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The Realistic Dilemma and Reform Path of IHR2005

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Abstract: The International Health Regulations2005 (IHR2005) plays a significant role in the governance of global public health security. Nevertheless, when addressing the global public health crisis triggered by the 2020 novel corona virus epidemic, the IHR2005 shows some shortcomings. For example, the treaty cannot effectively coordinate the timely implementation of health measures such as epidemic prevention surveillance, situation assessment, technical cooperation and financial support. Using the case analysis, the literature search and other research methods, the paper analyzes the dilemmas of IHR2005, such as the ambiguity of the text itself, the limitation of the scope of application, and the failure to completely abandon the national centralism. To solve these problems, this paper put forward three solutions: The first is to reconstruct the text, and to name only a few controversial places that can be directly converted into text. The second is to reconstruct the mechanism, like establishing a more mighty system on the basis of the original mechanism. The third is to reconstruct the institution, which should strengthen technical cooperation with non-state actors while adjusting regulations that are not adapted to the development of The Times, and consolidate the leadership position of the World Health Organization (WHO).

Keywords: IHR2005, PHEIC, COVID-19, WHO

1. Introduction

As the core of the global public health governance system, IHR2005 and WHO plays a crucial role in the governance of global public health security. It defines the relevant rights and obligations of parties, proposes suggestions to prevent international health risks and indicates the international health measures to be taken. It has enhanced the material and financial assistance among parties, strengthened the capacity of global health testing, advanced the time for epidemic prevention and control [1] and upgraded the global health safeguard mechanism from regional cooperation to international cooperation.

However, the global public health emergency triggered by the COVID-19 pandemic has questioned the work of international health organizations [2] and revealed some shortcomings of IHR2005. It cannot timely and effectively coordinate health measures such as epidemic prevention monitoring, situation assessment, technical cooperation, financial support and so on. Some states fail to fulfill their obligations under the treaty, and frequently take excessive restrictions on international travel and trade. Some countries deliberately stigmatized and politicized the COVID-19 epidemic, which seriously incapacitated the order of international law and affected the epidemic prevention work among countries around the world. For example, the president of the United States has

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instructed the government to stop funding the WHO, while assessing the dilemma of mismanagement and covering up the spread of the corona virus.

This work adopts the method of searching literature and studying cases. We take the prevention and control measures in COVID-19 as the research basis and combine the cases of epidemic in various countries to explore the pros and cons of dealing with epidemic disputes under the framework of IHR2005. By analyzing the rights and obligations stipulated in the regulations, we can further find out the legislative gaps and the vague legal provisions in the regulations, so as to put forward suggestions for the revision of the regulations.

As a universally binding international convention, IHR2005 has become the most important law in the field of global public health. However, cooperation in the field of global public health under the COVID-19 pandemic has shown great limitations. First of all, the shortcomings of IHR2005 are mainly reflected in the ambiguity of its text. Secondly, the issue of the IHR2005 compliance mechanism relates to the "limited" cooperation among states parties and the WHO's "regional" governance framework. Finally, the IHR2005 did not set up any committee or body to control the progress and outcome of the negotiations, but left it to states to "voluntarily" choose the means of dispute.

2. Problems Existing in IHR2005

2.1. IHR2005 Text Itself is Flawed

The provisions of IHR2005 have its own defects, which is reflected in the vague definition of relevant standards, the unclear setting of specific obligations, and the unclear path of dispute settlement.

2.1.1. The Relevant Standards Are Vague

The text of IHR2005 is too principled, leading to different standards in different countries in practice. For example, Article 2of the treaty indicates that the treaty is mainly concluded to solve the public health emergencies of international concern(PHEIC), but the definition for PHEIC is extremely vague. The criteria set forth in Annex 2 of the IHR2005 are four, namely: "whether the public health impact of the event is serious", "whether the event is unusual or unexpected", "whether there is a serious danger of international transmission" and "whether there is a serious danger of restricting international travel or trade". However, the standard of "unusual" and "serious" was not clearly defined and considered in the 2005HR, which led to the interpretation of each country in the process of implementation, and even some countries accused each other of violating the regulations. This not only severely affected the enthusiasm of those States parties that abide by the rules to continue to fulfill their obligations. It also provides so-called "justification" for countries that do not comply with WHO recommendations and obligations under the regulations, thereby undermining the effectiveness of international public health cooperation mechanisms.

