

LEGISLATOR FAQ ABOUT THE WHO

OPTIONS ARE ABOUT TO BECOME OBLIGATIONS

December 2023

SHF has compiled common questions or misconceptions received from lawmakers in response to our calls to action. These dismissals broadly fall into two buckets:

1. Insisting the documents will be nonbinding, and
2. Fears about withdrawing from the WHO.

The overarching theme is this: Our lawmakers do not see the huge change these documents are intended to bring. What has not yet been enforceable will become so if we do not stop it.

IS IT NONBINDING? THE RELATIONSHIP OF THE WHO TO AMERICAN SOVEREIGNTY IS CHANGING.

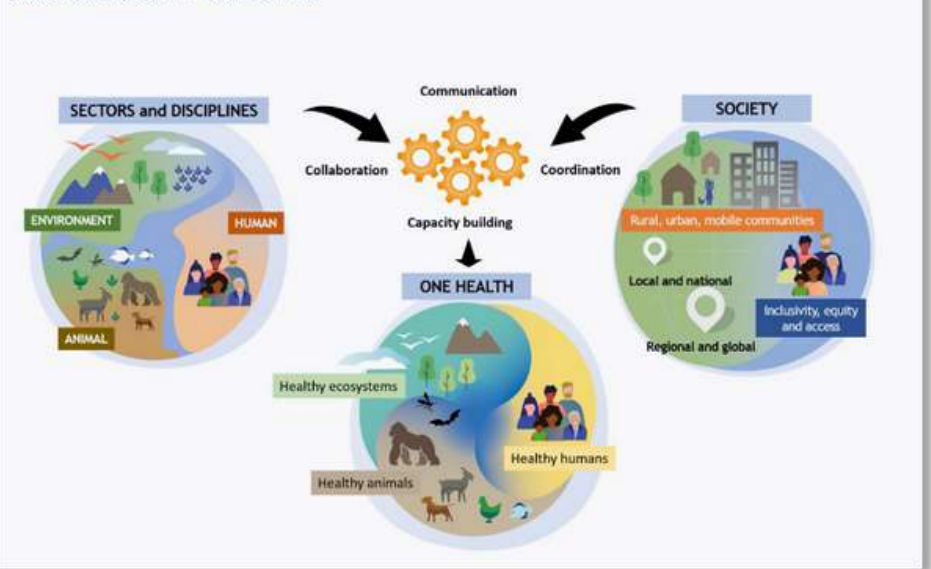
Q. In a statement, the U.S. Department of Health and Human Services confirmed, "It is false to claim that the World Health Organization has now, or will have by virtue of these activities, any authority to direct U.S. health policy or national health emergency response actions."

A. The WHO was already given the ability to direct U.S. policy if they declare an emergency. In 2017, the CDC published regulations

in the Federal Register tying the CDC's authority to quarantine to a declaration of emergency made by the WHO, even in the absence of any emergency declarations by U.S. officials.[i] "We note first that the definition of public health emergency is not limited to those emergencies declared by the HHS Secretary."

Importantly, the documents are using a "One Health" approach, a term coined by EcoHealth Alliance[ii] (NIH grantee for gain-of-function research in Wuhan, China[iii]), which would sweep all aspects of life into the public health umbrella.[iv] One Health would include communications, mental health, travel, food, agriculture, surveillance, economies, environment, medicines, and more under public health.[v]

FIGURE 1: ONE HEALTH PROMOTES A SUSTAINABLE AND HEALTHY FUTURE THROUGH COLLABORATION, COMMUNICATION, COORDINATION AND CAPACITY BUILDING



Q. "The draft treaty would be nonbinding and lays out broad recommendations related to international cooperation on pandemic prevention, preparedness, and response." Is it true that the treaty is only a recommendation and is not binding?

A. First point of order: The term “nonbinding” does not mean there is no effect. Look no further than the CDC’s Childhood Immunization Schedule, which is a nonbinding policy document, to see how large an impact nonbinding declarations can have. School attendance and insurance payments turn on what that nonbinding document states.

WHO recommendations have largely been nonbinding (voluntary) not because countries didn’t agree to terms, but because there was no enforcement mechanism. We are already bound to follow the International Health Regulations (IHR), because we agreed to join the WHO. In adopting its Constitution, we adopted its IHR and amendments. The next step is enforcement authority, which is the point of what’s happening now. One of the co-chairs of the WHO’s working group to coordinate the IHR amendments stated at the recent World Health Assembly, “The world, however, requires a different level of legal mandates, such as the pandemic treaty, to navigate through a particular pandemic should one occur, and it will.”^[i] The point of the documents is not to create binding agreements, because they are already binding. The point is to create enforcement mechanisms. Many of the amendments to the IHR would change “may” to “shall.” What was optional is about to become obligatory.

