Does the World Health Organization have the Powers it Needs to Fulfil its Objective (as Set Out in Article 1 of its Constitution) – 'the Attainment by All Peoples of the Highest Possible Level of Health'? If not, What Additional Powers does it Need, and How Might it Gain Them?

Ke Li

University of Melbourne, Parkville VIC 3010, Australia

keli5@student.unimelb.edu.au

Abstract. Since its creation, WHO once overcame geopolitical distractions and made prominent achievements in global public health, such as the SARS epidemic and the eradication of smallpox, and has played a leading role in global health governance. However, during COVID-19, WHO exposed its lack of power. While Article 2 grants the WHO normative and advisory powers, its authority remains constrained by state sovereignty, voluntary compliance, and funding dependencies. The organization lacks binding enforcement mechanisms to ensure member states adhere to health regulations. It does not have the power to achieve its goal, which is 'the attainment by all peoples of the highest possible level of health' in Article 1 of the Constitution of the World Health Organization. If it is to fulfill its objective, it needs to acquire more powers in many aspects, such as enforcement powers, punishment, oversight, and so on. Considering that the WHO, as an international organization, needs to develop new international treaties or amend existing health regulations through consultation and compromise between states, this is the most straightforward way.

Keywords: World Health Organization, Global Health Governance, International Health Regulations, COVID-19.

1 Introduction

The World Health Organization ('WHO') was born after the Second World War, and as a specialized agency of the United Nations, it is committed to responding to health emergencies, along with long-term measures and plans for health, such as prevention and control of AIDS, malaria, tuberculosis and psychiatric problems and so on. However, even with the its amazing achievements, it has failed to live up to the expectations of the post-war health as well as human rights movements, in particular during this COVID-19, which has received a lot of criticism. The U. S. government has accused

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the WHO of incompetence and slowness, trying to shift the blame for the spread of the global epidemic onto the WHO. It is seen as failing to fulfil its *Constitution of the World Health Organization*'s objective of "the attainment by all peoples of the highest possible level of health". However, this essay argues that this is because it does not have enough power to achieve its objective. It needs more powers, however, since WHO is an international institution, it needs to develop new international treaties or amend existing health regulations through consultation and compromise among countries, which is the most direct way to increase its power.

2 WHO's Objective and Core Functions

The *Constitution of the World Health Organization*('Constitution') is the constitutional document of WHO. It sets out the WHO's purpose, functions, organizational structure as well as the rights and obligations of member states. Article 1 of the Constitution stipulates the organization was created with the objective of, "the attainment by all peoples of the highest possible level of health". And defines in the preamble what is health. It refers to "a state of complete physical, mental and social well-being. And it also includes health within the scope of human rights, noting that it is an issue of concern to the international community.[1] The ambitious goals and ideas of WHO can be seen here, which go beyond simple medical treatment or disease management to emphasize the universal importance of health and the shared responsibility of the international community to improve health. It is not only to tackle disease and health, but also to advance global health equity and ensure that everyone has access to enjoy a high level of health.

Article 2 of the Constitution confers on WHO a series of powers. The WHO has normative power and directing power. The first power is the power of the World Health Assembly ('WHA') to formulate binding rules or regulations under international law. This is a hard law authority of WHO. The second power s mainly manifested in the power of WHO to formulate international health policies and standards on international health affairs and provide policy guidance to members, such as issuing temporary recommendations. These are not binding but flexible. These are an expression of WHO's international health lawmaking powers. In addition, it has the power to monitor and assess health trends, which is set out in Article 2 of the Constitution and Articles 5 and 6 of the IHR. The IHR empowers the WHO Secretariat to build a global surveillance, alert, and response system. Through a global surveillance system, the WHO can assess global health in responding to disease outbreaks and public health emergencies. The DG is also empowered to declare a PHEIC and to publish temporary recommendations.

WHO also has the authority to cooperate and coordinate with other UN international agencies. As mandated by Articles 2 and 69 of the Constitution, WHO is a specialized agency of the United Nations system and should establish and maintain an effective relationship with the UN, the specialized agencies and others in order to achieve its objective and works. From all this, it is clear that WHO has been entrusted with the desire to be the institution and the leading agency at the center of world health governance, and empowered by law to guide, regulate and coordinate.

