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7. Conclusion

For all of the reasons discussed above, and most importantly because UNESCO has successfully addressed the problems that led the United States to withdraw, the United States should delay no longer in deciding to rejoin UNESCO.

Respectfully submitted,
Jay M. Vogelson
Chair

August 1995

III. World Health Organization*

RECOMMENDATION

RESOLVED, That the American Bar Association recommends that the Government of the United States continue to give its strong support to the World Health Organization (WHO); and

FURTHER RESOLVED, That the American Bar Association recommends that the Government of the United States support more effective implementation of public health improvements through increased WHO standard setting and development of elements of model legislation, regulations and enforcement measures, adaptable to countries' individual needs.

REPORT

I. Introduction and Background

This report and recommendation is one of several relating to selected specialized agencies of the United Nations ("U.N.") and the International Energy Agency ("IAEA"). They have been developed by the Section of International Law and Practice, International Institutions Committee, through its Working Group on United Nations Specialized Agencies and the IAEA, as a contribution of the American Bar Association to the 50th Anniversary of the United Nations, in fulfillment of the American Bar Associations's Goal 8—to advance the rule of law in the world.

This report and recommendation address the work of the World Health Organization ("WHO", or "Organization") a specialized agency of the United Na-

*H. Francis Shattuck, Jr., Chair, Lane Porter, Rapporteur, Ruth Roemer, Susan Connor, and William J. Curran were principally responsible for this report.

tions,[1] established by a treaty separate from the United Nations Charter. WHO is organized in Regional and Country offices; its budget, structure and policy are governed by the World Health Assembly ("Health Assembly") of representatives from each Member State, which meets once a year. The United States' delegation includes representatives of both the United States State Department and the Department of Health and Human Services. The Executive Board ("Board") is composed of thirty-two technically qualified persons, designated by Member States, who are named by the Health Assembly. A Director General is appointed by the Health Assembly on the nomination of the Board and is the chief technical and administrative officer. Its budget in draft is sent to the Administrative Coordination Committee of the U.N. but no recommendations are received from the General Assembly or its designee as contemplated in the relationship agreement between WHO and the United Nations.

A. WHO Objective and Functions

The WHO Constitution came into force in 1948.[2] The parties to the WHO Constitution declared several principles as "basic to the happiness, harmonious relations and security of all peoples," including that health is "a state of complete physical, mental and social well being and not merely the absence of disease or infirmity."

The stated objective of the Organization[3] is the attainment by all people of the highest possible level of health. Its functions[4] of particular relevance[5] are:

(a) to act as the directing and co-ordinating authority on international health work; . . .
(b) to furnish appropriate technical assistance . . . . upon request or acceptance of Governments;
(c) to stimulate and advance work to eradicate epidemic, endemic and other diseases;

1. Agreement Between the United Nations and the World Health Organization, Adopted by the First World Health Assembly on 10 July 1948 (Off. Rec. Wld. Hlth. Org. 13, 81, 321). The UN-WHO agreement recognizes WHO as the specialized agency responsible for taking such action as may be appropriate under its Constitution for the accomplishment of the objective set forth in the WHO Constitution.

2. Constitution of the World Health Organization, opened for signature 22 July 1946, entered into force April 7, 1947, 62 Stat. 2679, T.I.A.S. 1808, 14 U.N.T.S. 185, arts. 80 & 82 [hereinafter WHO Constitution].

3. WHO Constitution, art. 1.

4. WHO Constitution, art. 2.

5. For a discussion of WHO, its structure, functions and actions, concerning particularly the AIDS epidemic, see Connor, *AIDS and International Ethical and Legal Standards: Role of the World Health Organization in* International Law & AIDS, International Response, Current Issues, and Future Directions, American Bar Association, 1992.

