

Research Briefing

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The WHO Pandemic Preparedness Treaty

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In March 2021, a group of world leaders announced an initiative for a new treaty on pandemic preparedness and response. This initiative was taken to the World Health Organization (WHO) and will be negotiated, drafted, and debated by a newly-established Intergovernmental Negotiation Body.

[A petition](#) on the UK Parliament website called for the Government “to commit to not signing any international treaty on pandemic prevention and preparedness established by the WHO, unless this is approved through a public referendum”. The petition closed in November 2022 with 156,086 signatures. At the time of updating this briefing paper, and was debated in Parliament on 17 April 2023.

This briefing will give an overview of the key background, progress, and developments of the treaty as of 1 June 2023.

2 Background

2.1 What is the WHO?

The World Health Organization (WHO) is the United Nations agency “that connects nations, partners and people to promote health, keep the world safe and serve the vulnerable – so everyone, everywhere can attain the highest level of health”.¹

The WHO Constitution was signed in July 1946 and entered into force on 7 April 1948. The UK is among 194 WHO Member States. The [WHO website](#) provides information about the organisation’s priorities and work.

2.2 How did the proposed treaty come about?

The [Independent Panel for Pandemic Preparedness and Response](#) was set up by the WHO to “provide an evidence-based path for the future, grounded in lessons of the present and the past to ensure countries and global institutions, including specifically WHO, effectively address health threats.” The Panel based its work on “insights and lessons learned from the health response to COVID-19 as coordinated by WHO”.²

Beginning in September 2020, the Panel examined why Covid-19 became a global health and socio-economic crisis. The Panel published its findings in its report, [Covid-19: Make it the last pandemic](#), in May 2021.³

Amongst several recommendations, the report identified a need for stronger leadership and better coordination at national, regional and international level and called for a “Pandemic Treaty” alongside a “more focused and independent WHO” and a senior Global Health Threats Council.

On 30 March 2021, the then Prime Minister Boris Johnson, alongside more than 20 world leaders and senior figures of international organisations,⁴

¹ World Health Organization, [About WHO](#), accessed 18 May 2022

² Independent Panel for Pandemic Preparedness and Response, [About the Independent Panel](#), accessed 18 May 2022.

³ Independent Panel for Pandemic Preparedness and Response, [COVID-19: Make it the Last Pandemic](#), May 2021, p45

⁴ The signatories were: J. V. Bainimarama, Prime Minister of Fiji; António Luís Santos da Costa, Prime Minister of Portugal; Klaus Iohannis, President of Romania; Boris Johnson, Prime Minister of the United Kingdom; Paul Kagame, President of Rwanda; Uhuru Kenyatta, President of Kenya; Emmanuel Macron, President of France; Angela Merkel, Chancellor of Germany; Charles Michel, President of the European Council; Kyriakos Mitsotakis, Prime Minister of Greece; Moon Jae-in,

[published a joint article in several international newspapers](#), calling for a more joined-up approach to pandemics in the future.⁵

[The article](#) proposed that “nations [...] work together towards a new international treaty for pandemic preparedness and response.”⁶

The article noted that the world would face other pandemics and major health emergencies in the future and said no state or multilateral agency can address these threats alone. The article stressed that:

... we must be better prepared to predict, prevent, detect, assess and effectively respond to pandemics in a highly co-ordinated fashion. The Covid-19 pandemic has been a stark and painful reminder that nobody is safe until everyone is safe.⁷

With that, the leaders committed to “ensuring universal and equitable access to safe, efficacious and affordable vaccines, medicines and diagnostics for this and future pandemics.” They said the world needed capacity to develop, manufacture, and deploy vaccines quickly in response to such threats, as well as doing more to “promote global access” to vaccines.

2.3 What was proposed?

In the March 2021 joint article, the group of leaders set out the main objectives of the proposed treaty:

The main goal of this treaty would be to foster an all of government and all of society approach, strengthening national, regional and global capacities and resilience to future pandemics. This includes greatly enhancing international co-operation to improve, for example, alert systems, data-sharing, research and local, regional and global production and distribution of medical and public health counter-measures such as vaccines, medicines, diagnostics and personal protective equipment.⁸

President of the Republic of Korea; Sebastián Piñera, President of Chile; Carlos Alvarado Quesada, President of Costa Rica; Edi Rama, Prime Minister of Albania; Cyril Ramaphosa, President of South Africa; Keith Rowley, Prime Minister of Trinidad and Tobago; Mark Rutte, Prime Minister of the Netherlands; Kais Saied, President of Tunisia; Macky Sall, President of Senegal; Pedro Sánchez, Prime Minister of Spain; Erna Solberg, Prime Minister of Norway; Aleksandar Vučić, President of Serbia; Joko Widodo, President of Indonesia; Volodymyr Zelensky, President of Ukraine; Dr Tedros Adhanom Ghebreyesus, Director-General of the World Health Organisation.

⁵ BBC News, [Covid-19: World leaders call for international pandemic treaty](#), 30 March 2021.

