

**RESOLUTION CONCERNING THE
WORLD HEALTH ORGANIZATION**

WHO CA+

**CONVENTION, AGREEMENT OR OTHER
INTERNATIONAL INSTRUMENT ON PANDEMIC
PREVENTION, PREPAREDNESS AND
RESPONSE**

Submitted by: John D. Lilly, MBA, DO
Missouri Chapter
Association of American Physicians and Surgeons

RESOLUTION

MISSOURI CHAPTER ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS

Whereas, Article 19 of the World Health Organization (WHO) Constitution states,

“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.” And,

Whereas, the A/INB/5/6 2 June 2023 draft of the WHO CA+ states, “the World Health Assembly convened a second special session in December 2021, at which it established an Intergovernmental Negotiating Body (INB) . . . “to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response, with a view to its adoption under Article 19 or other provisions of the WHO Constitution, as may be deemed appropriate by the INB.” And,

Whereas, the A/INB/5/6 2 June 2023 draft of the WHO CA+ states, “that the instrument should be legally binding” And,

Whereas, the A/INB/5/6 2 June 2023 draft of the WHO CA+ states, “the WHO CA+ applies at all times, including during and between pandemics.” And,

Whereas, the A/INB/5/6 2 June 2023 draft of the WHO CA+ states, “in particular developing country Parties, in achieving the objectives of this WHO CA+ through capacity-building and the development and transfer of technologies, skills, knowledge and know-how. . . . to grant, . . . a non-exclusive, royalty-free license to any such manufacturers to use their intellectual property and other protected substances, products, technology, know-how, information and knowledge used in the process of pandemic-related product development and production,” And,

Whereas, the A/INB/5/6 2 June 2023 draft of the WHO CA+ states, “shall align and, where possible, harmonize . . . use common technical documents; and share relevant information and assessments concerning the quality, safety and efficacy of pandemic-related products, including after regulatory approvals are granted” And,

Whereas, Article II, Section 2 of the United States Constitution states, “The President . . . shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur” so that only the U.S. President and the U.S. Senate may commit the United States of America to a treaty regardless of how it is titled, not a foreign organization. And,

Whereas, even with the consent of the Senate, treaties that the United States enters into cannot legally abrogate the rights of American citizens that are enumerated and guaranteed by the U.S. Constitution or intrude on State’s sovereignty,

Now therefore be it resolved, that the Association of American Physicians and Surgeons opposes the WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response (“WHO CA+”) as drafted by the Intergovernmental Negotiating Body of the World Health Organization.

Respectively submitted by John D. Lilly, MBA, DO, Missouri Chapter, Association of American Physicians and Surgeons. July 15, 2023.

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.

Article 20

Each Member undertakes that it will, within eighteen months after the adoption by the Health Assembly of a convention or agreement, take action relative to the acceptance of such convention or agreement. Each Member shall notify the Director-General of the action taken, and if it does not accept such convention or agreement within the time limit, it will furnish a statement of the reasons for non-acceptance. In case of acceptance, each Member agrees to make an annual report to the Director-General in accordance with Chapter XIV.

Article 21

The Health Assembly shall have authority to adopt regulations concerning:

- (a) sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease;
- (b) nomenclatures with respect to diseases, causes of death and public health practices;
- (c) standards with respect to diagnostic procedures for international use;
- (d) standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce;
- (e) advertising and labelling of biological, pharmaceutical and similar products moving in international commerce.

Article 22

Regulations adopted pursuant to Article 21 shall come into force for all Members after due notice has been given of their adoption by the Health Assembly except for such Members as may notify the Director-General of rejection or reservations within the period stated in the notice.



