2020

Using COVID-19 to Strengthen the WHO: Promoting Health and Science Above Politics

Lawrence O. Gostin

Georgetown University - Law Center - O'Neill Institute for National and Global Health Law,
gostin@law.georgetown.edu

Sarah A. Wetter

Georgetown University - Law Center - O'Neill Institute for National and Global Health Law,
sarah.wetter@asu.edu

This paper can be downloaded free of charge from:
<https://scholarship.law.georgetown.edu/facpub/2284>
<https://ssrn.com/abstract=3627672>

Milbank Quarterly Opinion, May 6, 2020, published online: <https://doi.org/10.1599/mqop.2020.0506>

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: <https://scholarship.law.georgetown.edu/facpub>

Part of the [Health Law and Policy Commons](#), and the [International Humanitarian Law Commons](#)

Using COVID-19 to Strengthen the WHO: Promoting Health and Science Above Politics

Lawrence O. Gostin & Sarah Wetter

On April 14, 2020, President Trump announced the suspension of funding for the World Health Organization (WHO) for 60 to 90 days to investigate WHO's handling of the COVID-19 pandemic—citing WHO's "disastrous decision" to oppose a travel ban on China, and for being slow and "China-centric."¹ The Trump administration has also directed agencies to remove WHO references from COVID-19 fact sheets, and delayed a resolution at the United Nations Security Council calling for WHO support.² Republican lawmakers backed President Trump, even calling for WHO Director-General Tedros Adhanom Ghebreyesus to resign.

The President's criticisms shift blame away from the administration's own response to COVID-19. Certainly, China failed in its international duty to respond rapidly and transparently to the novel coronavirus, and it suppressed truthful information provided by independent scientists and whistleblowers, which propelled a localized outbreak into a pandemic now in over 210 countries.

WHO's ability to police state conformance with international health obligations is limited, at best. The Organization relies on countries to report outbreaks, provide essential data, share virus samples, and invite WHO into their sovereign territories. When WHO declares a public health emergency of international concern (PHEIC) under the International Health Regulations (IHR), governments push back, fearing major disruptions to their economies. WHO is also vulnerable to country largess in securing its funding. WHO is often placed in an impossible position: if it acts too harshly against member states, countries may refuse to cooperate, and pull their funding, ultimately putting global health at greater risk.

We are facing a once-in-a-century health emergency, with WHO under attack as never before. But out of a crisis can come an historic opportunity to strengthen WHO to become the health agency the world desperately needs. What might WHO reform look like if we truly want to empower the Organization, as we should? That reform should address the structural problems that put WHO in the crossfires of geopolitical disputes and force it to appeal to countries' political interests instead of the best scientific evidence. First, it is important to consider how, and why, COVID-19 has become so politicized and divisive.

WHO's COVID-19 Response in China Highlights Political and Legal Constraints

On January 5, 2020, five days after China reported pneumonia-like cases of unknown cause, WHO alerted the world of the threat emanating from Wuhan's Huanan Seafood Market, but advised countries not to impose travel or trade restrictions.³ This recommendation was consistent with long-term WHO practice, guided by the IHR. By January 12th, China reported that the outbreak had been caused by a novel coronavirus and shared the virus's genome sequence worldwide. Yet China suppressed other vital information, with cases going

unreported by the Chinese Centers for Disease Control, and the government punishing doctors for spreading “rumors” about the magnitude of the threat. On January 14th, WHO disseminated China’s report that there was no evidence of SARS-Cov-2 transmission between humans, despite growing evidence to the contrary.⁴

China is a highly centralized nation, with Beijing controlling local government decision-making and a history of curbing journalistic freedoms. In 2003, China had delayed and underreported cases of another novel coronavirus (SARS). As early as December 2019, Taiwanese health authorities warned WHO of the emerging threat, including human-to-human transmission, but WHO did not act on these warnings. Meanwhile, China has actively blocked Taiwan from becoming a WHO member state.

WHO confirmed human-to-human transmission on January 22th after SARS-CoV-2 spread to Thailand, South Korea, and Japan by travelers who had not visited Wuhan’s seafood market. Despite international spread, the IHR emergency committee recommended against declaring a PHEIC on January 23rd. Just one day earlier, China locked down Wuhan city’s 11 million residents under a *cordon sanitaire*. On January 30th, after travelling to China and praising China’s outbreak response, Director-General Tedros declared COVID-19 a PHEIC.⁵

Knowing Dr. Tedros as well as I (LG) do, I believe he was using diplomacy to coax China into deeper international cooperation. Any Director-General must balance science against politics. In 2014, Margaret Chan was criticized after delaying a declaration of PHEIC for the West African Ebola outbreak, seeking to avoid damaging countries’ fragile economies. On January 30th, Dr. Tedros declared COVID-19 a PHEIC, recommending strict control measures. This gave the world ample notice to prepare and respond to a dangerous novel virus. The Organization has been proactive and transparent issuing global briefings virtually daily.