⁶ Prime Minister's Office, 10 Downing Street, [‘No government can address the threat of pandemics alone – we must come together’](#), 30 March 2021.

⁷ Ibid.

⁸ Prime Minister's Office, 10 Downing Street, [‘No government can address the threat of pandemics alone – we must come together’](#), 30 March 2021.

The article acknowledges existing provision for a coordinated international response under the [International Health Regulations](#), which would “underpin such a treaty”.

In October 2021, the Working Group on Strengthening WHO Preparedness for and Response to Health Emergencies (WGPR) [published a “zero draft” report](#) outlining an assessment of the benefits of developing a new instrument on pandemic preparedness and response for consideration by the World Health Assembly (WHA).⁹

The report suggested that the initiative “could include promoting high-level political commitment and whole-of-government whole-of-society approaches, addressing equity, enhancing the One Health approach, and strengthening health systems and their resilience.”¹⁰

Between 29 November and 1 December 2021, the WHA [met in a special session](#) to discuss the proposal and the way forward. This was the second ever special session of its kind in the history of the Assembly.¹¹

In this session, the WHA agreed to establish an Intergovernmental Negotiating Body to draft and negotiate “a WHO convention, agreement, or other international instrument on pandemic prevention, preparedness and response.”¹²

When drafting the treaty, the WHO stressed that the Negotiating Body “should be informed by evidence and should take into account the discussions and outcomes of the Member States Working Group on Strengthening WHO Preparedness and Response to Health Emergencies.”¹³

A WHO press release [provided an overview of the proposal](#), setting out details about its plan to “kickstart a global process” to draft and negotiate the new instrument under the WHO Constitution.¹⁴

⁹ WHO, [ZERO DRAFT Report of the Member States Working Group on Strengthening WHO Preparedness for and Response to Health Emergencies to the special session of the World Health Assembly](#), WHO Doc A/WGPR/4/3, 28 October 2021.

¹⁰ WHO, [ZERO DRAFT Report of the Member States Working Group on Strengthening WHO Preparedness for and Response to Health Emergencies to the special session of the World Health Assembly](#), WHO Doc A/WGPR/4/3, 28 October 2021, p1 and p8 para 29.

¹¹ For a full record of the Session and the decisions adopted, see: WHO, [World Health Assembly Second Special Session, 29 November – 1 December 2021](#), WHO Doc WHASS2/2021/REC/1.

¹² WHO, [World Health Assembly Second Special Session, 29 November – 1 December 2021](#), WHO Doc WHASS2/2021/REC/1, Decision SSA2(5) The World Together: Establishment of an intergovernmental negotiating body to strengthen pandemic prevention, preparedness and response, p20-21.

¹³ WHO, [World Health Assembly Second Special Session, 29 November – 1 December 2021](#), WHO Doc WHASS2/2021/REC/1, Decision SSA2(5) The World Together: Establishment of an intergovernmental negotiating body to strengthen pandemic prevention, preparedness and response, p20-21.

¹⁴ WHO Press Release, [World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response](#), 1 December 2021.

2.4 Parliamentary response to the proposed Treaty

The then Prime Minister Boris Johnson was a signatory to [the article proposing the treaty initially](#).¹⁵ The UK's position on the substance of the treaty remains to be seen, as negotiations on a draft continue.

The Government has [expressed support for the Treaty](#) and has said it is “actively shaping its design to ensure it improves how the world prevents, prepares for, and responds to future disease outbreaks of pandemic potential”.¹⁶ The Government, however, emphasised that “the key will be to ensure the final text is clearly in the UK national interest”.

A [petition calling for the government not to sign a new Pandemic Preparedness treaty without a public referendum](#) received 156,086 signatures in six months, before it closed in November 2022.¹⁷

[The petition received a Government response once](#) after achieving 10,000 signatures. The Government said that it supported a new legally binding instrument “as part of a cooperative and comprehensive approach to pandemic prevention, preparedness and response.”¹⁸

The petition was successfully considered for Parliamentary debate after achieving 100,000 signatures, and the debate [took place](#) on 17 April 2023.¹⁹

3 What is happening now?

3.1 How do negotiations work?

Negotiations are governed by the [Intergovernmental Negotiating Body](#) at the WHO, set up specifically to negotiate this proposed treaty.

The Intergovernmental Negotiating Body (INB) held a series of meetings in March and April 2022 to discuss proposals for the treaty. Further meetings have been held in December 2022, February-March 2023, with more planned

¹⁵ Prime Minister's Office, 10 Downing Street, ‘[No government can address the threat of pandemics alone – we must come together](#)’, 30 March 2021.

¹⁶ [PQ 6741](#), 26 May 2022

¹⁷ Parliamentary Petition, “[Do not sign any WHO Pandemic Treaty unless it is approved via public referendum](#)”, accessed 13 April 2023

¹⁸ Parliamentary Petition, “[Do not sign any WHO Pandemic Treaty unless it is approved via public referendum](#)”, Government Response, 27 May 2022.

¹⁹ [HC Deb 17 April 2023 c1WH](#)

throughout 2023. Minutes and proposed agendas of the meetings are available [on the WHO INB website](#).

