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Committee on Social Affairs, Health and Sustainable Development

Public health emergency: the need for a holistic approach to multilateralism and health care

Rapporteur: Ms Selin Sayek Böke, Türkiye, SOC

Report[1]

A. Draft resolution[2]

1. Long before the outbreak of Covid-19, scientists and public health experts had warned that threats from infectious diseases would represent one of the primary international health challenges of our times. Unfortunately, the Covid-19 pandemic hit a largely-unprepared world and revealed widespread lack of compliance with the International Health Regulations by states. This has resulted in millions of deaths, a high disease burden, and severe disruption of the lives of billions of people across all regions of the world, as well as a major setback to the UN Sustainable Development Goals.

2. It is believed that the world has entered a new pandemic era, where Covid-19 is seen only as a forerunner of more – and possibly worse – public health emergencies to come. New public health emergencies linked to the climate crisis, coupled with dwindling biodiversity, are waiting to unfold, and will likely hit the world unexpectedly. It is thus urgent that states learn the lessons from previous health emergencies by strengthening the global health architecture and developing necessary strategies at national levels, in order to react swiftly to emerging global health risks.

3. The Parliamentary Assembly considers that a holistic multilateral effort is needed, bringing together the World Health Organization, the World Trade Organization, and others in a multi-stakeholder dialogue to revisit the rules governing the health-care industry in the provision of essential medicines, vaccines, and health-care services within and between countries, including a diversification of medical supply sources. These rules should ensure that both the public and the private sectors in health care anchor their operations in human rights, notably the right to health, and guarantee equitable access to treatments and vaccinations of appropriate quality for all as a public good.

4. The Assembly welcomes the processes taking place at the international level to transform global health governance, including to ensure sustainable financing of the World Health Organization, to reform the International Health Regulations (2005), and to draft a legally binding instrument on pandemic preparedness, prevention, and response. Moreover, the Assembly supports the reform of international trade agreements to correct and prevent inequities in accessing public goods critical to preventing and controlling public health emergencies, contributing towards a safe, clean, healthy, and sustainable environment.

5. The Assembly strongly believes that the processes taking place to transform global health governance must build on the principle of equity and should explicitly refer to the relevant obligations of States to protect human rights and fundamental freedoms during public health emergencies. In this regard, the Assembly supports calls from UN experts that the new instrument on pandemic preparedness should draw on Article 12 of the International Covenant on Economic, Social and Cultural Rights, and Article 4 of the International Covenant on Civil and Political Rights. It must be recognised that the right to health is indivisible from all other rights, and as such the new instrument must also impose clear obligations on states to protect the full range of human rights, especially economic, social, and environmental rights, such as the right to housing, social protection, ~~and~~ adequate nutrition, and a safe, clean, healthy, and sustainable environment, which are essential to the enjoyment of the right to health.

[1] Reference to Committee: Doc. 15245, Reference no. 4577 of 28 May 2021.
[2] Draft resolution adopted unanimously by the Committee on 27 April 2023.

6. The Assembly welcomes the participation of parliamentarians in the drafting process of this instrument but regrets that it has not included genuine and meaningful participation by marginalised groups, civil society and non-governmental organisations working to promote public health and human rights, and urges WHO member states to reconsider this process, so as to enable transparent and accessible opportunities for all relevant stakeholders to contribute to the development of this crucial new instrument.

7. Public health authorities must implement timely and appropriate measures to curb the effects of public health emergencies, now and in the future. Member States are invited to draw inspiration from the toolkit issued by the Secretary General of the Council of Europe, on respecting human rights, democracy and the rule of law during the Covid-19 crisis, as well as the relevant Resolutions and Recommendations adopted by Assembly, in particular Resolution 2329 (2020) on "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic, Resolution 2337 (2020) on "Democracies facing the Covid-19 pandemic" and Resolution 2424 (2022) on "Beating Covid-19 with public health measures".

8. The Parliamentary Assembly regrets that the current system of global health security is not fit for purpose. It is too fragmented, overly dependent on discretionary bilateral aid, and dangerously underfunded. The Assembly thus believes this critical moment provides an opportunity to combat not just emerging threats, the Covid-19 pandemic, and the devastating effects it has had on the global economy, but also pre-existing fault-lines and inequities, including in access to health care, which have been brought to light by the pandemic. It urges governments to embrace the One Health approach, embracing the interactions between animals, humans, and the environment which contribute to and protect health.

9. The Parliamentary Assembly thus calls on governments in Council of Europe member States and worldwide, to:

9.1 With respect to ongoing processes at the World Health Organization:

9.1.1 commit to ensuring sustainable financing of the World Health Organization and make it independent of voluntary contributions so it can fulfil its essential functions;

9.1.2 actively participate in the World Health Assembly with a view to ensuring good governance of the World Health Organization;

9.1.3 ensure inclusive decision-making and full and equal participation of developing countries in the negotiating processes of the International Health Regulations and the International Negotiation Body to draft and negotiate a convention, agreement, or other international instrument to strengthen pandemic prevention, preparedness and response;

9.1.4 ensure that the aforementioned new legal instrument to strengthen pandemic prevention, preparedness and response is developed through a transparent and meaningfully consultative process, involving, and taking into account the proposals of, civil society, NGOs and human rights organisations, and define an active role for parliamentarians to oversee the transparency and effectiveness of the much needed consultative processes;

9.1.5 mainstream human rights in the revision of the International Health Regulations and in the drafting process of a convention, agreement, or other international instrument to strengthen pandemic prevention, preparedness and response, and ensure in particular that such instrument is in line with the "10 Human Rights Principles for a Pandemic Treaty" by the Civil Society Alliance for Human Rights in the Pandemic Treaty;

9.1.6 recognise that human rights are indivisible and impose clear obligations on states to protect human rights during public health emergencies in line with the Siracusa Principles, in particular social, economic and environmental rights, such as the right to housing, social protection, adequate nutrition, and a safe, clean, healthy and sustainable environment, which are essential to the enjoyment of the right to health;

9.1.7 impose clear obligations on states to regulate and protect against abuses by non-state actors and companies within their jurisdiction;

9.1.8 include a clause to prohibit undermining of other nations' access to public goods, such as stockpiling of scarce resources and entering into bilateral agreements by outbidding poorer nations;