3 The Failure of the WHO and the Reasons

But are these powers sufficient to enable WHO to achieve the objective pursued in Article 1? The reality shows that the WHO has achieved great results in practice, objectively its capacity to perform its duties has not met the expectations of the international community and the requirements of realizing its mission and objective. This is not its fault. It is true that WHO, while doing everything within the scope of the powers conferred on it by law. This is because it does not fully possess the power to fulfil its objectives.

While countries accuse the WHO of doing too little and slowly, they ignore that the WHO itself is an institution that operates on consensus and compromise. As an intergovernmental organization, it is destined to be difficult to escape the influence of great power games, geopolitics, economic interests, and competition.[2] Based on the level of domestic political and economic development, when WHO's priorities or recommendations may conflict with their national interests, governments will abandon compliance with its recommendations or oppose its decisions, giving priority to the protection of national interests. The North-South difference determines the priorities of developed and developing countries in addressing health issues. There is mutual mistrust among countries, and distrust between states and international organizations. These factors make international coordination difficult and cooperation difficult to achieve. On the contrary, WHO is unable to deal with such difficulties. This would require it to have more powers to deal with them.

However, the most important is the inherent limitation of state sovereignty on the mandate of international organizations, which is a key factor in the ineffective implementation of many WHO decisions and its "failure".[3] As a subsidiary organ and specialized agency of the United Nations system, WHO seeks to prioritize health goals over power politics. At this point, it assumes an optimistic premise that improving global health is a common goal for all countries, that all countries are committed to the prevention and control of disease, and that governments are willing to cede sovereignty for sake of global health issues, so that WHO can take actions based on expert scientific instructions directly, without approval.[4] The reality is that it is almost impossible for member states to cede their sovereignty for the sake of global health, so the WHO's optimistic assumptions do not hold. Instead, they place sovereignty above all else, and do not allow anything that might undermine state sovereignty.

4 What Additional Powers does it Require and how to require?

In line with the goals in the preamble, in an ideal world, WHO would be adequately funded to respond to health emergencies and long-term health development goals, and be able to lead research efforts, and guidance and recommendations to member states would be effectively implemented and truly fed back to improve the global health and disease.[5]

4.1 Enforcement Powers

While WHO has a leadership role in global health governance and enjoys broad international health legislative authority, it has not been matched with commensurate enforcement and supervisory powers. This structural flaw has led to the unilateral role of WHO as the publisher of scientific information and a recommender.

WHO lacks the implementation mechanisms, and the power to implement recommendations. Under the IHR, following the announcement of PHEIC by WHO, WHO can issue travel and trade recommendations. While the temporary recommendation can trigger their attention to infectious diseases, the implementation depends on the voluntariness of members. States, however, tend to adopt additional restrictive measures on international tourism and trade based on their own national interests, in repeated violation of the WHO recommendations. And countries imposing restrictive measures also do not always report them and reasons for them to WHO, as required by Article 43, thus hampering WHO's efforts to understand the health situation in members and support proportionate risk assessments.[6]

In addition, the WHO lacks the powers to monitor the application of regulations in member states.[7] The IHR introduces national core public health capacities to strengthen nations' capacity in preventing, protecting, controlling and responding promptly to potential health emergencies. However, the oversight of health capacity-building efforts in member states relies solely on the member states themselves, who complete self-assessments and submit self-reports to WHO. It is inevitable that States will conceal. In terms of sanctions, WHO does not have the authority to impose any penalties or sanctions on members that violate the IHR or its recommendations. And the only power it has is to make them "reconsider the application of such measures" when they fulfill their obligation to report on them.

Considered that an international organization constitution is derived from the authorization of sovereign states, therefore it requires consultation and consensus among states. The World Health Assembly is the highest decision-making organ of WHO. At the WHA, member states participate in the decision-making process. Through the World Health Assembly, member states reach consensus and commitment to revise existing IHR or create new international legal treaties or frameworks. This is the most straightforward and unambiguous way to give WHO these additional powers. Meanwhile, given that this way is difficult, WHO could also flexibly use its powers conferred on it by the Constitution to strengthen coordination and cooperation with other international organizations to ensure that its scientific advice receives support and resources.