3.2

What do experts expect from the Treaty?

Commentary in the British Medical Journal suggests “[i]t will take years to draw up any convention and it is unclear exactly what it will cover and how much global authority it will hold, with countries pushing and pulling in different directions.”²⁰

Experts at the London School of Economics outline proposals for the treaty in a blog post from March 2022.²¹ The post is based on a more detailed policy brief by the German Alliance on Climate Change and Health, King’s College London, and LSE.²² The LSE post suggests that the treaty is expected to be modelled as a Framework Convention - a broader agreement setting out consensus on high-level principles and commitments. They suggest that Protocols, guidelines and standards could be used to lay out more specific details and commitments in the future. This would be similar to conventions such as the [UN Framework Convention on Climate Change](#) (UNFCCC), which hosts the annual “COP” or “Conference of Parties” on tackling climate change.²³

The post by LSE academics lists a number of substantive issues that many different stakeholders have called for including in the treaty, noting that including everything would be unlikely, because there is not likely to be consensus on all of these issues among member states, especially if some issues are “seen to infringe on trade or sovereignty.”²⁴

The substantive suggestions called for, as summarised by these experts, include:

- Anchoring the treaty in human rights and addressing the principles of the right to health, equity, solidarity, transparency, trust, and accountability;

²⁰ Luke Taylor, ‘[World Health Organization to begin negotiating international pandemic treaty](#)’, (2021) BMJ 375 n2991.

²¹ Maike Voss, Clare Wenham, Mark Eccleston-Turner, Rithika Sangameshwaran, and Bianka Detering, [A new pandemic treaty: what the World Health Organization needs to do next](#), LSE Blogs, 30 March 2022.

²² Maike Voss, Clare Wenham, Mark Eccleston-Turner, Rithika Sangameshwaran, and Bianka Detering, ‘[A new Treaty on Pandemics – Key to \(re\)build trust in international cooperation?](#)’, German Alliance on Climate Change and Health, March 2022.

²³ See, for example, [COP26: the international climate change conference, Glasgow, UK](#), Commons Library Briefing Paper CBP-8868, 12 October 2021.

²⁴ Maike Voss, Clare Wenham, Mark Eccleston-Turner, Rithika Sangameshwaran, and Bianka Detering, [A new pandemic treaty: what the World Health Organization needs to do next](#), LSE Blogs, 30 March 2022.

- Using a One Health approach for pandemic prevention and early detection;
- Stronger health systems information and reporting mechanisms; including a better use of digital technology for data collection and sharing;
- A reform of the WHO alarm mechanism, the public health emergency of international control (PHEIC) declaration process and travel and travel restrictions;
- Pathogen and genomic data sharing;
- Resilience to and response to pandemics, including universal access to medicines, vaccines, diagnostics, medical equipment and treatments as well as resilient supply chains, technology transfer;
- Investments in health system strengthening and increased financing for pandemic preparedness and response;
- Stronger international health framework with a strengthened WHO at the centre and increased global coordination;
- Reinforcing legal obligations and norms of global health security and standard settings of health care systems;
- Coordination of research and development (R&D).²⁵

Proposals from stakeholders on what should be included in the treaty were heard by the INB at public hearings in April and September 2022 and can be accessed on [the INB's website](#). The outcomes of the INB's "informal, focussed consultations" with international experts can also be viewed on [the INB's website](#).

3.3 What's a "Zero Draft"?

A Zero Draft is a term used to describe the first draft of a text that will be negotiated. Zero Drafts of treaties often undergo several revisions and amendments before the final texts are agreed.

The INB has had several documents relating to the substantive content of the proposed Treaty so far:

²⁵ Maïke Voss, Clare Wenham, Mark Eccleston-Turner, Rithika Sangameshwaran, and Bianka Detering, [A new pandemic treaty: what the World Health Organization needs to do next](#), LSE Blogs, 30 March 2022.

- A [Working Draft](#), from the INB’s second meeting in July 2022, as an initial basis for discussions.²⁶
- A [Conceptual Zero Draft](#), from the INB’s third meeting in November 2022, to act as a bridge between the Working Draft and a future Zero Draft of the proposed Treaty.²⁷
- A [Zero Draft of the proposed treaty](#), known currently as “WHO CA+”.²⁸

3.4 What does the Zero Draft Treaty say?

The [Zero Draft of the treaty](#), known as the Zero Draft of WHO CA+, was published on 1 February 2023,²⁹ and discussed at the [Intergovernmental Negotiating Body’s fourth meeting](#) between 27 February 2023 and 3 March 2023.³⁰

Because the Zero Draft is the starting point for negotiations, the substantive provisions and content of the treaty could change. However, the general structure and broad issues the treaty is likely to address are more likely to remain. The main objective of the treaty, for example, is currently stated in Article 3 as:

... to prevent pandemics, save lives, reduce disease burden and protect livelihoods, through strengthening, proactively, the world’s capacities for preventing, preparing for and responding to, and recovery of health systems from, pandemics. The WHO CA+ aims to comprehensively and effectively address systemic gaps and challenges that exist in these areas, at national, regional and international levels, through substantially reducing the risk of pandemics, increasing pandemic preparedness and response capacities, progressive realization of universal health coverage and ensuring coordinated, collaborative and evidence-based pandemic response and resilient recovery of health systems at community, national, regional and global levels.

