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S. RES. 81

Relating to the establishment of a means for the Senate to provide advice and consent regarding the form of an international agreement relating to pandemic prevention, preparedness, and response.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2023

Mr. RISCH (for himself, Mr. BARRASSO, Mr. HAGERTY, Mr. CRUZ, Mrs. BLACKBURN, Ms. LUMMIS, Mr. BRAUN, Mr. DAINES, Mr. MARSHALL, Mr. CASSIDY, Ms. COLLINS, Mr. THUNE, Mr. MULLIN, Ms. ERNST, and Mr. CRAMER) submitted the following resolution; which was referred to the Committee on Foreign Relations

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RESOLUTION

Relating to the establishment of a means for the Senate to provide advice and consent regarding the form of an international agreement relating to pandemic prevention, preparedness, and response.

Whereas clause 2 of section 2 of article II of the Constitution of the United States empowers the President ''by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur'';

Whereas without appropriate and meaningful consultation with the Senate—

(1) the requirement for Senate advice and consent to treaties remains unfulfilled; and

(2) in some cases, executive agreements, political agreements, and other arrangements have been improperly used by the executive branch to circumvent the appropriate review of significant agreements by Congress;

Whereas, as an appropriate exercise of the advice and consent power entrusted to the Senate, the Senate may refuse to consider legislative measures intended to authorize or appropriate funds to implement international agreements which, in the opinion of the Senate, constitute treaties under the Constitution of the United States to which the Senate has not given its advice and consent to ratification;

Whereas clause 2 of section 5 of article I of the Constitution of the United States, grants plenary power to the Senate to ''determine the Rules of its Proceedings'';

Whereas an international agreement should take the form of a treaty requiring Senate advice and consent and should be transmitted by the President to the Senate for the Senate's consideration and approval if—

(1) the agreement involves commitments or risks affecting the Nation as a whole;

(2) the agreement is intended to affect State laws;

(3) the agreement will not take effect until after subsequent legislation is enacted by Congress;

(4) similar agreements were subjected to the advice and consent of the Senate;

(5) similar agreements are typically subject to the approval of national legislatures in other countries;

(6) Congress has expressed a preference regarding its involvement in such type of agreement;

(7) the agreement involves a high degree of formality;

(8) the agreement is not routine, is not expected to have a short duration, and does not need to be promptly concluded; or

(9) if the agreement is intended to implement an existing treaty or make technical amendments to an existing treaty, the relevant Senate committee has previously indicated that such implementation or amendments are significant enough to require submission to the Senate for its advice and consent:

Now, therefore, be it

Resolved,

SECTION 1. SHORT TITLE.

This Resolution may be cited as the ''World Health Organization Pandemic Treaty Implementation Resolution''.

SEC. 2. PURPOSE.

The purpose of this Resolution is for the Senate, as the article I branch of the United States Government that is entrusted with the Advice and Consent power under clause 2 of section 2 of article II of the Constitution of the United States, to establish, through the use of the rulemaking authority of the Senate, a means for determining the form that an international agreement, protocol, legal instrument or agreed outcome with legal force, signed by the President or by his designee, shall take and to which the President intends the United States to be-

come a Party or to otherwise be bound under international law, in whole or in part.

SEC. 3. DECLARATIONS.

(a) IN GENERAL.—Exercising the rulemaking authority of the Senate, the Senate declares, under clause 2 of section 2 of article II of the Constitution of the United States, that any international convention, agreement, protocol, legal instrument, or agreed outcome with legal force relating to pandemic prevention, preparedness, and response drafted by the intergovernmental negotiating body of the World Health Assembly that—

(1) is intended to be adopted pursuant to article 19 or any other provision of the Constitution of the World Health Organization; and

(2) establishes significant international commitments by the United States under the authority of World Health Assembly Decision SSA2(5) or any related decision,

meets 1 or more of the factors set forth in the last clause of the preamble, indicating that such agreement should take the form of a treaty requiring Senate approval.

