

## The 73<sup>rd</sup> World Health Assembly and Resolution on COVID-19: Quest of Global Solidarity for Equitable Access to Health Products

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### Abstract

The annual meeting of the World Health Assembly (WHA) of the World Health Organization (WHO) held virtually on 18-19 May 2020 discussed the global response to COVID-19 and adopted Resolution WHA73.1 on “COVID-19 Response”. The Resolution reaffirms the role of WHO as the directing and coordinating authority on international health work and it recognizes that all countries should have timely and affordable access to diagnostics, therapeutics, medicines and vaccines as well as to essential health technologies and equipment to respond to COVID-19. However, the Resolution does not define concrete actions to address the pandemic. Though the Resolution makes a commitment of ensuring access to medical products, vaccines and equipment for all countries in a timely manner, there are no concrete actions defined. In order to ensure global equitable access, WHO Members should make full use of the flexibilities of the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and also enhance transparency of costs of research and development (R&D), openness and sharing of data, tools and technologies, and build more capacity through technology transfer.

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*Lors de sa réunion annuelle, qui s'est tenue sous la forme d'une réunion virtuelle les 18 et 19 mai 2020, l'Assemblée mondiale de la santé (AMS) de l'Organisation mondiale de la santé (OMS) a débattu des réponses à apporter à la pandémie de COVID-19 et adopté la résolution WHA73.1 intitulée « Riposte à la pandémie de COVID-19 ». La résolution réaffirme le rôle de l'OMS en tant qu'autorité directrice et coordinatrice, dans le domaine de la santé, des travaux ayant un caractère international et reconnaît que les pays doivent avoir un accès libre et rapide à des produits de diagnostic, à des traitements, à des médicaments, à des vaccins et à des technologies et équipements de santé essentiels pour pouvoir mettre en place la riposte à la COVID-19. Toutefois, la résolution ne définit pas d'actions concrètes pour faire face à la pandémie. Bien que la résolution s'engage à ce que tous les pays puissent accéder rapidement aux médicaments, aux vaccins et au matériel médical nécessaires, aucune action concrète n'est proposée. Il est essentiel pour y parvenir que les membres de l'OMS fassent pleinement usage des flexibilités de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (ADPIC) et améliorent la transparence des coûts de la recherche et du développement (R&D), favorisent la consultation et le partage des données, des outils et des technologies, et participent au renforcement des capacités par le transfert de technologies.*

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*En la reunión anual de la Asamblea Mundial de la Salud (AMS) de la Organización Mundial de la Salud (OMS), celebrada virtualmente los días 18 y 19 de mayo de 2020, se debatió la respuesta mundial a la COVID-19 y se adoptó la Resolución WHA73.1 “Respuesta a la COVID-19”. En la Resolución se recuerda la función de la OMS como autoridad directiva y coordinadora en asuntos de sanidad internacional y se reconoce que todos los países deberían disponer de un acceso oportuno y asequible a pruebas diagnósticas, tratamientos, medicamentos y vacunas, y a tecnologías sanitarias esenciales, así como a equipo, con el fin de poner en marcha la respuesta a la COVID-19. Sin embargo, en la Resolución no se definen medidas concretas para abordar la pandemia. Pese a que en la Resolución se manifiesta un compromiso de garantizar el acceso mundial a productos sanitarios, vacunas y equipo médico de manera oportuna, no se recoge ninguna medida concreta. Los Miembros de la OMS, a fin de garantizar el acceso equitativo en todo el mundo, deberían utilizar al máximo las flexibilidades previstas en el Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual Relacionados con el Comercio (ADPIC) y, además, aumentar la transparencia en relación con los costos de la investigación y el desarrollo (I+D), la apertura y el intercambio de datos, herramientas y tecnologías, y crear más capacidad por medio de la transferencia de tecnología.*

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## I. Introduction

The annual session of the World Health Assembly (WHA), the highest decision-making body representing all the member States of the World Health Organization (WHO), was held virtually for the first time in history in the wake of the global disruptive impact of the COVID-19 pandemic. The 73<sup>rd</sup> session of the Assembly focused discussions on laying down the framework of a global response to COVID-19 based on multilateral cooperation and postponed all other public health matters for discussion at a later session of the WHA to be held this year.

On 19 May, the WHA concluded its discussions with the approval of a Resolution titled “COVID-19 Response”<sup>1</sup> (herein after “the Resolution”). The resolution was originally proposed by the European Union (EU) in the weeks before the meeting of the WHA and was subsequently co-sponsored by over 100 countries including the African Union and its member States and it was adopted by consensus of the WHO members. However, the United States (US), through a written statement, explained that it was disassociating from certain provisions in the Resolution. The Resolution aims to provide a global response to the COVID-19 pandemic; it spells out a set of actions to be carried out by member States, international organizations and requests to the Director-General of the World Health Organization.

The Resolution reaffirms the role of WHO as the directing and coordinating authority on international health work, even as the United States expressed reservation. The Resolution also highlights that the pandemic could hamper the progress to achieve the Sustainable Development Goals (SDGs). Importantly, it recognizes that all countries should have timely and affordable access to diagnostics, therapeutics, medicines and vaccines as well as to essential health technologies and equipment to respond to COVID-19.