9.1.9 commit to supporting a One Health approach, which embraces the interactions between animals, humans and the environment, and which contributes to health and protect against disease, including through enhanced collaboration of the World Health Organization with other relevant international organisations;

9.1.10 facilitate timely access to scientific knowledge and information to all stakeholders, including an open data-sharing system for epidemiological, genomic, clinical and anthropological

evidence, from academia to the front line, as recommended in Resolution 2114 (2016) on "The handling of international public-health emergencies";

9.2 With respect to the World Trade Organization and international trade:

9.2.1 interpret the Doha Declaration in the context of international legal obligations to ensure access to public goods, including medicines, diagnostics, treatments and technologies, and recognise the need to limit intellectual property rights in public health emergencies;

9.2.2 make full use of TRIPS flexibilities whenever possible to ensure equitable access to public goods;

9.2.3 commit to keeping supply chains open during public health emergencies;

9.2.4 initiate a process of reform of international trade agreements, with the aim of correcting and preventing inequities in accessing health technologies critical to preventing and controlling public health emergencies;

9.3 With respect to building stronger and more resilient health systems and responding to public health emergencies at national levels:

9.3.1 invest in primary health care and scale up the health workforce, ensuring decent pay and working conditions;

9.3.2 develop human-rights compliant strategies to prevent and handle major public-health hazards, including early detection, accurate data collection, availability of diagnostic and treatment tools, and real-time continuous monitoring to improve results in accordance with international recommendations;

9.3.3 provide universal health coverage to everyone within their territory, regardless of legal status, nationality, ethnicity, religion, gender, sexual orientation or socioeconomic background;

9.3.4 develop national prioritisation strategies to ensure equitable allocation of goods, such as vaccines, medicines and protective equipment, in situations of scarce resources. In doing so, member States should be guided by Article 3 of the Oviedo Convention, and are invited to consult Recommendation CM/Rec(2023)1 on "Equitable access to medicinal products and medical equipment in a situation of shortage", Resolution 2361 (2021) on "Covid-19 vaccines: ethical, legal and practical considerations" and the statement adopted by the Committee on Bioethics (DH-BIO) on "Covid-19 and vaccines: ensuring equitable access to vaccination during the current and future pandemics";

9.3.5 identify vulnerabilities in medical supply chains them and develop strategies for strengthening and diversification of supply sources, taking into consideration the recommendations set out in Resolution 2474 (2022) on "Securing safe medical supply chains";

9.3.6 enhance public investment in research and development and share results of publicly financed research between countries;

9.3.7 identify vulnerabilities in medical supply chains and strengthen manufacturing capacities and competence to produce in accordance with standards of Good Manufacturing Practice (GMP);

9.3.8 develop and maintain strong, efficient, transparent and sustainable regulatory systems for the evaluation and control of medicines throughout their lifecycle, and promote reliance on recognised global expertise to harmonise and streamline the different steps of the process – from regulatory evaluation and approval, to batch acceptance;

9.3.9 promote community engagement and mobilisation as essential elements of any action plan to deal with public health emergencies;

9.3.10 build up health literacy amongst all population groups and work with trusted non-governmental organisations and/or local initiatives to reach out to marginalised groups;

9.3.11 regulate activities of non-state actors and companies within their jurisdiction, in line with the United Nations Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States (2016) on "Business and human rights";

9.3.12 in the event of a public health emergency, carefully design and implement public health measures that would mitigate transmission, and ensure they are compatible with human rights, taking into account the recommendations in Resolution 2424 (2022) on "Beating Covid-19 with public health measures";

9.3.13 continuously review public health measures put in place to ensure they are human-rights compliant, relevant, proportionate, and effective at all times, and enable parliamentary and judicial oversight;

9.3.14 recognise the need to reach zero carbon emissions and to accelerate the transition to clean renewable sources of energy as a public health priority and take measures at national and multilateral levels to reach these goals.

10. The Assembly recalls the critical role parliaments play in moving the global public health agenda forward by enacting legislation, approving budgets, mobilising resources, and providing democratic oversight. It calls on national parliaments to continue to play a key role in transforming global health governance, including through parliamentary representation at multi-stakeholder events leading up to the UN High Level Meeting in September 2023 and open meetings of the International Negotiating Body to draft and negotiate a new legal instrument on pandemic preparedness, prevention, and response.

11. The Covid-19 pandemic exposed gross inequities in access to essential public goods, including medicines, vaccines, and personal protective equipment. It revealed that the global health is only as strong as its weakest link. The Assembly thus calls on all stakeholders, in particular the European Union and the United States of America to support the proposals by developing countries to ensure equitable access to health products, technologies and know-how, the strengthening of health systems and an access and benefit sharing mechanism for genetic material.

B. Explanatory memorandum by Ms Selin Sayek Böke, rapporteur

1. Introduction

1. On 17 March 2021, the Committee on Social Affairs, Health and Sustainable Development tabled a motion for a resolution on "Public health emergency: the need for a holistic approach to multilateralism and health care".[3] The motion pointed out that the Covid-19 pandemic had reminded everyone of the right to health and the critical importance of multilateralism.

2. The motion recalled the Assembly's Resolution 2329 (2020) on "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic", in which it called for the promotion of responsible research, development and production of medicines, vaccines and other medical equipment, and insisted on making them accessible and affordable to all. However, despite publicly funded research and international efforts to provide an equitable distribution of medical goods, structural problems persisted: excessive commodification of health services and the current set of international rules for trade and intellectual property protection impeded effective access to healthcare during much of the pandemic in many countries.

3. The motion further stressed that a holistic multilateral effort was needed to bring together the World Health Organization (WHO), the World Trade Organization (WTO) and others in a multi-stakeholder dialogue to revisit the rules governing the health-care industry in the provision of essential medicines, vaccines and health-care services within and between countries; and ensuring that both the public and the private sectors in health care build their operations on the basis of human rights, notably the right to health, and guarantee fair access to treatments and vaccinations for all as a public good.

