

ARTICLE

China's New Global Health Governance

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Abstract

This article analyses China's global health governance (GHG) practices and GHG legal infrastructure in the wake of COVID-19. It posits that China has pursued a mix of bilateral and multilateral strategies during the pandemic to promote global cooperation and domestic regulation to shape an effective GHG response. It demarcates China's proactive role in norm-setting to respond to the global health crisis. It first considers China's responses to COVID-19 and its interaction model with multilateral institutions including WHO and GAVI. It then examines China's bilateral health strategies, taking its interactions with African countries as an example, before analysing and comparing existing norms and practices on the 'right to regulate' under the rules of the World Trade Organisation and treaties that China participates in that call for more regulatory recognition. The article then proceeds to examine China's new initiatives in shaping GHG strategy during COVID-19. Finally, it concludes and calls for a coordinated multilateral approach to handle global health crises.

Two years on and still counting.¹ The COVID-19 pandemic has exposed the fragility of existing legal frameworks for global health governance (GHG) – laying bare the policy and coordination gaps in dealing with global health emergencies and crises. Despite their understanding that 'no country can fully protect its citizens in isolation or through traditional border controls'² and commitments to 'avoid unnecessary interference with international traffic and trade'³ to the World Health Organisation (WHO) and to only imposing necessary measures vis-à-vis trade regulations to the World Trade Organisation (WTO), governments lacked a coherent strategy in their responses. The current multilateral legal frameworks relating to GHG, chiefly, the WHO's 2005 International Health Regulations, and to trade affecting global health provision and regulation, chiefly, the WTO Agreements, sadly see rising inequity regarding the access, availability and affordability of personal protection gears, therapeutic drugs and vaccines. The disconnection between the

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¹World Health Organisation, 'WHO Director-General's opening remarks at the media briefing on COVID-19' (11 Mar 2020) <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed 1 Dec 2022.

²World Health Organisation, 'International Spread of Disease Threatens Public Health Security: The world health report 2007 focuses on building a safer future' (8 Dec 2010) <<https://www.who.int/news/item/08-12-2010-international-spread-of-disease-threatens-public-health-security>> accessed 1 Dec 2022.

³*International Health Regulations (2005)* (3rd edn, WHO 2008) <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1> accessed 1 Dec 2022 [hereinafter 'IHR 2005'].

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developed and developing nations has led some to conclude that the pandemic has changed the world and its governance forever.⁴ Seeing a GHG policy vacuum, China has taken action to start building a normative framework that emphasises the *right to regulate* – arguably based on the guiding principles of the United Nations (UN) Draft Convention on the Right to Development (hereinafter, ‘the Draft Convention’) – that permits states ‘to take regulatory or other measures’ to achieve the Draft Convention’s objective and purpose,⁵ which is ‘to promote and ensure the full, equal and meaningful enjoyment of the right to development.’⁶ The new framework that China purports to establish promotes more active state regulatory policy interventions, coinciding with the Draft Convention’s requirement that states cooperate to promote global health.⁷

In this Article, we seek to assess how China may impact GHG as part of its ongoing effort to (re) shape global governance at the multilateral level and through trade/investment norm-setting at the regional and bilateral levels during COVID-19. By saying ‘multilateral’, we mean an international institutional setting that involves the participation of all state members of a given international organisation, such as the UN. ‘Regional’ denotes a transnational institutional setting that focuses on regional agreements, such as the Regional Comprehensive Economic Partnership (RCEP). ‘Bilateral’ refers to two economies or regions dealing with each other, such as agreements between China and the African Union as well as China and the European Union.

Specifically, the article examines the following four thematic areas: (1) increased engagement with multilateral institutions, specifically the UN and its organs and international initiatives such as Gavi, the vaccine alliance that has helped build China’s reputation as a collaborator during COVID-19; (2) China’s enhanced bilateral engagement with African countries to provide COVID-19 relief materials and vaccines; (3) the reemerging emphasis on right to regulate in bilateral and plurilateral treaties and the impacts on rules-and-norms-setting under the WTO framework that echoes growing calls for more regulatory autonomy; and (4) challenges to China’s proposed new initiatives and its pursuit of a greater role in GHG structure as it seeks to build upon existing infrastructures, institutions, rules and practices. We use available normative documents as supplemented by COVID-19-related scientific reports and employ legal and historical analytical methods to examine the four different aspects, and to provide normative assessments on how China may reshape (and reset) GHG.

