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## **Review and approval of proposed amendments to the International Health Regulations: relations with other international instruments**

1. Several Member States, through their written comments<sup>1</sup> or during regional consultations, have raised the question of the interactions and possible conflicts between the draft revised International Health Regulations<sup>2</sup> and other international instruments. Requests have been made for a list of such instruments and clarifications about specific areas of overlap. Concerns were expressed that expanding the scope and changing the approach would bring the new Regulations into more direct interaction with other international legal regimes than has been the case in the past.
2. In response to these requests and concerns, the Secretariat has commissioned a review, and has also received contributions and recommendations from academic sources. Moreover, several comments from Member States contained specific observations on possible conflicts between the draft revised Regulations and other international instruments and legal regimes.
3. On the basis of the inputs indicated in the previous paragraph, the present document summarizes:
  - (a) general considerations about the problem of conflicts between rules of international law;
  - (b) the main findings on the possible overlap between the draft revised Regulations and selected international instruments, organized by subject area and including a list of the instruments reviewed;<sup>3</sup>
  - (c) the modifications (indicated in boldface) introduced into the draft revised Regulations<sup>4</sup> (the “draft revision”) in order to correct identified instances of conflicts with other international instruments.

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<sup>1</sup> Accessible at the following web site: <http://www.who.int/csr/ihr/revisionprocess/comments/en/>.

<sup>2</sup> Document IGWG/IHR/Working paper/12.2003, hereafter referred to as the January 2004 working paper.

<sup>3</sup> In view of the limited time and resources available, this document is generally restricted to the main global agreements.

<sup>4</sup> Annexed to document A/IHR/IGWG/3.

## CONFLICTS BETWEEN RULES OF INTERNATIONAL LAW

4. Even though there is no generally accepted definition of a “conflict” between rules of international law, for the purpose of the present document a conflict is defined as a situation in which two rules contradict each other, or where the implementation of one rule eliminates the possibility of implementing another rule. This definition carries two important consequences. First, there can be a conflict between an obligation set by a rule and a right conferred by another rule, and not only between two obligations. Secondly, not all overlaps between rules of international law result in a conflict; they can also produce “duplication”, in the sense that implementation of the first rule produces an action identical or equivalent to that resulting from implementation of the second rule, or “synergy”, in the sense that implementation of the first rule produces a different or distinct action from implementation of the second rule, with action under both rules, however, serving the same specific purpose.

5. Article 30 of the 1969 Vienna Convention on the Law of Treaties regulates the application of successive treaties on the same subject matter on the basis of the specific provisions of those treaties or, by default, of the prevalence of a later treaty over preceding treaties to the extent of the conflict with the earlier one (the so-called *lex posterior* rule). Another generally recognized criterion in international treaty practice concerns the prevalence of a special rule over a general one (the so-called *lex specialis* rule). Moreover, Article 31, paragraph 3(c) of the Vienna Convention includes “any relevant rules of international law applicable in the relations between the parties” among the elements to be taken into account in the interpretation of a treaty. In view of the proliferation in recent times of global treaties on subject matters that cut across many areas of international relations (e.g. trade and environment), two principles of treaty drafting and interpretation that have become widely adopted in practice and that are relevant for the International Health Regulations are: (1) the principle of mutual supportiveness between treaties and the consequential presumption against conflicts – in other words, when the interpretation of two treaties may lead to different solutions, that interpretation should be chosen which better preserves the positions of the parties under both treaties and which creates synergies rather than conflicts between them; and (2) the principle of not adding to or diminishing the rights and obligations provided for by other treaties.

6. **In order to provide a general rule guiding the relations between the Regulations and other international instruments in the light of the two foregoing principles, Article 42 of the January 2004 working paper has been revised, now appearing as Article 58 in the draft revision.**

## INTERNATIONAL TRADE LAW

*Agreements reviewed:* General Agreement on Tariffs and Trade 1994, Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, General Agreement on Trade in Services, and Agreement on Trade-Related Aspects of Intellectual Property Rights.

