



**TO:** Pandemic Treaty Intergovernmental Negotiating Body  
Co-Chairs Drs. Precious Matsoso and Roland Driecce

November 25, 2022

**AND TO:** Dr. Timothy Armstrong, Director, Dept. of Governing Bodies  
% World Health Organization

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**Re: concordance between the Conceptual Zero Draft of the Pandemic Treaty and the 16 measures recommended by Civil Society Organizations in the joint statement sent November 8, 2022 best protect all people, especially including those in low-income countries with limited financial resources and fragile healthcare systems**

Dear members of the intergovernmental Negotiating Body:

As the corresponding author of the [November 8, 2022 civil society joint-statement](#) prepared with the assistance of a Working Group of the Geneva Global Health Hub (G2H2) and representing the views of 101 organizations including some of G2H2's member organizations, I am writing to observe how the *Conceptual Zero Draft of the Pandemic Treaty* departs from those recommendations. Although the precise language of the text requires substantive improvement that can result from the formal negotiation process, the draft recognizes several important elements:

1. **Prevention:** The draft makes extensive references to the important objective of prevention (approximately 80 text references).
2. **Proportionality:** The draft recognizes the key principle of proportionality at Articles 14(8), 14(18) and preamble recital 28, especially between countermeasures and harm sought to be avoided, and the disproportionate impact on health workers and vulnerable groups.
3. **Investigation:** The draft recognizes the need for robust investigatory powers at Article 10(2).
4. **Equity:** The draft recognizes the importance of equitable access to pharmaceutical countermeasures at preamble recitals 29 and 34 and Articles 4(6) and 6(2)(a)(ii).
5. **Transparency:** The draft recognizes the importance of transparency about reporting outbreaks at Article 13(2)(d) and financing at Article 18(1).
6. **Healthy workforce:** The draft recognizes the importance of a healthy workforce in healthcare at Article 11 and in manufacturing at Article 7(2)(a)(vi).
7. **Financing:** The draft recognizes the importance of adequate financing for pandemic preparedness and prevention in Articles 8, 10, 11, 12, 14, 18 and 22.

However, there are significant omissions from the text that will likely undermine its effectiveness, for instance:

1. **Conflict of Interest Safeguards:** The draft fails to define conflicts of interest, even using WHO-recognized explanations<sup>1</sup> or recognize the need for conflict-of-interest safeguards, such as the text proposed in the UN Human Rights Council’s draft proposed treaty on business and human rights. The core requirement in that proposed Legally Binding Instrument (i.e., treaty) has remained intact since the proposed elements in 2017, as well as the zero, first, second, and third published drafts, and unpublished variations proposed in October 2022. The 2021 official draft states at Article 6.8:  
*“In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), States Parties shall act in a transparent manner and protect these policies from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character.”*<sup>2</sup>
2. **Gravity of Risk:** The draft fails to acknowledge the gravity of foreseeable, potential harm of pandemics or that experts estimate that COVID-19, for instance, caused 15% excess deaths above 2019 levels, which is nearly triple official estimates. This also appears to reflect the kind of failure of government data collection and reporting that the Treaty purports to redress. Furthermore, the Treaty preamble should acknowledge that future pandemics could be worse.
3. **Right to Health:** While the draft defines the right to health at Article 4(2) based on the first two recitals in the preamble to the [Constitution of the World Health Organization](#), it appears to relinquish the primacy of that right by Articles 2(1) which declares rights created by all other treaties (including intellectual property, trade, and investment treaties) to be unaffected. The draft does not yet acknowledge that the right to health is a building block right upon which the enjoyment of other rights depends.
4. **Enforcement:** The draft provides little guidance on enforceability except at Article 20(1), which only invites the Governing Body of the Treaty (presumably the Conference of the Parties) to decide after the Treaty comes into force how to ensure compliance. This approach precludes true enforcement and may encourage the governing party to enforce without legal authority to do so. Furthermore, the draft’s “background” preface confusingly states that “the INB agreed that the instrument should be legally binding and contain both legally binding as well as non-legally binding elements” and does not distinguish such elements in the draft text. Furthermore, the draft should acknowledge that non-binding provisions would permit their use by national governments to resolve disputes involving international trade and investment agreements even if it does not compel States Parties to domestically implement such measures.
5. **Use of acronyms:** The draft text use of acronyms and abbreviations such as
  - a. WHO CA+ (90 times),
  - b. TRIPS (8 times),
  - c. OP/COP/E-COP (17 times),
  - d. ONE Health (11 times), and
  - e. FAIR (2 as an acronym, 8 as a principle)

needlessly sacrifices understanding on the altar of brevity. For instance, the phrase “this Pandemic Treaty” or “this Treaty” could be used instead of “WHO CA+” (previously “CAII”). The use of acronyms is a form of communication by governments that is widely regarded as hampering understanding by the public that they are mandated to serve.

6. **Burden-Sharing:** Though the concepts of benefit sharing (in relation to certain countermeasures), data sharing, and research and development sharing are repeatedly referenced in articles 8-13, there is no recognition of the concept of burden-sharing. The current approach seems to stress the allocation of commercial consumables instead of sharing pandemic risks in the spirit of global solidarity.

I make these observations in my personal capacity and in recognition of the short timeframe between the WHO introducing the Zero draft on November 18 and holding the first round of formal negotiations on December 5-7, 2022 at which time I may share additional insights from other Civil Society Organization that endorsed the joint-statement and my G2H2 INB Working Group colleagues that helped draft it.

Respectfully submitted,



Bill Jeffery, BA, LLB, Executive Director and General Counsel  
Centre for Health Science and Law, an endorsing organization and corresponding author for the [102 groups supporting the November 8, 2022 joint-statement](#)

### Endnotes

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<sup>1</sup> For instance, the World Health Organization has adopted the following definition: “*An actual conflict of interest arises when a vested interest has the potential to unduly influence official or agency judgement/action through the monetary or material benefits it confers on the official or agency.*” in World Health Organization. (2016). Addressing and managing conflicts of interest in the planning and delivery of nutrition programmes at country level: report of a technical consultation convened in Geneva, Switzerland, on 8–9 October 2015. World Health Organization at page 3. Available at: <https://apps.who.int/iris/handle/10665/206554> citing Harvard University ethics professor Dennis F. Thompson. Understanding financial conflicts of interest. *New England Journal of Medicine*. 1993;329:573–6.

<sup>2</sup> Open-Ended Intergovernmental Working Group. *Third Revised Draft Legally Binding Instrument to Regulate, In International Human Rights Law, The Activities of Transnational Corporations and Other Business Enterprises*. August 17, 2021. Geneva. OEIWG. Available at <https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf>