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Zadeva: Analiza EU delegacije dokumenta *Draft bureau's text of the who convention, agreement or other international instrument on pandemic prevention, preparedness and response (WHO CA+)* iz 22. maja 2023, pripombe Slovenije

Comments of Slovenia

General Assessment

The Bureau's text presents a significant departure from the Zero Draft of the WHO CA+, with noted omissions of large parts of the comprehensive proposals for legal text submitted by the EU ahead of INB 5. This is particularly problematic in areas such as human rights, with the article specifying Parties' obligations is entirely omitted.

While some parts of the Bureau's text are well written, there are some stipulations that are difficult to understand due to the convoluted language more suited to policy drafting (e.g., Article 5 on General Principles and approaches, Article 9 on Research and Development, Article 11 on Co-development and transfer of technology and know-how etc.). There are also problems with internal consistency, especially where the Bureau's text discusses establishing review mechanisms. An example of this is Option 8. C of Article 8, which, if adopted, would be better placed in Chapter III.

Despite this, Slovenia agrees with the EU DELs assessment that the Bureau's text represents an encouraging step towards negotiating a binding international treaty and can be used for further discussion.

Chapter-by-chapter Analysis

Preamble

Text omitted.

Chapter I. Introduction

Article 1. Use of Terms

The list is incomplete. There are several technical terms throughout the document that will need clarification (e.g., zoonotic disease, spill-over events, small-scale outbreaks etc.) as well as general terms that merit further discussion to ensure a concise definition (e.g., pandemic).

Article 2. Objective and scope

The text needs to be shortened and simplified.

Article 3. General Principles and approaches

Respect for human rights is retained in the document only as a general principle. The entire Article 14 of the Zero Draft which dealt specifically with human rights has been omitted from the document. It is also important to note that the Zero Draft also included gender equality and rights of individuals and groups at higher risk and in vulnerable situations as general principles, an approach that has not been retained in the Bureau's text. Indeed, the Bureau's text only mentions human rights in Article 7 on health and care work force and briefly in the introduction to Chapter II, which is worrying. While the WHO CA+ aims to address not only technical issues surrounding pandemics, but also broader societal issues, such as infodemics, it would need to include clear human rights standards, such as previously mentioned Article 14 of the Zero Draft text.

Much of the public's uproar and backlash during and after the covid-19 pandemic is a direct result of human rights violations that have upset the public across the world. With low public trust in governments and intergovernmental organisations, it is important that the international community, particularly the WHO, shows a clear commitment not only to the right to health, but also to other socioeconomic rights and civil and political rights that were infringed on during the covid-19 pandemic.

On the other hand, it is encouraging to see equity as a general principle, which shows the Parties' commitment to achieving at least a minimal form of fair and just global health.

Another issue with the general principles has to do with responsibilities and capabilities in pandemic prevention, preparedness, response, and recovery of health systems, where two options (7.A and 7.B) are given. Option 7.B merely states the fact that unequal development presents a common danger, which is true, but unhelpful and unnecessary in the context of a binding treaty, while option 7.A outlines common but differentiated responsibilities (CBDR), a principle borrowed from international environmental law. While this approach may prove to resolve tensions between high and low-and-middle income countries regarding their responsibilities, it needs to be further clarified in substantive stipulations.

It is expected that other principles will be added, or some removed, however, it is important that democratic countries which have enshrined respect for human dignity and justice in their constitutions, argue for the same values on the international level.

Chapter II. The world together equitably: Achieving equity in, for and through pandemic prevention, preparedness, response, and recovery of health systems

Article 4. Pandemic prevention and public health surveillance

The language of the option 4.B is relatively mild, no strong obligations are imposed on the Parties, which are mostly required to "strengthen efforts to ensure" "in accordance with their capabilities". It is also unclear how cooperation and the support of WHO is envisioned regarding strengthening and maintaining public health laboratory and diagnostic capabilities. However, it is difficult to judge any of the more specific stipulations without a clear understanding of the new IHR.

Article 5. Strengthening pandemic prevention and preparedness through a One Health approach

As noted by the EU the text of Article 5 is to a large extent based on the text of Article 18 on One Health of the Zero Draft, however, several of the more operational elements related to one health surveillance and prevention of zoonotic spill-over were omitted. It

is worth noting though that in terms of implementing science-based actions, the Bureau's Draft is more detailed than the Zero Draft. Perhaps a way forward would be to examine EU's own work on "One Health", which is recognized as a good practice, and suggest language from there.

