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# Legal Status of Taiwan in the World Health Organization

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*From 1997 to 2007, in order to fight for its so-called “international room,” Taiwan continuously endeavored to try and squeeze into the World Health Organization (Hereinafter referred to as the “WHO”). However, the outcome has always been disappointing for Taiwan due to the diplomatic endeavor of the People’s Republic of China. In 2007, the fight especially attracted the world’s attention because Taiwan bid for membership to the WHO instead of observer status for which it had previously been bidding. In fact, Taiwan’s request for WHO membership had a big impression on the world and the reason why Taiwan has had a great interest in the WHO is not to engage in meaningful participation within the WHO, as propagandized by Taiwanese authorities, but to eventually acquire recognition as an independent state.<sup>1</sup> Although Taiwan has failed to achieve its goals for 11 years, accession to membership of the WHO has been, and still will be, a political goal pursued by Taiwanese authorities. The question is whether this goal can be backed from a legal perspective. It is submitted that the answer is “No.”*

## 1. Taiwan is not entitled to accede to the WHO

Chapter Three of the WHO Constitution provides some conditions for WHO membership and associate membership. According to the relevant articles, membership in the WHO shall be open to all states.<sup>2</sup> Meanwhile, territories or groups of territories,

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<sup>1</sup> On May 14, 2007, the Sixtieth World Health Assembly refused to list the proposal raised by several states on its agenda that Taiwan be a member of the WHO. Chinese Chief Delegate and Health Minister of China, Mr. Gao Qiang, pointed out in his presentation to the assembly that Taiwanese authorities instigated a few countries to put forward such a proposal, not for the health of the people in Taiwan, but for its own political goals. This proposal explicitly raised that Taiwan shall be a member of WHO as a state, which completely was against the “One-China Principle,” the United Nations Charter and the WHO Constitution. See [http://paper.people.com.cn/rmrb/html/2007-05/15/node\\_15.htm](http://paper.people.com.cn/rmrb/html/2007-05/15/node_15.htm). (last visited on Feb. 21, 2008)

<sup>2</sup> The WHO Constitution arts. 3-6. This document can be downloaded from the WHO website: *available at* [http://www.who.int/governance/eb/who\\_constitution\\_en.pdf](http://www.who.int/governance/eb/who_constitution_en.pdf). (last visited on Feb 21, 2008)

which are not responsible for the conduct of their own international relations, may be admitted as associate members by the Health Assembly upon application made on behalf of such a territory or group of territories by the member or other authority having responsibility for the international relations of the territory in question.<sup>3</sup> Therefore, the WHO can only admit states as its members. The threshold of associate membership for some territories is comparatively lower than that of sovereign states. However, under this circumstance, one premise must be met and that is that such a grant must be made with the prior consent of the state that has responsibility for that territory's international relations.

The "One-China Principle" has been the basic policy adopted by the government of the People's Republic of China to address the issue of Taiwan. This principle means that Taiwan is an integral part of China and the PRC government is the only legitimate government representing China in the international community. Therefore, as a province of China, Taiwan is not an independent state and cannot be granted WHO membership.<sup>4</sup> On a second thought, in accordance with the WHO Constitution, there is only one way Taiwan can legitimately accede to the WHO and that is by being granted associate membership as a territory. Such a grant requires the consent and application of the PRC government. In other words, this would force Taiwan to admit to being a territory of China. Obviously, Taiwanese authorities are unwilling to adopt this option.

Hence, as mentioned above, there is no possibility for Taiwan to accede to WHO membership.

## **2. IHR and the COP of FCTC cannot be used as tools for Taiwan to pursue its statehood**

### *IHR 2005 and Taiwan*

The WHO Constitution is the basic document of the organization. Apart from this document, several documents have been negotiated and enacted by the WHO in order to implement its constitution, such as the International Health Regulations (Hereinafter referred to as the "IHR"). The IHR was newly revised in 2005. In accordance with the

<sup>3</sup> The WHO Constitution, art. 8.

