REGIONAL FOCUS & CONTROVERSIES

The Legal Controversies between China and Taiwan in the WHO From the Perspectives of an International Law Scholar in Taiwan

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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.[1] 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.[2] 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 instrument[3] to the WHO Framework Convention on Tobacco Control

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

2 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.

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

(FCTC)[4]. 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,[5] the Health Administration of Taiwan announced in 2006 that it would implement such revised international regulations, before entry into force in 2007.[6] 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.

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

5 *See* REVISION OF THE INTERNATIONAL HEALTH REGULATIONS, 58TH WORLD HEALTH ASSEMBLY, Agenda item 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)

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

2. The Implementation of IHR and the MOU between WHO and China

The Secret MOU

The 2005 Memorandum of Understanding between the WHO and the People's Republic of China (the MOU) was signed for the purpose of allowing official communications between the WHO and Taiwan. This MOU, however, was kept secret[7] until one year later, when it was commented on by McKee and Atun in the Lancet,[8] a leading British Medical and Public Health Journal.

From a legal perspective, it is believed that the WHO does have the competence to enter into such agreement with the Chinese Government, as a necessary action to attain the objective of the Organization.[9] However, to judge if such instrument serves the purpose of the WHO, its formulation, interpretation, and operation must all be evaluated by the WHO Constitution and its related regulations, including the IHR.

How this MOU May Frustrate the Implementation of the WHO and IHR Principles?

First, According to McKee, the MOU provides that all possible contacts between the WHO and the Taiwan authorities need to be cleared, via a WHO contact point, with the Chinese delegation in Geneva no less than five weeks before they take place. Chinese authorities will decide which Taiwanese individuals will be contacted.

To be submitted, such arrangement is not only inefficient, but also inconsistent with Article 2 of the IHR then applicable, which entitles the Organization to communicate directly with the health administration of the Member State, instead of going through diplomatic channels.[10] As widely known, lots of items and missions, under WHO purview, cannot be predicted five weeks earlier. Particularly, the speed of spread of

7 Taiwan was not invited to join the negotiation of this MOU. After its conclusion, neither the WHO nor Chinese Government inform Taiwan authority of such instrument. The text of such instrument cannot be found at the official website of the WHO.

8 McKee M, Atun R., *Beyond Borders: Public Health Surveillance*. 367 LANCET 1224-6 (2006).

9 *See* Article 2(v) of the WHO Constitution. To be noted, Article 2(k) provides: "In order to achieve its objective, the functions of the Organization shall be: ...to propose conventions, agreement and regulations, and make recommendations with respect to international health matters and to perform such duties as may be assigned thereby to the Organization and are consistent with its objective."

10 Under the third annotated edition of the 1969 IHR, released in 1983, Article 2 provides that "for the application of these Regulations, each State recognizes the right of the Organization to communicate directly with the health administration of its territory or territories. Any notification or information sent by the Organization to the health administration shall be considered as having been sent to the State, and any notification or information sent by the health administration to the Organization shall be considered as having been sent by the State."

communicable diseases and transformation of viruses are not up to the WHO or any State to foresee. On the other side of the coin, the WHO is disallowed, by this MOU, to be contacted by the Taiwan authorities directly. Hence, the right of the WHO to consider Other Reports as granted by Article 9(1)[11] of the newly revised IHR is also being violated.

In addition, the appointing authority being Chinese but not Taiwanese is also inoperative. It is hard to expect the Chinese Government to appoint somebody from Taiwan's health administration, which is not recognized by the Chinese Government. Even if the Chinese Government wishes to do so, such Taiwanese official, not under its command, may feel difficulty in complying.

Importantly, Articles 8[12] and 41[13] of the WHO Constitution offer the possibility for the national organizations, governmental or non-governmental, to be represented at the related conferences of the Organization. The message revealed is the significance of representation of the organization, as opposed to invited experts or individuals. As a matter of fact, it is up to the separate, if not independent, Taiwanese public health administration to implement whatever has been adopted by the WHO. However, the MOU only allows Taiwanese individuals to be contacted by the WHO. As a democracy, Taiwan's legislative body will be very hesitant, if not deterred, to endorse any negotiation results reached by the WHO with this individual not having authorization. Nor will Taiwan's public health administration welcome the message brought back by such "chosen individuals."