2.1.2. The Specific Obligation Setting Is Unclear

IHR2005 has 10 articles, divided into 66 articles and 9 annexes, many of which involve health cooperation mechanisms, including information and public health response, public health measures, and health documents. Specifically, Article 13 and Article 14 of IHR2005 stipulate the relevant obligations of States and international organizations: " WHO shall, in implementing this Regulation, as appropriate, cooperate and coordinate its activities with other relevant intergovernmental organizations or international bodies, including through the conclusion of agreements and other similar arrangements. However, due to the excessive principles in the provisions, states lack specific operating standards in practice, resulting in the lack of cooperation mechanism.

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2.1.3. The Path of Dispute Settlement Between States Parties Is Unclear

Article 56 of the IHR2005 addresses disputes between States parties and dispute settlement between States parties and the World Health Organization, where there are several ambiguities in the text. The settlement of disputes between States Parties includes negotiation or peaceful means such as good offices, mediation and conciliation, which Article 2005 IHR56, paragraph 2, adds: "If a dispute cannot be resolved by means referred in paragraph 1 of this Article, the States Parties concerned may agree to refer the dispute to the Director-General, who shall make every effort to settle it.". In this article, neither the means of dispute settlement by the Director General nor the effect after settlement is stipulated, which seems to infinitely enlarge the Director General's authority over dispute settlement, but in fact, it obscures the dispute settlement procedure, which is even more detrimental to the settlement of disputes. This shows that the IHR2005 text does not set a clear path for dispute settlement among the parties.

2.2. There Are Regulatory Conflicts in the Area of State Sovereignty

The prevention and control of infectious diseases naturally belong to the category of national sovereignty. The state can artificially lower public health standards, ignore health standards when controlling the cross-border movement of people and goods, and excuse its own non-compliance with international health conventions on the grounds of non-interference in internal affairs [3]. However, the logical world of viruses does not have the concept of national borders [4]. States have a mandatory reporting obligation, and this is evidence of increasing international authority at the expense of national autonomy [5]. Obviously, these are the result of the agreement of the sovereign state to the transfer, not meaning that the IHR2005 has the power to ride the sovereignty of the state. On the contrary, the WHO mainly positions itself as an information channel in practice [6]. The role of the WHO is seen more as a coordination of developing rather than replacing national capacity. The crux of the problem, therefore, is the difficulty of implementing IHR2005's seemingly dominant regulations.

2.2.1. The Framework of State-centralism Is Not Reliable

The regulatory framework built on state-centrism is not robust [7]. The IHR2005 system still belongs to the cooperation at the national unit level in essence, so it needs to rely on the support and cooperation of member states, which makes it impossible to evade the principle of state consent as the basis of compliance, and cannot shake the adherence of states to national sovereignty and national security interests.

2.2.2. The Actual Needs of Member States Vary

Requiring Member States to build domestic surveillance systems will help to improve IHR 2005, but for developing countries, this will not only mean expensive economic inputs, but may also be at cross-purposes with their domestic health priorities. At the same time, there is much debate about the distribution of the costs and benefits of global health security [8].

Under the new corona virus epidemic, some US politicians have used the issue of the source of the virus to smear China's anti-epidemic efforts and claim to "hold China accountable", which once again confirms that in the state-led global health governance system, the IHR2005 has conflicts in the field of national sovereignty.

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3. The Potency of IHR2005 Is Limitations

The IHR2005 plays a crucial role in global health governance, but its effectiveness has shown its limitations in global health cooperation since COVID-19.

3.1. The Treaty Is Limited in Its Application

Under the IHR2005, States Parties have treaty obligations to monitor in a timely manner and to develop, strengthen and maintain their capacity to detect, assess and report incidents as quickly as possible. However, after the COVID-19 outbreak, many countries did not seriously fulfill their notification obligations. Some high-income countries are far behind in sharing important data, which is clearly not because of their lack of capacity. And because these data are self-assessed reports, the number of governments actually meeting the requirements may be even lower [9]. All this shows that the contracting party is not good enough in applying the treaty.