The text also stresses on the particular needs of developing countries.

Nevertheless, the Resolution fails to provide much needed guidance on how to implement or achieve the pious objectives that it recognizes. The approved text had gone through an extensive process of negotiations in the weeks prior to the WHA and was a *fait accompli* when it was presented at the Assembly, without the possibility of any of the issues being reopened during the session. As such, it reflects the result of a compromise reached between countries with different interests. At best, it reflects the resolve of the member States of the WHO to undertake best endeavours in a spirit of solidarity and cooperation.

Inclusion of reference to intellectual property (IP) and access to medical products and vaccines as well as their recognition as global public goods was contested during the negotiations. The Resolution falls short of sufficiently addressing how countries can meet the challenge of ensuring access to medical products, vaccines and equipment for all countries in a timely manner, in particular for developing countries, and does not contain specific actions. The Resolution does not direct how to concretely address these critical issues, as raised by most member States in their interventions, including statements by a number of heads of State.

## II. Call for Global Solidarity: Statements from Heads of State

At the outset of the Assembly, the United Nations (UN) Secretary-General and a number of heads of State addressed the WHA and mentioned key principles that should guide the global response of the pandemic. The interventions by Mr. Matamela Cyril Ramaphosa, President of the Republic of South Africa, Mr. Xi Jinping, President of the People's Republic of China, and Ms. Mia Amor Mottley, Prime Minister of Barbados, highlighted many of the critical issues for developing countries.

The UN Secretary-General, Mr. António Guterres, in his remarks, stated that a "massive multilateral effort" is required, and that "it is essential that these [diagnostics, therapeutics and vaccines] are universally available and affordable for everyone, everywhere". He further noted that "[t]hey are a quintessential global public good".<sup>2</sup>

Mr. Xi Jinping, President of the People's Republic of China, made a call to provide greater support for Africa and for developing countries that have weak public health systems and to strengthen global governance of public health. He made a pledge of 2 billion US dollars over the next two years to help in the COVID-19 response and also said that given the current efforts in China for the development of a vaccine for COVID-19, when this is available it will be made a global public good.

Ms. Mia Amor Mottley, Prime Minister of Barbados who spoke on behalf of the Caribbean Community (CARICOM), made a call for global leadership that will rebuild humanity, the environment and create more equity. She made a call for equitable access and fair allocation of resources and emphasized the need to access diagnostics tests that would allow the region to reopen safely. The Prime Minister also spoke about the need for debt restructuring or a debt moratorium that would prevent a financial crisis. She also reminded the international community that there are other urgent global health priorities critical for development, including chronic non-communicable diseases, HIV, antimicrobial resistance and the other health-related diseases that come as a result of the climate crisis.

Mr. Matamela Cyril Ramaphosa, President of the Republic of South Africa, stressed that although this crisis affects both developed and developing countries, it is the poor who suffer the most and that the pandemic has also shown the dangers of the growing inequalities between countries and within them and how the healthcare systems of many countries are struggling to cope. He made a call for developing countries to be assisted in the efforts to combat the pandemic and to rebuild their economies. He said that this assistance should include debt relief and equitable access to medical equipment, technologies, diagnostics and medical supplies.

The high-level segment also had interventions from Mr. Emmanuel Macron, President of the Republic of France, Mr. Moon Jae-in, President of the Republic of Korea, Mrs. Angela Merkel, Chancellor of the Federal Republic of Germany, and Ms. Simonetta Sommaruga, President of the Swiss Confederation.

President Emmanuel Macron emphasized the need for a strong WHO to tackle COVID-19 and that if a vaccine is discovered it should be a public good and everyone should have access to it. He also stressed that human health should not be bought and sold. President Moon also called for cooperation beyond borders and

for vaccines and treatments as public goods which must be distributed equitably to the whole world. Chancellor Angela Merkel pointed out the need to find a common solution together and how COVID-19 has shown the need to do more, particularly in prevention and research as well as in strengthening health systems. She also reaffirmed the WHO's role and the need to ensure sustainable financing for the organization. Sustainable financing of the WHO was also stressed by Ms. Simonetta Sommaruga, President of the Swiss Confederation.

