

118TH CONGRESS
1ST SESSION

S. 444

To require any convention, agreement, or other international instrument on pandemic prevention, preparedness, and response reached by the World Health Assembly to be subject to Senate ratification.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2023

Mr. JOHNSON (for himself, Mr. BARRASSO, Mrs. BLACKBURN, Mr. BRAUN, Mrs. BRITT, Mr. COTTON, Mr. CRUZ, Mr. DAINES, Mr. GRASSLEY, Mr. HAGERTY, Mr. HOEVEN, Mr. LEE, Mr. MARSHALL, Mr. RUBIO, Mr. SCOTT of Florida, Mr. TILLIS, and Mr. TUBERVILLE) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To require any convention, agreement, or other international instrument on pandemic prevention, preparedness, and response reached by the World Health Assembly to be subject to Senate ratification.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No WHO Pandemic
5 Preparedness Treaty Without Senate Approval Act”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) On May 18, 2020, President Donald Trump
4 sent a letter to World Health Organization (referred
5 to in this Act as “WHO”) Director-General Tedros
6 Adhanom Ghebreyesus (referred to in this Act as the
7 “Director-General”), announcing that—

8 (A) United States contributions to WHO
9 would be halted due its mismanagement of the
10 COVID–19 outbreak and its lack of independ-
11 ence from the People’s Republic of China; and

12 (B) the United States would withdraw
13 from WHO if it did not commit to substantive
14 improvements within 30 days.

15 (2) President Trump’s May 18 letter cited nu-
16 merous instances of WHO mismanagement of the
17 COVID–19 pandemic, including—

18 (A) unjustified delays informing member
19 states about a potentially serious disease out-
20 break in Wuhan, China; and

21 (B) repeated grossly inaccurate or mis-
22 leading claims about the transmissibility of the
23 virus and about the Government of China’s
24 handling of the outbreak.

25 (3) On June 30, 2020, Secretary of State Mike
26 Pompeo formally notified the United Nations of the

1 United States decision to withdraw from WHO,
2 which would have taken effect on July 6, 2021,
3 under the terms of a joint resolution adopted by
4 Congress on June 14, 1948 (Public Law 80–643; 62
5 Stat. 441).

6 (4) A Pew Research Center survey conducted in
7 April and May 2020 indicated that 51 percent of
8 Americans felt that WHO had done a poor or fair
9 job in managing the COVID–19 pandemic.

10 (5) On January 20, 2021, President Joseph
11 Biden sent United Nations Director-General António
12 Guterres a letter retracting the United States notice
13 of withdrawal from WHO.

14 (6) On December 1, 2021, at the second special
15 session of the World Health Assembly (referred to in
16 this Act as the “WHA”) decided—

17 (A) to establish an intergovernmental ne-
18 gotiating body (referred to in this section as the
19 “INB”) to draft and negotiate a WHO conven-
20 tion (referred to in this section as the “Conven-
21 tion”), agreement, or other international instru-
22 ment on pandemic prevention, preparedness,
23 and response, with a view to adoption under ar-
24 ticle 19 or any other provision of the WHO
25 Constitution; and

1 (B) that the INB shall submit a progress
2 report to the Seventy-sixth WHA and a working
3 draft of the convention for consideration by the
4 Seventy-seventh WHA, which is scheduled to
5 take place beginning on March 18, 2024.

6 (7) On February 24, March 14 and 15, and
7 June 6 through 8 and 15 through 17, 2022, the
8 INB held its inaugural meeting at which the Direc-
9 tor-General proposed the following 5 themes to guide
10 the INB's work in drafting the Convention:

11 (A) Building national, regional, and global
12 capacities based on a whole-of-government and
13 whole-of-society approach.

14 (B) Establishing global access and benefit
15 sharing for all pathogens, and determining a
16 global policy for the equitable production and
17 distribution of countermeasures.

18 (C) Establishing robust systems and tools
19 for pandemic preparedness and response.

20 (D) Establishing a long-term plan for sus-
21 tainable financing to ensure support for global
22 health threat management and response sys-
23 tems.

24 (E) Empowering WHO to fulfill its man-
25 date as the directing and coordinating authority

1 on international health work, including for pan-
2 demic preparedness and response.