The article proceeds as follows. The two parts immediately following this introduction show that when interacting with multilateral institutions, eg, the WHO and other UN agencies and Gavi, and with other developing states like African countries, China continues its past practices of cooperation. Specifically, it first describes China’s past and present engagements with WHO, Gavi, and the Human Rights Council (HRC). It posits that despite growing pressure from these institutions, China has reaffirmed its commitments to working with them and has pledged to increase monetary and material donations, including vaccines and medical equipment. In brief, China has performed more proactively in shaping GHG through its participation in these international organisations. Importantly, in describing China’s engagement with international organisations, the article points out that China’s increasing donations through multilateral institutions cannot compare with China’s massive interest in bilateral deals. The article thus proceeds to show from a bilateral perspective, using the China-Africa health cooperation as an example, how China invests in African health

⁴Henry Farrell & Abraham Newman, ‘Will the Coronavirus End Globalization as We Know It?’ (Foreign Affairs, 16 Mar 2020) <<https://www.foreignaffairs.com/articles/2020-03-16/will-coronavirus-end-globalization-we-know-it>> accessed 1 Dec 2022. However, some have found resilience in existing legal forms and international governance structures relating to health, including through trade and investment regulations. See eg, Caroline Freund et al, ‘How natural disasters reshape supply chains: Lessons for the COVID-19 crisis’, (VoxEU CEPR, 18 Aug 2021) <<https://voxeu.org/article/how-natural-disasters-reshape-supply-chains>> accessed 1 Dec 2022.

⁵UN Doc A/HRC/WG2/21/2 (17 Jan 2020), art 3(f).

⁶ibid art 1.

⁷ibid art 13.

infrastructure building. This part offers a historical overview and the on-going China-Africa health cooperation. In particular, it describes how China increased assistance during COVID-19, through support of local vaccine manufacturing plants in African countries and offer of personnel assistance and relief materials through new and existing channels. The first two parts demonstrate that for the past years China actively explores different mechanisms to build a China-related GHG framework.

The article next turns to China's emphasis on the right to regulate concerning health issues. It focuses on how current multilateral treaties (in particular trade and investment agreements) fail to offer grounds for the exercise of right to regulate to respond to the global health crisis satisfactorily, and how China recognises and incorporates the right to regulate in regional and bilateral treaties. On these bases, we argue that China's efforts to accord more regulatory autonomy to governments and potentially enable governments to take swift action during COVID-19. Furthermore, we show that China's domestic practices on strengthening the right to regulate also generate important influence on the global norm-setting concerning health issues. We posit that China's emphasis on the right to regulate domestic affairs works together with its efforts of promoting global coordination, in the sense that the former stresses the responsibility of states to provide health welfare for their citizens and the latter pays heed to the duty of states to cooperate among each other to provide sufficient health care to reduce injustice.

In addition to China's engagement in the institutional setting of multilateral, regional and bilateral framework to promote global cooperation and the right to regulate, China also makes huge efforts to establish new networks to promote the general accessibility of vaccines. The article then deals with this aspect specifically. It focuses on the newly proposed Global Developmental Initiative (GDI) and assesses its potential synergy with China's other initiatives such as the BRI to provide the global public good.

In a nutshell, this Article provides an account of how China engages at different levels of international life to shape the GHG. It concludes by noting the challenges and criticisms towards China's pursuit of a greater role in GHG and calls for a cooperative, multilateral approach in handling health crisis.