7. The broad subject matter of the draft revised Regulations overlaps with international law on trade in goods and possibly services, in view of the purpose of the Regulations as set out in Article 2. The review in this area focused on the main agreements of WTO. Generally speaking, it was felt that WTO agreements and the Regulations are compatible and offer broad areas of synergy. The relevant WTO agreements in fact recognize in various ways the right of States to protect health from trade-related risks through the application of certain disciplines, which may accommodate obligations or recommendations based on the Regulations that affect international trade in certain goods and services. An example of synergy is the relationship between the obligation to notify contained in

Article 5.1 of the revised draft Regulations and the obligation to publish laws, regulations and the like that have general application or to notify regulations in certain cases, provided for in Article X, paragraph 1 of the General Agreement on Tariffs and Trade, Annex B of the Agreement on the Application of Sanitary and Phytosanitary Measures and Article 2, paragraph 9 of the Agreement on Technical Barriers to Trade. The two sets of rules require different actions which, however, support the same specific purpose of increasing the transparency of trade-affecting measures.

8. The review identified two main possible problems. The first regarded, on the one hand, the prohibition, contained in Article 26 of the January 2004 working paper, of requiring health documents other than, *inter alia*, “routine document requirements concerning the public health status of goods or cargo in international trade [issued] pursuant to applicable international agreements”. On the other hand, Article XX(b) of the General Agreement on Tariffs and Trade, and relevant provisions of the Agreements on the Application of Sanitary and Phytosanitary Measures and on Technical Barriers to Trade, would arguably allow the Parties to those agreements to impose “non-routine” document requirements concerning the public health status of goods and cargo. **In order to eliminate this possible conflict, the word “routine” does not appear in Article 31 of the draft revision.**

9. The second possible problem concerns the issuance by WHO of temporary or standing recommendations under Articles 11 and 12 of the January 2004 working paper. Notwithstanding their non-binding nature, such recommendations give States Parties the authority to implement them, a right that might conflict with obligations under the relevant agreements. **Even though actual conflicts could be considered unlikely in view of the disciplines contained in the WTO agreements, attempts have been made to facilitate the compatibility between recommendations based on the Regulations and trade-related obligations through the establishment, in Article 15 of the draft revision, of criteria similar to those used under the WTO agreements (e.g. in Articles 2 and 5 of the Agreement on the Application of Sanitary and Phytosanitary Measures) to justify measures that restrict trade.**

## THE CODEX ALIMENTARIUS

10. The Codex Alimentarius Commission is a joint organ of WHO and FAO, whose main purpose, in accordance with Article 1(a) of its Statutes, is “[to protect] the health of the consumers and [to ensure] fair practices in the food trade”. From this standpoint, there is certainly synergy with the purpose of the draft revised Regulations. The standards, recommendations, guidelines and codes of practice adopted by the Commission, albeit legally non-binding, have acquired particular importance in international trade through Article 3, paragraph 2 and Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures, since measures that conform with them are presumed to be consistent with the relevant provisions of that Agreement and the General Agreement on Tariffs and Trade. This particular status makes it necessary to include Codex standards in the present analysis.

11. The draft Regulations and Codex standards or the Commission’s authority to adopt standards, may overlap, in particular in case of recommendations under the Regulations on trade in foodstuffs. Particular concern was expressed by some Member States with regard to standing recommendations, in view of their longer period of application. WHO’s recommendations could contradict or conflict with Codex standards and recommendations or could cover a subject matter on which the Commission has not yet adopted standards but which it would, under its Statutes, have the primary authority to regulate. The former situation could confront States Parties with a dilemma about which instrument to apply; that could be resolved in favour of Codex standards in the light of their status under the

Agreement on the Application of Sanitary and Phytosanitary Measures. The latter situation could raise questions about the appropriateness for WHO to make recommendations in an area falling within the Commission's competence.

