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The World Health Organization: Following the Values in Unstable Times

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Abstract

The aim of this article is to show the environment in which the World Health Organization operates. The article discusses the basic issues related to the global health care system, and then the statutory aims and purposes of the Organization. The last part analyses the indicated goals in the context of the realities, primarily the political ones, paying attention to the coronavirus pandemic, which undoubtedly has affected the functioning of Organization. The article shows various types of problems that the WHO encounters in the course of its activity, which illustrates the complexity and comprehensiveness of the phenomena that occur in the area of operation of international organisations.

Keywords
coronavirus pandemic, World Health Organization, law and values, law and politics, health law, global governance

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Introductory remarks

The concept of health is a basic element attributed to human rights; however, the literature assigns several meanings to this word, and likewise it has no single legal definition. Health was first defined in ancient times and its definition was quite broad. The outstanding Greek philosopher Plato claimed that it was one of the basic goods given to humans. Europe, however, leaned more towards the theory of the Greek precursor of medicine, Hippocrates. According to him: health is a creation that requires the balancing of certain factors, relying on the balance between a person and what surrounds them. Moving to the present times and the World Health Organization (*hereinafter: WHO*), the 1946 Constitution of the World Health Organization emphasises that "*Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.*"[1]

Global health protection and its fragmentation

In the middle of the twentieth century, states realised that multilateral collaboration was necessary to safeguard and maintain public health because it could no longer be viewed as the exclusive domain of a sovereign state.[2] The European powers of the 1800s became increasingly concerned about pandemic threats such as cholera or yellow fever coming mostly from their colonies and affecting their interests (for example economically) as transportation technology advanced making travelling easier and faster, connecting Europe with the Middle East and Asia.[3]

Therefore, more conventions on sanitation and quarantine measures were held, often leading to quarrelling, rivalries, and some mutual agreements on the importance of preventing viruses of the 'uncivilised others' were finally reached despite the hesitations of the European powers due to their Westphalian beliefs of non-intervention and stressing the concept of state sovereignty.[4]

The League of Nations and the United Nations were not the first organisations to consider focussing on global or worldwide health. According to Brown,[5] the Pan American Health Organization, originally founded in 1902 as the International Sanitary Office of the American Republics (currently incorporated as one of the six regional branches of the WHO), was the first organization attempting to promote global health. The Rockefeller Foundation, the Office International d'Hygine Publique, founded in 1903, which affiliated 12 European states, and the Health Organization department of the League of Nations, established in 1921, were other early 20th-century actors in the field of international health.[6]

1. WHO, *Constitution of the World Health Organization*, https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf, (access 10.12.2022).

2. D.P. Fidler, *The future of the World Health Organization: What Role for International Law?*, "Vanderbilt Journal of Transnational Law", 1998, 31 (5), pp. 1079–1126.

3. M. Cueto, T. Brown, E. Fee, *The World Health Organization: A history (Global health histories)*, Cambridge University Press 2019, pp. 11–12.

4. Ibidem.

5. T.M. Brown, M. Cueto, E. Fee, *The World Health Organization and the transition from 'international' to 'global' public health*, "American Journal of Public Health", 2006, 96 (1), pp. 62–72.

6. Ibidem.

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It must be noted that most of these early organisations had objectives and philosophies that were not in line with the liberal principle of improving global health. The way major players were acting could have rather contributed to maintaining inequality while combating inequalities.[7] In other words, it could be claimed that maintaining the neo-liberal order was essential to the establishment of institutions for global health.

A big change in the behaviour of states started to take place around the 1940's; the WHO Constitution was adopted in July 1946 at the International Health Conference by representatives of 61 nations (51 UN member states plus 10 additional governments), but it would not go into effect until 7 April 1948. As the Organization has grown, the WHO now affiliates 194 member countries and two associate members.[8] The guiding principles of the WHO, like those of its forebears, are not so easily summarized in terms of the neo-liberal order.