4. Since this motion was tabled by the Committee two years ago, there has been significant laudable progress in the right direction, but the battle is not yet won – as the on-going problems in combating the Covid-19 pandemic have shown. Rich countries have made bilateral agreements with vaccine developers and stockpiled vaccines, outbidding poorer nations and multilateral efforts through the COVAX mechanism of ensuring global equitable allocation. This has given the virus more chances to circulate and mutate into new variants, against which some of which the already developed vaccines are not fully effective. This has undoubtedly prolonged the pandemic unnecessarily.

5. Several processes are taking place at the World Health Organization to address these issues and transform global health governance. A working group has been established to look at ways to ensure sustainable financing of WHO so it can better fulfil its essential functions. Moreover, the 194 member States of WHO are involved in two parallel negotiations, one to revise the International Health Regulations and another one to draft a legally binding instrument on pandemic preparedness, prevention, and response. The two Bureaus are expected to co-ordinate their work with a view to adoption of both texts at the meeting of the World Health Assembly in May 2024.

6. In September 2022, I went on a fact-finding visit to Geneva and participated in the WTO Public Forum. I took part in sessions relevant for the topic of the report, with particular focus on creation and protection of global public goods for health and TRIPS flexibilities to ensure equitable access. In Geneva I had the pleasure to meet with Mr Robert Kampf, Counsellor at WTO, to discuss this more in detail. I also had the pleasure to meet with Ms Karin Hechenleitner Schacht, Human Rights Officer for the UN Special Rapporteur on Health.

7. In October 2022, I participated in the World Health Summit in Berlin, which for the first time was organised with WHO, to discuss the increasing political importance of global health and multilateralism. I had the pleasure to meet with WHO Director General, Dr Tedros Adhanom Ghebreyesus, and together with parliamentarians from all regions of the world, we discussed the critical role of parliaments in the design, implementation and monitoring of legislation, policies and programmes that are relevant to realising the right to health for everyone and to implementing the health-related Sustainable Development Goals. As parliamentarians we play an important role in pushing the global health agenda forward. Moreover, we discussed the importance of evidence-based public policies, and how we could benefit from the technical expertise of WHO and bridge the gap between policy and science.

8. As part of the preparation of this report, the Committee has held several hearings with experts. At the Committee's meeting in Izmir on 23 September 2022, we heard from Ms Nuriye Ortaylı, Public Health Expert and Mr Kayıhan Pala, Professor of Public Health at Bursa Uludağ University Faculty of Medicine. Moreover, the Sub-Committee on Public Health and Sustainable Development held an exchange of view with Mr KM Gopakumar, Legal Advisor at the Third World Network in October 2022, who highlighted how trade rules and

[3] Doc 15245. The motion was referred to our committee for report and I was appointed rapporteur on 17 June 2021.

intellectual property rights negatively affect access to treatment for diseases such as breast cancer for people in developing countries. Finally, during the Committee's meeting in Marrakech in March 2023, a hearing was held with the participation of Ms Latifa Belakhel, Head of Division for non-transmissible diseases, Ministry of Health and Social protection of the Kingdom of Morocco, and Mr Chakib Nejjari, Professor of epidemiology and public health, Vice-President of the Health Pole, Euromed University (Fez). I would like to express my sincere gratitude to all the experts for their valuable contribution, which I have incorporated into the report.

9. The Parliamentary Assembly and other stakeholders have for a long time called for a reform of WHO to allow it to better fulfil its function of achieving the highest attainable health standard for everyone. Human rights organisations and developing countries are worried that the transformative processes taking place do not take duly into account important human rights obligations and existing inequities between states, as demonstrated during the pandemic. The High-Level Meeting taking place at the UN General Assembly in September 2023 on pandemic prevention, preparedness and response, and the multi-stakeholder consultations taking place ahead of it, thus provide us with a unique opportunity to influence the outcome of the negotiations.

10. States have legal obligations to secure the right to health to everyone without discrimination as provided for in Article 12 of the International Covenant of Economic, Social and Cultural Rights and in Article 11 of the European Social Charter. Governments do have a responsibility in global equity not to interfere with or prevent other governments fulfilling of their obligations to their citizens. A failure to halt a pandemic or other public health emergency globally could jeopardise the achievement of the UN Sustainable Development Goals, as warned by my colleague Ms Jennifer De Temmerman (France, ALDE) in her report on "Covid-19 vaccines: ethical, legal and practical considerations". Against this background, I intend to explore what a holistic, multilateral, rules-based order could look like, with a view to building up the world's resilience and guaranteeing effective access to the right to health worldwide in a "One Health" paradigm-shift.

2. Emerging challenges to global health and the need for a stronger and more empowered World Health Organization

11. In this new pandemic era, Covid-19 is seen only as a forerunner of more, and possibly worse, public health emergencies to come. Threats from infectious diseases represent the primary international health challenge of our times. New public health emergencies linked to the climate crisis, coupled with dwindling biodiversity, are waiting to unfold. In fact, the WHO has declared the climate crisis the single biggest health threat facing humanity.[4] We could also find ourselves up against a man-made public health emergency, should pathogens be able to escape from a lab by accident, or be wielded as a weapon or should there be a nuclear accident or a hit on a nuclear facility during armed conflict.

12. The heatwaves we experienced across our region last summer, accompanied by drought, wildfires, and stress on health systems, are stark reminders of the substantial threat climate change poses to human health. In a joint press conference by the World Meteorological Organization (WMO) and WHO, following the 2022 heatwave in Europe, it was noted that heatwaves coupled with high levels of pollution exacerbate respiratory and cardiovascular diseases and conditions, especially in large urban spaces that are not adapted to cope with high temperatures.[5] WHO has been warning for a long time that climate change is severely affecting human health. Taking measures to reach zero carbon emissions and accelerating the transition to clean renewable sources of energy must thus also be a public health priority and require strong commitment on the multilateral level.

13. In 2022, WHO provided support to 53 emergencies across the world, including eight "Grade 3" protracted emergencies requiring a major WHO response. While the pandemic has been declared over in most of the richer nations, many people living in low- and middle-income countries have not yet received a first dose of a Covid-19 vaccine, let alone any boosters. This gross inequity means that Covid-19 continues to have a devastating effect on health, social rights, and the economy, in particular in poorer nations. WHO continues its efforts to increase allocation and uptake of Covid-19 vaccines worldwide. Access to treatments, such as antiviral medications, medical oxygen, etc., is also far from guaranteed in many countries, magnifying their burden of disease, and pushing up mortality and morbidity. Indeed, surviving the acute phase of Covid-19 is not enough: the disease can spark long-term disability ("long Covid"). We may be witnessing the biggest mass-disabling event in decades.

