Note of the Working Group Coordination on the Postponement of the Finalization of the WHO Pandemic Agreement

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This week marks the beginning of the 77th World Health Assembly (WHA), the highest governing body of the World Health Organization (WHO), which was expected to adopt a new international instrument on pandemics preparedness, prevention, and response. Announced in March 2021 by WHO Director-General and leaders from various countries, primarily European, the agreement aimed to prevent the dysfunctions in the international response to COVID-19 from recurring in future pandemics, and therefore would be endowed with mandatory provisions.

In December 2021, an extraordinary WHA established the Intergovernmental Negotiating Body (INB), which was composed of representatives from Member States, tasked with drafting the agreement. However, despite the WHO's efforts over more than two years, the INB did not reach a consensus to submit a draft to the Assembly within the expected timeframe.

Negotiated over nine INB meetings, following technical consultations and some opportunities for civil society participation, the draft agreement made significant progress in various areas, such as equity in pandemic prevention and response, strengthening the WHO, and access to information. Nonetheless, disagreements persisted on sensitive topics such as technology transfer, financing, and Pathogens, Access, and Benefits (PABS).

Given the extensive list of unresolved issues at the end of the last round of negotiations, comprising approximately 300 paragraphs, it was decided to resume the talks in the final week to seek some consensus to present to the WHA. According to various entities monitoring the negotiations in Geneva, despite the large number of unresolved paragraphs, progress was made in several sections of the text, such as Chapter 1 (Articles 1 to 3, covering use of terms, objectives, and principles), Chapter 2 (Articles 4 to 20, addressing equity throughout the prevention, preparedness, and response chain), and specific articles such as 7 (workforce), 14 (regulatory strengthening), 18 (communication and public information), 19 (international cooperation and support for implementation), and 20 (sustainable financing), as well as Chapter 3 (Articles 21 to 27), concerning institutional arrangements and final clauses.

However, divergences reflecting a cleavage between the interests of the Global North and South halted the finalization of the text to be submitted to the WHA. Controversies could not be overcome, particularly regarding the "One Health" approach (Article 5), technology transfer provisions (Article 11), and PABS (Article 12) above all.

The "One Health" approach is an integrated strategy recognizing the interconnection between human, animal, plant, and environmental health. Strongly advocated by WHO and widely recognized by Member States, it calls for cooperation at all levels, from

local to global, to address not only pandemics but also antimicrobial resistance and climate change, among other threats.

The inclusion of a section on One Health in the pandemic agreement is strongly supported by developed countries. Although the urgent need for measures addressing the interface between these dimensions is undeniable, including improving sanitary and phytosanitary surveillance concerning the trade of agricultural products, some developing states are concerned that new obligations and control mechanisms could be misused to create trade barriers motivated by protectionism and other interests of wealthy countries. In contrast, developed countries argue, citing examples such as the current H5N1 outbreak, that the WHO may delay declaring an emergency at this interface if the issue is not explicitly addressed in the instrument.

As for technology transfers, resistance revolves around the implications of intellectual property rights in the governance of the pandemic agreement. While developing countries argue that technology transfers should follow mutually agreed terms, developed countries advocate for voluntary approaches.

Regarding PABS, the divide between the Global North and South concerns the demand for rapid access to pathogens and their genetic sequences, as well as voluntarism in the distribution of health products, such as vaccines, and benefit-sharing. Although the idea that rapid sharing of data and information on pathogen genetic sequences should be associated with equitable benefit-sharing has advanced, the issue remained controversial in recent weeks, especially concerning the percentage of vaccine doses to be donated to the WHO and the regulation of contracts, intellectual property rights, and monetary benefit-sharing. Negotiators also showed interest in linking this section to the outcomes of negotiations under the Convention on Biological Diversity.

As for Brazil’s position, although excluded from the list of leaders proposing the adoption of the new instrument in 2021, the country gained an important role in the negotiations. Ambassador Tovar Nunes, representing the Americas region, was one of the six co-chairs of the INB, forming part of the Bureau that coordinated the negotiations. Civil society criticized the forms of social participation in shaping Brazil's position, among other reasons for the inclusion of the private sector in dialogues with social movements.

In a recent briefing convened by the Ministry of Health, Brazilian negotiators presented a positive outlook on the progress of the agreement negotiations. Expressing optimism about the possibility of the instrument being considered at the 77th WHA, Brazilian government representatives assessed that an extension of the deadline to conclude pending issues would not be necessary, in spite of the evident challenges.

In fact, despite the extension of the ninth INB meeting and the lack of consensus on the agreement, there was also no discussion of a draft resolution for the WHA, nor was a plan for the next stages of negotiations presented. As of the conclusion of this note, the document that the INB will submit to the WHA is still unknown.

Our assessment of the postponement of the conclusion of the agreement, whatever the terms of this extension may be, is that the absence of consensus within the stipulated timeframe is a worrying sign. It indicates that the terrible experience of COVID-19 has

not been sufficient to inspire the necessary political will among wealthy countries, including some that presented themselves as leaders of the agreement, to make concessions that would enable an efficient international response to pandemics.

We highlight various risks brought by the postponement of the agreement's conclusion. In this brief note, we will emphasize four of them:

First is the sluggishness of the process, hindered by the diminishing perception of urgency and political interest around the new instrument. The memory of COVID-19 is fading, overshadowed by other agendas and priorities of the States.

Second is the proximity of elections, which could negatively impact diplomacy and multilateralism, particularly in the United States. Opinion polls indicate the likely victory of a candidate who, in 2020, as President, began the process of withdrawing the country from WHO. This withdrawal only did not materialize due to electoral defeat and the inauguration of a new government. These first two risks suggest that time is working against consensus-building within the WHO.

Third, the mobilization of far-right movements producing misinformation has accompanied the entire negotiation process, following the ideological and electoral exploitation that characterized COVID-19, causing immeasurable damage to public health. The distortion of crucial elements of the negotiating process – such as false claims that countries would be deprived of their national sovereignty in responding to emergencies – fuels opposition to the agreement in the internal political arena of various countries.

In this sense, the postponement of the text's conclusion is already being presented by extremist groups as a victory. Defense of the agreement, on the other hand, is hindered by the complexity of the negotiating process, with numerous drafts and rounds not accompanied by efficient communication mechanisms. So far, the agreement has not even been assigned an appropriate name for publicly defended. The simultaneous negotiation of amendments to the International Health Regulations (IHR) has equally contributed to this confusion.

Furthermore, the social participation mechanisms of the INB were inadequate, providing little space for the contribution of entities and experts with relevant experience, mainly from the Global South, and leaving loopholes for the ideological capture of public consultations by extremist movements.

Finally, the factors that caused the dysfunctions of the international response to COVID-19 persist. If a new pandemic were declared at this moment, the dysfunctions that occurred are likely to repeat themselves, in the absence of fundamental political commitments to avoid them. For instance, the brutal asymmetries in access to vaccines and other essential supplies for emergency response were an indelible mark of COVID-19.

We will continue to monitor the developments during the WHA, hoping that the necessary consensus will be built as soon as possible.

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