12. While it is difficult to foretell whether and in which situations such a problem might occur, the likelihood of such an occurrence is strongly diminished by the fact that the Commission is a joint WHO/FAO organ and the Director-General would obviously do the utmost to avoid a conflict with the instruments adopted by it. To decrease further this possibility, **a specific reference to Codex standards and other instruments has been included in Article 15(d) of the draft revision. Moreover, the obligation for WHO under Article 12 of the draft revision to coordinate its activities with competent international bodies would apply to the Commission.** Furthermore, it should be kept in mind that Codex is not an operational or emergency system. Codex standards are adopted after years of study and debate, even when the accelerated procedure for their elaboration is used. Temporary recommendations made under the Regulations, geared as they are to tackle urgent, acute but short-lived events, have a different function. As far as the issuance of standing recommendations is concerned, the procedure envisaged would, moreover, allow States Parties and organizations concerned to draw the attention of the Review Committee envisaged in Chapter III of Part IX of the draft revision to existing Codex standards and their implications.

13. Finally, particular reference should be made to the 1995 *Codex Guidelines for the Exchange of Information in Food Control Emergency Situations*. Paragraph 2 of those guidelines requests food control authorities in exporting countries to notify the appropriate authorities in countries that have imported or are the destination of foods with which an emergency situation has arisen. Under paragraph 5, countries should identify a primary contact point that can act as the national focal point for information exchange. This requirement arguably contributes to synergy with regard to the relevant provisions on information exchange under the Regulations and the Guidelines.

## INTERNATIONAL ENVIRONMENTAL LAW

*Agreements reviewed:* Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) and the 1996 Protocol thereto [not yet in force]; Geneva Convention on Long-Range Transboundary Air Pollution (1979); United Nations Convention on the Law of the Sea, Part XII (1982); Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989); Convention on Biological Diversity (1992); Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992); Convention on Nuclear Safety (1994); United Nations Convention on the Law of Non-navigational Uses of International Watercourses (1997); Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998); Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1999) [not yet in force]; Cartagena Protocol on Biosafety (2000) to the Convention on Biological Diversity (1992); Stockholm Convention on Persistent Organic Pollutants (2001); Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (2002) to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (1976); and International Convention for the Control and Management of Ships' Ballast Water and Sediments (2004) [not yet in force].

14. The breadth and complexity of international environmental law make generalizations difficult. Because of the large number of treaties and the diversity of environmental topics considered, the

review in this area has been general rather than focused on comparing specific provisions of the draft Regulations with those of international environmental treaties. The proposed expansion of the Regulations' scope to cover diseases caused by chemical or radionuclear sources may create some overlap with the environmental treaties examined, since the latter are mainly concerned with chemical or radionuclear pollution. Environmental treaties, however, usually have a broader scope than the draft Regulations as they impose obligations on States Parties to prevent, reduce and control such pollution. By contrast, the draft Regulations do not mention prevention or reduction of pollution, thus the overlaps are confined to the control of pollution that can cause the international spread of disease.

15. The contributions and comments received do not identify particular instances of conflicts between the draft Regulations and environmental treaties. On the contrary, they emphasized several complementary or synergistic relationships, such as the following. (1) The draft Regulations do not interfere with the few treaties reviewed that contain obligations for emergency preparedness and response. The 1999 Protocol on Water and Health contains, for example, duties on the establishment, improvement, and maintenance of local, national and international surveillance, early-warning and response systems. Fulfilment of these specific duties by States Parties to the Protocol contributes to that of the more general detection and response duties in Articles 4 and 10, respectively, of the January 2004 working paper. (2) Organs and bodies set up by environmental treaties are not generally empowered to issue the kind of recommendations WHO would make under the draft Regulations. Thus, the problem of conflicting recommendations on measures to prevent international spread of disease while avoiding unnecessary interference with international traffic is unlikely to arise. (3) Many environmental treaties deal with problems that do not frequently flare into public health emergencies of international concern (e.g. those deriving from long-range transboundary air pollution).

16. Although specific conflicts or duplications were not identified, the existence of many environmental treaties on transboundary pollution raises the need for coordination between these treaties and the Regulations and between WHO and the parent organizations or secretariats of the treaties concerned. **To ensure such coordination, as noted above, an Article on cooperation with international organizations and bodies has been included in the draft revision (Article 12).**

## **INTERNATIONAL LAW ON INDUSTRIAL, NUCLEAR AND MARINE ACCIDENTS**

*Agreements reviewed:* United Nations Convention on the Law of the Sea (1982); International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (1978); International Convention on Oil Pollution Preparedness, Response and Co-operation (1990); Convention on the Transboundary Effects of Industrial Accidents (1992); Convention on Early Notification of a Nuclear Accident (1986); Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (1997); Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986); Convention on Nuclear Safety (1994).