The outbreak of COVID-19 has brought about many disputes, and the weak application of the dispute settlement mechanism in the IHR2005 clearly shows that dispute settlement plans can not be effectively invoked and complied with by state parties. In the final analysis, the dispute settlement mechanism is too loose, which easily leads to unnecessary delays in the process of dispute settlement because there is no specific deadline for completion. Moreover, state parties have a strong right to decide on the procedures for dispute settlement. The process cannot be initiated without the prior consent of both States parties. In the case of H5N1 in 2006, for example, Indonesia's refusal to share samples of a virus important for global disease control caused a conflict among the contracting parties that took six years to resolve.

Most fatally, when a dispute arises between a State party and the WHO, the WHO Assembly may not be able to guarantee a proper resolution of the dispute. The IHR2005's regime failed to provide a deterrent channel for seeking a fair judgment on violations of the regulations, leaving the IHR2005's substantive obligations and procedural requirements in vain.

3.2. The Application of the IHR2005 Is Financially Restricted

The IHR2005 is based on the authority of the WHO, which is limited by national funding. There are two main sources of funding for WHO, namely assessed contributions from Member States and voluntary contributions. If funds voluntary contributions are not in place on time, they will seriously affect the stability of WHO staff contracts and jobs, delay the implementation of WHO's global health development program and technical assistance to member States, and hinder the implementation of member States' health development plans. The land and development plan failed.

And because WHO relies on voluntary contributions from member States to carry out its work, it must take into account the interests of member States in practice. Thus, when the interests of Member States conflict with the needs of public health, WHO will find itself in a passive dilemma. WHO does not have complete freedom to spend its contributions derived from voluntary contributions and cannot fully serve global public health.

For example, after the outbreak of the novel corona virus, the America administration publicly accused the WHO of ineffective response and delayed notification, and even publicly demanded WHO Director-General Tedros Adhanom Ghebreyesus to reform the WHO by threatening "cut off supplies".

Funding shortfalls due to unpaid funds and voluntary contributions have left WHO without a stable and reliable source of funding, which has seriously affected the application of the IHR2005.

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3.3. States Parties Have Limited Liability

Regulating global health issues through international law has long been considered the most effective means of governance, but the results of practice are not good. In addition to the problems existing in the Treaty itself, which needs to be carefully evaluated and improved, the member states did not give the IHR2005 a higher mandate for breach of contract, penalty and arbitration, which may be the main legal defect of the Treaty. Throughout the text of the regulations, it does not provide for strong enforcement or sanctions mechanisms, nor does it address legal liability for violations of the provisions. This essentially regards the regulations as "soft law", limiting their coercive power as well as their legally binding and disciplinary power on States parties.

4. Reconstruction of the IHR2005

4.1. Text Reconstruction

The important feature of IHR2005 text is "ambiguity". In order to reach a consensus as soon as possible, the negotiators of the Convention intentionally hid the diplomatic skills of political compromise in the middle of the vague legal text, which produced short-term political gains but caused trouble in the subsequent application of the rules.

The text can be made as clear as possible by translating ambiguous points of dispute directly into the text of the convention. As mentioned earlier, the standard of "serious" in "public health emergencies of international concern" is not clearly defined and considered in the regulations, leading to the interpretation of it in the implementation process of each country, which needs to be further clarified.

4.2. Mechanism Reconstruction

The pandemic has demonstrated the urgent need for all countries to invest in strong health systems and primary health care services. Strengthening the core capacity of public health will inevitably involve the financing of WHO. In this regard, it has been suggested that international trade law can be seen as a tool to address financing problems [10]. Alternatively, a compensation fund administered by WHO could be used to pay for damage to private property [11].

At the same time, it is necessary to build a systematic information sharing mechanism platform. In addition to affecting the timely adoption of epidemic prevention measures, the lack of timely and incomplete information can also affect the political relations between countries. Since the outbreak of the novel corona virus, many countries have opposed the measures taken by the Chinese government, and some countries have accused China of suppressing information about the epidemic and allowing the virus to spread, which caused the current situation. Such comments are partly due to the lack of understanding of China's epidemic prevention information in other countries.

