INB 9: Final opportunity for States to agree on pandemic treaty?

This week, a Health Action International (HAI) delegation will be participating in the 9th (and presumedly final) session of the Intergovernmental Negotiating Body (INB) taking place in Geneva from 18th to 29th March. With the deadline of the 77th World Health Assembly looming increasingly large, it is very nearly the last opportunity — after over two years of deliberations and discussions — for governments to agree on a World Health Organization (WHO) convention, agreement, or other international instrument on pandemic Prevention, Preparedness and Response (PPR). Such an agreement is widely considered essential in order to avoid repeating the mistakes, gaffes, and miscalculations of the COVID-19 pandemic, which was marked by inequitable access to essential medicines and other health technologies and a misalignment of resources and priorities — a driving factor in many preventable deaths.

HAI has supported the INB process, as well as the reform of the International Health Regulations (IHR), contributing with statements, providing expert advice to delegations, and coordinating public interest civil society groups. Now, with negotiations entering a final phase, we reiterate our call for Governments to prioritise the wellbeing of citizens worldwide by, inter alia, enhancing more effective technology transfer, enabling closer scientific cooperation, and ensuring affordable and sustainable access to medicines and other health technologies.

It bears repeating: any agreement must have equity at its heart and provide the tools to address existing obstacles by placing health concerns above trade constraints. For that to happen, it is essential that measures aiming at facilitating the use of TRIPS flexibilities go beyond principled declarations and set out enforceable measures.

The current draft text of the agreement (dated 7th March 2024), which also happens to be the first official text-based negotiation document (with two months to go before the deadline!), contains provisions relating to general access to medicines in times of pandemics and addresses some of the most consequential issues involving PPR, such as the declaration of Public Health Emergency of International Response or the Pathogens Access and Benefit Sharing (PABS) scheme. The text does recognise the importance of facilitating and respecting the use of TRIPS flexibilities and the need to guarantee public return on public investment, although there is no operational wording to back these principles into effective implementation. While this draft can be considered a positive step, there is no guarantee that it will not be watered down or curtailed once formal negotiations start. Even relatively positive aspects of the draft, such as multiple references to equity, the commitment to promoting a One Health Approach to PPR, as well as the support for *"transparent and public sharing of research inputs and outputs from research and development of government-funded pandemic-related products"* (art. 9(5)), could be stronger and remain susceptible to change.

Another key issue to consider is that of public funding. While there is a consensus around the need for public return on public investment, there is no such agreement on how to make it enforceable or even possible. References in the text to existing and newly created licensing mechanisms are promising venues that should be upheld.

This INB process has embodied a paradox far too common in international discussions and negotiations, one in which transparency is hailed from behind closed doors. Beyond diplomatic decorum and necessary discretion for governments to speak freely, it is a matter of deep concern that a treaty with such profound implications for the future of the global health institutional architecture be negotiated almost exclusively in private. It does not bode well for transparency and accountability when the next pandemic hits. Relatedly, the participation and involvement of civil society organisations in the INB process has been limited and curtailed by both the Bureau and Secretariat.

With the 77th WHA deadline looming, and with high-income countries conceding little on matters including intellectual property or access and benefit-sharing of pathogens, there is no way of knowing what the final text will look like. States must heed the call from civil society to finalise an instrument that truly and effectively enshrines equitable access to medicines and health products for everyone, everywhere.