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The normative authority of the World Health Organization[☆]

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ABSTRACT

The World Health Organization (WHO) was born after the devastation of World War II, as a normative agency endowed with unprecedented constitutional powers. But even as it has achieved stunning successes, such as the eradication of smallpox, it has failed to live up to the exalted expectations of the postwar health and human rights movement – exemplified most recently by its inadequate response to the Ebola epidemic. Our aim is to offer innovative ideas for restoring the Organization to its leadership position by exercising its normative authority, even as it faces a crowded and often chaotic global health architecture. Before doing so, it will be helpful to summarize the main tensions the Organization faces in today's global health landscape.

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Introduction

The World Health Organization (WHO) was born after the devastation of World War II, as a normative agency endowed with unprecedented constitutional powers. But even as it has achieved stunning successes, such as the eradication of smallpox, it has failed to live up to the exalted expectations of the postwar health and human rights movement – exemplified most recently by its inadequate response to the Ebola epidemic. Our aim is to offer innovative ideas for

restoring the Organization to its leadership position by exercising its normative authority,^d even as it faces a crowded and often chaotic global health architecture. We begin by examining the WHO's fundamental tensions and core functions. Next we turn to the Organization's reform agenda, providing an overview of the process and considering six areas in which the WHO is particularly in need of improvement. We conclude with a few reflections on the future of the Organization. Throughout the article, we draw on lessons learned from the response to the recent outbreak of Ebola in West Africa.

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^d By normative authority, we mean the Organization's power to shape or influence global rules and norms and to monitor compliance. This can be contrasted with, for instance, the Organization's technical role (e.g., providing medical or logistical advice on a vaccination campaign or monitoring and reporting on the global spread of an epidemic).

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Fundamental tensions

The WHO, with its unmatched expertise and constitutional mandate, is well positioned to lead a sustained improvement in world health. But the Organization faces critical institutional tensions that significantly impair its functioning:¹

- ❖ *A Servant to Member States.* Member states demand faithfulness to their often-conflicting demands. They elect the Director-General (D-G), chart the work plan, approve the budget, and steer the overall direction. Such tight control can chill the Secretariat from acting as the moral leader for world health and advocating passionately on behalf of the most disadvantaged;
- ❖ *A Paucity of Resources.* WHO resources are entirely incommensurate with the scope and scale of global health needs. The agency's budget pales in comparison with national health budgets, despite its vast worldwide responsibilities;
- ❖ *Earmarked Funding.* The flow of funds is not only inadequate, but also highly restricted. The agency must have greater authority to direct its resources to where needs are greatest;
- ❖ *Weak Governance.* The WHO lacks critical institutional structures for financial management, transparency, priority setting, and accountability. The Organization also needs to harness the creativity of non-state actors, enable them to fully participate in decision-making, while managing conflicts of interest;
- ❖ *Excessive Regionalization.* Global policies and programs cannot be effectively implemented due to the WHO's decentralized structure. The regions are not fully branches of the Organization, but have wide autonomy. The autonomy of the regions can hamper the WHO's ability to speak with a single voice and exercise global leadership.

Mission and core functions

The WHO Constitution created a normative institution with extraordinary powers. The Constitution's first Article enunciates a bold mission: 'the attainment by all peoples of the highest possible level of health.' The Preamble defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.' The Preamble, moreover, places human rights as a central theme, affirming, 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.'

The Constitution unmistakably establishes the WHO as the premier global health leader, stating that it should 'act as the directing and coordinating authority on international health work' – working in close collaboration with UN agencies, national health ministries, and professional organizations (Article 2).

Article 2 grants the WHO extensive normative powers to carry out its mission, authorizing the World Health Assembly (WHA) to adopt 'conventions, agreements and regulations,

and make recommendations with respect to international health matters.' The Organization principally exercises its normative authority through 'soft' power – either constitutionally authorized 'recommendations' or more informal action by the Assembly, Board, and/or Secretariat. The Organization rarely exerts its constitutional authority to exercise 'hard' power by negotiating binding international law.

Recommendations: 'soft' global health norms

The WHO's most salient normative activity has been to create 'soft' standards underpinned by science, ethics, and human rights. Although not binding, soft norms are influential, particularly at the national level where they can be incorporated into legislation, regulation, or guidelines.

Article 23 grants the Assembly the authority 'to make recommendations to Members,' while Article 62 requires states to report annually on the action taken to comply with recommendations. The WHA's two most prominent recommendations are the International Code of Marketing of Breast-Milk Substitutes (1981) and the Global Code of Practice on the International Recruitment of Health Personnel (2010).

Apart from these notable exceptions, the Assembly rarely explicitly invokes Article 23. In practice, however, failing to invoke Article 23 appears inconsequential. States are not obliged to comply with recommendations. Moreover, WHO has not enforced Article 62 reporting requirements, rendering the difference between constitutional recommendations and other soft norms less significant.

The WHO uses a variety of legal and policy tools to set soft norms, with varying levels of institutional support. First, the WHA can pass a resolution, which expresses the will of member states, representing the highest level of commitment. Second, the Secretariat can set a standard on a grant of authority from the Assembly or Board, but without the governing authority's formal approval. Finally, the Secretariat can convene expert committees and disseminate their findings without formal endorsement.

The more directly the Assembly approves the normative content, the more likely that member states will support and implement the standard. To build political support for the Organization's most important initiatives, the Assembly adopts a 'request-development-endorsement' process. The WHA, for example, charged the Secretariat with developing both the Breast-Milk Substitutes and Health Personnel Recruitment Codes, followed by formal endorsement. Beyond Article 23 recommendations, the Assembly has placed its full weight behind major Global Strategies, such as on 'Diet, Physical Activity and Health' and on 'The Harmful Use of Alcohol.'

Most soft norms are less formal than full-fledged regulatory texts such as codes of practice or even broad policy frameworks such as global strategies. Given the diverse and complex technical fields within WHO's purview, the Organization has developed a variety of mechanisms for gathering and disseminating expert advice. The Secretariat convenes expert advisory panels and committees to provide technical guidance.² The Expert Committee on Drug Dependence, for example, guides the agency in the discharge of functions assigned under the Single Convention on Narcotic Drugs

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