11 It provides: "WHO may take into account reports from *sources other than notifications or consultations* and shall assess these reports according to established epidemiological principles and then communicate information on the event to the State Party in whose territory the event is allegedly occurring..." To be noted, the so-called "reports from notification" are those reports notified by IHR State Party to WHO, as dictated by Article 6. And, the so-called "consultations" are also information sent by IHR State Party to the WHO with respect to events occurring within its territory not requiring notification, as mentioned by Article 8. Comparing Other Reports under Article 9 with Notifications and Consultations, one can easily know that Article 9 allows any body other than central government of the IHR State Party to inform WHO of possible public health risks. To download the full text of the revised IHR, *see* the official website *available at* http://www.who.int/gb/ebwha/ pdf_files/WHA58/WHA58_3-en.pdf (last visited on 20 Feb. 2008)

12 Territories or groups of territories which are not responsible for the conduct of their international relations may be admitted as Associated Members by the Health Assembly upon application made on behalf of such territory or group of territories by the Member or other authority having responsibility for their international relations. Representatives of Associated Members to the Health Assembly should be qualified by their technical competence in the field of health and should be chosen from the native population. The nature and extent of the rights and obligations of Associated Members shall be determined by the Health Assembly.

13 The Health Assembly or the Board may convene local, general, technical or other special conferences to consider any matters within the competence of the Organization and may provide for the representation at such conferences of international organizations and, with the consent of the Government concerned, of national organizations, governmental or non-governmental. The matters of such representation shall be determined by the Health Assembly or the Board.

Second, also according to McKee, the MOU provides that Taiwanese citizens will not be invited to join expert advisory panels of the WHO. And the WHO is required to take care that Taiwanese citizens are not inadvertently included within delegations of NGOs attending WHO meetings. Direct contacts between the WHO and Taiwan is only possible when emergencies occur, as designated by the Director General, provided Chinese authorities agree with such contact.

It is believed that the exclusion of Taiwanese experts, from WHO expert advisory panels, cannot be based on technical or professional justifications, given the achievements of the Taiwan Public Health Authority. Such exclusion, not intending to facilitate the WHO in obtaining more useful opinions from experts, is not conducive to the achievement of WHO objectives.

The other requirement for the WHO to eliminate the possibility for Taiwanese citizens to join the NGO in attending WHO meetings is totally contrary to the rationale of having NGO represented, whose presence is meant to provide the WHO with different perspectives. The collective opinions of the NGOs might force the Organization and certain Member States to improve. The negative arrangement shows that Chinese public health administration is not tolerating different voices from civil society. The most recently revised IHR Articles 9 and 10 require a different and much open attitude of the WHO in terms of verification of governmental notification. Such open attitude should be placed in the MOU.

The veto power of China, in emergencies, is to hinder direct contact between the WHO and Taiwan and does not help Taiwan at all. The Chinese health administration cannot solve Taiwan's problems. When a dangerous situation is confirmed by the WHO, the exercise of such veto power will result in a violation of Article 1 of the WHO Constitution.[14] It is submitted that if this provision cannot be modified, then the Chinese Government should announce publicly that it will never exercise any veto power in such a situation.

Comments and Suggestions

To conclude, this MOU puts effective public health actions aside and fails to serve the WHO's object and purposes, with potentially catastrophic consequences. It does not remedy any loopholes in the global surveillance system. It must be renegotiated and modified to produce something workable and meaningful, with the full participation of the Taiwanese authorities.

14 "The objective of the WHO shall be the attainment by all peoples of the highest possible level of health." WHO Constitution, art. 1.

3. The Implementation of FCTC and the Idea of Inclusive Participation in the COP

The Idea of Inclusive Participation as Conceived by the FCTC Provisions

As indicated by certain paragraphs of its Preamble, the ultimate goal of the FCTC is to ensure the enjoyment of the highest attainable standard of physical and mental health by *every human being* without distinction of race, religion, political belief, economic or social condition. To achieve such goal, it is submitted that the spread of the tobacco epidemic as a global phenomenon must be restrained through the widest possible cross-border cooperation by "all States and non-State entities exercising autonomous governmental authority." Otherwise, the related cross-border problems cannot be addressed effectively.

From this perspective, the Chair of the IGWG was right by stating in her summary of the discussion on Rules 29 and 30 of the draft rules of procedure for the COP, that "a general spirit of inclusiveness and openness must be reflected."[15] It is believed that such approach is needed to implement Article 5 of the FCTC. Laying down general obligations, Article 5 specifically requires all Parties to cooperate with competent international and regional intergovernmental organizations (hereinafter "IGOs") and "other bodies" to achieve the objectives of this Convention. The catch-all phrase of "other bodies" in such provision marks the pledge of all Parties to openly seek support from all concerned in tackling tobacco epidemic issues. And importantly, the use of such terms of a residual nature shows the intention of the drafting countries of the FCTC that an opportunity must be created for those bodies or entities not covered by the FCTC provisioins but capable of implementing the FCTC to be involved and cooperating with the COP.

