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Center for Family and Human Rights

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Concerns About the WHO Pandemic Preparedness Treaty

Negotiations are underway to create a *Pandemic Prevention, Preparedness and Response Accord*, a binding multilateral agreement for coordinating pandemic preparedness and response. The accord is set to be finalized in May 2024. However, there are several concerning aspects of the process, including a lack of transparency, the creation of new bureaucratic mechanisms with little accountability, the transfer of power to the World Health Organization (WHO), and the likely inclusion of language that would open the door to the accord being used to promote controversial social issues, including abortion.

Unresolved Issues Regarding the Nature of the Accord

The WHO's constitution (Article 19) allows for the adoption of conventions or agreements with respect to relevant matters if they receive a two-thirds vote in the World Health Assembly (WHA), the WHO's governing body. Such conventions would then become binding on member states only when ratified according to national constitutional processes. Article 21 of the WHO's constitution allows for the creation of soft-law regulations, including with regard to preventing the spread of disease, which do not require ratification by member states, but come into effect upon adoption by the WHA.¹ These regulations can be subject to rejection or reservation by member states, but only within a limited period of time.

Because negotiating binding agreements under international law is more difficult, the WHO has historically tended to use Article 21, as in the case of the International Health Regulations² rather than Article 19.³ The International Negotiating Body (INB) convened by the WHO to draft the accord has expressed favor for an Article 19 treaty, but the matter remains unresolved.⁴ If the pandemic accord is adopted as a new binding treaty under Article 21, it will require ratification by the U.S. Senate and the President. Given the level of political polarization in the U.S., and the fact that policy priorities often vary widely between administrations, the requirement of Senate ratification is an important checkpoint for ensuring the involvement of the people's elected representatives in such potentially consequential matters. An accord under Article 21 can evade Senate scrutiny entirely and be adopted and implemented by the executive branch without political debate or scrutiny.

Secrecy Surrounding the Negotiation of the Accord

In February 2023, the Biden administration sided with China over the European Union in calling for the negotiations and drafts of the accord to remain closed to the public.⁵ Among the alarming implications of this is the fact that U.S. stakeholders—including taxpayers and their elected representatives—are not privy to the positions being taken by U.S. negotiators, including on whether the treaty will be binding, as discussed above, or which specific elements it will contain. Given how controversial and far-reaching COVID-19 policies proved to be, opting for secrecy in negotiations surrounding a pandemic treaty lends credibility to fears that the pandemic treaty is being used to impose policies and protocols that would not be politically acceptable in most countries.

Pro-Life Concerns

This pandemic preparedness and response accord seeks to go beyond the existing health regulations set out by the WHO, which pertain to narrower, more technical aspects of response to infectious disease outbreaks. Instead, it would use the declaration of pandemics as a platform to promote controversial social issues, including abortion, despite the fact that abortion is not an internationally-recognized human right.

The WHO has taken an increasingly extreme position on abortion, recently releasing a guideline calling for the repeal of all legal restrictions on abortion and seeking to curtail the right of health care providers to opt out of providing or assisting with abortions as a matter of conscience.⁶ From the outset of the COVID-19 pandemic, the WHO insisted that abortion was an essential service,⁷ eventually urging countries to relax abortion regulations and consider expanding telemedicine mechanisms for delivering abortion drugs.⁸ The WHO subsequently built on this recommendation in its 2022 abortion guideline, expanding it to non-emergency contexts for the first time, and explicitly referring to how telemedicine had “helped support access to abortion and family planning services during the COVID-19 pandemic.”⁹ Given that the WHO has interpreted a purported right to abortion into the text of nearly every binding UN human rights treaty despite the fact that none of the painstakingly negotiated texts mention the issue at all, the organization can be expected to use the pandemic accord to impose abortion on countries bound to adhere to it.

This is precisely the kind of abortion activism that the Biden administration seems to expect from the WHO in a new pandemic accord. In her opening statement at the February 2023 meeting of the INB, the U.S. ambassador specifically called for “access to essential health care services during pandemics, including sexual and reproductive health services,” which is language routinely used to promote abortion.¹⁰

Transfer of Power to the WHO and Bureaucratic Bodies

Negotiations on the new pandemic treaty are taking part alongside negotiations to update the International Health Regulations (IHR), which were adopted under the previously-mentioned Article 21 of the WHO Constitution. These processes are separate, but related, and intended to be complementary. Critically, the pandemic treaty, especially if adopted under Article 19 as a binding international convention, greatly expands the scope of what is covered from what is contained in the IHR, which contains existing pandemic preparedness provisions such as

the stockpiling of medicines, the availability of testing, and similar matters. In contrast, the “zero draft” of the treaty circulated in February includes much broader concepts, including the provision that member states “will take steps to address the social, environmental and economic determinants of health.” This phrase could be—and likely would be—interpreted to mean a panoply of social policy prescriptions that extend far beyond pandemic preparedness.