China's Engagement with International Organisations

This Part, from an institutional governance perspective, discusses China's participation in GHG by investigating how China engages with existing multilateral institutions, focusing on UN organs such as the WHO and the HRC, and other international initiatives such as Gavi, during COVID-19.⁸ The relationship between China and international institutions (in particular those providing health governance) since the start of the pandemic has often been tense, especially when it came to investigating the origin of the virus. International institutions criticised not only Beijing's uncooperative attitude towards investigations, but also the lack of substantive engagement with Gavi and COVAX (the COVID-19 Vaccines Global Access initiative).⁹ China's preferences toward a bilateral approach in providing vaccines, according to some commentators, attest to China's deployment of vaccine diplomacy.¹⁰ Despite all the mistrust

⁸There is a growing literature that deals with China's engagement with international organisations. See generally, Marc Lanteigne, *China and International Institutions: Alternate Paths to Global Power* (Routledge 2007) ch 4; Qingjiang Kong & Xiaojuan Ping, 'International Law and International Institutions: Implications for a Rising China' (2016) 1 *The Chinese Journal of Global Governance*; Ann Kent, 'China's Participation in International Organisations', in Yongjin Zhang & Greg Austin (eds), *Power and Responsibility in Chinese Foreign Policy* (Australian National University Press 2013) 132–166.

⁹'WHO Issues Rare Rebuke to China for Delaying Virus Team', (Bloomberg, 1 Jan 2021) <<https://www.bloomberg.com/news/articles/2021-01-06/who-issues-rare-rebuke-to-china-for-delaying-virus-origins-trip>> accessed 26 Jan 2022; Paul Adepoju, 'China Sidesteps COVAX Vaccine Donations' (Healthpolicy-Watch, 27 May 2021) <<https://healthpolicy-watch.news/china-vaccine-donations-africa-pandemic/>> accessed 26 Jan 2022.

¹⁰Yen Nee Lee, 'The US will be a "formidable competitor" to China in COVID vaccine diplomacy, professor says' (CNBC, 10 Jun 2021) <<https://www.cnbc.com/2021/06/10/covid-expert-on-us-china-competition-in-vaccine-diplomacy.html>> accessed 26 Jan 2022. China denies such accusations. China International Development Cooperation Agency China International Development Cooperation Agency, 'China International Development Cooperation Agency Spokesperson Tian

that complicates the current situation, China appears to have enhanced cooperation with these institutions: in the WHO, China advanced the Health Silk Road (HSR) strategy; in Gavi, China poured efforts into the COVAX facility; and in the HRC, China advocated for the right to health under the framework of right to development. It shows that China pursues a more proactive role in GHG building through these health-related and right to health-related organisations.

China and the WHO

China has a long history of working with the WHO both as a recipient of WHO's technical assistance that helped it undertake healthcare system reform, and as an important donor supporting the WHO's healthcare building in underdeveloped countries.¹¹ Over the years, the WHO – a member-governed organisation – has maintained a delicate and balanced relationship with China, praising it for health initiatives but also criticising it for mishaps.¹²

Since the start of COVID-19, the relationship between the WHO and China has continued to be under the spotlight and facing enhanced scrutiny, with political and technical pressure being imposed on both the WHO and China. Nevertheless, China has generally maintained a cooperative attitude towards the WHO. It increased donations to the WHO (US\$50 million in March and April 2020¹³ with pledged contributions totaling US\$2–3 billion¹⁴), partnered with the WHO to build the HSR initiative together,¹⁵ and called for international solidarity and cooperation through the work of the WHO.¹⁶

The HSR initiative was not just raised during the COVID-19 pandemic but was put on the table in 2016 in conjunction with the BRI (or Silk Road strategy).¹⁷ In 2017, China signed a Memorandum of Understanding (MoU) with the WHO to enhance collaboration to reduce the impact of health emergencies and build stronger health systems to deliver universal health coverage.¹⁸ At that time, the WHO proposed a strategic partnership with China to target vulnerable countries along the Silk Road and in Africa.¹⁹ In his speech in 2017 on building the HSR, WHO Director-General Tedros called for the health leaders of 60 countries and public health partners to build a 'healthy Silk Road' together, and promised 'the WHO will be on your side.'²⁰ It was on the same occasion that China issued the Beijing Communiqué for the development of the

Lin Interviewed by CGTN [国际发展合作署新闻发言人田林接受中国环球电视网采访实录] <http://www.cidca.gov.cn/2021-08/19/c_1211337750.htm> accessed 8 Dec 2022.