At the closing of the World Health Assembly on Day 2, other heads of State took the floor as invited speakers. Mr. Iván Duque Márquez, President of Colombia, called on ensuring multilateralism and the need to rapidly develop a vaccine and treatments. Mr. Mario Abdo Benítez, President of Paraguay, noted that a global disaster needs a global response, having the value of human life right at the center. Mr. Lotay Tshering, Prime Minister of Bhutan, stressed the centrality of public health and for ensuring that countries have access to diagnostic tools, protective personal equipment (PPE) and vaccines once available. Mr. Pedro Sánchez Pérez-Castejón, President of Spain, expressed the support to multilateralism and the WHO, and the necessary efforts to achieve universal health coverage (UHC). Mr. Giuseppe Conte, Prime Minister of Italy, recalled the existence of an "international alliance" to fight the COVID-19 pandemic with the WHO and countries, and noted the need to pay attention to the most vulnerable countries. Mr. Kausea Natano, Prime Minister of Tuvalu, while noting that the country remains COVID-19 free, pledged to leave all differences behind, reminding of our common humanity. Ms. Ursula von der Leyen, President of the European Commission, stressed the need for affordable tests, medicines and vaccines to all. She further noted that the coronavirus vaccine should not be a luxury of a few, but a universal common good. Finally, Mr. Nguyễn Xuân Phúc, Prime Minister of Vietnam, noted the successful approach in his country, with zero deaths, and called all countries to support multilateral cooperation and strengthen health systems. The number of interventions by heads of State is a rare precedent in the history of WHA.

During his closing remarks, Dr. Tedros Adhanom Ghebreyesus, WHO Director-General (DG), stressed that WHO will continue "to fight COVID-19 with every tool", including, among others, "research and development to develop evidence about vaccines, diagnostics and therapeutics" and "working with countries and all relevant partners to ensure equitable access to the tools to prevent, detect and treat COVID-19". The WHA's Chair, Ms. Keva Bain, from the Bahamas, thanked the work and collaborative efforts of all. She then suspended the Assembly.

### **III. Highlights from Country Statements**

Most delegations noted the unprecedented scale of the current COVID-19 crisis and affirmed the crucial importance of public health. They also highlighted and commended the work of healthcare workers around the

world, while expressing their condolences for all of those who lost their lives. The majority also expressed ample support for the work of the WHO, strengthening its role, and asked for more collaboration and coordination in the fight against COVID-19. Furthermore, many delegations noted the importance of the right to health and the need for concerted efforts to achieve universal health coverage.

At this WHA, the countries' statements also contained a number of expressive commitments and positionings in order to ensure the maximum and timely access to all health technologies to combat COVID-19, and to ensure that structural socio-economic and legal conditions are in place to make this possible at a global scale.

One of the priorities expressed by many delegations was the need for collective action for timely **equitable and affordable access to health technologies related to COVID-19**, including future vaccines, medicines and diagnostics. Examples include the statements by South Africa, Ethiopia, Bangladesh, Azerbaijan (on behalf of the Non-Alignment Movement (NAM)), the Republic of Congo (on behalf of the African Region), Indonesia, Algeria, Mexico, Morocco, Belize, Pakistan, South Korea, Poland, Lithuania and Slovenia.

Multiple countries also voiced that medical products and vaccines should be treated as **global public goods**, including Argentina, Zambia, Kenya, Peru, Namibia, Timor-Leste, Austria, Germany, Italy and Croatia (on behalf of the EU). Slovakia even called for an efficacious vaccine not to be commercialized in the first place, and serve the "general good". Such statements also echoed the high-level presidential statements of China, France and South Korea during the opening of the WHA.

Various delegations also stressed the need for a **renewed research and development (R&D) system** for pharmaceuticals and other medical products, such as Mozambique, Zambia, Canada and Azerbaijan (on behalf of NAM). Concerns about production capacity were also highlighted, such as Cameroon (on behalf of the African Group of Ambassadors in Geneva), Azerbaijan (on behalf of NAM) and Malta.

Specific support to the **voluntary pool of technologies** proposed by the government of Costa Rica<sup>3</sup> was made by the delegations of Chile, Ecuador and the Netherlands.

The importance of **flexibilities of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** was highlighted in various country statements, including by Cameroon (on behalf of the African Group of Ambassadors in Geneva), the Republic of Congo (on behalf of the African Region) and Zambia. Cameroon noted that "where possible, Member States should fully utilise the flexibilities contained in the TRIPS Agreement and the Doha Declaration to safeguard Public Health". Ethiopia

rendered explicit the need for "the removal of all kinds of legal, policy or technical barriers that impede access", and Austria called on the WHO "to play an important role to facilitate solutions regarding intellectual property rights".

Calls for debt relief/cancellation and financing were also expressed by delegations including Cameroon (on behalf of the African Group), Cabo Verde and Barbados. Syria, the Islamic Republic of Iran, Cuba and Venezuela requested the end of unilateral sanctions against their respective countries. Palestine urged the end of the occupation of its territory.

Many delegations took the opportunity to describe the policies implemented in their countries. There was also a call for the need not to disregard the continued needs concerning other diseases and of weaker health systems, particularly noted by certain African countries, and to face natural disasters in certain regions, particularly in the Caribbean.

#### Summary of Selected Statements Supporting Global Equitable Access

Antigua & Barbuda, on behalf of the Organization of Eastern Caribbean States and Barbados, made a call, among others, for "access to financing and debt forgiveness" and "access to currently needed supplies for COVID-19 response and *equal* access to emerging rapid tests, medicines, vaccines, and technologies".

Argentina called for a "global solidarity pact", supporting "any regional and global initiative to allow access to the results of research in treatments, vaccines and medical products". It further noted that it is mandatory that "States [should] be able to take actions that guarantee access to knowledge of these global public goods through free or sufficiently accessible licenses to all societies around the world".