(d) to propose conventions, agreements and regulations, and make recommendations with respect to international health matters;
(e) to provide information, counsel and assistance in the field of health; and
(f) to develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products.[6]

A significant power of the Health Assembly is its ability to adopt binding regulations in a circumscribed area: on sanitary requirements and other procedures designed to prevent the international spread of disease; nomenclatures; standards with respect to the safety, purity and potency and advertising of biological, pharmaceutical and similar products moving in international commerce.[7,8]

The Health Assembly also has authority to adopt conventions or agreements which become binding upon ratification.[9]

B. ACHIEVEMENTS

The First Five Decades

WHO's accomplishments since its origin in 1948 have been impressive. In the first decade, WHO focused on control of specific infectious diseases, i.e., malaria, yaws, tuberculosis, and venereal infections. In the second decade, WHO concentrated on worldwide training of new, effective medical assistants. In the third decade, WHO succeeded in four specific areas, i.e.: (1) smallpox eradication from the earth; (2) an expanded program of immunization against six diseases (diphtheria, tetanus, whooping cough, measles, poliomyelitis, and tuberculosis); (3) implementation of an "essential drugs" policy; and (4) the control of infant diarrhea through oral rehydration therapy. In the fourth decade WHO initiated primary health care (including public sanitation

6. WHO CONSTITUTION, art. 2.

7. WHO CONSTITUTION, art. 21. The Health Assembly has authority to adopt regulations concerning:
(a) sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease;
(b) nomenclatures with respect to diseases, cause of death and public health practices;
(c) standards with respect to diagnostic procedures for international use;
(d) standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce;
(e) advertising and labeling of biological, pharmaceutical and similar products moving in international commerce.

8. WHO CONSTITUTION, art. 22. Regulations adopted pursuant to article 21 are to come into force for all Members after due notice has been given of their adoption by the Health Assembly except for such Members as may notify the Director General of rejection or reservation within the period stated in the notice.

9. Under Article 19, a two-thirds vote of the Health Assembly is required for the adoption of such conventions or agreements, which are to come into force for each Member when accepted by it in accordance with its constitutional processes.

measures) as the path to a goal of universal health, as provided in its Constitution. In the fifth decade WHO leads in coordinating control and treatment of the HIV/AIDS pandemic through the Global Programme on AIDS. (Some of these efforts by necessity have been funded by voluntary "extrabudgetary" contributions from WHO Member States. International Health Regulations[10] have been adopted by the Health Assembly, requiring, in part, official notification of diseases (plague, cholera, and yellow fever).[11] No other regulations have yet been adopted.[12]

Technical Standards

Over the past forty-seven years, WHO has earned a reputation for scientific excellence, by setting authoritative technical standards and guidelines and providing technical advice and assistance to governments on a wide range of medical and public health matters.[13] These are based on the work of WHO expert committees[14] and WHO study[15] groups whose reports are submitted to the Board and published in a technical series. More than 800 reports have been published[16] and reflect the consensus reached by groups of experts. These reports are given great weight by health and science professionals worldwide as invaluable advisory references. Specific subjects include:[17] drug dependence; aging and working capacity; new areas for research concerning cardiovascular disease risk factors; prevention of diabetes mellitus; and schistosomiasis control; evaluation of certain food additives and contaminants; implementation of the global malaria control strategy; biological standardization; and nursing

10. World Health Organization, International Health Regulations (1969) (3rd anno. ed), Geneva, 1983.

11. The regulations are intended to strengthen the use of epidemiological principles as applied internationally, to detect, reduce or eliminate the sources from which infection spreads, to improve sanitation in and around ports and airports, to prevent the dissemination of vectors and, in general, to encourage epidemiological activities on the national level so that there is little risk of outside infection establishing itself.

12. Regulations concerning internal operations of the Organization, the Executive Board, World Health Assembly are in force.

13. BRITISH MED. J., Volume 309, 26 November 1994, at 1491.

14. *See* Regulations for Expert Advisory Panels and Committees: Basic Documents, World Health Organization (fortieth ed., Geneva, 1994). The WHO Director General selects members of WHO expert committees, taking into consideration the need for adequate representation of different trends of thought, as well as for an appropriate interdisciplinary balance. *Id.*, para. 4.2.