<sup>4</sup> The concept that Taiwan is not a state, but an integral part of China, has been supported and acknowledged by an overwhelming majority of states in the international community. In a recent example, an official of the Philippine Government said that, with regard to the airport construction of Taiwan on Taiping Island, the Philippines will only contact and negotiate with the People's Republic of China based on the "One-China Principle" upheld by the Philippine government. Refer to the website: [http://news.ifeng.com/mil/taiwan/200801/0131\\_1569\\_386485.shtml](http://news.ifeng.com/mil/taiwan/200801/0131_1569_386485.shtml). (last visited on Feb. 21, 2008)

general principle of international law, the IHR cannot be in conflict with the WHO Constitution. If any provisions in the IHR are unclear and need further explanations, such explanations must conform to the WHO Constitution. In fact, article 3(2) of the IHR reads as follows, “the implementation of these Regulations shall be guided by the Charter of the United Nations and the Constitution of the World Health Organization.” This provision then reflects the above-mentioned principle.

Article 4 of the IHR relates to the Responsible Authorities within each State Party. In order to effectively implement the IHR, article 4(1) reads: “Each State Party shall designate or establish a National IHR Focal Point and the authorities responsible within its respective jurisdiction for the implementation of health measures under these Regulations. To this end, the WHO shall designate a Contact Point so that it is able to send urgent communications concerning the implementation of these Regulations to the National IHR Focal Point of the States Parties concerned.”<sup>5</sup> In other words, the WHO Contact Point is responsible for communication with each State Party. It should be noted that in this provision, urgent, as a key word, needs to be cautiously noted. Urgent does not imply the same meaning as direct. Therefore, Article 4 cannot be explained as granting the WHO Contact Point the power to directly contact the relevant authorities in Taiwan. Since Taiwan is not eligible for WHO membership, if the WHO Contact Point needs to contact the health administration in Taiwan, prior consent from the PRC government, the only legitimate government representing Taiwan, must be obtained. In fact, a Memorandum of Understanding on Taiwan’s medical and health experts’ participation in technical exchange was signed between the PRC government and the WHO in order to effectively implement the IHR and promote the healthcare of people in Taiwan. Since the conclusion of this memorandum, experts from Taiwan have participated in several exchange activities.<sup>6</sup> Therefore, it is submitted that the only legitimate way for experts from Taiwan to participate in the WHO is with the prior consent of the PRC government.

### *COP of FCTC and Taiwan*

The Framework Convention on Tobacco Control (Hereinafter referred to as the “FCTC”) was the first global health treaty with binding force to be negotiated, drafted and concluded under the WHO system. In August 2005, the supreme legislative organ in China decided to ratify this convention and on October 11, the Government of China

<sup>5</sup> The 2005 IHR art. 4(3). This document is available on the WHO website: <http://www.who.int/gb/ghs/e/index.html>. (last visited on Feb. 21, 2008)

<sup>6</sup> Spokeswoman of Ministry of Foreign Affairs of China, Ms. Jiang Yu, answered the questions from journalists. Go to the website: <http://www.chinaembassycanada.org/chn/fyrth/t279486.htm>. (last visited on Feb. 21, 2008)

deposited the ratification with the UN and made a declaration concerning the application of the FCTC to Hong Kong and Macao. The declaration reads, in accordance with the provision of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, "the Government of the People's Republic of China decides that the WHO Framework Convention on Tobacco Control and the declaration made by the People's Republic of China on the prohibition of the introduction of tobacco vending machines shall apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China."<sup>7</sup> Hence, Hong Kong and Macao, as territories of China, shall be within the domain of the FCTC.

In May 1996, the World Health Assembly raised the first initiative of the FCTC negotiation. In October 2000, intergovernmental negotiation of the FCTC commenced and, in March 2003, the final version of the FCTC was adopted. Since the negotiation was intergovernmental by nature, Taiwan, as a part of China, was not eligible for participation in the negotiations. Moreover, in the third paragraph of the Preamble of the FCTC, the Parties of the FCTC recognize that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response. Clearly, this paragraph allocates the responsibility to control tobacco to each state. As to how a state will implement this responsibility is then a matter of domestic law. So it can be argued that Taiwan, as a part of China, can enjoy the rights and discharge this responsibility only in accordance with the relevant domestic law of China, just as Hong Kong and Macao. Taiwan cannot be a party of the Conference of Parties (Hereinafter "COP") of the FCTC.

In addition, on February 6, 2006, the first session of the COP adopted the Provisional Rules of Procedure which stipulated several practical modalities of observer participation in the proceedings of the COP. This document provides the eligibilities for an "observer." According to this document, only states, intergovernmental organizations and nongovernmental organizations are entitled to be observers.<sup>8</sup> Taiwan does not belong to any of these categories and, thus, Taiwan's participation in the COP as an observer is legally groundless.

