
A CUSTODIAN IN THE TIME OF CORONA

The fight against COVID-19 appears to be taking place mainly at a national level, while the World Health Organization (WHO) has repeatedly been the subject of criticism. However, according to Lauren Tonti and Pedro Villarreal, the role of the WHO is often underestimated. They explain from a legal point of view what action the organization is taking during the pandemic, and where there is a need for reform.

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A global challenge like the COVID-19 pandemic surpasses any single state's capacity to cope with its impact, no matter how powerful that state may be. Due to sovereignty considerations, devising and implementing a global response is a task that can only be undertaken through international cooperation. Since fighting a pandemic is a matter of concern for the international community as a whole, wouldn't it be ideal to have an institution with both technical know-how and the capacity to act beyond a strictly national purview?

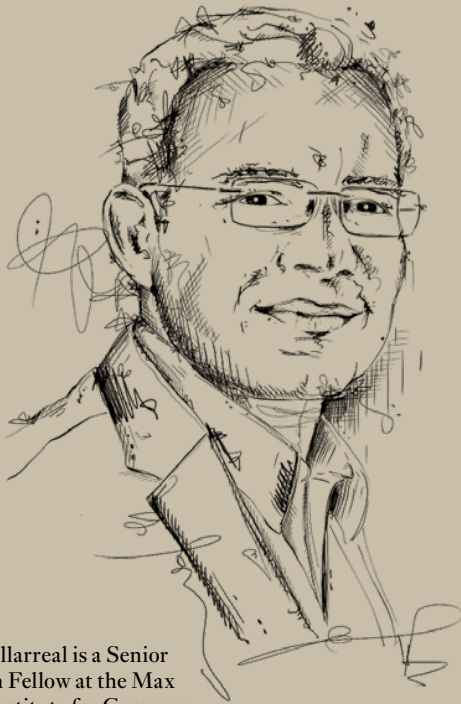
The World Health Organization (WHO) is in a privileged position to act as such an institution. To date, it has played a central role in the COVID-19 pandemic, and has fulfilled a variety of functions stemming from its powers and responsibilities enshrined in a series of international legal instruments. At the same time, the WHO faces criticism of and formal inquiries into its early-stage pandemic management, with questions being asked as to whether something could, and should have been done differently.

Legal research can contribute to addressing a series of questions in this regard. First, the WHO's functions and powers are enshrined in existing instruments of international law. Identifying the core problems deriving

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VIEW POINT

LAUREN TONTI & PEDRO VILLARREAL



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from the legal framework is necessary in order to adjust the international community's expectations as to what the WHO can and should do. After the first step, legal research can also help address several normative questions: What should the organization do differently? Which of these actions requires legal reforms? And more generally, how can the international community better prepare for the next pandemic? With these questions in mind, we can explore the roles that the WHO has played during the COVID-19 pandemic based on its existing capacities. These roles include: architect, sentry, counselor, educator, coordinator, and champion of equity – and are probably more numerous than many people realize.

The WHO has long acted as the architect of preparedness. In 2005, the World Health Assembly, the governing forum of the WHO, approved the International Health Regulations, the main legal instrument to be applied in global health emergencies. These regulations are designed to prevent, contain and respond to the international spread of contagious disease, while at the same time avoiding unnecessary interference with international travel and trade. The main goal is to minimize the global consequences of contagion regarding both the impact on human health and the disruptive nature of containment measures adopted by individual states. To achieve these aims, the International Health Regulations contain commitments for both the WHO and the Member States. In particular, these commitments include states' obligations to notify the WHO of events occurring in their territories that may constitute a public health emergency of international concern. Notification must occur within 24 hours of assessing the events.

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**A WARNING –
AT LEAST FOR
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Furthermore, the World Health Organization assumes the role of a global sentry. The WHO may investigate potential public health emergencies of international concern through the collection of data on communicable disease outbreaks provided either by states or non-official sources. At the beginning of 2020, the WHO worked with China to investigate and assess the danger posed by a novel coronavirus. The WHO is also responsible for sounding the global alarm, based on available epidemiological information relating to a public health event. The WHO initially identified the burgeoning global crisis as a public health emergency of international concern in its declaration of SARS-CoV-19 (the virus that causes COVID-19) on January 30, 2020. The WHO later declared COVID-19 a pandemic on March 11, 2020. These alerts gave countries an initial warning of the looming pandemic, at least to those who paid attention.

The WHO also acts as an adviser and teacher. The WHO's role in pandemic preparedness and response consists of more than just legal obliga-

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tions. Even though it cannot issue orders to its Member States in the same way that national health authorities can issue directives to their own populations, both the Constitution of the WHO and the International Health Regulations direct the WHO to issue guidelines on the best measures for disease control. Through this function, the organization deploys its decades-long expertise as the authority on matters of global health. In this capacity, the WHO counterbalances the rampant “infodemic” that is currently raging. By offering guidance and educational materials to both national authorities and the general public, the WHO can offset the spread of disinformation by sharing the best available, factual information.