Aims and purposes of the World Health Organization

The WHO's core functions are outlined in its Constitution, which also classifies them into three groups: (1) normative functions, which include creation of international conventions and agreements, regulations, non-binding standards and recommendations; (2) directing and coordinating functions, which include the organization's activities related to health for all, poverty and health, essential medicine, and specific disease programs; and (3) research and technical cooperation functions.[9]

The WHO has prioritised some aspects of these categories over others in the course of the last years, and its progress in doing so has been analysed and criticised.[10] In a series of articles published in the British Medical Journal in the mid-1990s, Fiona Godlee, for instance, criticized WHO management, effectiveness, policy selections, headquarter-regional negotiations and power struggles, and the organisation's lack of operational capacity in one of the most thorough analyses of the WHO.[11] At about the same time, a self-study commissioned by the WHO examined the organisation's efficiency in carrying out its fundamental duties and led to reform recommendations, with a particular emphasis on enhancing its technical capability, global health, and coordinating tasks.[12] In addition, the WHO Executive Board held special meetings in 1996 to review the Constitution and made recommendations for changes that would emphasize coordination, health policy development, norms and standards, promoting health for all, advising, and technical cooperation as the core functions of the organisation.[13]

7. M. Peters, S. Hollings, B. Green, et al., *The WHO, the global governance of health and pandemic politics*, "Educational Philosophy and Theory", 2022, 54 (6), pp. 707–716. DOI: 10.1080/00131857.2020.1806187

8 J. Lidén, *The World Health Organization and Global Health Governance: post-1990*, "Public Health", 2014, 128 (2), pp. 141–147. DOI: 10.1016/j.puhe.2013.08.008

9. G.L. Burci, C. Vignes, *World Health Organization*, Kluwer Law International 2004, p. 119.

10. G. Walt, *WHO under stress: Implications for health policy*, "Health Policy", 1993, 24 (2), pp. 125–144. DOI: 10.1016/0168-8510(93)90030-s

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12. WHO, *Report of the Executive Board Working Group on the WHO Responses to Global Change*, https://apps.who.int/iris/handle/10665/142401, (access 10.12.2022).

13. WHO, *Review of the Constitution and regional arrangements of the World Health Organization, Report of the special group*, https://apps.who.int/iris/handle/10665/78112, (access 10.12.2022).

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A retreat on "Enhancing the Performance of International Health Institutions" was held in Pocantico, NY, in 1996. The purpose of the retreat was to examine whether the institutional framework in international health was adequate for interdependence of global health in the 21st century. The Pocantico report arrived at the following conclusions: "WHO should be the 'normative conscience' for world health"; "WHO should assume leadership in achieving more coherence and equity in the system"; "the emphasis on technical assistance has often come at the expense of the normative role"; and "the emphasis on technical assistance has often come at the expense of the normative role."[14] There was a very clear focus on the global functions of WHO, with a goal for the WHO to become an unquestionable leader in the field of global health.[15] There is certainly a burning need for an effective global governance mechanisms in the field of human health. This kind of need seems obvious considering that the majority of new global health players focus primarily on operational tasks, which increases the demand for WHO's core global operations.[16]

The WHO operates worldwide to promote health, keep the world safe from diseases and serve the vulnerable. Its goal is to ensure that a billion more people have universal health coverage, to protect a billion more people against health emergencies, and provide a further billion people with better health and well-being. For each of these purposes, the WHO sets more specific aims such as: improving access to essential medicines and health products; preventing emergencies and supporting development of tools necessary during outbreaks; or addressing social determinants.[17] One possible title for the WHO's primary function is "the global protector of health".[18]

Asking instead of commanding

The WHO has always tended to depend on soft law instruments rather than hard law standards since they strive to give technical and scientific recommendations based on the best available data.[19] In contrast to active epistemic authority, which is an authority that is exercised on the basis of "knowledge and science" (through a legally binding instrument) WHO prefers to rest on epistemic elements exercised through non-legal instruments (such as guidelines and recommendations).[20] Seeing that the WHO has been effective in extending its interventions to a variety of fields, including the elimination of malaria, tobacco control, and breast milk replacements,[21] leads to the argument that acting through such a passive epistemic authority may be effective, at least to a certain extent.

14. See: *Pocantico Retreat: Enhancing the performance of international health institutions*, The Rockefeller Foundation 1996.