In a word, Taiwan is not entitled to directly participate in the WHO by either the

<sup>7</sup> *Tobacco Free Initiative*. Jan. 14, 2008. See <http://www.who.int/tobacco/framework/countrylist/en/index.html>. (last visited on Feb. 21, 2008)

<sup>8</sup> The Provisional Rules of Procedure paras. 1&2. This document can be downloaded from the WHO website: [http://www.who.int/gb/FCTC/PDF/cop1/FCTC\\_COP1\\_ID5-ch.pdf](http://www.who.int/gb/FCTC/PDF/cop1/FCTC_COP1_ID5-ch.pdf). (last visited on Feb. 21, 2008)

2005 IHR or the FCTC. The only legitimate method is obtaining the consent of the PRC government. In particular, as far as the FCTC is concerned, Taiwan is neither eligible to be a party to the FCTC nor an observer to the COP.

### **3. The key issue is not whether Taiwan shall be a member or an observer of the WHO, but how to promote the health situation of people in Taiwan**

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.<sup>9</sup> In fact, care for the health of the people in Taiwan has been a continuous policy of China.<sup>10</sup> However, it does not follow that Taiwan's accession to WHO membership acts as a premise to promote the health situations and to develop the health cause in Taiwan. Hong Kong and Macao are both Chinese territories and are not eligible for membership to the WHO, but this fact does not affect the progress of healthcare in those two regions. In the same way, although Taiwan is not, and will not, be the member of the WHO, the healthcare of people in Taiwan has been under effective protection. This point is well verified by the battle against SARS in 2003.

The SARS epidemic brought about global panic and China suffered the most in the crisis. Because SARS was a new virus, the measures adopted by China at the start of the outbreak were not very effective. However, with more knowledge of SARS, new measures taken by the government of China helped to eventually defeat SARS by May. It showed that the PRC government concerned itself with the health and human rights of its people. In Taiwan, in order to help the people battle against SARS, the PRC government took a series of effective steps, including encouraging communications between experts from Taiwan and the WHO. For example, apart from transmitting information about the SARS epidemic situation and treatment technology to the relevant organs in Taiwan, the PRC government also invited Taiwanese experts to the Mainland to investigate SARS prevention and treatment. In April 2003, a symposium on the prevention and control of SARS across the Taiwan Strait was held. On May 9, another forum was jointly held by the medical and health groups of the Mainland and Taiwan. The Chinese Centre for Disease Control and Prevention also supplied SARS test reagents. In particular, the PRC government permitted the WHO to send experts to Taiwan to investigate the SARS epidemic situation and permitted experts from Taiwan

<sup>9</sup> The WHO Constitution, para. 3.

<sup>10</sup> In particular, on March 4, 2008, Chairman of People's Republic of China, Mr. Hu Jin-tao, expressed the Taiwan Policy of the PRC government. In his speech, Mr. Hu emphasized that the Government of China will do anything, as long as it is beneficial to the people in Taiwan. Refer to the website: [http://paper.people.com.cn/rmrb/html/2008-03/05/node\\_17.htm](http://paper.people.com.cn/rmrb/html/2008-03/05/node_17.htm). (last visited on March 6, 2008)

to participate in the Global Conference on SARS organized by the WHO in June 2003.<sup>11</sup> By contrast, Taiwanese authorities took some steps that undermined the health of people in Taiwan. For example, on May 25, 2003, the Straits Exchange Foundation in Taiwan refused to accept urgent items donated by the Mainland on order from Taiwanese authorities. This made the world suspect whether Taiwanese authorities really cared for the health of its people as it had propagandized for several years.

All in all, it is submitted that under no circumstance is Taiwan eligible for membership to the WHO. The agreements within the WHO system cannot be used as the tools for Taiwan to pursue its statehood. On the contrary, the key issue is whether Taiwanese authorities will concern themselves with the medical and health situations of the people in Taiwan instead of wasting resources on its political goals.

<sup>11</sup> See Vice Premier and Health Minister of China, Ms. Wu Yi's, presentation during the Fifty-sixth World Health Assembly. Refer to the website: <http://www.fmprc.gov.cn/ce/ceat/chn/xwdt/t102750.htm>. (last visited on Feb. 22, 2008)