14. Other emergency support in 2022 included assisting local health care workers, civil society and government units in the Philippines to tackle misinformation to help prevent the spread of Covid-19; provide emergency medical assistance in Ukraine following the severe disruptions in access to health care caused by

[4] https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health.
[5] Statement by Ms Maria Neira, Director of Environment and Health (WHO) during a joint press conference by WMO and WHO on 19 July 2022.

the Russian Federation's war of aggression; intensified efforts to support countries with outbreaks of other infectious diseases, including Cholera in Lebanon and Ebola in Uganda; supporting Pakistan in the aftermath of the devastating floods, where the risk of disease outbreaks and malnutrition is extremely high, focusing on scaling up health care provision, disease surveillance and outbreak control; responding to the worst food insecurity seen in the Greater Horn of Africa in decades; and continuing to deliver essential health-care and supplies to Yemen.[6]

15. The series of large-scale earthquakes that hit Türkiye and Syria in February 2023 are another natural disaster and public health emergency in much need of emergency assistance. The death toll has surpassed 50.000 and more than 3 million people have been displaced. WHO is supporting the emergency response in the two countries by dispatching life-saving medicines and other medical supplies; the activation of its Emergency Medical Teams Network to provide essential health services and supplies to care for those in need; liaison with disease surveillance and rapid response teams to ensure ongoing surveillance and detection of water-borne, infectious and respiratory diseases, as well as preparedness for any outbreak; and support for the mental health and psychosocial response.[7]

16. Emerging challenges to global health are growing and it is likely that new public health emergencies will hit unexpectedly. We must thus be prepared for the unexpected. This requires a strong WHO that can fulfil its essential functions and react swiftly to emergency situations. Lessons from previous public health emergencies must be studied and taken into account when developing national strategies and new global mechanisms. In Resolution 2114 (2016) on "The handling of international public-health emergencies", the Assembly recommended to make WHO the lead institution in handling international public health emergencies, ensuring that it has the necessary powers and stable financing "to effectively implement and monitor the International Health Regulations and reinforce its rapid response mechanism".

17. The current system of global health security is not fit for purpose. It is too fragmented, overly dependent on discretionary bilateral aid, and dangerously underfunded.[8] Against this background, we should seize this critical moment to reset the very foundations of health systems: from governance, financing, strengthening access to medicines, vaccines, and health services, building up the health workforce, to strengthening capacities of all countries to prevent and respond to health emergencies.[9]

3. Transforming global health governance

3.1 Empowering WHO and commitment to supporting a One Health Approach

18. At the centre of the new order must be a reinvigorated WHO, which plays the lead role in the surveillance of global health emergencies and in identifying gaps in the national core capacities set out in the International Health Regulations. However, while the WHO is recognised as the leading and coordinating authority, global health governance today is more fragmented than it has ever been since the establishment of WHO in 1948 and, in reality, the organisation has little authority to implement its norms. Instead, health partnerships and agencies such as the World Bank, which are criticised for being dominated by donor countries and corporations, exercise the real authority.[10]

19. As the South Centre has pointed out, it is therefore important that WHO is "effectively retooled to act as the leading and coordinating authority on global health with adequate legal powers, and institutional and financial capacities to do so without undue influence from donor countries and entities that have interest in the private sector. This would enable the WHO to ensure that the interests of all countries are fairly addressed in its normative and operational activities."

20. First and foremost, member States must ensure sustainable financing of WHO in order to make it independent of voluntary contributions to fulfil its essential functions, as called for by the Assembly in Resolution 2329 (2020) on "Lessons for the future for an effective and rights-based response to the Covid-19 pandemic". Out of its current 6 billion USD annual budget, the organisation has been allowed to spend less than 20% on its core mission, which is to support public health in the poorest countries and respond to emergencies around the world.

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[6] https://www.who.int/emergencies/funding/outbreak-and-crisis-response-appeal/impact-in-2022.
[7] https://www.who.int/emergencies/situations/Earthquake-Türkiye-Syria.
[8] https://www.imf.org/en/Publications/fandd/issues/2021/12/Multilateralism-Pandemic-Era-Okonjo-Iweala-Shanmugaratnam-Summers.
[9] https://www.who.int/news-room/feature-stories/detail/responding-to-covid-19-and-building-stronger-health-systems-for-universal-health-coverage.
[10] South Centre, Leading and Coordinating Global Health: Strengthening the World Health Organization. Pages 30-31: https://www.southcentre.int/wp-content/uploads/2023/02/RP174_Leading-and-Coordinating-Global-Health-Strengthening-the-World-Health-Organization_EN.pdf.

21. Responding to calls from many stakeholders, the Executive Board of WHO established a Working Group on Sustainable Financing in January 2021 to seek long-term solutions for the financing of the organisation. Representatives from 194 WHO member States participated in discussions on making WHO's funding more predictable and flexible.

22. The working group convened 7 times before reaching consensus on the recommendations to put forward to the World Health Assembly, with the proposal for increased assessed contributions by member States being the most difficult topic of the negotiations, due to reluctance from some states. The Chair of the Working Group noted that it became clear to them that what they were discussing was "nothing less than the future role of WHO in global health and even beyond, namely the question, what kind of global health architecture we envisage: A less fragmented, better coordinated, more efficient and truly inclusive global health governance with a fundamentally strengthened WHO at its centre as the enabled leading and coordinating authority."[11]

23. The result was the adoption of a text by the World Health Assembly in May 2022 that will, amongst other things, increase the assessed contributions by member states from 16 % to 50 % by 2029-2031. While the consensus to increase the assessed contribution is welcomed, it will still not be sufficient. Experts stress that WHO needs more secure multilateral funding and must be empowered in order to perform its vital roles in preserving our global health in a more sustainable and secure way. In particular, instead of outsourcing critical public health governance to agencies and health partnerships, the World Health Assembly should consider letting WHO take over the functions, resources, and obligations of such agencies whose purpose and activities lie within the field of competence of the WHO, a possibility under Article 72 of its Constitution.[12]

