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Country report

Multilateral Dialogue Geneva



Geneva Telegram on the 11th meeting of the intergovernmental negotiating body on the pandemic agreement

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The "Geneva Telegram" deals with events in Geneva's multilateral organizations on a current topic, this time the 11th meeting of the Intergovernmental Negotiating Body on the Pandemic Agreement (INB11), which met in Geneva from 9 to 20 September 2024.

This round of negotiations marked another crucial step in the process of finalizing the pandemic agreement. However, WHO Director-General Dr. Tedros Adhanom Ghebreyesus expressed his disappointment at the lack of significant progress: "Progress has been made, but not to the extent we had hoped for."

The urgency of a binding pandemic agreement has further increased after the WHO Director-General declared a Public Health Emergency of International Concern (PHEIC) on August 14, 2024, due to the ongoing Mpox outbreak on the African continent.¹ This escalation underscores the importance of globally coordinated pandemic preparedness and response measures and shows that a pandemic will not wait for negotiations to be concluded.

The issue of the Pathogen Access and Benefit Sharing System (PABS) once again became a point of contention. While Dr. Tedros pushed for an agreement by the end of the year, key decisions were postponed again. Diplomats praised the efforts of the Bureau, in particular proposals by French Co-Chair Anne-Claire Amprou and Brazilian Vice-Chair Tovar da Silva Nunes. However, there are still significant differences regarding the sales quotas of pandemic-related products and the monetary and non-monetary benefits to be agreed under PABS. To finalize the agreement by a Special

Session of the World Health Assembly in December 2024, significant progress would be needed in informal rounds during the month of October, as the next INB meeting is not scheduled until November 4-15, 2024.

New emphasis through personnel changes

The INB Bureau remains characterized by strong leadership. Under the Co-Chair, French Ambassador Anne-Claire Amprou, and the experienced South African Co-Chair Precious Matsoso, attempts are being made to moderate the diverging interests of the member states. In particular, the new text proposals on PABS from Amprou and Vice-Chair Tovar are a positive signal of the will to find a compromise.

Involving experts and non-state actors

The involvement of non-state actors remains a key issue. A notable innovation of INB11 was the increased involvement of non-state actors (NGOs, industry representatives and academic experts), who were included in the daily consultations by the Chairs.

This transparency initiative was welcomed by many stakeholders, but the role of civil society in the negotiations remains limited. Although they

¹ More [here](#).

were allowed to make comments, the actual negotiations are largely inaccessible. Nina Jamal from the animal welfare organization FOUR PAWS praised the INB Bureau for its “transparency towards relevant stakeholders, increased openness and constructive suggestions from Member States”. Michelle Childs from the Drugs for Neglected Diseases Initiative (DNDi) also expressed satisfaction with the openness, particularly in terms of sharing draft texts and daily briefings.² These steps help to make the negotiation process more transparent and counter misinformation. There were also calls for stakeholder input to be made publicly available to further promote transparency.

Legal Framework and “pandemic agreement light”

The legal framework of the agreement was already the subject of the expert dialog in the run-up to the meeting. Two articles of the WHO Constitution were discussed. The WHO Secretariat had explained the options for this³: A treaty under Article 19 of the WHO Constitution would be more binding, but would involve a more protracted process, as Article 19 requires ratification and accession by each individual member state. An agreement under Article 21 could be implemented more quickly but would remain less binding. Some member states, particularly from Africa, favour Article 19 to ensure greater accountability. However, the US ambassador made it clear that the United States preferred an agreement under Article 21.⁴

The new text proposal⁵ that the Bureau then proposed to the negotiating body during the negotiations postpones certain decisions until after the

actual agreement has been concluded. This is described by observers as a “pandemic agreement light”.⁶ The Bureau is thus attempting to clarify the most complex and highly technical issues, such as PABS, later through the Conference of the Parties (COP) to first reach an agreement that the negotiating parties can accept. The aim would be to negotiate details in an intergovernmental working group (IGWG) immediately after the conclusion of the main agreement and have these approved by the COP. However, some developing countries, which consider PABS to be a crucial point, are opposed to these delays, while others hope that this will enable the very specific detailed issues to be resolved at expert level.

The aim of the Bureau is to moderate between the interests of countries that share pathogens and the interests of countries that prefer less stringent benefit-sharing obligations concerning i.e. medical products for their pharmaceutical industry.