Article 6. Preparedness, readiness, and resilience

The text of the first two paragraphs of the article is largely programmatic and better suited to general principles. Surveillance is already covered in Article 4, so there is no need for general commitments to be repeated here as they are in the third paragraph. As noted by the EU the text of Article 6 paragraph 4 is to a large extent based on paragraph 4 of Article 11 on Strengthening and sustaining preparedness and health systems' resilience of the Zero Draft, with the Bureau's Draft expanding on health infrastructure.

Article 7. Health and care workforce

As already mentioned, this article is the only one using human rights language, requiring the Parties to address disparities in the health and care workforce, with reference to women. Gender language could be further strengthened.

Article 8. Preparedness monitoring and functional reviews

Article is difficult to assess without a clear understanding of the new IHR. The article proposes establishing a UHPR mechanism, which is an interesting avenue to pursue, and Slovenia could support, however it would need to be better stipulated and perhaps, this stipulation might be better placed elsewhere, i.e., in Chapter III.

Article 9. Research and development

An ambitious stipulation that might be difficult to implement, especially taking into consideration different capabilities in terms of R&D.

Article 10. Liability risk management

This stipulation raises several important issues regarding financing such a scheme, legislative changes needed on a national level as well as managing relationships with relevant vaccine providers, particularly regarding proposed limitations on contractual indemnity clauses.

Article 11. Co-development and transfer of technology and know-how

The language of this article is somewhat confused and overlapping with Article 9 on R&D. Furthermore, the EU proposals for achieving equity should be re-proposed and discussed appropriately.

Article 12. Access and benefit sharing

The language in this article is particularly tortuous, especially the Option 12. A, which is no more than a programmatic norm without any real effect. Option 12. B is somewhat better, as it establishes a relatively clear system of pathogen sharing. The stipulations on benefit sharing are a bit more difficult to analyze, as they seem to overlap with issues already addressed in Article 9 and Article 11 and are not well placed here. WHO has also just launched a new International Pathogen Surveillance Network and it isn't clear how these new systems will work together.

Article 13. Supply chain and logistics

As noted by the EU “the option of establishing a WHO anchored “network” intended to address issues of supply chain resilience is presented as an option alongside another option (an element of the EU proposal), which however deals with a rather different issue, namely the establishment of a partnership among agencies intended to address issue of allocation of set aside quantities for low-and middle-income countries.” These issues are separate and need to be negotiated as such.

Article 14. Regulatory strengthening

Article 15. International collaboration and cooperation

This article is relatively ambitious as it focuses on equity and rights of persons in vulnerable situations, however its language is very general, and it is difficult to see how it would be effectively implemented. Paragraph 1(c) that deals with gathering and analyzing data would be better placed elsewhere in stipulations that specifically deal with information and data sharing. The paragraph on the WHO Director-General determining whether to declare a pandemic is also misplaced here and needs to be dealt with separately.

Article 16. Whole-of-government and whole-of-society approaches at the national level

An important article that mentions the social determinants of health, which should be a part of the principles of the WHO CA+ and acknowledges the need for whole-of-society engagement to tackle public health emergencies. Establishing an effective national coordinating multisectoral mechanism that includes all relevant key actors is to be supported.

Article 17. Implementation, acknowledging differences in levels of development

Differentiated implementation is offered as Option 17.B and merits consideration, especially as it offers protection from further weakening of already underdeveloped health systems.

Article 18. Communication and public awareness

As already discussed, (see comment to Article 3), the recent covid-19 pandemic was quickly joined by a rapidly spreading infodemic that significantly weakened the public trust in national and international health systems. While the suggestions in this article are helpful, there is a need to acknowledge the importance of human rights and their potential violations to secure public trust in health policies.

Article 19. Financing

Chapter III. Institutional arrangements and final provisions

The assessment of articles 20 to 41 will only be possible once the substantive stipulations are agreed upon. As already mentioned, it would be advisable to incorporate the UHPR mechanism in this chapter together with other articles on institutional arrangements.

Generally, it appears that the EU suggestions regarding crucial bodies, such as the Implementation and Compliance Committee and the Panel of Experts has been retained, with the latter incorporating the One Health approach, which is commendable. It is important to address the lack of human rights language in this chapter as well, specifically in Article 27 on relationship with other international agreements and instruments which does not mention any relevant international human rights treaties, for example CRPD, CEDAW etc. The relationship with the IHR also merits its own paragraph, if not a separate article.

Pripravila: Delovna skupina MZ za sodelovanje pri pripravi Mednarodnega instrumenta o preprečevanju, pripravljenosti, in odzivu na pandemije in spremembe Mednarodnega zdravstvenega pravilnika