24. Moreover, the World Health Assembly should "ensure the primacy of WHO and oversight of its governing bodies over hosted and external partnerships; ensure full and effective participation of all WHO member States in any such partnerships; and introduce legally binding obligations on non-State actors engaging with WHO to act consistently with the decisions of WHO governing bodies."[13]

25. It must be recognised that the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and interdependent. Thus, we must all commit to supporting a "One Health" approach, including through enhanced collaboration of WHO with relevant international organisations (such as the World Organisation for Animal Health, the Food and Agriculture Organization of the United Nations, the United Nations Environmental Programme) to "support developing countries to enhance capacities, including to establish effective cross-sectoral surveillance, including on antimicrobial resistance".[14]

3.2 Amendments to the International Health Regulations

26. The International Health Regulations are an instrument of international law that is legally binding on 196 State Parties and provide an overarching legal framework that defines rights and obligations of states in handling public health events and emergencies that have the potential to cross borders. It is the only international legal treaty with the responsibility of empowering WHO to act as the main global surveillance system. The International Health Regulations were first adopted in 1969, having been preceded by the International Sanitary Regulations adopted in 1951, and were initially focused on six quarantinable diseases.

27. The International Health Regulations are one of the most important legal instruments to "prevent, protect against, control and provide a public health response to the spread of disease". They were last revised in 2005, as a response to the 2002-2004 SARS outbreak, and came into force in June 2007. Some key changes following the revision included requirements for states to notify WHO of any event with the potential to cause a public health emergency of international concern (PHEIC), and to develop core public health capacities. A PHEIC is defined as "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response". According to WHO, this definition implies a situation that is: serious, sudden, unusual or

[11] https://www.who.int/news/item/26-05-2022-report-by-mr-bj-rn-k-mmel--chair-of-the-who-sustainable-financing-working-group--to-the-seventy-five-world-health-assembly.
[12] South Centre, Leading and Coordinating Global Health: Strengthening the World Health Organization, pages 30-31.
[13] *Ibid*.
[14] South Centre, Can Negotiations at WHO Lead to a Just Framework for the Prevention, Preparedness and Response to Pandemics as Global Public Goods? page 18.

unexpected; carries implications for public health beyond the affected State's national border; and may require immediate international action.[15]

28. The Covid-19 pandemic revealed widespread lack of compliance with the International Health Regulations by states. This concerned in particular preparedness, the role and authority of National Focal Points (NFPs), legal frameworks for the implementation of the IHR, notification and alert systems, information sharing, and adoption of disproportionate unilateral measures.[16] The Independent Panel on Pandemic Preparedness and Response concluded that the International Health Regulations needed urgent updating to ensure that WHO and its member States react more quickly to global health risks.[17]

29. Legal and public health experts, as well as member States themselves, have begun looking at ways to strengthen this legal framework. Some believe it is necessary to adopt additional rules and ensure more textual clarity, while others are of the opinion that the inadequate implementation by states and WHO was at the core of the problem. Inequality in resource, capacity, and power between high-income countries and low- and middle-income countries has so far been one of the root causes of the inability to come to an agreement concerning the revision of the International Health Regulations.

30. The Working Group on Amendments to the International Health Regulations convened for the second time from 20 to 24 February 2023, to consider 307 amendments proposed by member States. The negotiations highlight the divide between the interests and priorities of high-income countries and those of low- and middle-income countries. Whereas proposals for amendments from developing countries focus on facilitating equity in health and emergency preparedness and response, the European Union has previously said no to expanding the scope of equity-related measures to "health emergencies" and insisted on limiting it to "pandemics" only.[18] Such a narrow application could have profound consequences during public health emergencies such as Ebola or Zika virus outbreaks.

31. Legal and public health experts largely concur with the proposals set out by developing countries, including the necessity to ensure equitable access to health products, technologies, and know-how; health systems strengthening, and an access and benefit sharing mechanism for genetic material. With regard to intellectual property licensing, transfer of technology, and know-how, a proposal by Eswatani on behalf of the African region suggests that once a public health emergency of international concern has been declared, there should be "exemptions and limitations to the exclusive rights of intellectual property holders" to "facilitate the manufacture, export and import of the required health products, including their materials and components".[19]

32. In an editorial by *The Lancet*, it is argued that an effective IHR "must be built on the base of equity, where rights and responsibilities are well co-ordinated, benefits and burdens are fairly distributed, national and global interests are carefully balanced, and short-term assistance and long-term capacity-building are provided with the intention of benefiting local populations in LMICs".[20] I fully agree with this, as well as the notion that developing countries should be further empowered in a transparent and inclusive legislation process, so that their concerns and practical barriers in controlling global health threats can be resolved in a fair manner. This would be in the best interest of all states, rich or poor, because as we learned throughout the pandemic, our global health is only as strong as our weakest link.

3.3 Negotiations to draft a convention, agreement, or other international instrument to strengthen pandemic prevention, preparedness, and response

33. In December 2021, during a special session of the World Health Assembly, WHO member States decided to establish an Intergovernmental Negotiating Body (INB) to draft and negotiate a convention, agreement, or other international instrument to strengthen pandemic prevention, preparedness, and response. The special session was the second-ever since WHO's founding in 1948, and as noted by its Director General, the decision by the World Health Assembly was "historic in nature, vital in its mission, and represented a once-in-a-generation opportunity to strengthen the global health architecture to protect and promote the well-being

[15] https://www.who.int/news-room/questions-and-answers/item/emergencies-international-health-regulations-and-emergency-committees.
[16] Geneva Graduate Institute, Global Health Centre.
[17] https://healthpolicy-watch.news/97225-2/.
[18] https://twn.my/title2/health.info/2022/hi220507.htm.
[19] https://healthpolicy-watch.news/amendments-to-international-health-regulations-focus-on-accountability-compliance-and-equity/.
[20] https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(22)00254-6/fulltext.

of all people."[21] The INB is expected to deliver a progress report to the 76th World Health Assembly in 2023, with the aim of adopting the instrument by 2024.