15. *See* Regulations for Study and Scientific Groups, Collaborating Institutions and Other Mechanisms of Collaboration. Basic Documents, World Health Organization (fortieth ed., Geneva, 1994). Study groups may be convened instead of expert committees when one or more of five conditions are met, including that the knowledge on the subject to be studied is still too uncertain and the opinions of competent specialists are too diverse for there to be a reasonable expectation of authoritative conclusions which can be immediately utilized by the Organization. *Id.* at para. 1.1.

16. World Health Organization, Books and Periodicals, Subscriptions, 1994, at 9.

17. World Health Organization, Books and Periodicals Subscriptions, Geneva, 1994.

training and practice. The results of WHO scientific groups[18] are also published.

International Health Regulations

WHO has chosen to exercise sparingly its powers of adopting binding regulations or standards. The International Health Regulations, historically of great importance for quarantines and navigational hygiene, are now of less importance in modern day travel, but are nonetheless kept current.

International Classification of Diseases

A much heralded accomplishment has been the adoption of the International Classification of Diseases (now in its 10th version) used universally as the common language for disease-diagnosis, as well as definitions related to the collection of morbidity and mortality statistics, which are the building blocks of public health.

WHO's forays into marketing standards have been limited and, to some extent, controversial, as they have involved areas of extensive commercial wealth: examples are the International Code of Marketing of Breast-milk Substitutes; the Tobacco or Health Programme; and the Action Programme on Essential Drugs. Those topics were selected because of the very high perceived impact on public health in the less developed world. WHO has remained generally shy of venturing into more politically charged topics such as reproductive issues, and, although standards have been adopted as guidelines for pharmaceutical manufacturing, purity, labeling, etc., no effort has been made to raise such standards to the level of international controls. The long term trend has been away from specific problems to development and strengthening of national health systems.

Coordination Efforts

Coordination with other specialized agencies has been formally instituted by WHO in virtually every field, with varying results. WHO collaborates closely with FAO, for instance, in the establishment of the Codex Alimentarius, a food purity code used as a standard in many less developed countries, as well as with the International Labour Organization in setting occupational health and safety standards. Coordination has also been strong, for instance, in the successful efforts to eradicate polio, smallpox, and increase immunizations.

18. *See* Regulations for Study and Scientific Groups, Collaborating Institutions and Other Mechanisms of Collaboration. Basic Documents, World Health Organization (fortieth ed., Geneva, 1994). The functions of scientific groups are to review given fields of medical, health and health systems research, to assess the current state of knowledge in those fields, and to determine how that knowledge may best be extended. Scientific groups play for research a role comparable to that of expert committees and study groups for the Organization's program in general.

WHO has led in the establishment and effective coordination within the United Nations system of a joint and cosponsored United Nations Program on HIV/AIDS ("UN AIDS Program"). It is a major current development designed to deal more effectively with the economic, social, cultural and medical aspects and its impact on persons living with AIDS. The six participating organizations of the UN AIDS Program are UNDP, UNESCO, UNFPA, UNICEF, WHO and the World Bank.[19] The UN AIDS Program represents an internationally coordinated response. Its objectives[20] are consistent with the ABA resolution on AIDS, adopted in August 1989,[21] calling for effective coordination of international AIDS programs.

Emergency and Humanitarian Relief

WHO has been active in providing emergency and humanitarian relief actions (e.g., Somalia, former Yugoslavia) in cooperation with other bodies in the United Nations' system, pursuant to General Assembly resolution 46/182 on strengthening the coordination of humanitarian emergency assistance of the United Nations. In former Yugoslavia, WHO: (a) assessed health needs and advised health authorities and other U.N. organizations and non-governmental organizations on the nutritional content of food supplies; (b) supported health care institutions with medical and other supplies; and (c) assisted in the physical and psychological rehabilitation of war victims. In Somalia, the spread of cholera was controlled in 1994 with the assistance of a team of WHO staff.