Azerbaijan, on behalf of the Non-Alignment Movement (NAM), reiterated full support to the WHO and called for "affordability and fair access to diagnostics, tests and vaccines", being a "priority for developing countries". It also affirmed the need for new instruments to regulate R&D for pharmaceutical products. Finally, it also noted a commitment to UHC and health-related SDGs to ensure health security and long-term capacity for local production and affordable measures.

Cameroon, on behalf of the African Group of Ambassadors in Geneva, welcomed "the various initiatives aimed at ensuring equitable access to new COVID-19 diagnostics, treatments and vaccines", and that it is "produced rapidly at scale and made available for all people, in all countries, at a cost that everyone can afford", drawing on the negative experiences of the past such as HIV and Ebola. It also urged "Member states and the private sector to work together to facilitate the transfer of technology and know-how for medicines, vaccines, diagnostics and other commodities, that will allow us to meet global demand". It



also noted that "where possible, Member States should fully utilise the flexibilities contained in the TRIPS Agreement and the Doha Declaration to safeguard Public Health".

Costa Rica expressed the need to "concentrate all technology, all knowledge, all possible inputs in a universal patent pool so that all countries may make use of such knowledge". It further called for global solidarity where all actors could contribute to innovation and research, voluntarily sharing experiences and scientific conclusions against COVID-19, and announced the upcoming launch, with the WHO Director-General, of the "Solidarity for a Call to Action" initiative. Chile and Ecuador supported Costa Rica's initiative on the pooling of patents and all other information.

Croatia, on behalf of the European Union (EU) and its Member States, voiced the need for emerging technologies related to COVID-19 to be treated as global public goods, and that should be available to everybody.

The Republic of Congo, on behalf of the African Region, noted the particular impact for countries with a fragile health system. It stated that "health for all should be our focus" to continue the efforts to vaccinate and attain health goals. Importantly, it affirmed that "we hope that countries can make full use of flexibilities in the context of the IP system", calling for "all Member States [to] have equitable access to medicines and medical products".

Tunisia, on behalf of the Eastern and Mediterranean Region, noted the "commitment to accelerate the development and production of treatment and vaccines and ensure equitable access to all".

Zambia stressed that the country, "like many other LMICs, struggle to secure even limited consignment of commodities due to the difference in price structures by manufacturers for different regions." It also called for shortages being countered "based on the provisions of the TRIPS agreement and flexibilities of the Doha Declaration coupled with expedited regional pooled resources and procurement to ensure equitable and affordable access to new technologies". It furthermore urged the WHO Secretariat "to accelerate the emerging pipeline of rapid tests and support the development of adapted, accurate diagnostic tests that can be used widely in LMICs including promotion of local manufacturing while assuring quality".

For a full compilation of statements related to access to health products, please see: *Compilation of Extracts from Selected Country Statements during 73rd World Health Assembly supporting Access to Health Products on COVID-19* (<https://www.southcentre.int/compilation-of-extracts-selected-country-statements-during-73rd-wha/>).

#### IV. The COVID-19 WHA Resolution

The Resolution adopted by the WHA accords primary responsibility upon States to take measures in response to COVID-19 through an inclusive approach to address the needs of all sections of the society by all arms of the government. It also calls for strengthening multilateral cooperation to respond to COVID-19 on the basis of global solidarity. In particular, it recognizes the need to ensure universal, equitable and timely access to medical products, devices, vaccines and equipment, and the need to remove any obstacle to such access, including through the use of TRIPS flexibilities to overcome any obstacle to access arising from intellectual property rights (IPRs). It also recognizes immunization against COVID-19 as a global public good. The Resolution also calls upon all member States to implement the International Health Regulations (IHR) and requests the WHO to provide the necessary assistance to do so. Moreover, the Resolution also recognizes the leading and coordinating role of the WHO in the global response to COVID-19 and the need to strengthen the resources of the WHO, and the need for an evaluation in the future of the experience gained and the lessons learned.

The Resolution marks a compromise between different positions and interests and is substantially weaker than what it could have achieved in terms of creating obligations or allocating responsibilities specifically with regard to actions that could be taken by member States, the WHO secretariat and other relevant international organizations, to ensure equitable and timely access to health technologies. In particular, a recognition in the Resolution that all medical products and vaccines have to be public goods would have been highly desirable. Inclusion of a reference to IP and access, as well as recognition of vaccines and medical products as global public goods was intensely debated and contested by some members. The Resolution is also lacking in specific elements of how access will be ensured. Beyond a recognition of the importance of equitable, timely and affordable access, and the necessity of removing obstacles to such access, it does not specify what actions need to be taken to ensure such access. Even mention of voluntary pooling was difficult to achieve, and is being narrowly interpreted by at least one member State.