In accordance with its mandate, the WHO has issued technical guidance on a wide range of COVID-19-related topics, from clinical care to therapeutics and from diagnostics to travel guidelines. While these are based on non-mandatory recommendations for states, they are nevertheless often referenced in national health authorities’ decisions. As the scientific community learned more about the novel virus, the WHO either updated COVID-19 recommendations accordingly (e.g. regarding face-mask usage) or even superseded them (e.g. by discouraging travel restrictions). Several factors may have induced the mixed reception of the WHO’s guidance, including an initial lack of information on a new pathogen, a lack of scientific community consensus, or perhaps even an inadequate the WHO assessment of the numerous factors involved in healthcare service provision. The accuracy of the WHO’s guidelines may be heavily contested and controversial. It is a testament to the weight of such recommendations, since faulty guidance may have adverse consequences when implemented.

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The WHO also acts as a coordinator. With personal protective equipment and other necessary medical equipment in short supply, the WHO partnered with other agencies to establish and coordinate the COVID-19 Supply Chain System, through which parties can request diagnostic, biomedical and other vital medical supplies for expedited delivery. As a centralized organ of global health governance, the WHO has assumed a coordinating role in both fundraising and COVID research. The WHO established a special fund to raise the sums needed for critical response efforts. The fund has distributed hundreds of millions of dollars for vaccine development and commodity procurement, among other allocations. The WHO also coordinates the acceleration of research. The WHO partnered with other organizations to launch the Access to COVID-19 Tools (ACT) Accelerator, a global collaboration between public and private stakeholders aimed at accelerating development, production and equitable access to COVID-19 tests, treatments, and vaccines.

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Finally, the WHO is committed to equity. Countering states' default tendency to prioritize their own populations, the WHO has championed a more equitable global distribution of multiple COVID-19 medical resources during the pandemic. In the competition for the allocation of such scarce resources, countries with higher financial capacities may stockpile them. By contrast, countries with lower purchasing power are neglected, thus posing the risk of being left last in the supply chain pipeline. In a resolution adopted at the World Health Assembly on May 19, 2020, full immunization against COVID-19 was deemed a "global public good." This framing provides the basis for global programs and strategies aimed at finding the best solutions to the most devastating pandemic in recent history.

One of these programs is COVAX, an ACT Accelerator branch and global initiative aimed at facilitating equitable worldwide access to safe and effective COVID-19 vaccines. While the WHO devised the fair allocation scheme, other bodies (e.g. Gavi, the Vaccines Alliance, a public-private-partnership, as well as UNICEF) will undertake the actual vaccine distribution. Based on the goal of simultaneous distribution for a proportion of countries' populations, the COVAX initiative represents the most equitable mechanism for global allocation of a vaccine against COVID-19 to date. Participating states are divided into two major groups: a self-financed group, whose members pay per dose received; and a funded group, whose members obtain vaccines through developmental aid instruments (i.e. on a concessional basis).

However, COVAX faces two major limitations. First, the initiative requires an active willingness to participate by both states and pharmaceutical companies. When the first vaccine, developed by Pfizer/Biontech, received regulatory approval in several countries, it was not in the COVAX Initiative's portfolio. The company joined the Initiative only after the purchase and distribution of its vaccine in multiple high-income countries was well underway. Second, financed states' vaccine purchases are fully dependent on donations from either international financial institutions or philanthropic non-state actors. It is a reflection of the persistent limits of solidarity when it is most needed.

Just as installing a sprinkler system during a blazing inferno is problematic, so too is implementing preventive measures at the height of a global pandemic. However, the WHO and its Member States can make the best of the momentum triggered by COVID-19 and incorporate the wisdom learned from this experience into reforms for an improved pandemic response.

IN LIGHT OF THE
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First, the Member States should use the roadmap provided in the International Health Regulations. This roadmap is fully dependent on states' adherence to its provisions in order to function properly. When the pandemic first struck, only a small group of Member States was complying with the basic requirements of disease surveillance stipulated in the International Health Regulations. States should work to improve this, while the WHO can design objective evaluation and feedback mechanisms for International Health Regulations metrics.

Second, stakeholders at all levels of governance can place best-available evidence at the core of decision-making. Evidence-based decision-making largely depends on information sharing. Hence, effective and reliable local, national, and inter-state surveillance and information sharing systems can prove decisive in battles against future outbreaks.

Third, states can demonstrate their commitment by dedicating financial resources to public health emergency preparedness.

Fourth, in the face of criticism of its decision-making, the WHO should work to increase public transparency and cooperation with bodies working on global health security. Both the WHO and the Member States can optimize communication with one another. The WHO should find clearer ways to convey to the world the severity of a health threat, so that states may take necessary precautions. The sometimes inconsistent use of technical terms by the WHO's officials is not constructive in such an endeavor. For instance, the unclear definition of a 'pandemic' led to mixed messaging from the WHO Director-General regarding the exact nature of COVID-19's spread in early 2020.

Fifth, the WHO can bolster the International Health Regulations by harmonizing them with other global health security instruments. The WHO, in conjunction with the Member States voting in the World Health Assembly, can also embrace necessary reforms to make it a dynamic governance structure in tune with contemporary challenges. In so doing, the WHO can increase confidence in the overall framework. Finally, the WHO and the Member States can strive for consensus regarding the support and mechanisms needed by institutions in order to protect global public health.

Both the WHO and its Member States can learn from COVID-19's challenges to protect populations from subsequent pandemics. These bodies and their leaders should treat pandemics as seriously as other security threats, and mobilize global governance infrastructure in order to prevent and prepare for public health emergencies.