WHO, through its Regional and Country offices, has established a communications network, in conjunction with UNDRO, the UN's specialized organization for disaster relief, and has worked effectively, particularly at the Regional and subregional levels, to coordinate the generous donations from multiple sources in earthquakes in Latin America.

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19. In July 1994, the Economic and Social Council adopted resolution 1994/24 endorsing the establishment of the joint and cosponsored program and calling on the six organizations to work together to develop detailed proposals for its implementation.

20. *See* information sheet provided by WHO External Relations Office, Washington, March 1995 (concerning the Joint United Nations Program on AIDS). The UN Program will have the following broad functions: provide policy, strategic, and technical guidance on HIV/AIDS for the UN system; link the efforts of the six cosponsoring UN agencies at country level, to ensure more efficient and cost-effective UN support to National AIDS programs; provide direct support to National AIDS Programs in areas of greatest need, especially in planning and prioritization, program development, and evaluation of National AIDS Programs.

21. *See* ABA Recommendation and Report on AIDS adopted by the ABA House of Delegates in August 1989, prepared by the Committee on International Health Law and proposed by the Section on International Law and Practice. The resolution endorses the global strategy of WHO for the worldwide prevention and control of AIDS. The ABA also urges (a) the Government of the United States to strengthen its support for the WHO Global Program on AIDS (WHO/GPA), including AIDS program activities implemented by the Pan American Health Organization (PAHO) and for bilateral programs of research, prevention and control; and (b) the effective coordination of international AIDS programs conducted by the WHO/GPA, PAHO, and other global, regional, bilateral arrangements, and private voluntary organizations.

Health Assembly resolutions[22] have strengthened emergency and humanitarian relief actions involving the health needs of refugees and other displaced persons. Pursuant to WHA47.29 (12 May 1994) in coordinated relief efforts for Rwandan refugees and internally displaced persons, WHO conducted epidemiological assessments; delivered emergency health supplies; and controlled cholera, dysentery and meningitis. These actions appear consistent with the ABA resolution on refugee health needs, adopted in August 1991.[23]

C. Criticism

Compared to other agencies in the United Nations system, WHO has been subject to little criticism, perhaps because of the essentially apolitical character that it has conscientiously sought to maintain. In recent years the few criticisms by some[24] have been directed to lack of a coherent strategy, which may reflect the dramatically disparate levels of health throughout the world. Some critics assert that WHO does not operate according to its own definition of health but remains dominated by a biomedical physically based concept of health in terms of disease, disability, and premature death, virtually ignoring the mental and social dimensions of health.[25] The emphasis on primary care and increased awareness of poor health as a reflection of poverty throughout the U.N. system would seem to belie this criticism.

WHO, as a specialized agency, established by treaty, operates under its own policies. For example, the financial regulations of WHO provide that external auditors are to be the Auditor General of a Member Government and be appointed, and removed, only by the Health Assembly.[26]

A most disturbing recent criticism would appear to indicate that WHO may have lowered its guard against the "politicization" that has affected some of the less technically-based UN agencies. Commentators have referred also to allegations that WHO funds had been misused, through letting of contracts to Board members prior to the last reelection of the Director General. It is reported

22. *See* World Health Organization, Executive Board, Ninety-fifth Session, Provisional agenda item 12, EB95/23, 14 November 1994, Annex, f.n.1, at 1. "Resolutions WHA46.6 on Emergency and humanitarian relief operations (12 May 1993); WHA46.39 on Health and medical services in times of armed conflict (14 May 1993); WHA47.28 on Collaboration within the United Nations system and with other intergovernmental organizations; health assistance to specific countries (12 May 1994); and WHA47.29 on Rwanda (12 May 1994)."