##### *Responsibility of States*

The Resolution adopted by the WHA expresses deep concern at the mortality and morbidities caused by COVID-19, as well as its socio-economic impact and the exacerbation of the inequalities within and between countries. It also underlines the primary responsibility of governments to take response measures to the pandemic, that are specific to their national contexts, and raise the resources for the same. It therefore requests member States to respond to COVID-19 through coherent and coordinated measures by all departments of governments (whole of government approach) to address the needs of all sections of society (whole of society approach) on the basis of a national, cross-sectoral COVID-19 action plan

outlining both immediate and long term actions with a view to sustainable strengthening of health systems, preparedness, surveillance and response capacities. In implementing national action plans, governments are requested to take into account the needs of people in vulnerable situations; ensure that restrictions on the movement of medicines, medical equipment, humanitarian and health workers is temporary; take measures to support access to safe water, sanitation and hygiene, and infection prevention and control; take measures for continued functioning of the health system in all relevant aspects, in accordance with national contexts and priorities, necessary for an effective public health response to the COVID-19 pandemic and other ongoing epidemics (US disassociated from this part of the resolution due to the reference to sexual and reproductive health, which suggested that access to abortion is included in the scope of this provision); provide reliable and comprehensive information on COVID-19 and the measures taken in response, and take measures to counter misinformation and disinformation and malicious cyber activities; provide access to safe testing, treatment and palliative care for COVID-19; provide access to personal protective equipment for health professionals and other frontline health workers, as well as provide psychosocial support, protection at workplace, facilitate access to work and provision of adequate remuneration; leverage digital technologies for the response to COVID-19, paying particular attention to digital inclusion, patient empowerment, data privacy, and security, legal and ethical issues, and the protection of personal data; optimize prudent use of antimicrobials in the treatment of COVID-19 and secondary infections in order to prevent the development of antimicrobial resistance; strengthen actions to involve women's participation in all stages of decision-making processes, and mainstream a gender perspective.

### ***Global Solidarity***

The Resolution recalls the importance of strengthening multilateral cooperation in responding to COVID-19. Specifically, it calls for intensification of cooperation and collaboration at all levels to contain, control and mitigate the COVID-19 pandemic, in a spirit of unity and solidarity. Member States are called upon to share COVID-19 related knowledge, lessons learned, experiences, best practices, data, materials and commodities needed in the response with WHO and other countries, as appropriate; collaborate to promote both government funded and private sector R&D, including through open innovation, and share relevant information with WHO; and provide sustainable funding to WHO to ensure that it can fully respond to public health needs in the global response to COVID-19.

Further, the Resolution recognises that COVID-19 has disproportionately impacted the poor and the most vulnerable people with repercussions on health and

development gains particularly in low and middle-income countries (LMICs) and developing countries, hampering the achievement of the SDGs and UHC. In this context, the Resolution reiterates the importance of continued and concerted efforts to address these, particularly through timely and adequate development and humanitarian assistance to LMICs, including the provision of development assistance. It also recognises with deep concern in this context the impact of high debt levels on the ability of countries to withstand the impact of COVID-19.

### ***The Role of the WHO***

The Resolution recalls the constitutional mandate of the WHO as the coordinating and directing authority on international health work and its key leadership role within the broader UN response to COVID-19. This is significant since the US has particularly questioned the role of the WHO as a leading and coordinating agency in the global response to COVID-19. The Resolution also requests the DG to ensure that the Secretariat is adequately resourced to support the member States' granting of regulatory approvals needed to enable timely and adequate COVID-19 countermeasures; to initiate a stepwise process of impartial, independent and comprehensive evaluation, including using existing mechanisms, as appropriate, to review experience gained and lessons learned from the WHO-coordinated international health response to COVID-19.

The operative provisions request the WHO Director-General to continue to work with the UN Secretary-General and relevant multilateral organizations on a comprehensive and coordinated response across the UN system. It also requests the DG to provide assistance to countries upon their request, in accordance with their national contexts, to support the continued safe functioning of the health system in all relevant aspects necessary for an effective public health response to the COVID-19 pandemic and other ongoing epidemics, and the uninterrupted and safe provision of population and individual level services, for, among others, communicable diseases, including by undisrupted vaccination programmes, neglected tropical diseases, noncommunicable diseases, mental health, mother and child health and sexual and reproductive health and promote improved nutrition for women and children (the US disassociated from this provision as explained below under "US exceptionalism"). Further, the WHO secretariat is also requested to assist countries upon request in developing, implementing and adapting relevant national response plans to COVID-19.

The Resolution also asks the WHO DG to continue to work closely with the World Organisation for Animal Health (OIE), the Food and Agriculture Organization of the United Nations (FAO) and countries, as part of the One-Health Approach to identify the zoonotic source of the virus and the route of introduction to the human population, including the possible role of intermediate hosts, including through efforts such as scientific and

collaborative field missions, which will enable targeted interventions and a research agenda to reduce the risk of similar events as well as to provide guidance on how to prevent SARS-COV2 infection in animals and humans and prevent the establishment of new zoonotic reservoirs, as well as to reduce further risks of emergence and transmission of zoonotic diseases; regularly inform member States, including through Governing Bodies, on the results of fundraising efforts, the global implementation of and allocation of financial resources through the WHO Strategic Preparedness and Response Plan (SPRP), including funding gaps and results achieved, in a transparent, accountable and swift manner, in particular on the support given to countries.