15. See also: D. Jamison, J. Frenk, F. Knaul, *International collective action in health: objectives, functions, and rationale*, "The Lancet", 1998, 351 (9101), pp. 514–517. DOI: 10.1016/S0140-6736(97)11451-9

16. J. Ruger, D. Yach, *The Global Role of the World Health Organization*, "Glob Health Gov", 2009, 2 (2), pp. 1–11.

17. WHO, *What we do*, https://www.who.int/about/what-we-do, (access 10.03.2022).

18. P. Huang, *Explainer: What Does The World Health Organization Do*, https://www.npr.org/sections/goatsandsoda/2020/04/28/847453237/what-is-who-and-what-does-it-do, (access 10.12.2022).

19. G.L. Burci, *Global Health Law: Present and Future*, in: *Research Handbook on Global Health Law*, eds. G.L. Burci, B. Toebes, Edward Elgar Publishing 2018, pp. 486–528.

20. J. Klabbers, *The Normative Gap in International Organizations Law: The Case of the World Health Organization*, "International Organizations Law Review", 2019, 16 (2), pp. 272–298. DOI: 10.1163/15723747-01602004

Criticism of the Organization

The WHO has been criticised for 'lack of effectiveness'[22] generated by its often weak leadership, budgetary issues and extrabudgetary funds (how they will be used and who gets to decide)[23] and having no power under international law to enforce their legal instruments (which is linked to the Westphalian principles of state sovereignty). Some authors[24] are, however, of the opinion that the globalisation of public health changes and undermines the definition of a 'sovereign state', conflicting interests and influences of member states and private donors.

The COVID-19 pandemic, both as a significant organisational challenge and as a chance to demonstrate leadership and assert influence in the global health sector, constitutes a useful lens through which the WHO can be observed. Its performance has been usually questioned.[25] The WHO has been accused of working with China to downplay the severity of the outbreak during the early stages of the pandemic.[26] It has also come under fire for its allegedly tardy declaration of a public health emergency of international significance (PHEIC) and for several other allegedly inadequate or tardy recommendations (such as those on face masks or travel restrictions).[27]

Recently, the academia has focused on the uncomfortable cohabitation of knowledge and politics in the functioning of the WHO in the context of what has been said above. Although the conflict between these two aspects was evident and debated a long time ago, before the COVID-19 pandemic has started[28], it has grown much more intense recently. For instance, Benvenisti has drawn attention to the contrast between political cooperation issues (procedures guaranteeing compliance) and issues considering technical coordination (not requiring such mechanisms).[29] In this regard, he has argued that if global health generally presents a number of cooperation or coordination challenges, the WHO is the only one having the authority to address these issues.

Singh has approached the matter from a different angle claiming that this fusion of knowledge and politics has led to several efforts that at the end of the day have been effective (*e.g.,* setting up an innovative structure such as the Access to COVID-19 Tools Accelerator).[30] Some writers are of the opinion that the WHO might still manage the coexistence of the political and professional aspects of its work more successfully, even within the existing organisational and legal limits.[31] The WHO is sometimes criticised for failing to recognise the significance of politics in global health[32] and is also called to begin interacting more with the political side of global health after reviewing a body of research on prior disease outbreaks.[33]

21. D.P. Fidler, *International Law and Global Public Health, Articles by Maurer Faculty*, https://www.repository.law.indiana.edu/facpub/652, p. 15, (access 10.12.2022).

22. S. Andresen, *Leadership Change in the World Health Organization: Potential for Increased Effectiveness?*, FNI Report 8/2002, The Fridtjof Nansen Institute 2002, pp. 1–35.

23. T.M. Brown, M. Cueto, E. Fee, *The World Health Organization...*, op. cit., pp. 62–72.

24. D.P. Fidler, *The future of the...*, op. cit., pp. 1079–1126.

25. See also: L. Gruszczyński, M. Melillo, *The uneasy coexistence of expertise and politics in the World Health Organization: Learning from the experience of the early response to the COVID-19 pandemic*, 2021, Available at SSRN: https://ssrn.com/abstract=3786300, (access 10.12.2022).

26. H. Feldwisch-Drentrup, *How WHO Became China's Coronavirus Accomplice*, www.foreignpolicy.com/2020/04/02/china-coronavirus-who-health-soft-power, (access 10.12.2022).