23. The ABA resolution on refugee health needs states that the American Bar Association urges the United Nations (a) to provide international protection for refugee health needs; (b) to review the adequacy of current international agreements to address the health and related humanitarian needs of refugees and other displaced persons; (c) to strengthen the protection of refugee health under the existing international agreements; and (d) to develop international agreements, or other mechanisms, to protect the health needs of all other displaced persons.

24. *See* LANCET, Editorial, Vol. 345, January 1995.

25. *Id.*, at 203.

26. Financial Regulations of the World Health Organization, in: World Health Organization, Basic Documents, Fortieth Edition, Geneva, 1994.

that an external audit examining these allegations criticized WHO for shortcomings in management, and recommended changes in the regulations governing the letting of contracts to Board members.[27] This, of course, must at a minimum be closely monitored.

D. Internal Changes

The Executive Board has been working to make changes to improve effectiveness at WHO. It established a working group[28] in May 1992 to carry out a general process of reorganization. This group made forty-seven recommendations which were adopted by the Board,[29] of which 18 had reportedly been implemented by January 1995. Board recommendation 31 is to ensure that WHO be active in its response to the U.N. structural and operating reforms supporting interagency coordination in the United Nations' system and health and development programs.[30] Board recommendation 39 is to improve personnel procedures, to ensure that technical competence is the primary basis for the selection and recruitment of long and short term staff.[31] Both Recommendations 31 and 39 remain "under review."[32] We support implementation of these recommendations.

II. The Legislative Role of WHO

A. Need for WHO to Assist Member States to Update and Revise Health Legislation Through On-Site Technical Assistance

Because of the specialized nature of public health law and regulation, grounded in science and limited by resources, WHO has been the primary source of both comparative health legislative information and expert consultants for less developed countries. WHO has long recognized the need for public health laws, and their effective implementation, and makes available texts and summaries of health legislation of the world in its unique *International Digest of Health Legislation*, published quarterly in English and French. Particularly as countries move forward

27. *See* British Med. J., *supra*, note 13, at 1426.

28. The Working Group on the WHO Response to Global Change.

29. *See* World Health Organization Forty-Seventh World Health Assembly, Resolutions and Decisions, Annex 2, Geneva, 2-12 May 1994. WHA47/1994/REC/1.

30. Recommendation 31 states: "Ensure that the Organization be active in its response to the structural and operating reforms taking place in the United Nations and its programmes. WHO should develop concept papers or action papers to facilitate the adoption of procedures, within the United Nations system, which further interagency cooperation and collaboration in the resolution of health and development problems."

31. Recommendation 39 states: "Improve the personnel procedures to ensure: technical competence as the primary basis for the selection and recruitment of long and short term staff; the design and implementation of appropriate career development and continuing education programs; and the development of a staff rotation system between headquarters and regions. The Director-General should assess the impact of the geographic distribution of posts on the quality of staff."

32. *See* WHO response to global change, Progress report by the Director General, Executive Board, Ninety-fifth Session, Provisional agenda item 9.1, EB95/12, 31 October 1994.

in the process of development, the need for more sophisticated regulatory schemes increases.[33,34,35] The overwhelming crowding and urbanization of the globe has also increased the need for effective public health enforcement of sanitary and other health requirements. We support Health Assembly resolution WHA30.44, adopted in 1977, which requests the Director General to strengthen its health legislation program and to assist Member States upon their request to develop appropriate health legislation adapted to their individual needs, and to make technical cooperation in health legislation and its administration more effective, particularly in developing countries.[36,37]

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33. *See* World Bank, Health Sector Policy Paper, Washington, 1980 at 42-43. Other international organizations recognize the need for properly drafted national legislation and regulations. In a 1980 report on the health sector the World Bank emphasized that national legislation and regulations must be consistent with new programs in basic health care in developing countries; citing two examples where inappropriate legislation impeded health programs: (1) training and licensure requirements for health workers prohibiting the use of medical auxiliaries at the village level; and (2) civil service regulations that do not recognize new types of health workers.

