

## Explainer: Legal provisions for the Pandemic Agreement

*In response to the COVID-19 pandemic, UN Member States agreed to develop a legally binding international agreement to ensure the world is better prepared to respond to future health emergencies. Member States have set a target date of May 2024 for consideration by the World Health Assembly (WHA). As of December 2023, a decision on the exact type of instrument to be agreed is still under consideration.<sup>1</sup> While the current draft is entitled an “agreement,” the document also refers to a potential “convention” or “other type of international instrument.” This briefing document explains the nuance.*

During its second meeting in July 2022, the Intergovernmental Negotiating Body (INB) identified Article 19 of the World Health Organization Constitution as the comprehensive provision under which the instrument for the pandemic agreement should be adopted. Under Articles 19 and 20, initial adoption requires a two-thirds majority vote by the WHA followed by an initial 'opt-in' process that should take no more than 18 months and demonstrates an intent to participate.<sup>2</sup>

According to the current draft text, at least 40 countries would need to ratify, accept, or approve the agreement (subject to their respective national processes) for the agreement to enter into force and become legally binding on those States.<sup>3,4</sup> States that have not gone through this process can accede to the agreement after it comes into force.

The WHO Constitution does not distinguish between “conventions” or “agreements.” Article 19 has been applied by Member States once previously with the adoption of the 2003 WHO Framework Convention on Tobacco Control (FCTC).<sup>5</sup> While Article 19 does not specifically refer to a ‘framework’ convention model, but rather a ‘convention’, the FCTC was developed as such, borrowing its format from environmental law.<sup>6</sup>

In international law, a framework convention generally establishes broader principles and commitments for its signatories as well as structure and procedures for its governance. Specific, more detailed obligations and targets may be left to be determined in subsequent protocols<sup>7</sup> that also require adoption by Member States to come into force. While securing high-level binding commitment to the overall principles, a framework convention provides Member States with flexibility as they can choose to join only a subset of specific obligations.<sup>8</sup>

Although Article 19 has been identified as the provision to be used for the pandemic agreement, Article

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<sup>1</sup> Ravelo JL. What Is the Pandemic Treaty and What Would It Do? Devex. Accessed 12 December 2023. Available at <https://www.devex.com/news/what-is-the-pandemic-treaty-and-what-would-it-do-106577>.

<sup>2</sup> World Health Organization. *Constitution of the World Health Organization*. WHO. 1946.

<sup>3</sup> WHO INB. *Draft Negotiating Text of the WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response (WHO Pandemic Agreement)*. WHO. 2023.

<sup>4</sup> The timing between signature and ratification of the agreement depends on national governance processes and varies by Member State. An example of this can be seen with the time between signature and ratification for each State for the [Framework Convention on Tobacco Control](#).

<sup>5</sup> Lehtimäki, S., Reidy, A., Nishtar, K., et al. *Independent Review and Investigation Mechanisms to Prevent Future Pandemics: A Proposed Way Forward*. Kuala Lumpur: United Nations University International Institute for Global Health. 2021.

<sup>6</sup> Yildiz E. *Why Framework Convention Design Is the Ideal Design for the New Instrument for Torture-Free Trade?* The Graduate Institute. 2022.

<sup>7</sup> Phelan A, Pillai OP. *International Health Law in Perspective: Background Paper 16*. The Independent Panel for Pandemic Preparedness and Response. 2021.

<sup>8</sup> Economic Commission for Europe, the Committee on Housing and Land Management. *Framework Convention Concept: Note by the Secretariat*. 2011.

21 of the WHO Constitution has not been fully excluded.<sup>9</sup> Specific to certain work areas (see Annex),<sup>2</sup> it is an “opt-out” agreement and enters into force automatically with a simple majority vote for all Member States unless they have notified WHO of their intent to reject the instrument<sup>3</sup> within a given time frame.

#### Annex. WHO Instruments

WHOC Article	Article 19	Article 21
Full text <sup>2</sup>	“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.”	“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.”
Tool	<ul style="list-style-type: none"> <li>Convention or agreement.</li> </ul>	<ul style="list-style-type: none"> <li>Regulation.</li> </ul>
Characteristics	<ul style="list-style-type: none"> <li>Legally binding.</li> <li>Requires a two-thirds vote of the Health Assembly to adopt.</li> <li>“Opt-in” convention or agreement, operative only upon its ratification, acceptance or approval of the instrument by an agreed number of Member States.</li> </ul>	<ul style="list-style-type: none"> <li>Legally binding.</li> <li>Requires a simple majority vote of the Health Assembly to adopt.</li> <li>“Opt-out” regulatory instrument, entering into force for all Member States of WHO on a particular date if they have not notified WHO of the intention to opt out of the instrument.</li> </ul>
Scope	<ul style="list-style-type: none"> <li>Any matter within the competence and mandate of WHO.</li> </ul>	<ul style="list-style-type: none"> <li>Limited to sanitary and quarantine requirements; Nomenclatures concerning diseases, causes of death and public health practices; Standards concerning diagnostic procedures; Standards concerning safety, purity, and potency of biological and pharmaceutical products; and advertising and labeling of biological and pharmaceutical products.</li> </ul>
Time to come into force	<ul style="list-style-type: none"> <li>The Member States must take action relative to acceptance within 18 months of adoption, and report on reasons for not accepting.</li> <li>The instrument comes into force once an agreed number of Member States have demonstrated they have formally ratified, accepted or approved it through national processes.</li> </ul>	<ul style="list-style-type: none"> <li>Comes into force without express consent by the Member States – Member States must express rejection or reservation within a defined period after adoption.</li> </ul>
Reporting requirements	<ul style="list-style-type: none"> <li>Requires annual reporting by the Member States to the WHA, Director-General or as otherwise specified in such convention or agreement.</li> </ul>	<ul style="list-style-type: none"> <li>Requires annual reporting by the Member States to the WHA, Director-General or as otherwise specified in such regulations.</li> </ul>
	<ul style="list-style-type: none"> <li>Framework Convention on Tobacco Control (FCTC).</li> </ul>	<ul style="list-style-type: none"> <li>Nomenclature with Respect to Diseases and Causes of Death.</li> <li>International Health Regulations (IHR).</li> </ul>

<sup>9</sup> Ravelo JL. Majority of WHO Member States Want Legally Binding Pandemic Instrument. Devex. Accessed 12 December 2023. Available at <https://www.devex.com/news/majority-of-who-member-states-want-legally-binding-pandemic-instrument-103669>