**RESUMED FIFTH MEETING AND DRAFTING GROUP OF
THE INTERGOVERNMENTAL NEGOTIATING BODY TO
DRAFT AND NEGOTIATE A WHO CONVENTION,
AGREEMENT OR OTHER INTERNATIONAL
INSTRUMENT ON PANDEMIC PREVENTION,
PREPAREDNESS AND RESPONSE
Provisional agenda item 2**

**A/INB/5/6
2 June 2023**

Bureau's text of the WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response (WHO CA+)

BACKGROUND, METHODOLOGY AND APPROACH

1. In recognition of the catastrophic failure of the international community in showing solidarity and equity in response to the coronavirus disease (COVID-19) pandemic, the World Health Assembly convened a second special session in December 2021, at which it established an Intergovernmental Negotiating Body (INB) open to all Member States and Associate Members (and regional economic integration organizations, as appropriate) **to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response, with a view to its adoption under Article 19 or other provisions of the WHO Constitution, as may be deemed appropriate by the INB.**
2. In furtherance of the above mandate, the INB established a process and systematic approach for its work and agreed, at its second meeting, that the instrument should be legally binding and contain both legally binding as well as non-legally binding elements. In that regard, the INB identified Article 19 of the WHO Constitution as the comprehensive provision under which the instrument should be adopted, without prejudice to also considering, as work progressed, the suitability of Article 21, and requested the Bureau to develop and present to the INB a conceptual zero draft of the instrument (WHO CA+) for discussion.
3. At its third meeting, the INB agreed that the Bureau, with support from the WHO Secretariat, would prepare the zero draft of the WHO CA+, based on the conceptual zero draft and input received during the third meeting of the INB, with legal provisions. The INB further agreed that the zero draft would be considered at its fourth meeting as a basis for commencing negotiations at that meeting, it being understood that the zero draft would be without prejudice to the position of any delegation and following the principle that "nothing is agreed until everything is agreed". Subsequently, at its fifth meeting, the INB requested the Bureau to provide a Bureau text, including options, where feasible, based on all submissions received and included in the compilation document, in order to facilitate the work of the drafting group, on the continued understanding that nothing is agreed until everything is agreed.
4. Accordingly, the Bureau has prepared a Bureau's text of the WHO CA+ for consideration by the INB Drafting Group in June 2023.



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the full continuum of essential health services, from health promotion to prevention, treatment, rehabilitation and palliative care.¹

[Other terms may be added, as appropriate, during the work of the INB.]

Article 2. Objective and scope

1. The objective of the WHO CA+, guided by equity, the right to health and the principles and approaches set out herein, is 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 the 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; the progressive realization of universal health coverage; and ensuring a coordinated, collaborative and evidence-based pandemic response and the resilient recovery of health systems at community, national, regional and global levels.

2. In furtherance of its objective, the WHO CA+ applies at all times, including during and between pandemics.

Article 3. General principles and approaches

To achieve the objective of the WHO CA+ and to implement its provisions, the Parties will be guided, inter alia, by the general principles and approaches set out below.

1. **Respect for human rights** – The implementation of the WHO CA+ shall be with full respect for the dignity, human rights and fundamental freedoms of persons, including the right to the enjoyment of the highest attainable standard of health, and each Party shall protect and promote such rights and freedoms, with due regard to the need for specific measures to ensure non-discrimination, the respect for diversity, the promotion of gender equality and the protection of persons in vulnerable situations.

2. **Sovereignty** – States have, in accordance with the Charter of the United Nations and the general principles of international law, the sovereign right to legislate and to implement legislation in pursuance of their health policies. In doing so, they shall uphold the purposes and objectives of the WHO CA+ and carry out their obligations under the WHO CA+ in a manner consistent with the principles of the sovereign equality and the territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. **Equity** – Equity shall be at the centre of pandemic prevention, preparedness, response and recovery, both at the national level within States and at the international level between States. It requires, inter alia, specific measures to protect persons in vulnerable situations. Equity includes the unhindered, fair, equitable and timely access to safe, effective, quality and affordable pandemic-related products and services, information, pandemic-related technologies and social support. The Parties commit to promote, respect and facilitate equity in all phases of pandemic prevention, preparedness and response and recovery of health systems.

