

# COVID-19 AND THE INSTITUTIONAL RESILIENCE OF THE IHR (2005): TIME FOR A DISPUTE SETTLEMENT REDESIGN?

*Ching-Fu Lin*\*

## ABSTRACT

*The global outbreak of COVID-19 has triggered governments around the world to take a series of health measures in response to the public health challenges that have arisen, as well as their corresponding social, economic, and political ramifications. The World Health Organization (hereinafter “WHO”) and its International Health Regulations (2005) (hereinafter “IHR (2005)”) play a pivotal role in providing a global governance framework to guide and coordinate governments through a series of substantive and procedural requirements. During the COVID-19 pandemic, however, some State Parties and the WHO Director-General have allegedly not acted in compliance with the IHR (2005), which may lead to disputes between State Parties or even between the WHO and State Parties. Yet the IHR (2005) seems to lack an adequate dispute settlement mechanism that facilitates peaceful resolution. This article therefore examines the multilayered dispute settlement mechanism under Article 56 of the IHR (2005), and explores the critical flaws of its institutional design. It further calls for the establishment of a Compliance and Accountability Committee via a minor revision of the IHR (2005) to actively monitor, evaluate, and issue Specific Comments on the practices of the State Parties and the WHO in terms of their conformity with the treaty. By adding this quasi-adjudicative*

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\* Associate Professor, Institute of Law for Science and Technology, National Tsing Hua University, Taiwan. The author would like to thank I-Ching Chen, Hui-Hsuan Yang, and Kuan-Lin Ho for their great research assistance. The author can be reached at: [chingfulin@mx.nthu.edu.tw](mailto:chingfulin@mx.nthu.edu.tw).

*branch to existing mechanisms, the Compliance and Accountability Committee offers an expeditious, proactive, and less costly channel to publicly name those whose measures are not in conformity with the IHR (2005) with detailed legal reasoning, creating a stronger compliance pull and a normative reference for dispute settlement. While the proposed institutional redesign is not and cannot be an alternative to existing dispute settlement mechanisms, it may supplement and reinvigorate ways in which to resolve disputes in an innovative manner.*

**KEYWORDS:** *communicable disease, COVID-19, International Health Regulations 2005, IHR (2005), Public Health Emergency of International Concern (PHEIC), dispute settlement, dispute resolution, institutional design*