3 (8) On July 18 through 22, 2022, the INB held
4 its second meeting at which it agreed that the Con-
5 vention would be adopted under article 19 of the
6 WHO Constitution and legally binding on the par-
7 ties.

8 (9) On December 5 through 7, 2022, the INB
9 held its third meeting at which it accepted a concep-
10 tual zero draft of the Convention and agreed to pre-
11 pare a zero draft for consideration at the INB's next
12 meeting.

13 (10) In early January 2023, an initial draft of
14 the Convention was sent to WHO member states in
15 advance of its formal introduction at the fourth
16 meeting of the INB, which is scheduled for February
17 27 through March 3, 2023. The draft includes broad
18 and binding provisions, including rules governing
19 parties' access to pathogen genomic sequences and
20 how the products or benefits of such access are to
21 be distributed.

22 (11) Section 723.3 of title 11 of the Depart-
23 ment of State's Foreign Affairs Manual states that
24 when "determining whether any international agree-
25 ment should be brought into force as a treaty or as

1 an international agreement other than a treaty, the
2 utmost care is to be exercised to avoid any invasion
3 or compromise of the constitutional powers of the
4 President, the Senate, and the Congress as a whole”
5 and includes the following criteria to be considered
6 when determining whether an international agree-
7 ment should take the form of a treaty or an execu-
8 tive agreement:

9 (A) “The extent to which the agreement
10 involves commitments or risks affecting the na-
11 tion as a whole”.

12 (B) “Whether the agreement is intended to
13 affect state laws”.

14 (C) “Whether the agreement can be given
15 effect without the enactment of subsequent leg-
16 islation by the Congress”.

17 (D) “Past U.S. practice as to similar
18 agreements”.

19 (E) “The preference of the Congress as to
20 a particular type of agreement”.

21 (F) “The degree of formality desired for
22 an agreement”.

23 (G) “The proposed duration of the agree-
24 ment, the need for prompt conclusion of an

1 agreement, and the desirability of concluding a
2 routine or short-term agreement”.

3 (H) “The general international practice as
4 to similar agreements”.

5 **SEC. 3. SENSE OF THE SENATE.**

6 It is the sense of the Senate that—

7 (1) a significant segment of the American pub-
8 lic is deeply skeptical of the World Health Organiza-
9 tion, its leadership, and its independence from the
10 pernicious political influence of certain member
11 states, including the People’s Republic of China;

12 (2) the Senate strongly prefers that any agree-
13 ment related to pandemic prevention, preparedness,
14 and response adopted by the World Health Assembly
15 pursuant to the work of the INB be considered a
16 treaty requiring the advice and consent of the Sen-
17 ate, with two-thirds of Senators concurring;

18 (3) the scope of the agreement which the INB
19 has been tasked with drafting, as outlined by the Di-
20 rector-General, is so broad that any application of
21 the factors referred to in section 2(11) will weigh
22 strongly in favor of it being considered a treaty; and

23 (4) given the level of public distrust, any rel-
24 evant new agreement by the World Health Assembly
25 which cannot garner the two-thirds vote needed for

1 Senate ratification should not be agreed to or imple-
2 mented by the United States.

3 **SEC. 4. ANY WORLD HEALTH AGENCY CONVENTION OR**
4 **AGREEMENT OR OTHER INTERNATIONAL IN-**
5 **STRUMENT RESULTING FROM THE INTER-**
6 **NATIONAL NEGOTIATING BODY'S FINAL RE-**
7 **PORT DEEMED TO BE A TREATY SUBJECT TO**
8 **ADVICE AND CONSENT OF THE SENATE.**

9 Notwithstanding any other provision of law, any con-
10 vention, agreement, or other international instrument on
11 pandemic prevention, preparedness, and response reached
12 by the World Health Assembly pursuant to the rec-
13 ommendations, report, or work of the International Nego-
14 tiating Body established by the second special session of
15 the World Health Assembly is deemed to be a treaty that
16 is subject to the requirements of article II, section 2,
17 clause 2 of the Constitution of the United States, which
18 requires the advice and consent of the Senate, with two-
19 thirds of Senators concurring.

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