¹ https://www.who.int/health-topics/universal-health-coverage#tab=tab_1.

(e) develop a database that provides the details of pandemic-related products for all known pandemic potential diseases, including the technological specifications and manufacturing process documents for each product.

5. In the event of a pandemic, the Parties shall:

(a) take appropriate measures to support time-bound waivers of intellectual property rights that can accelerate or scale up the manufacturing of pandemic-related products during a pandemic, to the extent necessary to increase the availability and adequacy of affordable pandemic-related products;

(b) apply the full use of the flexibilities provided in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), including those recognized in the Doha Declaration on the TRIPS Agreement and Public Health of 2001 and in Articles 27, 30 (including the research exception and the “Bolar” provision), 31 and 31bis of the TRIPS Agreement;

(c) encourage all holders of patents related to the production of pandemic-related products to waive or manage, as appropriate, the payment of royalties by developing country manufacturers on the use, during the pandemic, of their technology for the production of pandemic-related products, and shall require, as appropriate, those that have received public financing for the development of pandemic-related products to do so; and

(d) encourage all research and development institutes, including manufacturers, in particular those receiving significant public financing, to waive or manage, as appropriate, royalties on the continued use of their technology for production of pandemic-related products.

6. The Parties shall ensure, when engaged in bilateral or regional trade or investment negotiations, that negotiated provisions do not interfere with the full use of the flexibilities provided in the TRIPS Agreement, including those recognized in the Doha Declaration on the TRIPS Agreement and Public Health of 2001.

Option 11.B

1. Capacity-building and the transfer of technologies, skills, knowledge and know-how relevant to pandemic prevention, preparedness and response should be a country-driven, transparent, effective and iterative process. To this end, the Parties shall:

(a) cooperate, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, to assist Parties, **in particular developing country Parties, in achieving the objectives of this WHO CA+ through capacity-building and the development and transfer of technologies, skills, knowledge and know-how** relevant to pandemic prevention, preparedness and response;

(b) provide, within their capabilities, resources to support such capacity-building and the development and transfer of relevant technology, and to facilitate access to other sources of support, taking into account their national policies, priorities, plans and programmes; and

(c) monitor and review periodically, within the framework of the Conference of the Parties, capacity-building and the transfer of the technologies, skills, knowledge and know-how relevant

to pandemic prevention, preparedness and response, based on and responsive to the needs and priorities of developing countries.

2. The Parties also recognize the importance of manufacturers and other entities with access to relevant technologies in respect of pandemic-related products making specific efforts to transfer these technologies, skills, knowledge and know-how to countries, particularly developing countries, that do not have access to such technologies, skills, knowledge and know-how.

3. At all relevant times, particularly during pandemics, each Party shall, subject to its national laws:

(a) take steps to urge the manufacturers of pandemic-related products, such as but not limited to diagnostics, vaccines and therapeutics, to grant, subject to any existing licensing restrictions, on mutually agreed terms, [as appropriate,] a non-exclusive, royalty-free licence to any such manufacturers to use their intellectual property and other protected substances, products, technology, know-how, information and knowledge used in the process of pandemic-related product development and production, in particular for pre-pandemic and pandemic diagnostics, vaccines and therapeutics for use in agreed developing countries;

(b) urge the manufacturers of pandemic-related products, such as but not limited to diagnostics, vaccines and therapeutics, to transfer, under mutually agreed terms as appropriate, the relevant technologies, skills, knowledge and know-how to countries without such manufacturing capacities, particularly developing countries; and

(c) actively support, participate in and/or implement, as appropriate, relevant WHO technology transfer programmes and initiatives aimed at enabling developing countries to produce their own vaccines, medicines and diagnostics to address health emergencies, including strategies to build new production facilities in developing and/or industrialized countries, and on the transfer of technology, skills and know-how.