To be more specific, this Convention focuses on, among other things, elimination of illicit trade[16] in tobacco products, which naturally requires international and cross-border cooperation. Article 15(4) requires each Party to monitor and collect data on cross-border trade and to exchange information among custom, tax and other authorities. Information thus collected shall be put in periodic reports of the Parties submitted to the COP. Such information has to be comprehensive and exhaustive, for it is meant to aide the COP in developing related strategies, plans and programs,[17] as well as in taking other actions to achieve the objectives of the Convention.[18] Without cooperation and the political will of non-Contracting States and non-State entities exercising autonomous governmental authority (treated as Other Bodies) in providing

15 *See* REPORT OF THE 2ND SESSION OF THE INTERGOVERNMENTAL WORKING GROUP (A/FCTC/IGWG/2/7) Annex 4 26 (5 October 2005),. This Working Group did preliminary negotiation on the draft Rules of Procedure for the COP.

essential information related to illicit trade within their territories, the COP will be unable to complete the picture of the illicit trade jigsaw puzzle.

Speaking of domestic actions, to combat against illicit and cross-border trade of tobacco products necessitates effective investigations, prosecutions, and judicial proceedings by related countries and Other Bodies in whose territories such illicit activities occur. Without cooperation among all these actors in searching for and transferring of information and evidence for judicial purposes, the combat cannot even be started. More importantly, such cooperative endeavour would be impossible without the enactment of appropriate internal, domestic, and national legislation,[19] which facilitates and authorizes cooperation between related government agencies. From this perspective, it is also necessary to get on board all the countries and "autonomous territorial governmental entities without Statehood, as Other Bodies." This is another justification for the above-mentioned spirit of inclusiveness and openness to be embodied in the admission of observers in the COP meetings.

Another important FCTC obligation comes from Article 13, which requires each Party to comprehensively ban all tobacco advertising, promotion and sponsorship, in accordance with its constitution or constitutional principles. This includes two following steps.

Subject to the legal environment and available technical means, each Party is required to prohibit cross-border advertising, promotion and sponsorship "originating from its territory."[20]

For those Parties having imposed such ban, they may ban those forms of cross-border tobacco advertising, promotion and sponsorship "entering their territory" and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory under their national law.[21] Article 13 hence reveals the following important messages. To begin with, a Contracting State needs to establish its domestic laws to ban those activities "originated from its territory" with cross-border effects. Such ban comes with penalties. And it is such penalties that this country can impose upon those advertising, promotion and sponsorship "originated from other countries and entering into its territory." In other words, the national treatment principle applies.

Secondly, such treatment for nationals must be established in accordance with its

16 FCTC art. 15(1). The forms of such trade include smuggling, illicit manufacturing and counterfeiting.

17 *Id*. art. 23(5)(c).

18 *Id*. art. 23(5)(h).

19 *Id*. art. 15(6).

20 *Id*. art. 13(2).

21 *Id*. art. 13(7).

constitution or constitutional principles. It means that Parties are urged to overcome the difficulties existing in their domestic legal systems and opposition of interest groups (e.g., tobacco companies) in order to change their own laws. Only by doing this can the necessary legislation for banning cross-border advertising, promotion and sponsorship be created.

Naturally, tobacco companies looking for a host country to serve as the origin of its advertising, promotion and sponsorship activities will take advantage of those States or territories (administered by governments lacking Statehood) which have difficulties in imposing such ban on their nationals, residents and foreigners as a consequence.

Therefore, in order to discourage this forum shopping, there is a need to be involved in every State and "non-State entity exercising autonomous governmental authority," including but not limited to FCTC Party.

To be noted, Article 19 of the FCTC addresses the issue of liability. It contains similar obligations to cooperate as under Article 13. The judicial assistance to be provided between countries is conditioned upon the limits of national legislation, policies, legal practices and applicable existing treaty arrangements.[22] To enlarge the scope and possibility of such cooperation, it takes political will to facilitate the adoption of necessary legislation. Without engaging those non-Parties in the FCTC forum and COP meeting by creating some alliance relationship through which such States and "non-State entities exercising autonomous governmental authority" would be willing to conform to the Convention, such general political will may not be generated. It all goes back to the original idea suggested by the IGWG Chair, namely, the implementation of the principle of "inclusiveness and openness." In this connection, cooperation from Other Bodies with competence or governmental authority is necessary, for the same reasons as stated above.