34. At its second meeting in July 2022, the INB decided that the instrument will be legally binding and will be negotiated with a view to adoption under Article 19 of the WHO Constitution. This article provides the World Health Assembly with the authority to adopt conventions or agreements on any matter within WHO's competence, with a requirement of a two-thirds majority of votes. The pandemic treaty would be the second-ever convention to be adopted under Article 19, following the Framework Convention on Tobacco Control, adopted in 2003.

35. Any legal regime adopted under Article 19 of the Constitution will formally establish a new secretariat, which may or may not be hosted by the WHO. Unlike the International Health Regulations adopted under Article 21, Article 19 establishes a treaty regime outside the WHO's administration and can thus not provide new powers, rights or obligations to the WHO itself without further contractual arrangements.

36. In December 2022, at the third meeting of the INB, its Bureau presented a Conceptual Zero Draft, provided as a "flexible, living instrument" with a view to moving it towards a Zero Draft. The Zero Draft was finally ready in February 2023, for the purpose of forming the basis of negotiations between the 194 WHO member States during the fourth meeting of the INB, from 27 February to 3 March 2023. The INB further agreed that the zero draft will be without prejudice to the position of any delegation and following the principle that "nothing is agreed until everything is agreed".

37. The Zero Draft includes a preamble and a vision grounded in equity, followed by eight chapters, with 38 articles in total. It sets out as part of its objectives to "prevent pandemics, save lives, reduce disease burden and protect livelihoods, through strengthening, proactively, the world's capacities for preventing, preparing for and responding to, and recovery of health systems from, pandemics.". The operational text focuses inter alia on equity, the right to health, good governance principles on pandemic prevention, preparedness and response, sharing of technology and know-how, non-discrimination, transparency and accountability, as well as financing and institutional arrangements. It does so, while at the same time reaffirming the principle of state sovereignty both in the preamble and in the operational text.

38. There have been mixed reviews about the draft texts of the INB. Although some comments and concerns regarding the Conceptual Zero Draft were taken into account in the preparation of the Zero Draft, many stakeholders, including prominent human rights organisations, NGOs and developing countries, believe that the Zero Draft is not ambitious enough and are concerned that the human rights dimension was not adequately taken into consideration during the negotiations and is not sufficiently covered in the substance of the latest draft. On the other hand, according to Health Policy Watch, it is "unlikely that the draft will survive in its current form, given the strong pharmaceutical lobby, particularly in the European Union".[22]

39. In a legal analysis on the Conceptual Zero Draft published by the O'Neill Institute for national and global health law of Georgetown University[23], the authors point out that the draft omits three key provisions. First, they consider that the draft lacks a financial mechanism to support low- and middle-income countries that are often vulnerable to health crises. The Financial Intermediary Fund for Pandemic Prevention, Preparedness and Response of the World Bank has a scope which is too narrow, and funding levels are far too low. Second, they point out that the draft neglects mobilisation of resources to support low- and middle-income countries in implementing robust, non-discriminatory social protection programmes, such as income, education, employment, and mental health. Third, they note that the draft largely neglects protection of human rights. The authors argue that there are no clear provisions safeguarding against civil and political rights violations and call for an incorporation of the guidelines on civil and political rights protections during health emergencies being developed by the International Commission of Jurists and the Global Health Law Consortium.

40. Another shortcoming of the draft is the definition of state sovereignty, which is at odds with human rights. The draft fails to mention that states' approach to public health is constrained by human rights. Their approaches cannot be discriminatory, at odds with science, and they may not pursue public health in a way which violates civil and political rights.[24] Thus, the new instrument should explicitly refer to the relevant

[21] https://www.who.int/news/item/01-12-2021-world-health-assembly-agrees-to-launch-process-to-develop-historic-global-accord-on-pandemic-prevention-preparedness-and-response.
[22] https://healthpolicy-watch.news/pandemic-treaty-zero-draft-proposes-who-gets-20-of-products/.
[23] https://oneill.law.georgetown.edu/pandemic-treaty-the-conceptual-zero-draft/.
[24] *Ibid*.

obligations of States to protect human rights and fundamental freedoms during public health emergencies.[25] UN experts have urged States to ensure that ongoing multilateral negotiations should draw from Article 12 of the International Covenant on Economic, Social and Cultural Rights (rather than the definition of health as contained in WHO's Constitution), and the International Covenant on Civil and Political Rights, in particular its Article 4. The draft should also take into account longstanding international human rights obligations that are essential to public health crisis preparedness, response and recovery, including social security – which is essential for the enjoyment of the right to health.

41. So far, these calls have not been adequately taken into account by the INB. The International Commission of Jurists, Amnesty International, the Global Initiative for Economic and Social Rights and Human Rights Watch published a joint public statement in February 2023, calling for a strengthening of human rights elements in the Zero Draft, which they believe still fails to adequately incorporate: participation and accountability; the right to health and the social determinants of health; the right to scientific progress and its proper relationship with intellectual property rights; equality and non-discrimination; human rights in responses to public health emergencies; international assistance and cooperation; health and essential workers; and human rights and the role of corporate actors.[26] Moreover, Doctors Without Borders has called for stronger commitments to populations of humanitarian concern and on humanitarian access.

42. As regards the drafting process, although the INB has held and will continue to hold open sessions, where stakeholders including the Council of Europe may attend open sessions of meetings, speak at open sessions of meetings at the co-chairs' discretion, and provide inputs to the INB, I regret that our organisation and other important stakeholders working to promote human rights will not have access to the drafting process itself, which will happen in closed meetings. This makes it even more important for the Council of Europe member States to ensure that proposals during closed negotiations are guided by the principles of human rights and solidarity, and for the Council of Europe as an organisation to take an active role in the open meetings and provide input to the intergovernmental negotiating body with the aim of ensuring its compatibility with Council of Europe human rights standards.