(d) request, where appropriate, the services and cooperation of, and information provided by, competent and relevant organizations and bodies of the United Nations system and other international and regional intergovernmental organizations and nongovernmental organizations and bodies as a means of strengthening the implementation of the WHO Pandemic Agreement; and

The treaty draft includes a proposal for a “Conference of the Parties” which would have a blank check to create its rules, amend the treaty, create protocols, and even call on the United Nations to help enforce the WHO dictates.^[ii]

Q. "This voluntary accord, which is still in draft form, does not commit a nation to any set of defined policies or put sovereignty over individual or domestic health policy at risk but rather issues nonbinding recommendations to ensure we learn from past global health crises and work across borders to protect each and every life." Is this true?

A. Here is proposed text from the latest draft in October 2023^[i]:

3. The provisions of the WHO Pandemic Agreement shall in no way affect the ability of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to the WHO Pandemic Agreement, provided that such agreements are compatible with their obligations under the WHO Pandemic Agreement. The Parties concerned shall communicate such agreements to the Conference of the Parties, through the Secretariat.

Countries that agree to the treaty agree they will not make future agreements that are incompatible with their obligations to the WHO. Under the One Health approach that brings food, animal life, and climate under the umbrella of public health, this ultimately means almost all areas of policy will be relevant and scrutinized in light of the pandemic treaty. William Karesh of EcoHealth Alliance claims creation of the term One Health.[i]

The treaty is meant to be legally binding, and the changes to the IHR are meant to give the WHO more authority and teeth. That's the reason behind this entire process. People are shouting for more centralized authority and more funding for the WHO precisely because the IHR does not have enforcement mechanisms. A quick web search with the words "legally binding" and "treaty" will show you this.

Further, WHO recommendations and guidance are meant to become law as countries or states adopt the language on their own, or nonbinding guidance is treated as law, as the CDC recommendations for COVID were, and as the CDC's childhood schedule has been incorporated into state laws.

Even when guidance is being illegally asserted as law, damage is done while people challenge that authority through the court system. We saw this play out when the Biden administration used OSHA to push its COVID vaccination plans — the OSHA regulation was struck down by the Supreme Court, but only after months and months of Americans getting a shot for no other reason than their job required it even before the regulation was complete and was undergoing legal challenge. Policymakers know that bad policy can be pushed out, and even if it's ultimately struck down, they've moved their ball down the field.

Regarding past global health crisis, no one at the WHO has been held accountable for mishandling of crisis after crisis, and in fact, Tedros Adhanom Ghebreyesus was just reelected after the atrocious and tragic mishandling of the COVID declared pandemic.[ii] It is widely understood that the WHO has mishandled Ebola, AIDS,[iii] H1N1 ("Swine Flu"),[iv] and most recently, COVID. The WHO relied on statements from China about the outbreak, regardless of the nation's previous disastrous mishandling of SARS.[v]

It is also notable that both the drafting of the treaty and the amendments to the International Health Regulations are happening simultaneously, with a lot of overlap. It has been declared member states will not see the draft of the proposed amendments to the regulations until they are set for a vote at the World Health Assembly in 2024. It is entirely possible for provisions of the treaty to get absorbed into the IHR, which only requires a simple majority of the WHA to pass, and has historically not involved US Congressional oversight.

Q. A few congressmen have said, "The agreement does recognize the WHO as the coordinating authority for these multinational health efforts, but this does not grant the WHO any authority whatsoever to overrule any nation's individual health or domestic policies." Does the agreement recognize the WHO as the coordinating authority? Where do we find that the WHO is given the power to overrule a nation's individual health policies?

A. Proponents of the need for an additional agreement (the treaty) and updates to the IHR discuss the need for the WHO to have enforcement powers and more money to have centralized authority. The parent organization of the WHO, the United Nations, has stepped in with a "Political Declaration on

Pandemic Preparedness, Preparation, and Response.”[i]It was strategically adopted in October 2023 before the WHO documents are up for a vote. The aim is to give “generous political weight” to the WHO process and “enable” the WHO to become central to the global health architecture. Further, the Conference of the Parties that would be created under the treaty (or maybe the IHR amendments) would be able to call on the U.N. for implementation assistance.

Until this point in history, the WHO has been acting largely on its own, with little input from its parent, the United Nations. Now the WHO is leveraging the fear and compliance generated by the pandemic to grab power. The U.N. sees this and that’s why it stepped in to play a more active role in WHO happenings.

The United States would be committed to WHO policy through its WHO agreements, its U.N. agreements, its international agreements with other organizations such as the Food and Agriculture Organization, and agreements like the Paris Accord because the latter are tied together with the One Health approach central to U.N. and WHO language, which brings food, animals, and climate under the umbrella of public health.

Q. “The WHO also has no enforcement body, so compliance with its agreements is necessarily nonbinding by design.” Does the WHO have an enforcement body? If not, are all these documents nonbinding?