Rule 29-31 of the Rules of Procedure are intended to regulate the participation of observers in the COP. It is believed that the formulation of the rules in this article must be in conformity with mandates under the FCTC treaty provisions. Two relevant articles, in this Convention, can serve as a yardstick with which to reflect on the drafting of these rules at COP-I. The first article is Article 5(5), which reads:

> "The Parties shall cooperate, as appropriate, with competent international and regional IGO and other bodies to achieve the objectives of the Convention and the

22 *Id*. art. 19(3).

23 These are as follows: (1) IGOs - Article 5(5); (2) regional IGOs - Article 5(5); (3) other bodies - Article 5(5); (4) competent and relevant organizations and bodies of the UN system - Article 23(5)(g); (5) other (non-UN system) international IGOs - Article 23(5)(g); (6) other (non-UN system) regional IGOs - Article 23(5)(g);(7) NGOs - Article 23(5)(g); (8) Other bodies - Article 23(5)(g)

protocols to which they are Parties."

The other related provision is Article 23(5)(g), which provides:

> "The Conference of the Parties shall keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation and may adopt protocols, annexes and amendments to the Convention, in accordance with Article 28, 29 and 33. Towards this end, it shall ...
>
> (g) Request, where appropriate, the services and cooperation of, and information provided by, competent and relevant organizations and bodies of the United Nations system and other international and regional IGOs and nongovernmental organizations (hereinafter NGOs) and bodies as a means of strengthening the implementation of the Convention."

In order to obtain the services and cooperation of, and information provided by, these bodies, the COP shall establish criteria for the participation of these bodies as observers at its proceedings. This is provided by the next provision - Article 23(6). Eight kinds of candidates should be accommodated under the above-mentioned articles.[23] There seems to be four categories of bodies, as follows:

- Competent and relevant organizations and bodies of the UN system
- Other competent and relevant organizations out of the UN system, with two sub-categories including international IGOs and regional IGOs;
- Competent and relevant NGOs; and
- Other competent and relevant bodies (which are not part of UN system bodies, not non-UN system international or regional IGOs, not NGOs)

The Related Provisions of Rules of Procedure as Adopted by the COP-I

The Rules 29-31 of the Rules of Procedure as adopted in the COP-I meeting[24] govern the participation of three different kinds of bodies in the COP meetings as observers. They are as follows:

- any non-Contracting State, which is a WHO Member,
- Associate Member of WHO,
- UN Member, or IAEA Member,

24 *See* Decisions of the Conference of the Parties to the WHO Framework Convention on Tobacco Control 12-3 (6-17 Feb. 2006); *see* also A/FCTC/COP/1/DIV/8, 23 (March 2006).

- any regional economic integration organization;
- any international IGO; and
- any international and regional NGO.

Comparing Rules 29-31 with the above-mentioned 4 categories of bodies, we can instantly recognize that the 4th category of residual bodies is missing. That is "other competent and relevant bodies," which are without Statehood, not part of UN system IGO, not non-UN system international or regional IGO, and not NGO. What can this missing category possibly comprise? It is submitted that those territorial governmental entities which exercise autonomous governmental authorities but lacking (widely) recognized Statehood fall into this residual category, e.g. Taiwan.[25] As one of these entities, Taiwan is no less capable of implementing FCTC treaty obligations than a normal State, for Taiwan possesses an autonomous government, a population, territories, and borders. Besides, its government is in firm and effective control of the custom/tax/public health affairs within its borders, including cross-border trade.[26]

As a matter of fact, during the COP-I meeting the representative from Marshall Islands did advocate the idea of inclusive participation by proposing the addition of Other Bodies into the draft Rule 30. Chinese delegates, together with many other suspicious delegations, vehemently challenged the appropriateness of such proposal at the meeting. Having attended the COP-I, the present author can testify that the Chinese delegate and other opposing delegates demanded that the Marshall Islands substantiate its proposal by providing examples which qualify as Other Bodies. Marshall Islands did not respond to this point. All the delegates in the room understood that Taiwan was the subject of the proposal. But, amazingly, no delegate mentioned the name of Taiwan throughout the debate. Neither was the issue of sovereignty of Taiwan ever touched upon. At the end, the Marshall Island's proposal was rejected by the Chairman for lacking enough support.