4.2 Increase Financing Powers and Financial Autonomy

The resources available to WHO are not commensurate with the scope and scale of the world's health needs. Because of budget constraints, WHO is forced to make trade-offs among health priorities. The funding structure of WHO comes from two main sources, the first being "assessed contributions", the cost of which is apportioned among member states according to the wealth and population of each country. But these amounts

are less than 20% of WHO's total budget. And if member states do not pay their contributions, WHO seems helpless. The second category is "voluntary contributions", which comes from voluntary contributions from member states and private funders, which is an important source of WHO's financial income. It is true that voluntary contributions have largely alleviated WHO's underfunding in dealing with health matters. But these donations tend to go to the specific disease, sector, or country for which they are earmarked. The WHO has no control over its use. This limits its ability to distribute voluntarily, especially in the face of global health tensions.

There is, therefore, a need to increase financial autonomy and independence of WHO, and for World Health Assembly to give it more full authority to approve its budget. It could draw on the model of UNITAID for funding from other sources, such as taxation of global resources and global activities. Meanwhile, it is also possible to increase countries' assessed contributions to supplement WHO core budgets, thereby reducing the control and constraints of voluntary contributions. Although this may make donors move to other organizations. But it is important to understand that financial autonomy is crucial for WHO to set the global health agenda. WHO must therefore be given this part of the power to increase its core budget. For example, WHO could draw on the methodology used by the International Monetary Fund to measure the "relative position in the world economy" of member countries in determining the allocation of its quota.

4.3 The Power to Access, Share and Validate Information Independently

WHO is authorized to obtain the disease information from unofficial sources. However, as the IHR does not give WHO the power to independently investigate incidents, after receiving information, WHO needs to consult and verify reports and information received from non-state sources with the related countries. This severely affects WHO's freedom to obtain independent information from outside national governments, cutting off another source of access to necessary information for WHO.[8] Even if information is obtained through unofficial means, it is still subject to verification and consultation with the State party. Most importantly, WHO has an obligation to disclose independent source of information to the state parties, which means that WHO has no power to protect whistleblowers unless WHO can demonstrate justification, especially when whistleblowers are from the source country. This might have a chilling effect, further eroding WHO's independent access and freedom to information and making it more dependent on government data.

In addition, WHO can only share information obtained with other countries after the states parties has rejected the recommendation for cooperation, and if "it is duly justified". This means that it does not have the power to share the information it obtains, which in turn undermines WHO's ability to provide information to facilitate coordination. This leads to a vicious circle. Therefore, it needs to be empowered to obtain and verify information on health independently of member governments, reduce dependence on a single country and potential information withholding, and be able to share it with all countries to facilitate WHO's coordination and collaboration capacity.

5 Conclusion

This essay holds that WHO does not fully possess the powers necessary to achieve its objective of "the attainment by all peoples of the highest possible level of health". Although WHO has a range of powers conferred on it by the Constitution and the IHR, this still falls short of the goal, especially in the case of this COVID-19 epidemic. This is because WHO does not have the powers required to achieve its objectives. It can only exercise its powers within the limits of its national mandate and is heavily influenced by a variety of factors such as national interests and geopolitics. According to its objective, it needs additional enforcement powers, powers to monitor states parties' compliance with their obligations, and the power to impose sanctions for non-compliance with recommendations. It also needs to increase its fundraising powers and financial autonomy to reduce its reliance on voluntary contributions. It also needs the power to independently access and share sources of information to respond to health emergencies. The most direct and fundamental way for WHO to gain these powers is for states parties to consult, vote and ballot in the WHA to increase WHO's powers by creating new international health treaties or amending existing ones. In cases where it is not currently possible to amend treaties to increase its powers, WHO can achieve its mission through a number of political measures or by strengthening its cooperation with other international bodies.

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