Currently, the parties are negotiating on issues such as:

- The definition, means, and procedure for declaring a pandemic, and what this actually means in practice for states.

²⁶ WHO INB, [Working draft, presented on the basis of progress achieved, for the consideration of the Intergovernmental Negotiating Body at its second meeting](#), A/INB/2/3, 13 July 2023.

²⁷ WHO INB, [Conceptual zero draft for the consideration of the Intergovernmental Negotiating Body at its third meeting](#), A/INB/3/3, 25 November 2023.

²⁸ WHO INB, [Zero draft of the WHO CA+ for the consideration of the Intergovernmental Negotiating Body at its fourth meeting](#), A/INB/4/3, 1 February 2023.

²⁹ WHO INB, [Zero draft of the WHO CA+ for the consideration of the Intergovernmental Negotiating Body at its fourth meeting](#), A/INB/4/3, 1 February 2023.

³⁰ WHO Press Release, [Countries begin negotiations on global agreement to protect world from future pandemic emergencies](#), 3 March 2023; see also, WHO INB, [Report of the Fourth Meeting of the Intergovernmental Negotiating Body](#), A/INB/4/6, 17 March 2023.

- How the treaty would work alongside the International Health Regulations.
- Key international principles that will guide the treaty, such as human rights, sovereignty, equity, solidarity, transparency, accountability and more.
- How to achieve equity in the global supply chain for pandemic-related products, and access to relevant technologies.
- Strengthening the resilience and responsiveness of health systems.
- How states and the WHO should be coordinating and cooperating in pandemic preparedness and response.
- How to finance pandemic preparedness and response initiatives.
- Setting up a new Governing Body for the treaty – a COP or Conference of the Parties.
- Other general legal issues relating to the treaty, such as amendments, withdrawal, and dispute settlement.

3.5 How does this relate to the International Health Regulations?

Alongside the development of the pandemic preparedness treaty, the WHO is also undertaking a review of the [International Health Regulations 2005 \(IHR\)](#). According to the WHO, the IHR is:

... a key international instrument on international health, rooted in the WHO Constitution. The IHR was established to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.³¹

Because the IHR already provides for some of the legal basis for international responses to “public health emergencies of international concern”, the regulations therein are relevant to the development of the pandemic preparedness treaty.

With this in mind, the WHO has explained the interplay between the two processes as follows:

³¹ WHO Questions and Answers, [Pandemic prevention, preparedness and response accord](#), 23 January 2023.

The work on the new accord on pandemic prevention, preparedness and response would aim to be coherent with, and complement, the IHR. The Health Assembly decision SSA2(5) establishing the INB noted the “need for coherence and complementarity between the process of developing the new instrument and the ongoing work [...] regard to implementation and strengthening of the IHR (2005)”.

A process agreed on by the World Health Assembly at its meeting in May 2022 is underway to consider potential “targeted” amendments to the IHR. This work is being conducted through a dedicated Member-State led working group process (the Working Group on Amendments to the IHR (2005)) which held its [first meeting](#) on 14-15 November 2022.

The World Health Assembly [decision](#) establishing the above-mentioned Working Group requested the Working Group “to coordinate with the process of the [INB], by means that include regular coordination between the two respective Bureaux and alignment of meeting schedules and workplans, as both the International Health Regulations (2005) and the new instrument are expected to play central roles in pandemic prevention, preparedness and response in the future.”

As part of this process, [more than 300 amendments have been proposed](#) by States Parties.³²

These amendments were subject to a review by the [Review Committee regarding amendments to the International Health Regulations](#). The [terms of reference](#) (PDF) for this Review Committee detail the exact scope of the work and analysis that the Committee was expected to undertake on the proposed amendments.³³

The Committee [conducted a full analysis](#) (PDF) of each of these amendments in detail to provide technical recommendations to the WHO Director-General and WHO member states. It produced its final report on 6 February 2023.³⁴

This report, and the amendments as a whole, will be considered by the Working Group (WGIHR). The Working Group will then present its final proposed amendments to the International Health Regulations for consideration by the Seventy-seventh World Health Assembly (the WHO’s decision making body) in May 2024.³⁵

³² WHO, [Article-by-Article Compilation of Proposed Amendments to the International Health Regulations \(2005\) submitted in accordance with decision WHA75\(9\) \(2022\)](#) (PDF); see also, WHO, [Proposed Amendments to the International Health Regulations \(2005\) submitted in accordance with decision WHA75\(9\) \(2022\)](#) (PDF).

³³ IHR Review Committee regarding amendments to the International Health Regulations (2005), [Terms of Reference](#), 23 October 2022.