27. T.J. Bollyky, D.P. Fidler, *It's Time for an Independent Coronavirus Review*, Foreign Affairs, https://www.foreignaffairs.com/articles/china/2020-04-24/its-time-independent-coronavirus-review, (access 10.12.2022).

Political backlash

The WHO was placed at the centre of the global political stage when COVID-19 started to demonstrate a pandemic potential and was expected to provide prompt and efficient solutions to common concerns. Voices of global discontent soon began to emerge. One of the WHO's harshest opponents was former President Trump, who repeatedly accused the agency of making "inaccurate or deceptive" assertions, including applauding China for its openness and the public health initiatives it implemented.[34] He frequently criticised the WHO for being China-focused and denounced the purportedly tardy establishment of a PHEIC.[35] However, this situation was an attempt to find a new target to blame for the pandemic that plunged the world, rather than a meaningful criticism of the mechanisms running the organisation.[36]

However, the WHO's position on China was condemned not only by the United States. Several nations agreed, as did a number of professionals and observers who believed the WHO might have done more[37]. This criticism appears to support the notion that the expectations were perhaps too high for the people who were familiar with the WHO and its difficulties.[38]

Some authors, e.g. Gruszczyński[39], believe that the WHO's attitude towards China was a strategy rather than passiveness. The necessity to ensure access to as much information about the outbreak as possible furthered the WHO's general propensity to adopt a cooperative approach and to alleviate the existing political tensions as regards the COVID-19 pandemic.[40] This was initially made possible only through ongoing cooperation with China. The Emergency Committee's initial statement emphasised the significance of having access to the pertinent data,[41] but from the WHO's point of view, praising China rather than criticising it may be seen as the best way for it to carry out its responsibilities as an epistemic authority, allowing it to assess the risks currently present and ensuring that the global community had access to as much information as possible. The WHO just adopted a political strategy to carry out one of its tasks, instead of being lenient. This was obviously a political choice.[42]

Final remarks

From the very beginning of the existence of international bodies involved in protection of public health, they have experienced similar problems. As can be seen from the above reflections, the environment in which the WHO operates does not always generate comfortable working conditions. The WHO must deal with all kinds of problems related to political pressures, funding, lack of capacity

28. J. Siddiqi, *World health and world politics: the World Health Organization and the UN system*, University of South Carolina Press 1995.

29. E. Benvenisti, *The WHO - Destined to Fail? Political Cooperation and the COVID-19 Pandemic*, "American Journal of International Law", 2020, 114 (4), p. 590. DOI: 10.1017/ajil.2020.66

30. M. Kavanagh, R. Singh, M. Pillinger, *Playing Politics. The World Health Organization's Response to COVID-19*, in: *Coronavirus Politics: The Comparative Politics and Policy of COVID-19*, eds. S.L. Greer, E.J. King, A. Peralta-Santos, E.M. da Fonseca, Michigan University Press 2021, pp. 34–50.

31. J. Alvarez, *The WHO in the Age of the Coronavirus*, "American Journal of International Law", 2020, 114 (4), pp. 579–585. DOI: 10.1017/ajil.2020.70

32. S.E. Davies, C. Wenham, *Why the COVID-19 response needs International Relations*, "International Affairs", 2020, 96 (5), p. 1227. DOI: 10.1093/ia/iiaa135

33. Ibidem, pp. 1248–1249.

34. *Donald Trump's tweet of 19 May 2020*, www.twitter.com/realDonaldTrump/status/1262577580718395393?s=20, (access 10.12.2022).

35. *Donald Trump Coronavirus Press Briefing Transcript April 14: Trump Halts WHO Funding*, https://www.rev.com/blog/transcripts/donald-trump-

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to make legally binding decisions. Each step must be carefully calculated from the viewpoint of not only statutory goals, but also political calculations. The organisation, especially recently, has been heavily criticised for its passive approach to China at the beginning of the coronavirus pandemic; however, some representatives of the doctrine perceive such action more as cold calculation rather than passivity. The WHO should be assessed at all times taking into account the social and economic conditions under which it must operate. Only looking at this organisation with the full picture of the world in mind will allow meaningful conclusions to be drawn about its existence.

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