(b) LIMITATION OF AGREEMENT.—The Senate declares that any agreement described in subsection (a)—

(1) involves a significant political and economic commitment of the United States to foreign countries; and

(2) does not legally bind the United States until after—

(A) the President transmits such agreement to the Senate for its consideration as a treaty, subject to the applicable constitutional advice and consent procedures; and

(B) the Senate provides its consent to such treaty through a resolution of ratification.

SEC. 4. ADVICE.

(a) REFERRAL.—Any agreement described in section 3(a) that is transmitted to the Senate pursuant to section 3(b)(2)(A) shall be referred to the Committee on Foreign Relations of the Senate for its consideration.

(b) CONSULTATION WITH THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE.—

(1) CONSULTATIONS DURING NEGOTIATIONS.—The Secretary of State, or the designee of the Secretary, shall—

(A) at the request of the Chair or the Ranking Member of the Committee on Foreign Relations of the Senate, meet with any or all members of the Committee regarding—

(i) negotiating objectives;

(ii) the status of negotiations in progress; and

(iii) the nature of any potential changes to the laws of the United States or the administration of such laws that may be recommended to Congress to carry out—

(I) an agreement described in section 3(a); or

(II) any requirement of, amendment to, or recommendation under, such agreement; and

(B) consult closely and on a timely basis with, and keep fully apprised of the negotiations, the Committee on Foreign Relations of the Senate.

(2) CONSULTATIONS BEFORE SIGNING AGREEMENT.—Before signing an agreement described in section 3(a), the President shall—

(A) consult closely, and on a timely basis, with the members of the Committee on Foreign Relations of the Senate; and

(B) keep such members fully apprised of the measures other nations have taken to com-

ply with the provisions of such agreement that are to take effect on the date on which such agreement enters into force.

(c) DESIGNATED SENATE ADVISORS.—

(1) DESIGNATION.—The Secretary of State—

(A) shall designate not fewer than 2 members of the Committee on Foreign Relations of the Senate, on a bipartisan basis, to serve as Senate advisors to the negotiations regarding an agreement described in section 3(a); and

(B) may designate additional members of the Committee on Foreign Relations of the Senate as Senate advisors, after consultation with the Chair and Ranking Member of the Committee.

(2) CONSULTATIONS WITH DESIGNATED CONGRESSIONAL ADVISORS.—During negotiations regarding an agreement described in section 3(a), the Secretary of State or an officer of the Department of State who has been confirmed to such position by the Senate and designated by the Secretary, shall consult closely and on a timely basis (including immediately before initialing any agreement) with, and keep fully apprised of the negotiations, the Senate advisors designated pursuant to paragraph (1).

(3) ACCREDITATION.—Each Senator designated as a Senate advisor pursuant to paragraph (1) shall be accredited by the Secretary of State on behalf of the President as an official advisor to the United States delegation to any relevant international conferences, meetings, and negotiating sessions relating to an agreement described in section 3(a).

SEC. 5. CONSENT.

(a) SUBMISSION OF TREATY TO THE SENATE.—An international convention, agreement, protocol, legal instrument, or agreed outcome with legal force relating to pandemic prevention, preparedness, and response described in section 3(a) shall not become effective with respect to the United States until after the President, not later than 60 days after such agreement is signed, submits to the Senate—

(1) such agreement, including all related materials, annexes, and other relevant documents; and

(2) a certification that—

(A) the materials submitted pursuant to paragraph (1) constitute the totality of such agreement in question; and

(B) the adoption of the treaty is in the vital national security interest of the United States.

(b) DECLARATION.—Exercising the rulemaking authority granted to the Senate under clause 2 of section 5 of article I of the Constitution of the United States, the Senate declares that it shall not be in order for the Senate to consider any bill, any joint or concurrent resolution, any amendment to such bill or amendment, or any conference report authorizing or providing budget authority to implement, in whole or in part, any international pandemic preparedness, prevention, and response convention, agreement, protocol, legal instrument, or agreed outcome with legal force of the World Health Assembly, the purpose of which is to implement, in whole or in part, an agreement described in section 3(a).

(c) SUNSET.—This section shall remain in effect until the date on which the President submits the agreement and certification required under subsection (a) to the Senate as a treaty for its constitutional advice and consent.

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