³⁴ WHO, Working Group on Amendments to the International Health Regulations (2005), [Report of the Review Committee regarding amendments to the International Health Regulations \(2005\)](#), A/WGIHR/2/5, 6 February 2023.

³⁵ WHO, [World Health Assembly](#) [accessed 1 June 2023]

This INB will present a draft of the proposed pandemic preparedness treaty (WHO CA+) to the World Health Assembly at the same time.

3.6 Will the WHO be given the power to impose restrictive measures?

Recent reports have highlighted concerns that the WHO may be given powers to impose certain restrictive measures such as lockdowns, mandatory quarantines, or mandatory vaccines.³⁶

The proposed treaty does not currently have any provisions for such measures, nor grant the WHO such powers. When asked during a Parliamentary debate whether the UK Government could give assurances that the UK would not accede sovereignty and power to the WHO,³⁷ the government Minister (Anne-Marie Trevelyan) said:

Yes, absolutely I can. The speculation that somehow the instrument will undermine UK sovereignty and give WHO powers over national public health measures is simply not the case. I absolutely reassure both my right hon. Friend and my hon. Friend the Member for Hastings and Rye (Sally-Ann Hart), who raised a similar issue earlier, on behalf of all their constituents: that is not the case. The UK remains in control of any future domestic decisions about public health matters—such as domestic vaccination—that might be needed in any future pandemic that we may have to manage. Protecting those national sovereign rights is a distinct principle in the existing draft text. ... that is absolutely not under threat.³⁸

It appears that most concerns originate from a single set of proposed amendments to the International Health Regulations (IHR), suggested by Bangladesh.³⁹

As mentioned above, [more than 300 amendments to the IHR have been proposed](#) by States Parties, and states in the WHO's Working Group are in the process of considering which of these should be included in a feasible package of amendments to be proposed to the World Health Assembly in 2024.⁴⁰

³⁶ See for example, Tony Diver, [WHO could gain powers to impose lockdown on UK](#), The Telegraph, 25 May 2023

³⁷ [HC Deb 17 April 2023 34WH](#)

³⁸ [HC Deb 17 April 2023 34WH](#)

³⁹ WHO, [Proposed Amendments to the International Health Regulations \(2005\) submitted in accordance with Decision WHA75\(9\) \(2022\)](#) (PDF), pp 9-16.

⁴⁰ WHO, [Article-by-Article Compilation of Proposed Amendments to the International Health Regulations \(2005\) submitted in accordance with decision WHA75\(9\) \(2022\)](#) (PDF); see also, WHO, [Proposed Amendments to the International Health Regulations \(2005\) submitted in accordance with decision WHA75\(9\) \(2022\)](#) (PDF).

The amendments suggested by Bangladesh include proposals such as:

- The removal of the words ‘non-binding’ from the definitions of recommendations in Article 1 of the Regulations (but retaining ‘advice’ as the definition).
- A new Article 13A on “WHO Led International Public Health Response” with language requiring states to “undertake to follow WHO’s recommendations in their international public health response.”
- Proposals for strengthening the Regulations’ language on collaboration and assistance, with new proposals for the financial assistance to developing countries.

These proposals do not change the ordinary legal meaning of ‘recommendations’ or ‘advice’, and there are currently no suggestions from the proposals, nor Bangladesh’s justifications for the amendments, that a special meaning should now be ascribed to the WHO’s recommendations.⁴¹ Bangladesh has also not expressed any intention that its amendments would allow the WHO to impose any restrictive measures on states. Bangladesh said its amendments seek to ‘help create level playing field among the vital players in effectively responding to future health emergencies’ and ‘strengthening the core capacities of the health systems of the Member States in enhancing their resilience’.⁴²

The effect of these proposed amendments was considered by the WHO’s [Review Committee regarding amendments to the International Health Regulations](#). The Committee commented that “on a plain reading the proposed change would not affect the current understanding of the definition of standing or temporary recommendations as merely advice that is not mandatory.”⁴³ But read with Bangladesh’s other proposed amendments elsewhere in the Regulations, the Committee noted that this “could be understood as aiming to change the nature of these recommendations from non-binding to binding.”⁴⁴

⁴¹ The ordinary meaning of terms is to be used in the interpretation of treaties, according to Article 31 of the [Vienna Convention on the Law of Treaties](#) 1969; unless the parties clearly intended for terms to have a special meaning under Article 31(4).

⁴² Bangladesh, “Justification on the amendment being proposed by Bangladesh” (30 September 2022), in WHO, [Proposed Amendments to the International Health Regulations \(2005\) submitted in accordance with Decision WHA75\(9\) \(2022\)](#) (PDF), p10.

⁴³ WHO, Working Group on Amendments to the International Health Regulations (2005), [Report of the Review Committee regarding amendments to the International Health Regulations \(2005\)](#), A/WGIHR/2/5, 6 February 2023, p26.

⁴⁴ WHO, Working Group on Amendments to the International Health Regulations (2005), [Report of the Review Committee regarding amendments to the International Health Regulations \(2005\)](#), A/WGIHR/2/5, 6 February 2023, p26.