### ***Implementation of International Health Regulations (IHR)***

The Resolution also reiterated the importance of full implementation of and compliance with the IHR by all parties. It calls upon member States to provide WHO with timely, accurate and sufficiently detailed public health information related to the COVID-19 pandemic as required by the International Health Regulations. The Resolution also requests the WHO Director-General to continue to build and strengthen the capacities of WHO at all levels to fully and effectively perform the functions entrusted to it under the IHR. It also requests the DG to assist and continue to call upon all States Parties to take the actions according to the provisions of the IHR, including by providing all necessary support to countries for building, strengthening and maintaining their capacities to fully comply with the IHR.

### ***Access to diagnostics, therapeutics, medicines and vaccines***

The Resolution recognizes "... the need for all countries to have unhindered timely access to quality, safe, efficacious and affordable *diagnostics, therapeutics, medicines and vaccines*, and essential health technologies, and *their components* as well as *equipment ...*" necessary for the COVID-19 response. The operative provision in the Resolution relating to this specifically "calls for the *universal, timely and equitable access* to and fair distribution of all quality, safe, efficacious and affordable essential health technologies and products *including their components and precursors* required in the response to the COVID-19 pandemic as a global priority, and the urgent removal of unjustified obstacles thereto, consistent with the provisions of relevant international treaties including the provisions of the TRIPS agreement and the flexibilities as confirmed by the Doha Declaration on the TRIPS Agreement and Public Health<sup>4</sup>. This provision essentially lays down a principle which should be followed by all member States, the WHO and other relevant intergovernmental organizations in adopting measures to ensure timely and affordable access to the medical products, technologies and equipment to all

people in all countries, without being hindered by any unjustified obstacles, including those that may be created by the protection and enforcement of intellectual property rights (IPRs).<sup>5</sup>

The Resolution also calls on international organizations and relevant stakeholders to, *inter alia*, work collaboratively at all levels to develop, test, and scale-up production of safe, effective, quality, affordable diagnostics, therapeutics, medicines and vaccines for the COVID-19 response, including, existing mechanisms for voluntary pooling and licensing of patents to facilitate timely, equitable and affordable access to them, consistent with the provisions of relevant international treaties including the provisions of the TRIPS agreement and the flexibilities as confirmed by the Doha Declaration on the TRIPS Agreement and Public Health. The US disassociated from this specific paragraph referring to the use of TRIPS flexibilities.

The Resolution only vaguely refers to voluntary patent pooling and licensing without specifying, however, norms that such a mechanism should comply with to ensure equitable global access. However, the US has clearly stated that it does not support the creation of new voluntary pooling mechanisms and would only accept the use of existing patent pooling mechanisms. The limitation with the existing mechanism of patent pooling is that their licensing agreements generally cannot ensure a geographical scope that includes all developing countries. This would be detrimental particularly in the context of COVID-19.

### ***Immunization as a Global Public Good***

The inclusion of a specific paragraph referring to the concept of "global public good" in relation to population-wide immunization pertaining to COVID-19 was a matter of substantial contention during the negotiations. In particular, it is reported that the US specifically objected to the inclusion of this term on the ground that there was no legal definition of the term, though it is generally understood in economic literature as referring to things that are non-excludable and non-rivalrous in nature. In the end operative paragraph 6 in the Resolution recognized extensive immunization against COVID-19 as a global public good. However, it did not specifically recognize vaccines necessary for such immunization as global public goods, in spite of the reference to vaccines as a global public good by several heads of State as well as ministers of health. Nevertheless, the operative provisions of the resolution relating to universal, timely and equitable access and the removal of any obstacles thereto also apply to vaccines.

### ***US Exceptionalism***

Despite the overwhelming support to the Resolution, only one country - the US - expressed in writing its disassociation from certain operative paragraphs of the Resolution. These were related firstly to use of the language on "sexual and reproductive health" in operative paragraphs (OP) 7.5 and 9.4, since as noted the US

regarded such language as inclusive of access to abortion which it did not support. Secondly, to operative paragraphs 4, 8.2 and 9.8, all of which are specifically concerned with the issue of access to medical products, vaccines and equipment for COVID-19, as the US regarded that it did not fully consider "the critical role that intellectual property plays in incentivizing the development of new and improved health products".

The US also stated that in its view the reference to "voluntary pooling...of patents" in the Resolution should be limited to existing mechanisms and not any new proposal for a pooling mechanism and it should also be "narrowly tailored in scope and duration to the medical needs of the current crisis, and that the World Intellectual Property Organization (WIPO), as the UN agency with technical expertise on intellectual property issues, play an appropriate role in their operation and evolution". This clearly demonstrates that the US would most likely oppose the establishment of any new pooling mechanism in which the WHO could play a coordinating role and wherein the licenses do not have territorial restrictions or territorial exclusions. It should be stressed that the WIPO Director-General himself has already contested the view that IP is at the present moment a barrier for the COVID-19 crisis response<sup>6</sup>.

