

The Legal Controversies between China and Taiwan in the WHO From the Perspectives of an International Law Scholar in Taiwan: Case Studies on IHR and FCTC Implementation

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1. Introduction

Since 1997, the Government of Taiwan has been continuously and, unsuccessfully, bidding for observer status at the World Health Assembly.² In 2006, the idea of *Meaningful Participation by Health Entity of Taiwan* was used as legal ground to seek observer status, while hoping to leave the sovereignty issue untouched.³ In 2007, the issue of sovereignty surfaced, as the deeply frustrated Taiwan Government toughened its tone by applying for WHO Membership, which was again fruitless.

Meanwhile, the year of 2005 saw the President of Taiwan depositing to the UN the accession instrument⁴ to the WHO Framework Convention on Tobacco Control (FCTC)⁵. As Taiwan is not recognized by the UN as an independent State, such move was unable to make Taiwan a Contracting Party to the FCTC. However, in February 2006 when the 1st FCTC Conference of Parties (COP-I) convened in Geneva, the final negotiation and adoption of the Rules of Procedures for the COP became interesting because of the Marshall Islands' proposal which, if accepted, would have provided an opportunity for Taiwan to be eligible to become an observer at the COP meeting in the capacity of "Other Bodies." It goes without saying that such move did not succeed.

On the other battle front, as the revision of International Health Regulations (IHR) was completed in 2005 at the WHO,⁶ the Health Administration of Taiwan announced in 2006

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² For the propaganda of Taiwan, see the website available at http://who.mofa.gov.tw/why_cp4.asp (last visited on 20 Feb., 2008)

³ The present author attended the 2006 WHA meeting and witnessed the whole debate process. During the debate for such bid, Chinese delegate and its allied countries still considered such move to be politically motivated and seeking for international recognition of Taiwan as an independent State.

⁴ See the report made by Taiwan's Minister of Foreign Affairs to the Congress (available only in Chinese). To download it, see website available at <http://www.mofa.gov.tw/webapp/ct.asp?xItem=16977&ctNode=1137&mp=1> (last visited on 20 Feb. 2008)

⁵For more information on this treaty, see official website available at <http://www.who.int/tobacco/framework/en/> (last visited on 20 Feb. 2008)

⁶ See REVISION OF THE INTERNATIONAL HEALTH REGULATIONS, 58TH WORLD HEALTH ASSEMBLY, Agenda item

that it would implement such revised international regulations, before entry into force in 2007.⁷ However, as the revised IHR requires WHO, *inter alia*, to be open reports submitted by bodies other than Governments of Contracting Parties, the Chinese Government quickly closed a bargain with the Director General of the WHO as a precaution. A secret MOU was signed which disallows direct contact between the WHO and Taiwan, and hinders the application of the revised IHR to Taiwan.

The present author has the privilege to know the concrete legal issues involved in the controversies between China and Taiwan in making Taiwan eligible to enjoy the benefits from the revised IHR and to participate in the Conference of Parties of the FCTC. In this short paper, the legal issues involved in these wars will be addressed. The author, however, will not take the opportunity to discuss the most controversial and fundamental issues concerning the sovereignty of Taiwan. Rather, attempts will be made to provide some personal and scholarly comments and solutions which may not please either side across the Taiwan Strait at first sight, but may be worthy of further consideration.

13.1, WHA58.3 (23 May 2005). This revised IHR enters into force on 15 June 2007. It replaced the 1969 IHR, as amended in 1973 and 1981. For information, *see* the official website *available at* <http://www.who.int/csr/ihr/en/> (last visited on 20 Feb. 2008)

⁷ *See* <http://www.taiwanembassy.org/UK/ct.asp?xItem=38544&ctNode=3244&mp=132&nowPage=1&pagesize=1000> (last visited on 20 Feb. 2008)