43. The Civil Society Alliance for Human Rights in the Pandemic Treaty (CSA) is an informal, open group of organisations and individual experts working to mainstream human rights considerations in the negotiations of the new instrument, as well as in related processes in the field of governing pandemic preparedness and response. A priority objective of the CSA is the democratisation of the process of formulating the new instrument on pandemic prevention, preparedness, and response, by ensuring effective participation of communities and civil society organisations, including those representing and working with marginalised and criminalised groups. The group has identified "Ten Human Rights Principles for a Pandemic Treaty", understood as a living document, which I urge the INB to consider when negotiating the new instrument.[27]

4. Reform of international trade agreements and ensuring equitable access to public goods

44. On 7 July 2022, the Human Rights Council adopted, without a vote, a resolution[28] calling for global, equitable access to medicines, vaccines, and other medical technologies. We have a collective responsibility in ensuring equitable access to healthcare and that scarce resources are fairly distributed during public health emergencies. That is also why a new pandemic treaty or other instrument must explicitly support the "strengthening of national and regional capacities and capabilities of developing countries for pandemic prevention, preparedness, response and recovery" as called for by the South Centre in a written submission to the INB.[29]

45. Whereas WHO is currently undergoing negotiations for major reforms, there has been little discussion about the need to reform international trade agreements and the functioning of WTO. One of the major failures of the pandemic has been the gross inequity in access to personal protective equipment, vaccines and medicines, due to intellectual property rights, trade bottlenecks and export restrictions. Three years have passed since the outbreak of the Covid-19 pandemic, but powerful states have still not been able to come to an agreement concerning a patent waiver for lifesaving Covid-19 vaccines and sharing of information

[25] https://www.ohchr.org/en/statements/2022/05/negotiations-international-instrument-pandemic-preparedness-must-be-guided-human.
[26] https://icj2.wpenginepowered.com/wp-content/uploads/2023/02/Final-Pandemic-Treaty-Joint-Statement-re-Zero-Draft_24Feb2023.pdf.
[27] See https://covid19advocacy.org/civil-society-alliance/; https://covid19advocacy.org/wp-content/uploads/2023/02/CSA-on-Human-Rights-in-the-Pandemic-Treaty-Human-Rights-Concerns-in-Zero-draft-of-the-WHO-CA.pdf.
[28] HRC Resolution A/HRC/50/L.13/Rev.1 on "Access to medicines, vaccines and other health products in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".
[29] South Centre Comments on the Draft Annotated Outline of a WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response, 24 June 2022.

technology, which would save lives, shorten the pandemic, and thereby play an important role in re-stabilising the global economy.

46. In September 2022, I went on a fact-finding visit to Geneva, Switzerland, to attend the WTO Public Forum, where I heard calls from civil society and human rights NGOs on the urgent need to ensure availability of research and development (R&D) as global public goods, with greater sharing of data, intellectual property, know-how, and increased transparency. The world must come together to increase supply and equitable access in all regions through sustained investment in research and development, strengthening of local production and pooled procurement.

47. The COVAX initiative, which won the 2021 Council of Europe North-South Prize, was launched in 2020 in order to ensure global equitable allocation of Covid-19 vaccines with the goal of delivering 2 billion doses to low- and middle-income countries by the end of 2021. Regrettably, it did not manage to deliver even half of the doses it had set as its goal. COVAX's mission was compromised by hoarding and stockpiling by rich countries, as well as catastrophic Covid outbreaks leading to borders and thus supply chains being closed down. Moreover, a lack of sharing of licenses, technology and know-how by pharmaceutical companies meant manufacturing capacity went unused. This lack of global equitable allocation of Covid-19 vaccines has already resulted in a setback of the United Nations Sustainable Development Goals.

48. Rich countries, including the EU bloc, have been hoarding vaccines and outbidding middle- and low-income countries in bilateral agreements with vaccine manufacturers, undermining the principle of equity – critical to saving lives and our global economy. Out of the 13.37 billion vaccine doses that have been administered globally, less than one third of people in low-income countries have received a first dose, let alone any boosters.[30] The access to vaccination in middle- and lower-income countries has increased only in recent months after several high-income countries had declared the pandemic to be over and donated left-over doses.

49. The ongoing multilateral efforts to ensure prevention, preparedness and timely response to public health emergencies must also take into account the role of the private sector, in particular pharmaceutical companies, in providing access to essential services and medicines during such crisis, as well as having in place proper human rights obligations for businesses. In the report on "Public health and the interests of the pharmaceutical industry: how to guarantee the primacy of public health interests?" my former colleague Ms Liliane Maury Pasquier (Switzerland, SOC) points out that measures should be taken with a view to gearing the system to public health needs, including by adopting stricter marketing authorisation policies and by ensuring full transparency regarding the real costs of research and development. Moreover, states must define clear mechanisms to avoid conflicts of interest in the involvement of the private sector that receive public funds.

50. Several resolutions by the World Health Assembly have called on member States of the WHO to make full use of the flexibilities under the TRIPS Agreement; requested the WHO Secretariat to monitor and analyse the pharmaceutical and public health implications of trade agreements; explore options under trade agreements to improve access to medicines; and provide guidance and technical support to Member States in their efforts in this regard.[31] The Assembly echoed these calls in Resolution 2361 (2021) on "Covid-19 vaccines: ethical, legal and practical considerations" and Resolution 2424 (2022) on "Beating Covid-19 with public health measures". So far, the multilateral response to concerns around intellectual property rights and equitable access to public goods in the context of Covid-19 has been to encourage governments and the private sector to undertake voluntary licensing of technologies through use of patent pooling mechanisms. But we cannot rely on solidarity and the goodwill of patent right holders and rich countries to ensure access to lifesaving vaccines and medicines.

51. Already at the beginning of the pandemic, South Africa, and India, along with other developing countries, called for a TRIPS waiver for all Covid-19 related products. It took over 20 months of negotiations just to come to an agreement on a watered-down version of the original proposal to the WTO TRIPS Council. As developing countries and human rights organisations have proposed to extend intellectual property waivers to include therapeutics and diagnostics, the European Union, the United States, and other rich countries once again delayed the much-needed decision in December 2022, arguing that they needed more evidence that intellectual property rules have slowed global access to Covid-19 treatments and tests, despite strong opposition from lead scientists, WHO and human rights organisations.[32]

[30] https://ourworldindata.org/covid-vaccinations.
[31] South Centre, Leading and Coordinating Global Health: Strengthening the World Health Organization pages 30-31.
[32] https://www.oxfamfrance.org/wp-content/uploads/2021/10/A-Dose-of-Reality-Briefing-Note-EMBARGOED-00.01-THURSDAY-21-OCTOBER.pdf.

