

Inquiry into the World Health Organization's Covid-19 Response: Potential Legal Mechanisms and Implications

The Covid-19 pandemic has resulted in millions of infections and widespread fatalities, impacted our way of life, and triggered a global economic crisis. This has prompted an inquiry into the World Health Organization's response to the pandemic. Here Lexbridge looks at the mechanisms for this inquiry and implications for international health legal frameworks.

WHO's Regulatory Framework

International health law has gained increasing prominence in 2020 as a result of the Covid-19 pandemic. This field of international law is closely associated with the work of the World Health Organization (WHO) and the treaties it oversees.

The WHO's principal legal framework for pandemic response is the 2005 International Health Regulations – a multilateral treaty with 196 State parties that entered into force in 2007. The Regulations create a series of obligations for State parties – including surveillance (Article 5), notification (Article 6), information-sharing (Article 7), and consultation (Article 8) – with respect to events that take place within their territory that may constitute an international health concern.

In particular, processes exist with respect to any cases of disease that may have a serious health impact, such as cholera, yellow fever, smallpox and SARS (severe acute respiratory syndrome), as well as any disease which is unknown but has been identified as having a serious health impact.

WHO's Response to Covid-19

The WHO issued its first Covid-19 Situation Report on 21 January 2020. In this Report, the WHO outlined the sequence of events that eventually resulted in the first meeting of the WHO Emergency Committee on 22 January. The WHO China Country Office was informed of pneumonia with an unknown cause, detected in Wuhan, China from 31 December 2019 – 3 January 2020. Further cases were reported in Thailand (13 January), Japan (15 January), and the Republic of Korea (20 January).

The Lexbridge logo is centered in a black rectangular box. The background of the top half of the page is a blue bokeh effect of light fibers.

Lexbridge

On 30 January 2020, the WHO Director-General made the assessment under the International Health Regulations that a situation constituted a ‘public health emergency of international concern’ – the characteristics of which include that there is an extraordinary event which:

- (i) constitutes a public health risk to other States through the international spread of disease; and
- (ii) potentially requires a coordinated international response (Article 1).

On 11 March 2020, the WHO declared Covid-19 to be a ‘pandemic’. Since that time, individual States have continued to respond to the pandemic and the WHO has sought to exercise global oversight.

WHO Inquiry Resolution

In April 2020, governments began to call for an inquiry into the origins and global response to Covid-19, and this eventually led to the passing of a resolution at the World Health Assembly meeting on 19 May 2020. The resolution was co-sponsored by more than 130 members and was unanimously adopted. The resolution calls for an “intensification of cooperation and collaboration at all levels to contain, control and mitigate the Covid-19 pandemic” and reaffirms the importance of compliance with the International Health Regulations. Most importantly, the Resolution calls upon the WHO Director-General to:

initiate, at the earliest appropriate moment, and in consultation with Member States, a stepwise process of impartial, independent and comprehensive evaluation, including using existing mechanisms, as appropriate, to review experience gained and lessons learned from the WHO-coordinated international health response to Covid-19...

Particular aspects of this evaluation are to include:

- (i) the effectiveness of the mechanisms at WHO’s disposal;
- (ii) the functioning of the International Health Regulations;
- (iii) the WHO’s contribution to United Nations-wide efforts; and
- (iv) the actions of WHO and their timelines pertaining to the Covid-19 pandemic.

This Resolution is effectively the mandate for how the WHO will conduct a review of its response to the pandemic, and the functioning of the International Health Regulations.

Inquiry Mechanisms and Implications

The WHO Director-General is clearly directed in the Resolution to ensure the evaluation is to be “impartial, independent and comprehensive”. On 9 July 2020, the Director-General announced the initiation of the ‘Independent Panel for Pandemic Preparedness and Response’ to conduct the pandemic inquiry. The Panel will be co-chaired by former Prime Minister of New Zealand Helen Clark and former President of Liberia Ellen Johnson Sirleaf.

The Panel will operate independently, and the co-chairs will choose other Panel members, as well as members of an independent secretariat to provide support. It will present an interim report to World Health Assembly in November 2020, before presenting its substantive report in May 2021.

Cooperation from key WHO member states will be critical to the effectiveness of the inquiry. Notably, China has indicated support for the inquiry after Covid-19 is brought under control.

One consequence of any inquiry could be recommended amendments to the International Health Regulations, especially with respect to the mechanisms associated with the declaration of a public health emergency of international concern. To that end, proposals may be made regarding the criteria for communicating concerns to the WHO, and a reassessment of the WHO’s own internal processes for reviewing information from member States and the timelines for when certain declarations are made.

Even prior to the finalisation of any WHO inquiry, one of the clear lessons from the Covid-19 pandemic is the importance of information-sharing by impacted States with the WHO and the prompt response to the outbreak of a new disease whose potential impact to local, national, and international communities is unknown.

For further inquiries, please contact Lexbridge Lawyers on +61 (2) 6198 3392 or send an email to enquiries@lexbridgelawyers.com.