Thus, the US argues that such OP can lead to "a misinterpretation of international trade obligations in non-WTO multilateral fora", which may negatively affect countries' abilities "to incentivize new drug development and expand access to medicines". This view was echoed in the statement by the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA).<sup>7</sup>

## V. Statements from Intergovernmental Organizations (IGOs) and Non-Governmental Organizations (NGOs)

Intergovernmental organizations as well as non-governmental organizations echoed many of the issues raised by member States, while also stating many critical aspects of the response that were not addressed by the Resolution.

The African Union for example called for global health solidarity and reminded the global community that the current response to COVID-19 should not halt the progress made in responding to HIV, Tuberculosis, Malaria and maternal and child health.

The United Nations Programme on HIV/AIDS (UNAIDS) made a call for fighting inequalities and backed the call made by over 100 current and former world leaders and experts urging for a People's Vaccine. The request for a people's vaccine was made through an open letter in which the leaders demanded "that all vaccines, treatments and tests be patent-free, mass produced and distributed fairly."<sup>8</sup>

The South Centre in its statement called for COVID-19 technologies to be considered global public goods,

for pharmaceutical innovation to be structurally linked to access and for the need to rethink the model of research and development to focus on health rather than on commercial interests. The statement stressed the need to strengthen the role of WHO and urged solidarity with developing countries.<sup>9</sup>

The United Nations Conference on Trade and Development (UNCTAD) stated that "global production and trade have plummeted in the wake of unprecedented confinement measures", and that "this crisis has shown that we need better trade". UNCTAD further highlighted that trade should not only be "an engine of economic growth", but should also "tackle shortages of medical supplies and food".

Numerous statements were also submitted by NGOs. The joint submission by Médecins Sans Frontières (MSF) and Drugs for Neglected Diseases initiative (DNDi) recommends five steps for WHO member States to actually deliver on the commitment to access to COVID-19 drugs, diagnostics and vaccines. They suggested that researchers, public health experts, civil society organizations and political leaders from developing countries should be included in the decision making process. They also asked for commitments to the open sharing of knowledge and that the funding for research and development should be made conditional so that the results, data, promising compounds, clinical trial protocols and their results should be put in the public domain. They also called for health tools to be free of intellectual property restrictions. They further called on WHO members to ensure sufficient production, equitable allocation and affordable pricing, noting that current production capacity will need to be increased and to do this technology transfer is needed. They also highlighted the need for transparency of the current public investments that have been allocated into discovery and development of tools to address Covid.

Knowledge Ecology International also stressed the need to increase capacity so that treatments and vaccines can be supplied to everyone and that therefore all relevant technology for COVID-19 products should be available either free or openly licensed with non-discriminatory, reasonable and affordable royalties and that relevant technologies should become global public goods.

Medicus Mundi International urged WHO member States to safeguard civil and social rights within the response to the pandemic and to invest in building solid and equitable public health and social protection systems and made a call for continuing to work for 'Health for All' in global solidarity and addressing the social and economic determinants of health.

Relatedly, over 86 NGOs in an open letter to the WHO Director-General days prior to the WHA, called for greater action to ensure access to new diagnostics, therapeutics and vaccines for COVID-19. They noted that "while there is great hope as [these tools] make their way through the development process, there are growing concerns regarding how these will be made available and



affordable for the people and vulnerable communities who need them most. Funding and voluntary approaches for intellectual property licensing alone are not sufficient to guarantee that life-saving health technologies and medical tools will be delivered into the hands of health ministries, treatment providers and patients around the world.”<sup>10</sup>

## VI. Conclusions

This 73rd WHA saw strong support by both developing and developed countries for the WHO to play a leading and coordinating role in the global response to COVID-19. There was also a bold support from the UN Secretary-General and from multiple heads of State to ensure global equitable access to treating technologies as global public goods. However, the Resolution is a missed opportunity to define specific actions to address the pandemic. Ensuring unhindered access is a commitment made in the resolution, but there are no concrete actions defined, and even the inclusion of general and consistently utilized language, such as regarding "TRIPS flexibilities", was included only after overcoming intense opposition to the same by some members. The concept of global public goods, albeit adopted, does not specifically apply to vaccines and treatments. Critically, the Resolution does not provide any normative assurance to WHO members, particularly developing countries, that affordable, adequate and timely access to medical treatments, vaccines and other medical products will be guaranteed.

The Resolution vaguely refers to voluntary patent pooling and licensing without specifying how these could support unhindered, equitable global access. The creation of a technology pool, as mentioned in the statement of Costa Rica, could be a welcome additional measure to facilitate sharing, exchange and coordination between countries, research institutes and all those working for the development and later access of vaccines, treatments and other health products to fight COVID-19. Though this was mentioned in a public declaration by the President of Costa Rica and the WHO DG prior to the Assembly<sup>11</sup>, this was not reflected in the Resolution adopted and was yet to be formally launched. Any voluntary pooling mechanism must provide universal access to the pooled technologies to all countries, and the WHO must play a coordinating role.