17. Industrial, nuclear and marine accidents may release chemical or radionuclear materials into the environment in ways that would fall within the broader scope of the draft Regulations. Thus, the latter would apply to such accidents in addition to the international treaties adopted, for example, by IMO or IAEA to deal with such instances. Such treaties impose obligations to take actions to prevent accidents and to control the effects of such accidents if they happen. The specific overlap of subject matter concerns preparing for, and controlling, the effects of accidents because the draft Regulations do not contain obligations on preventing accidents.

18. An overview of the treaties reviewed reveals a more acute need for coordination than in the case of the environmental treaties dealt with in the previous section. Whereas no single organization has been established to respond to land-based chemical pollution, IMO and IAEA have historically taken a leading role concerning marine pollution, nuclear accidents and radiological emergencies. They have adopted several treaties on these subjects in their respective areas of competence, have set standards and monitored their implementation, and managed notification and response systems. WHO has historically supported those agencies when public health considerations arose. At the same time, WHO has under its Constitution a primary responsibility as the directing and coordinating authority on international health work. It is important to recall this function as the conventions reviewed in this section are not comprehensive and may not adequately deal with health concerns. In the case of nuclear accidents and radiological emergencies, moreover, WHO is a Party to the two 1986 IAEA Conventions on nuclear accidents and is thus legally bound to coordinate its response and assistance activities in accordance with their provisions.

19. Several of the agreements reviewed impose obligations on States Parties to notify accidents to affected States, international organizations or both (see in particular Article 198 of the Convention on the Law of the Sea, Article 5 of the International Convention on Oil Pollution Preparedness, Response and Co-operation, Article 10, paragraph 2 of the Convention on the Transboundary Effects of Industrial Accidents, Article 2 of the Convention on Early Notification of a Nuclear Accident (CENNA), and Article 9 of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management). The only provision that appears to raise an issue of duplication is Article 2 of the Convention on Early Notification of a Nuclear Accident since the same State, if it is a Party to both that Convention and the Regulations, would have to notify the same incident to both WHO and IAEA. It could be argued, however, that the data referred to in Articles 2 and 5 of the Convention on Early Notification do not include health-related information, so that there could be a gap in health protection if the State concerned did not notify WHO of that information under the Regulations.

20. **Article 12 on cooperation with international organizations and bodies and Article 58 of the draft revision (replacing Article 42 of the January 2004 working paper) attempt to deal with some of the concerns summarized in this section.**

## **INTERNATIONAL LAW ON BIOLOGICAL, CHEMICAL AND NUCLEAR WEAPONS**

*Agreements reviewed:* Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (1993); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (1972); Treaty on the Non-proliferation of Nuclear Weapons (1968).

21. The extension of the scope of the Regulations to include intentional release of a biological, chemical or radionuclear agent could create an overlap with the treaties listed above. However, international law on biological, chemical and nuclear weapons regulates States' behaviour in order to minimize the likelihood that such weapons will be used, whereas the draft Regulations provide for the international public health responses that the actual use of such weapons would require. Given the different purposes of the draft Regulations and the treaties in question, relationships between their provisions are few and complementary or synergistic. For example, the obligation set in Article 41 of

the January 2004 working paper (Article 45 in the draft revision) does not conflict with the prohibition in Article III of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction concerning the transfer of any of the agents listed in Article I of that Convention, since Article III does not apply to microbial agents of types and in quantities that have prophylactic, protective or peaceful purposes. **It was therefore concluded that no change needed to be introduced in the draft revision in light of the review of the treaties listed above.**

## **INTERNATIONAL LAW ON COMBATING TERRORISM**

22. The draft Regulations and the International Convention for the Suppression of Terrorist Bombings (1998) both focus on the aftermath of an intentional use of a biological, chemical or radioactive agent. However, the respective regimes differ significantly, producing a situation where analysis of relationships between provisions of the instruments yields little of interest. The draft Regulations seek to establish a public health framework to detect, report and respond rapidly and effectively to any intentional use of biological, chemical or radionuclear agents in order to minimize the health impact of such use. By contrast, the Convention sets up a law-enforcement framework.