4. The transfer of technology, skills, knowledge and know-how for the manufacture of pandemic-related products shall be conducted in a manner consistent with applicable national laws and international laws and obligations, facilitated progressively over time on mutually agreed terms as appropriate, and shall be suitable to the capacity of recipient countries to empower them to manufacture pandemic-related products.

5. In the event of a pandemic, each Party shall, in accordance with national laws:

(a) make available non-exclusive licensing of government-owned technologies on mutually agreed terms as appropriate, that can be used for the development and manufacturing of pandemic-related products, and publish the terms of these licences at the earliest reasonable opportunity and to the fullest extent possible;

(b) promote the publication, by private rights holders, of the terms of voluntary licensing agreements or technology transfer agreements for pandemic emergency response-related products, at the earliest opportunity and to the fullest extent possible;

(c) promote the voluntary engagement of private rights holders with established regional or global technology transfer hubs or other multilateral mechanisms or networks for the voluntary licensing and voluntary transfer of technology on mutually agreed terms as appropriate, for pandemic emergency response-related products;

7. The Parties commit to safeguarding the humanitarian principles of humanity, neutrality, impartiality and independence, and to facilitating the unimpeded access of humanitarian staff and cargo.

8. The Parties shall enable inclusive, equitable and effective cooperation and participation, and shall take all appropriate measures to undertake the foregoing no later than XX.

Article 14. Regulatory strengthening

1. The Parties shall align and, where possible, harmonize technical and regulatory requirements and procedures; promote and facilitate the use of regulatory reliance and mutual recognition; use common technical documents; and share relevant information and assessments concerning the quality, safety and efficacy of pandemic-related products, including after regulatory approvals are granted.

2. The Parties, for the purposes of regulating pandemic-related products, shall strengthen the capacity and performance of relevant national and regional regulatory authorities, including through technical assistance, with the aim of expediting regulatory approvals and authorizations and ensuring the quality, safety and efficacy of pandemic-related products.

3. Each Party shall make publicly available information on national and/or regional processes, in accordance with relevant laws, for authorizing or approving use of pandemic-related products during a pandemic, and any additional relevant regulatory pathways that may be activated during a pandemic to increase efficiency, and shall ensure that such information is kept updated in a timely manner.

4. The Parties shall, as appropriate, monitor, regulate and strengthen the existing rapid alert systems among neighbouring countries, against substandard and falsified pandemic-related products, including through existing Member State mechanisms on substandard and falsified medical products.

5. Each Party shall take steps to ensure that it has legal, administrative and financial frameworks in place to support emergency regulatory approvals for the effective and timely regulatory approval of pandemic-related products during a pandemic.

6. Each Party shall, in accordance with national laws, encourage manufacturers, as appropriate, to generate relevant data and diligently pursue regulatory authorizations and/or approvals of pandemic-related products with WHO-listed authorities, other priority authorities and WHO.

Article 15. International collaboration and cooperation

1. The Parties shall coordinate, collaborate and cooperate with competent international and regional intergovernmental organizations and other bodies, as well as among themselves, in the formulation of cost-effective measures, procedures and guidelines for pandemic prevention, preparedness, response and recovery of health systems, and to this end shall:

- (a) promote global, regional and national political commitment, coordination and leadership for pandemic prevention, preparedness, response and recovery, by means that include establishing appropriate governance arrangements;
- (b) support mechanisms that ensure that policy decisions are science and evidence-based;
- (c) develop, as necessary, and implement policies, drawing on international guidance, that recognize the rights and specific needs, and ensure the protection of all people, in particular persons in vulnerable situations, those living in fragile environments or areas and small island

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States.”

Section 2. Powers and duties of President.—The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Section 3. Powers and duties of President, continued.—He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed and shall commission all the officers of the United States.

Section 4. Impeachment.—The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

AMENDMENT V

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VII

In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

AMENDMENT XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

AMENDMENT XII

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state