In addition, key terms have been watered down in the new text. These formulations reflect the strategy of removing controversial topics such as PABS and but also Articles 4 and 5 on prevention and One Health from direct negotiation.

Main topics and areas of tension: PABS, prevention legal framework and IHR

The PABS remained the central point of discussion in this round. Observers reported that, in addition to the discussion on benefit sharing, a key aspect of the discussion remains the interaction of the PABS instrument with existing agreements, such as the Nagoya Protocol.⁷

² More [here](#).

³ See [here](#).

⁴ This US preference was further underpinned by a recently passed resolution. On September 11, the US Congress passed the “No WHO Pandemic Preparedness Treaty Without Senate Approval Act”. This act, introduced by Republicans, ensures that the US cannot ratify any agreement without Senate approval. It reflects concerns that the pandemic treaty could undermine national sovereignty - despite all previous drafts of the treaty explicitly recognizing the sovereignty of member states. This decision could significantly affect the dynamics of the negotiations, especially with regard to the final adoption of the agreement, see [here](#).

⁵ See [here](#).

⁶ See [here](#).

⁷ The “Nagoya Protocol” is an international agreement under the Convention on Biological Diversity (CBD) that regulates access to genetic resources and the fair and equitable sharing of the resulting benefits. In this context, the PABS instrument aims to apply similar principles, but specifically for pathogens with pandemic potential. The challenge is to ensure that the PABS instrument is recognized as a Special International Instrument (SII) and is consistent with the requirements of the Nagoya Protocol in order to avoid duplication and conflict.

Irrespective of the ratification of the agreement, consideration is being given to outsourcing the issue of PABS and handing it over to a separate IGWG, which could begin its work immediately after the pandemic agreement has been concluded. However, the question remains open as to whether PABS will be treated as an annex, i.e. part of the main agreement, or as a separate protocol. Both options offer advantages and disadvantages. The decisive factor is that fragmentation or “cherry picking” is avoided, whereby not all participants in the pandemic agreement also join the PABS.

While some diplomats praised the Bureau's good approach of establishing PABS as a separate instrument, the conflict over key issues such as quotas, monetary and non-monetary benefits, and access to material and data remains unresolved. Shifting these detailed discussions to an IGWG could contribute to objectification, as the pressure to date has produced few tangible results.

Another area of tension in the recent negotiations was Article 4 on prevention. Despite the obvious relevance of measures to prevent future pandemics, this article met with unexpectedly strong resistance. The reasons for this remain unclear, but the opposition could jeopardize the implementation of crucial prevention measures.

The postponement of key decisions were particularly criticized by the Group for Equity, whose final statement was sobering.⁸

Commentary and Outlook

Despite some progress, many key points remain unresolved. Although progress was noted in the final report regarding Article 4 Monitoring, Article 5 One Health, Article 9 Research, Article 10 Local Production, Article 11 Technology Transfer, Article 12 PABS, Article 13 Supply Chains and Article 14 Strengthening Regulatory Systems, details of this progress remain unclear.

The possibility of outsourcing the PABS system to a separate instrument offers both opportunities and risks. Should this happen, it must be ensured that all participants in the agreement also join the PABS system to prevent fragmentation. The likelihood of the agreement being adopted by the end of 2024 depends heavily on the ability of the member states to find compromises in the next rounds of negotiations. WHO Director-General Dr. Tedros Ghebreyesus remains optimistic, but the next round of negotiations in November will be crucial. The negotiations on Article 4 on prevention highlight the importance of implementing early pandemic preparedness measures. However, the strong resistance to this article could prove to be an obstacle. Overall, the challenge remains to resolve the remaining open issues in a timely manner to achieve a strong and effective pandemic agreement.

The improved involvement of interest groups is particularly positive, as co-chair Matsoso emphasized: “We have made progress in terms of the involvement of stakeholders, who were also able to participate in the negotiations themselves this time.” Even though there are still many hurdles to overcome, Matsoso remains confident: “We will find a solution - in our lifetime.”

⁸ The Group for Equity comprises 29 countries, which represent an interesting alliance of predominantly African, Latin American and South and South-East Asian countries, namely: Argentina, Bangladesh, Botswana, Brazil, China, Colombia, Dominican Republic, Egypt, El

Salvador, Eswatini, Ethiopia, Fiji, Guatemala, India, Indonesia, Iran, Kenya, Malaysia, Mexico, Namibia, Pakistan, Palestine, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand and Uruguay.

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