34. *See* the World Bank, World Development Report, 1993, Investing in Health, World Development Indicators, Oxford University Press, 1993, at 164. The World Bank considers regulation essential, for example, in formerly socialist countries for development of efficient institutions. Observing signs of poorly conceived regulations already emerging, the World Bank cited "Romania's recent decision to issue lifetime licenses to doctors without establishing strict standards of practice or recertification requirements." Observing that the legal and regulatory environment for private doctors, hospitals, and insurance institutions is often either nonexistent or hostile, the World Bank opined that in the long term better regulation will require both training of government inspectors and other regulatory personnel and development of government institutions such as medical licensing boards and national and local medical ethics committees.

35. *Id.* at 164. "Although private medical practice is now permitted in most of the formerly socialist countries, the legal and regulatory environment for private doctors, hospitals, and insurance institutions is often either nonexistent or hostile. With large numbers of private doctors establishing practices and private hospitals and clinics being created, regulation of providers will be critical for reducing the incidence of medical malpractice and financial fraud. . . . In the long run, better regulation will require both training of government inspectors and other regulatory personnel and development of government institutions such as medical licensing boards and national and local medical ethics committees."

36. WHA. 30.44 requests the WHO Director General:

(1) to strengthen WHO's program in the field of health legislation, with a view to assisting Member States, upon their request, in the development of appropriate health legislation adapted to their needs, and to enhance technical cooperation in health legislation and its administration, particularly in developing countries;
(2) to strengthen collaboration with other specialized agencies concerned in the development of guidelines for health legislation on the various subjects of health policies;
(3) to study and implement the optimum means for dissemination of legislative information in Member countries to serve as guides for the development of new or revised health laws;
(4) to submit a report on development in this sphere to the Health Assembly as soon as possible.

37. See also WHA33.28, adopted by the World Health Assembly in May 1980. Resolution WHA33.28 recognized that appropriate health legislation is an essential component of health care services and environmental health systems for the delivery of both personal and environmental health services; and that obsolete health legislation may constitute an obstacle at the national level to the attainment of health for all persons. WHA33.28 requested the Director General to proceed with the formulation of a detailed programme of technical cooperation and information transfer in health legislation.

There is a current need for WHO action pursuant to resolution WHA30.44 and WHO should ensure its implementation. The United States should support implementation of WHO proposals[38] to provide support to countries in drafting new or revised health legislation; and for cooperation with countries in their efforts to create public awareness of health laws and regulations.

In evaluating the world health situation and its WHO programs in health during the period 1985 to 1990, WHO stated that legislation is one of the key mechanisms for supporting health policies and programs and for regulating health system activities. WHO's program of "health for all" cannot be achieved in the absence of an up-to-date, enlightened, and realistic framework of laws, regulations, and other instruments that establish the responsibilities of government, other national and subnational authorities, members of the health professions and other elements of society concerned with health development.[39]

B. Examine Need for WHO Regulations or Conventions

In addition, consideration should be given by the Government of the United States to recommend development and adoption by the Health Assembly of WHO regulations or conventions where: (a) a major worldwide public health problem exists; (b) there is consensus that regulation is required; (c) there are international consequences across borders; and (d) WHO regulations or conventions will significantly raise the level of international public health. For instance, any WHO regulation or convention on environmental health should be grounded in actions the effect of which is international, that is, consequences adversely affecting health across national boundaries.

III. Conclusion

By following the measures recommended, the Government of the United States should support WHO in exploring means of more effective implementation of public health improvements through increased standard setting and development of elements of model legislation, regulations and enforcement measures.

Respectfully submitted,
Jay M. Vogelson
Chair

August 1995

38. Proposed WHO Programme Budget for Financial Period 1996-1997, World Health Organization (Geneva, 1994), at 35 (discussing health legislation activities for 1996-1997; trends for 1998-2001).

39. World Health Organization, Implementation of the Global Strategy for Health for All by the Year 2000, Second Evaluation, Eighth Report on the World Health Situation, Volume 1, Global Review (Geneva, 1993), at 55.