25 Professor James Crawford pointed out 9 territorial entities proximate to States in his authoritative treatise. They are Cook Islands, Faroe Islands, Greenland, Niue, Northern Mariana Islands, Palestine, Puerto Rico, Somaliland, and Taiwan. *See* JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW, 741-742 (2ND ED., 2006). *See* also the list given by Professor McKee and Atun, *Beyond Borders: Public Health Surveillance*, 367 THE LANCET, 1124-6 (APR. 15, 2006). To download this article, *see* the website: http://download.thelancet.com/pdfs/journals/0140-6736/PIIS0140673606685206.pdf (last visited on 18 Feb. 2008)

26 Taiwan has been a WTO Member in the capacity of separate customs territories since 1 January 2002. It proves that this entity has, at least, a government which is separate from Chinese Central Government and has been exercising effective and autonomous authority on customs matters in its territories. For Taiwan's Membership in WTO, *see* the website *available at* http://www.wto.org/english/thewto_e/countries_e/chinese_taipei_e.htm (last visited on 19 Feb. 2008)

Comments and Suggestions

The author has analyzed the Preamble and Articles 5(5), 13, 15(4), 19, and 23(5)(g) of the FCTC. It is clear that, the adopted Rules of Procedure, which contain the rules and criteria for admission of observers in the COP, are not in total conformity with the principles embraced by these provisions. It is also clear that the choice made by the COP-I deviated from these principles. The idea of Other Bodies is derived from the FCTC treaty provisions themselves. And the cooperation with such Other Bodies is important and such importance has been anticipated by drafting countries for the FCTC. What is conceived by this term includes those territorial governmental entities with controversial or no statehood under international law, but however in the position of implementing the FCTC mandates. If we can get these Bodies or Entities on board, the effectiveness of the FCTC will only be enlarged, rather than reduced.

The COP-I failed to come out with something capable of engaging every State and non-State entity in the combat against the global tobacco epidemic. Given the fact that the FCTC has not yet acquired universal binding force upon all countries,[27] it would help to achieve the objective of this Convention if some kind of mechanism for engaging all non-Parties to fully cooperate can be created. In this connection, the COP meeting in the future is advised to follow the practice of many other international organizations[28] in granting "Cooperating non-Party" status as a reward for the commitment made by them to observe the treaty obligations as well as rules and resolutions/ recommendations adopted by the COP. Such Cooperating Status comes with an observer status (at the COP meetings), which is however subject to regular review and, revocation, when non-compliance is proven.

4. Conclusions and Prospects

The issues of full application of IHR to Taiwan and appropriate participation of Taiwan to the COP have been considered no less politically motivated than Taiwan's bid for the WHA observer and WHO Membership. As a matter of fact, the preliminary but

27 Currently, there are 152 Contracting Parties to the FCTC. There are 168 Signatories to this treaty. For such information and treaty status, *see* http://www.who.int/tobacco/framework/countrylist/en/index.html (last visited on 20 Feb. 2008)

28 To name but a few, The International Commission for the Conservation of Atlantic Tunas(ICCAT), Inter-American Tropical Tuna Commission(IATTC). For downloading ICCAT 03-20 *Recommendation on Criteria for Attaining the Status of Cooperating non-Contracting Party, Entity, or Fishing Entity in the ICCAT*, *see* the website: http://www.iccat.int/Documents/Recs/compendiopdf-e/2003-20-e.pdf (last visited on 20 Feb. 2008). For downloading the parallel resolution in IATTC, which is Resolution C-07-02, entitled *Criteria for Attaining the Status of Cooperating Non-Party or Fishing Entity in the IATTC*, please *see* the website *available at* http://www.iattc.org/PDFFiles2/ C-07-02-Cooperating-non-party-status.pdf (last visited on 20 Feb. 2008).

unsatisfactory road has been paved for Taiwan in the IHR and FCTC treaty provisions. The idea of Other Reports under Article 9 of the revised IHR and the term of Other Bodies under Article 5(5) and 23(5)(g) of the FCTC, if fully implemented, can serve Taiwan's minimum public health (but not political) interests.

However, the 2005 MOU between China and WHO hinders application of IHR to Taiwan and direct contacts between WHO and Taiwan. The Rules of Procedure for the COP, as adopted by COP-I, does not live up to the expectations of the FCTC treaty provisions. The application of IHR to Taiwan needs to be restored through, *inter alia*, the renegotiation of this MOU. The rationale of Other Bodies needs to be taken seriously by the COP, through, if not amending the Rules of Procedure, establishing a mechanism of Co-operating non-Contracting Parties, which can participate in the COP as observers.