covid-19 triggered a political call for a legal response to come first, with broader societal support still being formed. Matters are also different concerning the role of the private sector—much more diverse and nuanced in the case of pandemic preparedness and response compared with the 'firewall' approach vis a vis the tobacco industry. Finally, the FCTC process was somewhat straightforward compared with the current one; in spite of hard stances and disagreements on many issues, countries managed to accomplish a first formal draft negotiating text (a so called 'Chair's text') by six months after the start of negotiations, and a final agreed draft after just six negotiating sessions.

Here we also witness a large, almost generational gap between the first (2000–2003) and second (2022–2024) WHO treaty negotiations, with a knowledge gap as an inevitable consequence. The process in between (2008–2012) that produced the FCTC's first protocol, on illicit trade [6] (a treaty in its own right under the parent treaty) was too narrow in scope and in participation of sectors to bridge this gap. Most health diplomats are new to treaty development, learning nuances of as the negotiations progress.

What else has evolved, is novel, or different?

The extraordinary magnitude and urgency of the pandemic threat prompted exceptional arrangements from the World Health Assembly (WHA). Two negotiations with close targets and timeframes coincided, not a usual practice in WHO: that regarding the pandemic agreement and, the other, amendments to the existing International Health Regulations [7]. This triggers novel approaches, including careful alignment of schedules of the two bodies (likely more and more difficult with both processes entering their intense final phases), and a joint meeting and a side-by-side text of the proposed provisions and amendments. The alignment of these processes poses opportunities and challenges.

- Should the concept of'all-hazard' (IHR) vs. a'specialized' (pandemic treaty) instrument prevail? That is…, can the new treaty be contained within tasks specific to pandemics while the IHR address international spread of disease in general?
- Can overlaps and inconsistences be avoided, particularly in such tight timeframes?

The future of global health security will very much depend on the ability of the two bodies to find a right balance and way forward.

New ways of engaging and grouping by Member States are unfolding. The 'hybrid' meetings, not employed in earlier treaty negotiations, broaden the

engagement of government representatives and stakeholders. Informal negotiations, too, play a much larger role in promoting the formal ones. This reflects intense polarization around differences, often complex geopolitical ones, in key areas such as IP, equity, access, among others—in contrast with the more straightforward 'black and white' nature of the tobacco threat. Another novelty is the formation of cross–regional 'interest' groups of Member States– added to the traditional regional groupings. Two such groups, the Group of Friends of a Pandemic Treaty, and the Group on Equity, include members from diverse WHO regions. These groups reflect share goals and priorities and add an interesting dynamic with regional stands.

We also witnessed establishment of several international mechanisms, closely related to provisions of a future pandemic treaty, while the treaty negotiations were in progress. Examples include the International Pathogen Surveillance Network [8], the Global Health Emergency Corps [9], and a medical countermeasures platform [10].. This is different from what was often described as "power of the process" in relation to the FCTC negotiations [11]. In that situation, countries introduced stronger national tobacco control policies - not international mechanisms - while the treaty negotiations still in progress. Such solutions may reflect the urgency of a next, unpredictable pandemic as well as the unpredictability of the outcome of ongoing negotiations. We believe it will be important to take into account–now– the likely need to integrate such mechanisms into the pandemic treaty/accord once it is adopted, at least before it enters into force.

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