But the Committee warned:

That change would require a fundamental reconsideration of the nature of recommendations and the process for their adoption and implementation. The Committee further notes that during a public health emergency of international concern the recommendations may work better if they are not mandatory and advises against changing the nature of recommendations.⁴⁵

The Committee also commented on the other amendments which might be seen as seeking to make WHO recommendations binding, and considered that these “would be incoherent with the existing Regulations, as it would render these recommendations mandatory, whereas they were intended to be non-binding.”⁴⁶

The Committee suggested that if the aim of the amendments was to strengthen the political character of the recommendations, the amendments could instead ask states to use their ‘best endeavours’ or similar, rather than binding states to WHO recommendations:

Irrespective of legal coherence, changing temporary and standing recommendations into binding obligations may raise questions of feasibility. At this moment it is still unclear how to assess “compliance” with temporary recommendations issued ..., since they are defined as nonbinding advice. No standing recommendations have ever been issued under the Regulations. To mitigate this feasibility concern, States Parties may wish to adopt the proposed alternate language of “use best endeavours” or maintain the original language “undertake to follow”.⁴⁷

Ultimately, these are proposed amendments and it is not yet known which amendments will be part of the final package of amendments that the WHO’s Working Group will send to the World Health Assembly for consideration. They could also be amended before that time to clarify the legal effect as highlighted by the Review Committee. A final package of amendments will be presented to the Assembly for consideration before May 2024.

⁴⁵ WHO, Working Group on Amendments to the International Health Regulations (2005), [Report of the Review Committee regarding amendments to the International Health Regulations \(2005\)](#), A/WGIHR/2/5, 6 February 2023, p26.

⁴⁶ WHO, Working Group on Amendments to the International Health Regulations (2005), [Report of the Review Committee regarding amendments to the International Health Regulations \(2005\)](#), A/WGIHR/2/5, 6 February 2023, p56.

⁴⁷ WHO, Working Group on Amendments to the International Health Regulations (2005), [Report of the Review Committee regarding amendments to the International Health Regulations \(2005\)](#), A/WGIHR/2/5, 6 February 2023, p56.

3.7 What has the UK said about changes to the International Health Regulations?

A [new Parliamentary Petition](#) is calling for a vote in Parliament on whether to accept amendments to the International Health Regulations. The Government responded to this petition on 5 May 2023, explaining that the UK supports strengthening the IHR and the amendment process, and that “For the amendments to be considered adopted at least two thirds of WHO’s 194 Member States that are present and voting will need to agree to them.”⁴⁸

On specific questions of UK sovereignty and amendments relating to restrictive measures, the UK Government explained:

The UK Government has a strong commitment and duty to implement international law that it is subject to. However, we have been clear that the UK will not sign up to any IHR amendments that would compromise the UK’s ability to take domestic decisions on national public health measures.

Should the UK Government wish to accept an IHR amendment, then changes to domestic law considered necessary or appropriate to reflect obligations under the IHR amendment, may be required depending on the content of the respective IHR amendment. The Government would prepare such draft legislation before Parliament in the usual way.

In all circumstances, the sovereignty of the UK Parliament would remain unchanged, and the UK would remain in control of any future domestic decisions about national public health measures including any restrictions.⁴⁹

The Government here is referring to the right of individual state, under [Articles 59 and 61 of the IHR](#), to notify the WHO that they reject amendments to the IHR within a specified timeframe, so that those amendments do not apply to that state.

3.8 How is the UK involved in negotiations on the Treaty?

The INB is set up to be open to all WHO Member States and has said in its proposed methods of work that it “will work in an inclusive manner.”⁵⁰ This

⁴⁸ Parliamentary Petition, “[Hold a parliamentary vote on whether to reject amendments to the IHR 2005](#)”, Government Response, 5 May 2023.

⁴⁹ Parliamentary Petition, “[Hold a parliamentary vote on whether to reject amendments to the IHR 2005](#)”, Government Response, 5 May 2023.

⁵⁰ WHO International Negotiating Body, ‘[Proposed method of work](#)’, 10 March 2021, WHO Doc A/INB/1/3 Rev.1.

means that the UK can participate in the INB in the same way as it participates in the World Health Assembly.

The UK is represented at the WHO by the [UK Mission to the WTO, UN and Other International Organisations \(Geneva\)](#).

3.9 Is there a public consultation?

The WHO has explained that, through the WHA Decision, the WHA requested that the WHO Director-General “convene the INB meetings and support its work, including by facilitating the participation of other United Nations system bodies, non-state actors, and other relevant stakeholders in the process to the extent decided by the INB.”⁵¹,

The INB has been taking public consultations on the proposal since early 2022. The INB had [two rounds of public hearings](#).