¹¹China's Relationship with the World Health Organization (WHO)' <https://www.fmprc.gov.cn/web/wjb_673085/zjzg_673183/gjs_673893/gjzz_673897/sjws_674137/gx_674141/> accessed 26 Jan 2022; World Health Organisation, 'Our contributors' <<https://www.who.int/about/funding/contributors>> accessed 26 Jan 2022. According to the WHO, China has donated \$89 million to WHO for the 2018/2019 biennium, ranking 17th among all contributors.

¹²For example, the WHO criticised China for covering up the SARS virus in 2003 which invited intense international scrutiny. Moreover, the WHO has also been an important debate forum for Taiwan, a politically sensitive topic in China. To date, China has successfully blocked many proposals to include Taiwan as a member of the WHO.

¹³Ambassador Chen Xu Announced in Geneva That China Has Decided to Donate Another \$30 Million to the WHO' (24 Apr 2020) <http://geneva.china-mission.gov.cn/eng/zgyqtgjzz/202004/t20200424_8197169.htm> accessed 26 Jan 2022.

¹⁴Yanzhong Huang, 'Vaccine diplomacy is paying off for China' (Foreign Affairs, 11 Mar 2021) <<https://www.foreignaffairs.com/articles/china/2021-03-11/vaccine-diplomacy-paying-china>> accessed 26 Jan 2022.

¹⁵World Health Organisation, 'Towards a Health Silk Road' (18 Aug 2017) <<https://www.who.int/director-general/speeches/detail/towards-a-health-silk-road>> accessed 26 Jan 2022.

¹⁶Full Text: Speech by President Xi Jinping at Opening of 73rd World Health Assembly' (XinhuaNet, 18 May 2020) <http://www.xinhuanet.com/english/2020-05/18/c_139067018.htm> accessed 26 Jan 2022.

¹⁷Xi Jinping: Joining Hands to Build a Green, Healthy, Intelligent, and Peaceful Silk Road [习近平: 携手打造绿色、健康、智力、和平的丝绸之路] (Mission of the People's Republic of China, 22 June 2016) <https://www.fmprc.gov.cn/web/gjhdq_676201/gj_676203/yz_676205/1206_677052/xgxw_677058/201606/t20160622_9305225.shtml> accessed 26 Jan 2022.

¹⁸World Health Organisation, 'New vision and strengthened partnership for WHO and China' (21 Aug 2017) <<https://www.who.int/news/item/21-08-2017-new-vision-and-strengthened-partnership-for-who-and-china>> accessed 26 Jan 2022.

¹⁹'Towards a Health Silk Road' (n 15).

²⁰'Towards a Health Silk Road' (n 15).

HSR initiative, and signed MoUs on continuous cooperation in the health sector with Brunei and Mongolia.²¹ During the pandemic, HSR was mentioned again by President Xi during the 73rd World Health Assembly in 2020. In addition, the China Population Welfare Fund – a national public welfare foundation based in Beijing – joined the COVID-19 Solidarity Response Fund²² in support of the work of the WHO and its partners to help countries respond to the COVID-19 pandemic.²³

China and Gavi

In 1999, Gavi was established by the Gates Foundation with a goal to accelerate developing countries' access to vaccines and to support research into 'effective, affordable and sustainable' health solutions for these countries.²⁴ Gavi works closely with the WHO, UNICEF, and the World Bank as well as sovereign donors and private sectors to strengthen primary health care and broaden vaccine coverage.²⁵ Consequently, UNICEF, the WHO, the World Bank, and the Gates Foundation hold permanent seats on the Gavi Board. Other Gavi partners (government donor countries, developing countries, research and technical institutes, vaccine industries, NGOs, and independent individuals) may serve on its Board on a time-limited basis.²⁶ Gavi's public-private partnering structure means it relies heavily on donations from sovereign governments and private sectors.²⁷ Major donors include the US (US\$3,390 million), the UK (US\$2,884.5 million), Germany (US\$1,689.3 million), as well as the Gates Foundation (US\$1,757.2 million).²⁸