Since January 30th, COVID-19 has circumnavigated the globe. Thus far, the pandemic has impacted mostly high-income countries in east Asia, Europe, and North America. Powerful countries have largely steered the response themselves, with minimal contributions from WHO. But now the pandemic is marching into lower-income regions, especially sub-Saharan Africa, where WHO’s resources and technical expertise will prove critical. With its already paltry funding and political support at a low ebb, WHO must still rise to the challenge of partnering with lower-income countries, focusing on both health and equity. In this once-in-a-century health crisis, we have the opportunity to empower WHO to protect the world—following no political agenda, while advocating for science and equity.

Give WHO the Power and Freedom to Act for Global Health and Science

As long as WHO so heavily depends on cooperation and support from member states, the leadership will be constrained in its ability to work with the singular aim of doing what is necessary to advance global health and WHO’s constitutional principle of the right to health. WHO should have members’ funding and the political backing that it urgently needs to lead a

global pandemic response. Several key structural reforms could empower WHO, limiting adverse political influence.

An Emboldened Director-General. Even without structural reform, the Director-General should act boldly. The Director-General should always speak truth to power, standing up to even the most powerful member states. WHO would actually enhance its reputation as the global health leader by acting transparently according to the highest scientific standards.

Provide Ample Funding Within WHO's Control. The international community must fund WHO on a scale commensurate with its global mandate, enabling WHO to set norms, publish guidance, and offer technical assistance on a wide array of health issues. Sustainable funding would also help insulate WHO from member state interference. A sizable portion of WHO funding should come from mandatory assessments rather than voluntary (earmarked) contributions. Presently, not even one-quarter of WHO's budget is from mandatory assessments. States should raise this level to at least 50%, while at least doubling WHO's overall budget, which would still leave WHO at funding levels below the US Centers for Disease Control and Prevention.⁶

Empower WHO to Use Unofficial Data Sources. Following China's lack of transparency during SARS, WHO fundamentally revised the IHR (articles 9-11), giving the Director-General power to consider "unofficial" information sources, for example, by journalists, civil society, or health professionals. Yet, delays in sharing key data during COVID-19 highlight the need for further IHR reforms. Presently, WHO must collaborate with the member state, seeking to verify reported information before taking action. Only if the government refuses collaboration may WHO share unofficial data with other states. The Director-General should assemble an on-call independent expert group, like the IHR roster of experts, to independently assess official and unofficial data. If the expert consensus supports the reliability of unofficial data sources, it should have the power to recommend sharing those data with other states and the public.

Further, sources that provide unofficial data need to be protected. Presently, the source's confidentiality is protected only if WHO deems protection "duly justified." Failure to safeguard privacy could chill whistle blowers, fearful of being sanctioned by government. That is exactly what happened to Li Wenliang, the Chinese physician who tried to alert the world to COVID-19.

Compliance-Enhancing Incentives for Member States. There is a long history of member states failing to comply with IHR norms and WHO recommendations on travel, trade, and quarantine. Most states have not built core health system capacities as required by the IHR. The Director-General could publicly "call out" offending member states. To ensure transparency, civil society could provide "shadow reports" on state adherence to their obligations. Ultimately, WHO could withdraw voting rights for members who chronically flout legal norms.

Putting the World's Health First

The political realities that the Director-General faces create a tension between the world's health and what WHO's leadership is empowered to do. Reducing this tension can only benefit global health and advance WHO's mission. It will not be easy, but as the world will surely look to alter the global health architecture after COVID-19, strengthening WHO will become essential. The Organization richly deserves, and has earned, robust funding and unwavering political support. The next time WHO is caught in the middle of a geopolitical struggle, world leaders must put health and science first, backing the Director-General to lead the global response.

Lawrence O. Gostin is Founding O'Neill Chair of Global Health Law at Georgetown University and Director of the World Health Organization Collaborating Center on National and Global Health Law.

Sarah Wetter is Fellow at the O'Neill Institute for National and Global Health Law, Georgetown University Law Center

The authors acknowledge the support of Eric A. Friedman, Global Health Justice Scholar at the O'Neill Institute for National and Global Health Law

REFERENCES:

¹ The White House. President Donald J. Trump is demanding accountability from the World Health Organization. April 8, 2020. <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-demanding-accountability-world-health-organization/>. Accessed April 25, 2020.

² Hudson J, Dawsey J, Mekhennet S. Trump expands battle with World Health Organization far beyond aid suspension. *Washington Post*. April 25, 2020.

³ World Health Organization. Pneumonia of unknown cause – China. January 5, 2020. <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unknown-cause-china/en/>. Accessed April 25, 2020.

⁴ World Health Organization. Novel Coronavirus – Thailand (ex-China). January 14, 2020. <https://www.who.int/csr/don/14-january-2020-novel-coronavirus-thailand/en/>. Accessed April 25, 2020.

⁵ World Health Organization. WHO Director-General's statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV). January 30, 2020.

⁶ Centers for Disease Control and Prevention. CDC – Budget Request Overview. 2020. <https://www.cdc.gov/budget/documents/fy2020/cdc-overview-factsheet.pdf>. Accessed April 25, 2020.