The first [took place in April 2022](#), and invited limited submissions from stakeholders and the general public in response to a guiding question of “What substantive elements do you think should be included in a new international instrument on pandemic preparedness and response?”⁵²

A [second round of public hearings](#) took place at the WHO on 29-30 September 2022. This round of hearings asked interested parties to submit a short 90-second video answering the question: “Based on your experience with the COVID-19 pandemic, what do you believe should be addressed at the international level to better protect against future pandemics?”⁵³

The INB also held what it called “Informal, focused consultations” with international experts on selected key issues to the development of the Treaty. These were held between September and October 2022, where all WHO Member States could participate in an “interactive discussion” with relevant stakeholders and subject matter experts.⁵⁴

Ahead of plans for the INB to submit its outcome for consideration by the 77th WHA in 2024, the UK Government has said it will engage stakeholders as negotiations begin, with a view to a final outcome that learns the lessons of COVID-19 to strengthen preparedness for and response to, future potential

⁵¹ WHO Press Release, [World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response](#), 1 December 2021.

⁵² See, WHO INB, [Public hearings regarding a new international instrument on pandemic preparedness and response](#), 12-13 April 2022 (accessed 17 May 2022).

⁵³ See, WHO INB, [Second round of public hearings. New international instrument on pandemic prevention, preparedness and response: contributing to the second round of public hearings](#), 29-10 September 2022 (accessed 9 March 2023).

⁵⁴ See, WHO INB, [Informal, focussed consultations](#), 21 September – 14 October 2022 (accessed 9 March 2023).

pandemics.⁵⁵ In September 2022, the UK Government also indicated that it is “engaging with a range of stakeholders on the instrument, through roundtables with civil society and discussion with relevant groups”, and that outside of the WHO’s public consultations the UK would continue to engage with relevant stakeholders as the negotiations progress.⁵⁶

At the European Parliament, a Parliamentary Question [was put to the European Commission](#) about the treaty, and the participation of citizens in the process.⁵⁷ The Commission was asked “to what extent will [it] ensure that the citizen, who has no direct vote in a body such as the WHO, is not bypassed in the decision-making process and that a shift of competence further and further away from the voter does not lead to an increasing ‘de-democratisation’ of our society?”

The response, given on behalf of the Commission, referred to commitments from the INB and WHO Director-General to hold public hearings and work with relevant stakeholders:

The principle of ‘Informed opinion and active cooperation on the part of the public are of the utmost importance in the improvement of the health of the people’ is anchored in the preamble of the Constitution of the World Health Organisation (WHO).⁵⁸

4 What happens next?

4.1 Will the treaty be legally binding?

The Intergovernmental Negotiating Body [agreed by consensus](#) at its second meeting in July 2022 that the new international instrument on pandemic preparedness should be legally-binding.⁵⁹

The exact scope and extent of the obligations under the treaty will depend upon the outcome of negotiations for the treaty.

⁵⁵ [PQ 125555 \[on Disease Control: International Cooperation\]](#), 18 February 2022, Answered on 28 February 2022.

⁵⁶ [PQ 45483 \[on Infectious Diseases: Disease Control\]](#), 2 September 2022, Answered on 27 September 2022.

⁵⁷ See European Parliament, Question reference [P-000921/2022](#), 7 March 2022.

⁵⁸ See European Parliament, Question reference [P-000921/2022\(ASW\)](#), 19 April 2022.

⁵⁹ WHO Press Release, [Pandemic instrument should be legally binding. INB meeting concludes](#), 21 July 2022.

Background

The [WHO's initial release](#) refers to the plans leading to “a convention, agreement or other international instrument under the Constitution of the World Health Organization”.⁶⁰

Recent academic commentary by Clare Wenham, Mark Eccleston-Turner and Maïke Voss suggested that the WHA's mandate for the INB leaves room for an outcome that is not legally binding. They suggest:

the language of ‘a legally binding instrument to be adopted under Article 19 of the WHO Constitution’ was changed to ‘WHO convention, agreement or other international instrument ... with a view to adoption under Article 19, *or under other provisions of the WHO Constitution as may be deemed appropriate by the INB*’ (emphasis added), meaning that the resulting ‘pandemic treaty’ may not actually be a treaty at all, but some other instrument, lacking the legally binding force of a treaty.⁶¹

However, the initial proponents of the initiative, including the UK, EU, and others have [supported a legally binding treaty](#) at this stage, with the EU suggesting that an “international instrument” would also be binding in international law.⁶²

The [WHO's press release noted](#) that the treaty would be drafted “with a view to adoption under Article 19 of the WHO Constitution, or other provisions of the Constitution as may be deemed appropriate by the INB.” It also said:

Article 19 of the WHO Constitution provides the World Health Assembly with the authority to adopt conventions or agreements on any matter within WHO's competence. The sole instrument established under Article 19 to date is the WHO Framework Convention on Tobacco Control, which has made a significant and rapid contribution to protecting people from tobacco since its entry into force in 2005.⁶³

4.2

How will the treaty be adopted?

The Intergovernmental Negotiating Body [agreed by consensus](#) at its second meeting in July 2022 that the new international instrument on pandemic preparedness should be legally-binding.⁶⁴

⁶⁰ WHO Press Release, [World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response](#), 1 December 2021.

⁶¹ Clare Wenham, Mark Eccleston-Turner, Maïke Voss, ‘[The futility of the pandemic treaty: caught between globalism and statism](#)’, (2022) 98(3) *International Affairs* 837-852, p 844.