23. Tension between the public health framework in the Regulations and the law-enforcement strategy embodied in the International Convention might arise if law-enforcement or national security agencies do not provide to WHO information, materials and samples pursuant to Article 41 of the January 2004 working paper under the justification that releasing such information could prejudice or impede law-enforcement or national security objectives. **Article 45 in the draft revision is intended to take this possibility into account and avoid a conflict between regimes.**

## **INTERNATIONAL LAW ON TRANSPORTATION**

### **Maritime transportation**

24. The review was based on the relevant provisions of the United Nations Convention on the Law of the Sea, which strive to strike a balance between the rights of the coastal State and the prerogatives of the State of nationality of a ship, depending on the particular maritime zone in which the ship is located. For the most part, the provisions of the draft revised Regulations most relevant to maritime transportation expressly state, or implicitly assume, that ships are within the coastal State's territorial or internal waters, which means that the most important subject matter overlap may occur with the Convention's rules on ships navigating these maritime areas. These are areas in which, understandably, the sovereignty and jurisdiction of the coastal State is the strongest.

25. Generally, the provisions of the Convention on the Law of the Sea on maritime navigation and the relevant rules in the draft Regulations are synergistic. The balancing of the coastal State's jurisdiction for public health purposes and the facilitation of maritime navigation can be seen in the regimes on innocent passage through the territorial sea (Articles 17-32) and archipelagic waters (Article 52), transit passage through international straits (Articles 37-44) and archipelagic sea lanes (Articles 53 and 54), and prevention and punishment of infringements of sanitary laws and regulations in the zone contiguous to the territorial sea (Article 33, paragraph 1). In each of these regimes, coastal States are empowered to adopt and enforce laws and regulations that deal with, among other things, public health risks. No particular conflict was identified between the foregoing provisions of the

Convention and Articles 19 and 21 of the January 2004 working paper (main Articles 23 and 25 of the draft revision).

## Air transportation

26. The review was based on the Convention on International Civil Aviation (1944). That Convention and the draft Regulations are generally synergistic, starting with their shared objective of avoiding unnecessary interference with, respectively, air transportation and international traffic. The synergy is enhanced through standards and recommended practices developed by ICAO. That Organization has adopted a mandatory standard providing that: “Contracting States shall comply with the pertinent provisions of the current edition of the *International Health Regulations* of the World Health Organization” (Annex 9, Provision 8.12). The Convention further strengthens the synergy with the draft Regulations by mandating that passengers, crew and cargo of aircraft comply with the laws and regulations of States Parties regarding admission to, or departure from, their respective territories, including quarantine regulations (Article 13), and through Article 14 which provides that each State Party agrees to take effective measures to prevent the spread of communicable diseases by means of air navigation.

## Land transportation

*Agreements reviewed:* International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail (1952); International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail (1952); European Agreement concerning the International Carriage of Dangerous Goods by Road (1957); Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (1970); Customs Convention on Containers (1972); Customs Convention on the International Transport of Goods under Cover of TIR Carnets (1975); International Convention on the Harmonization of Frontier Controls of Goods (1982); European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterways (2000).

27. Generally, these treaties seek to regulate the transport of goods by land to ensure efficiency of transport, to counteract smuggling, and to increase transportation safety. These objectives mean that these agreements do not overlap significantly with the draft Regulations.

