INSTITUTIONAL ADAPTATION WITHOUT REFORM

WHO AND THE CHALLENGES OF GLOBALIZATION

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One of the most interesting phenomena since the end of the cold war is the degree to which “traditional” international organizations have adapted to deeply changing political and factual circumstances without formally amending their own constitutional structures or functions. They have relied on the general and flexible nature of their constitutive instruments and on political processes to assume roles that could have hardly been foreseeable at the moment of their establishment.

The World Health Organization (WHO) offers a good example of such “adaptation without reform”, having substantially developed its normative, policy-making and operational functions, sometimes on the basis of decisions of its governing bodies and sometimes on the initiative of its Secretariat but without changing its overall legal framework. First of all, what are the reasons that have caused and steered this process of development and adaptation? They are certainly diverse and sometimes antagonistic, but are all facets of the process of globalization in its overall complexity. The following challenges and developments may better illustrate the pressures and increasing competition faced by WHO in its role as the global public health agency:

– The relative decline of governments as the main providers of medical and health care services domestically, and as the only legitimate authorities setting health rules and policies internationally. Market mechanisms and corporate interests have assumed a primary role in defining global health governance;

– The dark side of the pervasiveness of market and corporate values in the public health field is the failure of the market to adequately address the so-called “neglected diseases”, i.e. those disproportionately affecting poor countries and which do not offer prospects of sufficient financial

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returns for pharmaceutical companies. This imbalance is captured in the notion of the “10/90 divide”: only 10 per cent of investments is destined to the research and development of medicines for diseases affecting 90 per cent of humankind;

– The increasing speed and ease in the international movement of goods and persons, together with profound social and economic changes in developing countries, has facilitated the emergence or re-emergence of infectious diseases at an unprecedented pace. The capacity of such diseases to destabilize entire regions or even the whole international community, dramatically confirmed by the SARS outbreak of 2003 and the current fear of a new influenza pandemic, has challenged existing regimes for intergovernmental cooperation and accepted notions of national sovereignty;

– In a globalizing and increasingly interdependent world, health has clearly emerged as a cross-cutting issue, interacting with areas of international relations and law such as trade, intellectual property, environmental protection, human rights, arms control and the fight against international terrorism. WHO has not actively participated to the establishment of the respective legal regimes, and has somehow found itself at the margin of political debates and normative developments;

– Finally, globalization is also reflected in the explosion of information technology and the increasing speed and availability of information. WHO has on occasion relied on the internet not only or so much for information purposes but rather as an important operational tool, using it to provide guidance that could reach directly individuals and other non-state actors besides governments.

Why then, faced with such developments and challenges, has WHO not enacted more formal and substantial institutional changes? The reasons are manifold; first of all, the history of the UN system shows consistently the reluctance of Member States to open constitutions of international organizations to formal amendments except for increasing the membership of executive bodies. More specifically to WHO, there has been a reluctance to codify and regulate activities of the Organization that may impact and affect the international pharmaceutical market and the interests of major corporate actors. Thirdly, the Secretariat of a technical agency such as WHO arguably enjoys more “freedom of manoeuvre” vis-à-vis its governing bodies than, for example, the Secretariat of a political organization such as the UN. This relatively broader authority has allowed the