⁶² See, for example, European Council, [An international treaty on pandemic prevention and preparedness](#), 25 March 2022 (accessed 17 May 2022).

⁶³ WHO Press Release, [World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response](#), 1 December 2021.

⁶⁴ WHO Press Release, [Pandemic instrument should be legally binding. INB meeting concludes](#), 21 July 2022.

This confirmed the initial proposal by the World Health Assembly that the treaty could be adopted according to Article 19 of the WHO Constitution, or any other appropriate mechanism under the WHO Constitution.

Article 19 of the [WHO Constitution](#) provides for one such mechanism, which states:

Article 19

The Health Assembly shall have authority to adopt conventions or agreements with respect to any matter within the competence of the Organization. A two-thirds vote of the Health Assembly shall be required for the adoption of such conventions or agreements, which shall come into force for each Member when accepted by it in accordance with its constitutional processes.

Any convention or international treaty adopted using this procedure would require agreement of at least two-thirds of the WHO Members.

The INB identified Article 19 as the most comprehensive provision of the WHO Constitution under which the instrument should be adopted, but remained open to confirming whether Article 21 could also be appropriate as work on the treaty progresses.⁶⁵ [Article 21](#) relates to the World Health Assembly's powers to adopt regulations on a range of technical health-related issues. Regulations under Article 21 would come into force for all Member States, except where Members reject or make reservations within a specified notice period.

The INB emphasised that the final decision on how to adopt the Treaty remains with the World Health Assembly.⁶⁶

4.3

Recent developments and key dates moving forward

According to the WHA's initial decision establishing the INB,⁶⁷ the INB's initial work,⁶⁸ and the latest proposals at the INB's fourth meeting in

⁶⁵ WHO INB, [Report of the Second Meeting of the Intergovernmental Negotiating Body](#), A/INB/2/5, 21 July 2022, para 4.

⁶⁶ WHO INB, [Report of the Second Meeting of the Intergovernmental Negotiating Body](#), A/INB/2/5, 21 July 2022, para 4.

⁶⁷ WHO, [World Health Assembly Second Special Session, 29 November – 1 December 2021](#), WHO Doc WHASS2/2021/REC/1, Decision SSA2(5) The World Together: Establishment of an intergovernmental negotiating body to strengthen pandemic prevention, preparedness and response, p20-21.

⁶⁸ WHO International Negotiating Body, ['Proposed method of work'](#), 10 March 2021, WHO Doc A/INB/1/3 Rev.1.

February/March 2023,⁶⁹ the following are key dates in the progress of the treaty.

- The INB hosted its [fifth meeting in April 2023](#).
- The INB delivered a [progress report](#) to the 76th World Health Assembly in May 2023.⁷⁰
- By late May / early June, the first draft of the WHO CA+ will be distributed to Member States.
- A INB Drafting Group [will meet in June 2023](#).
- The INB will host its sixth meeting in July 2023.
- Further meetings or drafting group sessions could be held in September, November, and December 2023
- The INB will submit its outcome for consideration by the 77th World Health Assembly in May 2024.

In a progress report from 28 March 2023, the INB [indicated the following](#):

In the period leading up to the Seventy-seventh World Health Assembly in May 2024, the INB will, pursuant to its agreed timeline and deliverables, hold four additional sessions (including two “two-week marathon” sessions) in first quarter of 2024, as well as two additional sessions of the drafting group in 2023. The INB may, if it finds appropriate, supplement its working sessions, in order to meet the ambitious deadline established by the Health Assembly for the INB’s work.⁷¹

Further Reading

- Luke Taylor, ‘[World Health Organization to begin negotiating international pandemic treaty](#)’, (2021) BMJ 375 n2991.
- Haik Nikogosian and Ilona Kickbusch, ‘[The case for an international pandemic treaty](#)’, (2021) BMJ 372 n527,

⁶⁹ See, for example, WHO INB, [Proposal by the Bureau of the Intergovernmental Negotiating Body \(INB\) regarding modalities for the INB’s fourth and fifth meetings, for consideration by the INB](#), A/INB/4/4, 21 February 2023.

⁷⁰ WHO INB, [Progress report of the Intergovernmental Negotiating Body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response](#) (INB) to the Seventy-sixth World Health Assembly, A/INB/5/3 Rev.1, 5 May 2023 (PDF)

⁷¹ WHO INB, [Progress report of the Intergovernmental Negotiating Body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response](#) (INB) to the Seventy-sixth World Health Assembly, A/INB/5/3, 28 March 2023.

- Clare Wenham, Mark Eccleston-Turner, Maïke Voss, '[The futility of the pandemic treaty: caught between globalism and statism](#)', (2022) 98(3) International Affairs 837-852
- Panel for a Global Public Health Convention, [The Pandemic Convention We Need Now; A Call to Action](#), April 2022
- Alexandra L Phelan, '[The World Health Organization's pandemic treaty](#)', (2023) BMJ 380, p463.

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