28. Several of the above-mentioned Conventions allow for public health interventions, thus in principle ensuring synergy with the relevant provisions of the draft Regulations. A possible conflict arises with the Customs Convention on Containers, which states that “each Contracting Party shall grant temporary admission to containers, whether loaded with goods or not” (Article 3, paragraph 1). The draft revision envisages, however, the possibility of recommendations to the effect that States Parties not accept containers loaded with goods, even temporarily. For example, Article 16 of the draft revision includes refusing entry as a measure that WHO may recommend with respect to containers. Implementing public health measures recommended by WHO that prevent entry of containers would eliminate the possibility of complying with the obligations in the Customs Convention concerning temporary entry of containers. The Convention does not have provisions to deal with public health situations that would require denial of entry of containers. **Notwithstanding the possible conflict, the draft revision has not been amended in this respect, as this would risk significantly decreasing the level of protection against a public health threat linked to the international movement of containers.**



## **INTERNATIONAL HUMAN RIGHTS LAW**

29. The implementation of the Regulations may involve actions or measures by States Parties that affect human rights and freedoms protected by relevant treaties and rules of customary international law. Measures such as isolation and quarantine, the imposition of medical examination, vaccination or prophylaxis, the collection and transmission of personal information, and the destruction of personal property could affect or interfere with the enjoyment of rights such as privacy, freedom of movement, security of person, liberty and the right to private property.

30. The main instrument reviewed in this connection has been the International Covenant on Civil and Political Rights (1966), as an almost universal treaty and part of the so-called Bill of Human Rights. In this connection, however, several of the rights and freedoms spelt out in the Covenant and relevant for the application of the draft Regulations allow limitations based, inter alia, on public health considerations. Particular reference can be made to Articles 9 and 10 (liberty and security of person), Article 12 (liberty of movement), Article 17 (right to privacy), Article 18 (freedom of thought, conscience and religion), Article 19 (freedom of expression), Article 21 (right of peaceful assembly), and Article 22 (freedom of association). The formulation of such “qualified” rights allows for better synergy between the draft Regulations and the Covenant.

31. **To ensure that health measures under the draft revised Regulations are applied to persons in a manner that does not conflict with the entitlements and freedoms they enjoy under international human rights law, a general reference thereto has been included in Article 42, paragraph 1. Appropriate provisions or references have also been included elsewhere in the draft Regulations, such as Articles 15, 27, 28, 39 and 42, paragraph 2.**

32. It has also been noted that Articles 23 and 36, paragraph 2 of the January 2004 working paper imposed obligations that are more restrictive on States than those in existing human rights law by prohibiting non-consensual medical examination, vaccination and prophylaxis or not requiring any such measure as a condition of admission of any traveller to a State. **Consequently, those two provisions have been merged in the draft revision into a new Article 27, which strives to strike a more appropriate balance between public health protection and respect for human rights.**

## **INTERNATIONAL LAW ON DIPLOMATIC IMMUNITIES**

33. There has been general agreement in the comments and contributions received that Article 38 of the January 2004 working paper would be in conflict with the relevant provisions of the Vienna Convention on Diplomatic Relations (1961), in particular its Article 29 on the inviolability of the person of a diplomatic agent and Article 31 concerning the immunity of a diplomatic agent from the jurisdiction of the receiving State.

34. Article 38 of the January 2004 working paper was based on an interpretation made by the Committee on International Quarantine (now the Committee on International Surveillance of Communicable Diseases) and appended as a footnote to Article 24 of the current Regulations. It was founded on the consideration that public health measures applied by a State do not have the same nature and function as the enforcement and jurisdictional measures referred to in Articles 29 and 31 of the Vienna Convention, and that respect for diplomatic immunities should not lead to an unacceptable lack of protection against public health threats.

35. In the light of the comments received, Article 38 of the January 2004 working paper has been redrafted in the draft revision into Article 43, which attempts to ensure the implementation of appropriate health measures under the Regulations without prejudice to the enjoyment of immunities under international law. At the same time, the scope of the original article has been expanded to persons enjoying immunities under international law, since the problem at hand may well apply to senior government officials or other persons who enjoy immunities under international law without being diplomatic agents under the terms of the Vienna Convention.

## **CONCLUSION**

36. The foregoing review has been prepared at the request of many Member States and aims at guiding discussions of the Intergovernmental Working Group. As many international agreements as feasible have been reviewed, given the limitations of time and resources. Obviously this circumscription does not prejudice the possibility of Member States referring to agreements that have not been reviewed, or to raise additional issues, during the session.

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