52. The first waves of the pandemic also saw severe disruptions in medical supply chains. We need clear global rules to keep supply chains open during pandemics or other public health emergencies. As has been pointed out by my colleague, Ms Jennifer De Temmerman, in her report on "Securing safe medical supply chains", we must build up global supply capacities. We should invest in a long-term and sustainable multilateral effort, preferably through WHO, for the development, manufacturing, stockpiling and distribution of vaccines and other essential materials – a system that is kept in use during normal times and which can pivot swiftly to provide a timely and necessary response to public health emergencies. Moreover, states must identify vulnerabilities in medical supply chains, strengthen manufacturing capacities and competence to produce in accordance with standards of Good Manufacturing Practice (GMP), and ensure regulatory oversight (from site inspection to regulatory evaluation and approval as well as independent oversight of the approved quality batch to batch).

5. Building resilient national health systems in Council of Europe member States and beyond

53. In the urgent debate report on "Beating Covid-19 with public health measures", my colleague Mr Stefan Schennach (Austria, SOC), said that member States must urgently allocate the necessary funding in order to build up stronger and more robust health systems. This includes combatting not just the pandemic and its devastating effects on the global economy, but also pre-existing fault-lines and inequities, including in access to health care, which the pandemic has exposed. It also necessitates an acceptance and embracing of embracing the One Health approach, as called for in several of the reports of the Assembly.

54. The pandemic has laid bare the inequities in our health systems, including in mental health, and lack of sufficient funding, resulting, inter alia, in overworked and underpaid health-care staff and insufficient hospital beds. In the WHO Europe region, staff shortages were the overriding problem for hard-pressed health services. In our member States, there are big differences in the number of intensive care beds relative to population. At the beginning of the pandemic, Germany had 28.2 hospital beds per 100 000 inhabitants and Austria had 21.8, while the European average was only 14.1.[33]

55. We must build up strong and robust healthcare services at national levels. Pre-pandemic, the world was taking positive steps with regard to Universal Health Coverage in order to deliver health for all by 2030. The pandemic fundamentally disrupted our health systems, societies and economies and has thus eroded the development gains over the past 25 years.[34] The first waves of the pandemic should have been a wake-up call for governments and the international community that the inequities in our health systems and lack of sufficient funding must be urgently addressed.

56. It is critical that member States develop national prioritisation strategies to ensure equitable allocation of goods, such as vaccines, medicines, and protective equipment, in situations of scarce resources. Public health authorities must implement timely measures to curb the effects of public health emergencies. As the situation evolves, there is a need continuously to review the public health measures put in place in our member States with parliamentary oversight so as to ensure that they are always relevant, proportional and effective, in a way which is human rights compliant.

57. The world must come together and increase solidarity and secure financing to strengthen country core capacities for preparedness and for managing response to health emergencies. The International Monetary Fund has estimated that this will require developing economies to spend an additional 1 percent of GDP, at least over the next five years.[35] As the Covid-19 pandemic has demonstrated, our collective global health is only as strong as our weakest link, which is why it is essential to complement the additional spending at national levels with enhanced external grants support for investments in lower-income countries. Rather than treating it as "aid for other nations", it must be treated as a strategic investment in global public goods that benefits us all.[36]

58. Regrettably, many countries seeking financial assistance from the International Monetary Fund have been given such assistance on the condition that they undertake structural adjustment programmes, involving drastic cuts in public health budgets, which affect the most vulnerable. International financial institutions, including the World Bank and the Council of Europe Development Bank, as well as multilateral trade and development institutions such as the World Trade Organization and the European Bank for Reconstruction and Development should collaborate, under the lead of WHO, with other important institutions promoting global

[33] https://www.ft.com/content/43ba23b5-7dc3-435d-9d6a-201dbc038451.
[34] https://www.who.int/news-room/feature-stories/detail/responding-to-covid-19-and-building-stronger-health-systems-for-universal-health-coverage.
[35] https://www.imf.org/en/Publications/fandd/issues/2021/12/Multilateralism-Pandemic-Era-Okonjo-Iweala-Shanmugaratnam-Summers.
[36] *Ibid*.

health, human rights and sustainable development at national, regional and international level, in order to support a global trade and investment system that is driven by principles of solidarity and the protection of human rights as well as support lower-income countries and regions to invest in public goods needed to address threats from new public health emergencies.

59. Public investment in research and development should be enhanced and results of publicly financed research must be shared. The strengthening of National Focal Points is critical to the implementation of the International Health Regulations, as they conduct the communications aspects of the IHR, both within countries and internationally. As the designated point of contact between WHO and states Parties, it is essential that National Focal Points are provided with the necessary authority, capacity, training, and resources to effectively carry out the functions required of them by the International Health Regulations.

6. Concluding words

60. I believe the goal we want to achieve is shared by all: effective access to the right to health for all, by preventing public health emergencies in the first place, and reacting to them in a fast, effective, just and human-rights compliant way when they happen despite our best precautions. The challenge we must face is how to best design a multilateral system which can deliver this goal and be agreed by all.

61. At the centre of the new order must be a reinvigorated and empowered WHO, acting as the leading governing authority for global health, both *de facto* and *de jure*. Member States must ensure sustainable financing of WHO and ensure that it has the necessary powers effectively to implement and monitor the International Health Regulations and reinforce its rapid response mechanism to public health emergencies. Council of Europe member States should actively participate in the World Health Assembly with a view to ensuring good governance of WHO, as well as promoting and monitoring reform efforts, and ensuring transparency.

62. Inclusive decision-making and full and equal participation of developing countries is needed in the negotiating processes of the International Health Regulations and the International Negotiation Body to draft and negotiate a convention, agreement, or other international instrument to strengthen pandemic prevention, preparedness and response. Negotiations must not neglect the voice of important stakeholders, such as parliaments, and should ensure transparent and meaningful consultative processes that involve civil society, NGOs and human rights organisations, and take their proposals duly into account to strengthen the texts.

63. Governments must learn the lessons from previous public health emergencies and mainstream equity and human rights in the revision of the International Health Regulations and in the drafting process of a convention, agreement, or other international instrument to strengthen pandemic prevention, preparedness and response, and ensure in particular that the latter instrument is in line with the “10 Human Rights Principles for a Pandemic Treaty” by the Civil Society Alliance for Human Rights in the Pandemic Treaty.