In spite of voluntary mechanisms like a technology pool, WHO member States should also make full use of the TRIPS flexibilities, as noted by the delegations of Cameroon (on behalf of the African Group of Ambassadors in Geneva), the Republic of Congo (on behalf of the African Region) and Zambia, including measures such as compulsory licensing and government use, when needed and applicable. Attention should be further given to data exclusivity and regulatory measures that might also curb accessibility in different countries, and proposals for

the use of other instruments, including the security exception of Art. 73 of the TRIPS Agreement<sup>12</sup>. Other elements that countries could consider towards ensuring that global equitable access is achieved, are increasing transparency of costs of R&D, openness and sharing of data, tools and technologies, and building more capacity through technology transfer. These are all legitimate policy tools. The Resolution does recognize the possibility of the use of TRIPS flexibilities to support access to diagnostics, therapeutics, medicines and vaccines.

Finally, in the long term, as part of the review of the experiences and lessons learned, full consideration should be given to exploring the possibility of initiating negotiations for a binding R&D treaty, as recommended by the WHO Consultative Expert Working Group on Research and Development: Financing and Coordination (CEWG)<sup>13</sup>.

All these measures should be taken in order to ensure that, with global solidarity, the world will be able to fairly, timely and equitably combat the COVID-19 pandemic.

## Endnotes:

<sup>1</sup> See [https://apps.who.int/gb/ebwha/pdf\\_files/WHA73/A73\\_CONF1Rev1-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_CONF1Rev1-en.pdf).

<sup>2</sup> See full speech on: <https://www.un.org/sg/en/content/sg/statement/2020-05-18/secretary-generals-remarks-the-world-health-assembly-bilingual-delivered-scroll-down-for-english-and-french-version>.

<sup>3</sup> See below discussion in the conclusion section.

<sup>4</sup> See [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mi\\_ndecl\\_trips\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mi_ndecl_trips_e.htm).

<sup>5</sup> See Viviana Muñoz Tellez, "The COVID-19 Pandemic: R&D and Intellectual Property Management for Access to Diagnostics, Medicines and Vaccines", South Centre Policy Brief (April 2020). Available from <https://www.southcentre.int/policy-brief-73-april-2020/>.

<sup>6</sup> The WIPO Director-General, Mr. Francis Gurry, noted that, in his understanding, "The main challenge at the present time is not access to vaccines, treatments or cures for COVID-19, but the absence of any approved vaccines, treatments or cures to have access to. The policy focus of governments at this stage should therefore be on supporting science and innovation that will produce a vaccine, treatments or cures." While not explicitly denying the possibility of a WIPO-based pooling mechanism, the focus of the organization has been notably on other kinds of activities, including a policy-tracker on measures taken by IP offices, the PATENTSCOPE database, and patent-based partnerships. See [https://www.wipo.int/about-wipo/en/dgo/news/2020/news\\_0025.html](https://www.wipo.int/about-wipo/en/dgo/news/2020/news_0025.html).

<sup>7</sup> See T. Cueni, "Intellectual property is not a hindrance but a help to end Covid-19", *Financial Times*, 17 May 2020. Available from <https://www.ft.com/content/e82dd07c-95c5-11ea-899a-f62a20d54625>. A response to this article by Ellen t'Hoën was published, noting that "the existence of IP rights over those treatments and how they are exercised, will play an important role in determining how production is able to be scaled up. The IP monopoly pharmaceutical model has served the industry and its shareholders well, but is not the model to deliver the products now needed to respond to

the Covid-19 pandemic now". Ellen t'Hoën, "Letter: Finding a treatment for Covid-19 is linked to IP", *Financial Times*, 20 May 2020. Available from <https://www.ft.com/content/d6d258e2-9a86-47fd-949d-14784b585063>.

<sup>8</sup> See "Presidents and prime ministers lead call for 'people's vaccine', free to all", available at

<https://news.un.org/en/story/2020/05/1064122>.

<sup>9</sup> The full South Centre statement can be accessed here: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=56bfabc1be>.

<sup>10</sup> See the full letter here: <https://www.twn.my/title2/health.info/2020/hi200509.htm>.

<sup>11</sup> See M. Alas, "Costa Rica and Chile announced an open, collaborative platform to combat COVID-19", *SouthNews*, 19 May 2020. Available from <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=311dfdf347>.

<sup>12</sup> See "COVID-19 PANDEMIC: ACCESS TO PREVENTION AND TREATMENT IS A MATTER OF NATIONAL AND INTERNATIONAL SECURITY" at <https://www.southcentre.int/covid-19-open-letter/>.


<sup>13</sup> See G. Velásquez, "Rethinking R&D for Pharmaceutical Products After the Novel Coronavirus COVID-19 Shock", South Centre Policy Brief 75 (April 2020). Available from <https://www.southcentre.int/wp-content/uploads/2020/04/PB-75-Rethinking-RD-after-COVID-19-Shock-REV.pdf>



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