The “zero draft” stipulates that “the WHO Director-General shall, in accordance with terms set out herein, declare pandemics.”¹¹ While the particular modalities of such a declaration are up for debate, the fact remains that the declaration of a pandemic would inevitably empower the WHO to dictate a variety of response elements, including the determination of which services are to be considered “essential.” Member states would be required to “strengthen synergies with other existing relevant instruments that address the drivers of pandemics, such as climate change.” Such a “synergy” would further speed the transfer of power from sovereign nations to international bureaucracies, using the threat of emergencies, whether related to public health or climate concerns.

Member states who ratify the treaty as currently envisioned would also be tasked with allocating a set percentage of their gross domestic product for “international cooperation and assistance on pandemic prevention, preparedness, response and health systems recovery, particularly for developing countries, including through international organizations and existing and new mechanisms.”¹² Existing international organizations are notoriously lacking in transparency and accountability with regard to how their money is spent, and the UN’s agencies and bureaucracies have increasingly behaved in ways that are unmoored from agreed outcomes from the General Assembly and other bodies that operate on the basis of consensus. Ratification of such a treaty would bind countries to funding and supporting further bureaucracies that would then operate with relative impunity, and from which it would be complicated to extricate themselves.

The bureaucratic mechanisms that the treaty establishes would give the WHO a greater say in domestic policy decisions on any subject related to human rights and health as well as the social, environmental, and economic determinants of health. And they would tie up national health systems to the processes and mechanisms required by the treaty in the case of a pandemic emergency. Chief of these will be the authority, vested in the Secretary General of the WHO, to declare a pandemic emergency and to thereby trigger the binding bureaucratic processes in the treaty. Beyond these obligations, the treaty also imposes an obligation on countries to “consider and endeavor to implement” any recommendations prepared by the international bureaucratic and monitoring processes set up by the treaty. Because the implementation of the treaty will take place at the level of administrative law, this entire policy-making process will take place removed from political debate and scrutiny by the people and their elected representatives.

The Ineffectiveness of the Sovereignty Clause

Much of the opposition to the pandemic treaty has arisen due to concerns that it would erode national sovereignty, prompting attempts to fact-check such claims. The early “zero draft” of the treaty does contain a sovereignty clause, but it contains a caveat that member states’ domestic “jurisdiction or control do not cause damage to their peoples and other countries.”¹³ The definition of “damage” is unspecified and subject to interpretation by the WHO. The WHO also includes language on “protection of human rights,” which, as previously discussed, it interprets to include such things as a right to abortion, in contradiction of global consensus.

In a fact-checking article intended to disprove the claim that the treaty would undermine sovereignty, an expert pointed out that there is “no indication right now that the U.S. would even sign it,” adding that it “would probably need to be approved by the Senate.”¹⁴ Nevertheless, it is still unclear whether the instrument would require Senate approval, or whether the U.S. negotiators support such a requirement, due in part to the same negotiators’ insistence on secrecy.

A widely circulated fact-check by the Associated Press denied that the treaty would be used to censor free speech, impose lockdowns, limit individual autonomy in health care decisions, or even limit civil liberties. Citing a World Health Organization official, the AP article said it was a “conspiracy theory” that the treaty could be used to intrude in national policy space.¹⁵ All these abuses took place during the COVID-19 pandemic without a treaty, by the very same national and international officials who are now secretly negotiating the pandemic treaty. These same bureaucrats, who wanted increased power and money during the COVID-19 emergency, want us to blindly accept that these abuses will never happen again once they have more power under an international treaty.

Indeed, the danger of the new treaty is not so much to give the WHO total control of national policy, as for national bureaucracies to be tied into global bureaucratic requirements that will make it difficult for countries not just to decide the best course of action during future pandemics but how to govern their own health systems, both during pandemic times and during non-pandemic times.

Conclusion

Due to the concerns raised above with regard to national sovereignty, the need for increased accountability and transparency with regard to multilateral institutions, the risks of enlarging and empowering global health bureaucracies, and the potential harms of the pandemic accord for pro-life concerns both domestically and internationally, we urge U.S. stakeholders, including lawmakers, to a) insist that this international instrument be formulated in a way that would require ratification by the President and the Senate, and b) decline to ratify it when faced with the choice.

Endnotes

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