To build the information sharing mechanism, this paper holds that we can start from two aspects: one is to expand the scope of information; the second is to refine the sharing rules.

4.2.1. Expand the Scope of Information

In terms of expanding the scope of information, states should start from the source of information. In the past, when countries counted and reported the number of confirmed COVID-19 cases, China's information was reported through the official government platform, while the United States relied on the data released by Johns Hopkins University, which shows the role of unofficial platforms in information sharing. Therefore, the diversification of information sources can help build a global information mechanism.

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4.2.2. Refine Health Information Sharing Rules

As far as the rules of information sharing are concerned, there is still a lot of room to refine the technical rules of international cooperation, relevant standards for information sharing and the work flow of organizations can be improved. The degree of refinement of disease control is directly related to the timeliness of public health decision-making, which also affects the direction of global health in the face of public health emergencies. Therefore, in the amendment of the regulations, the construction of information sharing mechanism should be focused on, so as to create a safe foundation for global health governance.

4.3. Institutional Reconstruction

Both State and non-State actors influence responses to public health threats and opportunities. They constitute to a large extent a dilution of WHO's powers, with the result WHO's attempt to become the leader envisaged in its Constitution remains ineffectual [12]. In spite 1of this, the role of WHO is still irreplaceable, so the core of institutional restructuring is to clarify the leadership position of WHO.

4.3.1. Adjust IHR that don't Adapt to the Development of the Times

For example, article 71 of the Constitution, which means that NGOs must have official relations with WHO, puts organizations in low - and middle-income countries at a disadvantage, as these organizations find it difficult to make their voices heard [13].

4.3.2. Strengthen Technical Cooperation with Non-state Actors

For example, the Global Alliance for Vaccines and Immunization (GAVI) initiative has broken the logjam in the multilateral system and transformed the relationship between WHO, UNICEF and the World Bank [14]. For another example, although the Gates Foundation (Gates Foundation) is the WHO's most voluntary donor, it has been questioned for its legitimacy [15]. Global health partnerships are playing an increasingly important role in global health governance and are receiving increasing attention from the international community. The World Health Assembly can adopt resolutions to establish corresponding policies and mechanisms to support the management of global health partnerships.

4.3.3. Strengthen the Use of Technical Institutions

The COVID-19 pandemic has highlighted the need to communicate public health messages in vivid and novel ways [16]. WHO and the International Telecommunication Union (ITU), with support from UNICEF, text directly to people's mobile phones to deliver vital health information.

5. Conclusion

The global ravages of the COVID-19 pandemic have changed the global public health governance issues, governance subjects and their relationships. Since the outbreak of COVID-19, the issue of how to promote cooperation among member states in the field of health and how to build a better international health legal system has become the focus of controversy. As an important treaty under WHO, the IHR 2005 plays an important role in maintaining the health security of all States parties in the field of global health. However, the process of health legislation should not be pushed forward by the problems that have already occurred, but should go to the forefront of the problem and take the initiative to exercise initiative.

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It is necessary to actively build a new paradigm of global public health governance. Therefore, regardless of how the reform of IHR2005 unfolds, there is an urgent need to reform the international health legal system and strengthen international cooperation to deal with future pandemics.

"Major public health emergencies of international concern" are the main content of the current regulations, and its identification is related to the process and attitude of the subsequent States parties to the event. The key to the issue is to improve the PHEIC review mechanism to make it more transparent and authoritative. What's more, the emergency executive Committee and emergency supervision committee can be added to help refine the emergency. The establishment of the dispute settlement mechanism is to make up for the shortcomings of the preceding paragraph of the regulations, and the way to improve it is to introduce the panel system on the basis of the original means of dispute settlement, learn from the experience of the WTO dispute settlement mechanism, and increase the enforceability of its rulings. The information-sharing mechanism is generally stipulated in the current regulations, and it is an effective way to improve the efficiency of global pandemic prevention and control by refining and structural adjustment of this mechanism, expanding the source and scope of information, and refining the sharing rules.

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