A. Provisions in the treaty provide for a new Conference of the Parties to make protocols, boards, guidelines, and additional treaty provisions at a future date. They would determine how to assess and enforce the treaty and their guidelines. It’s essentially a blank check for assessment and enforcement powers that would be filled in after a legally binding treaty is approved. Again, the point of the treaty and IHR amendments is to give the WHO more enforcement powers through actual regulations, vastly increased funding, and all-encompassing scope of a One Health approach that pulls all areas of life under the public health umbrella.

Q. “A draft treaty under consideration in the WHO does not overrule any nation’s ability to pass individual pandemic-related policies.” Is this true?

A. We already have an agreement that restricts national choice. Article 43 of the IHR, called “Additional health measures,” addresses member state actions. Countries can act on their own if they use the WHO recommendations as a floor for protection and a ceiling for international travel and trade. Countries can act to achieve the same or greater protection as WHO guidance but cannot be more restrictive to international traffic and utilize means that are the least invasive and disruptive.

This is an example of the IHR already having provisions sought but having no enforcement power. Many scholars believe the IHR (along with the Vienna Convention on Treaties) was violated by actions like lockdowns, because lesser restrictions would have achieved the same goal without the resulting devastation to economies and international traffic.

WHAT HAPPENS IF THE U.S. WITHDRAWS FROM THE WHO? THE WORLD FOLLOWS THE U.S., NOT THE OTHER WAY AROUND.

Q. "International organizations like the U.N. and WHO are not perfect and need improvement. But exiting them outright would do grave damage to American interests, leaving us isolated and marginalized on the global stage with less of a platform to promote American interests and values." "The United States must be at the table with the rest of the world, working to protect the world's most vulnerable populations." If we are not at the WHO table, what will we lose? What, if any, are the repercussions for leaving the WHO?

A. American leadership is not dependent on someone else's platform or acceptance. Americans are leaders because we do the right thing, even when it's the hard thing. Our humanitarian efforts are not dictated by unelected global policymakers, nor would Americans hesitate to help other countries in a pandemic regardless of participation in any international organization. Throughout our history, when America rises, we lift others up with us. Instead of focusing on the fear of missing out, Americans focus on what we will create. The world follows the U.S., not the other way around.

In leaving the WHO, we would be safeguarding our constitutional rights to informed consent, to federalism, and to stopping the flood of American tax dollars to an organization that has time and time again demonstrated failure when it comes to preventing or responding to outbreaks of disease.

Q. "We should be strengthening American leadership in the world, not diminishing it." Do we believe that joining the WHO strengthens America or weakens it?

A. At this point, being a part of the WHO is not benefiting America. The WHO failed disastrously at preventing and responding to COVID-19. The WHO has a history of fumbling pandemics, along with corruption and sexual abuse. The Biden administration is funneling hundreds of millions of American tax dollars into the WHO, the World Bank Pandemic Fund, and other organizations that work in conjunction with the WHO. The agreements are calling for even more money and resources to be distributed to poor countries in the name of "equity."

Q. "According to WHO, this pandemic accord will help guide the international community's response to future pandemic threats, opening clear lines of collaboration and creating comprehensive guidelines to protect communities worldwide in the case of an outbreak."

A. The WHO should create comprehensive guidelines to protect people in an outbreak. That's their job. They should be experts in public health and global policy and help communities around the world with that knowledge. According to their Constitution, they "assist" governments "upon request" with their health services, as well as in times of emergency. These are things they already do.

But the WHO was never meant to manage pandemics. They were meant to inform and support countries and create a space for communication between nations.

It's also important to note that the new WHO authorities and actions would not be isolated to times of outbreaks. A large part of the justification for expanding the WHO's authority is "preparation," which requires constant surveillance and resources for readiness. There's also a proposal on the table to vastly expand the ability of the WHO to declare emergencies. The U.S. and other countries have proposed that the WHO should have the ability to declare "potential," intermediate, and regional emergencies.

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- [i] <https://www.federalregister.gov/documents/2017/01/19/2017-00615/control-of-communicable-diseases>
[ii] <https://globalhealthnow.org/2017-09/whats-difference-meaning-one-health>
[iii] <https://oversight.house.gov/landing/covid-origins/>
[iv] https://merylnass.substack.com/p/why-countries-must-leave-the-world?utm_source=%2Fsearch%2Fcountries%2520that%2520followed%2520WHO%2520guidance%2520had%2520worse%2520outcomes&utm_medium=reader2
[v] <https://iris.who.int/bitstream/handle/10665/363518/9789240059139-eng.pdf?sequence=1>
[vi] <https://www.who.int/news-room/events/detail/2023/05/22/default-calendar/the-world-together-member-state-led-processes-to-strengthen-pandemic-prevention-preparedness-and-response>; Clip at <https://twitter.com/LFIreland/status/1665276525610954752>
[vii] https://apps.who.int/gb/inb/pdf_files/inb7/A_INB7_3-en.pdf, page 25.
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[ix] <https://globalhealthnow.org/2017-09/whats-difference-meaning-one-health>
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