China only became a donor to Gavi in 2015 at the Berlin Pledging Conference. Between 2016 and 2020, China contributed US\$5 million.²⁹ It was during COVID-19 that China started to participate more vigorously in the activities of Gavi, committing more donations at the Global Vaccine Summit to support Gavi's work for the 2021–2025 strategic period.³⁰ In total, China has pledged US\$20 million to Gavi (not including COVAX), a four-fold increase compared to 2016–2020.³¹

²¹National Health and Family Planning Commission of the People's Republic of China, 'Director Li Bin Met with Health Ministers of Relevant States during the Belt and Road High Level Meeting for Health Cooperation: towards a Health Silk Road [李斌主任在“一带一路”暨“健康丝绸之路”高级别研讨会期间会见相关国家卫生部长]' (23 Aug 2017) <<http://www.nhc.gov.cn/libin/tpk/201708/15aa7c9f207e4ceca320f159d7537684.shtml>> accessed 26 Jan 2022; Wang Bin, 'The Belt and Road High Level Meeting for Health Cooperation: towards a Health Silk Road Passes the Beijing Communique [“一带一路”暨“健康丝绸之路”高级别研讨会通过《北京公报》]' (18 Aug 2017) <http://m.xinhuanet.com/2017-08/18/c_1121507317.htm> accessed 26 Jan 2022.

²²The COVID-19 Solidarity Response Fund for the WHO was announced by Tedros in March 2020 to enable all countries with the weakest health systems to invest in preparedness efforts and respond to COVID-19: World Health Organisation, 'COVID-19 Response Fund' <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/donate>> accessed 26 Jan 2022.

²³World Health Organisation, 'China Population Welfare Fund to Channel Donations from Chinese Companies, Charities, and Individuals towards COVID-19 Solidarity Response Fund for WHO' (20 May 2020) <<https://www.who.int/china/news/detail/20-05-2020-china-population-welfare-fund-to-channel-donations-from-chinese-companies-charities-and-individuals-towards-covid-19-solidarity-response-fund-for-who>> accessed 26 Jan 2022.

²⁴Gavi, 'The Bill & Melinda Gates Foundation' <<https://www.gavi.org/operating-model/gavis-partnership-model/bill-melinda-gates-foundation>> accessed 26 Jan 2022.

²⁵Gavi, 'About Our Alliance' <<https://www.gavi.org/our-alliance/about>> accessed 26 Jan 2022.

²⁶Gavi, 'Gavi Board' <<https://www.gavi.org/our-alliance/governance/gavi-board>> accessed 26 Jan 2022. For instance, in 2020, the Gavi Board had representatives from government donor countries and from developing countries including France, Germany, Netherlands, Italy, Norway, Canada, Ghana, India, Pakistan, Afghanistan and Laos: Gavi, 'Gavi Alliance Governance Committee Meeting' (10 Dec 2020) <<https://www.gavi.org/sites/default/files/document/2021/Gov-2020-Mtg-08-Minutes%20POSTED.pdf>> accessed 26 Jan 2022; Gavi, 'Board composition' <<https://www.gavi.org/governance/gavi-board/composition>> accessed 26 Jan 2022.

²⁷Gavi, 'Donor Profiles' <<https://www.gavi.org/investing-gavi/funding/donor-profiles>> accessed 26 Jan 2022.

²⁸*ibid.*

²⁹Gavi, 'China Donor Profile' <<https://www.gavi.org/investing-gavi/funding/donor-profiles/china>> accessed 26 Jan 2022.

³⁰*ibid.*

³¹*ibid.*

Compared to donations from Gavi's traditional major donors (mostly the developed economies), China's contribution to Gavi is still small, thus China can only be seen as a marginal player for now.³²

During the COVID-19 pandemic, Gavi, the WHO and the Coalition for Epidemic Preparedness Innovations established an initiative, COVAX – the COVID-19 Vaccines Global Access Facility – to accelerate the development and manufacture of COVID-19 vaccines and to guarantee fair and equitable access for every country by pooling resources.³³ COVAX's Advance Market Commitment (AMC) mechanism asks higher-income countries to place orders and pay for their doses. These upfront payments then allow manufacturers to continue developing and manufacturing vaccines even before the vaccines were fully approved. Doses for lower-income countries are paid for via a separate financial mechanism – supported by OECD's Official Development Assistance as well as contributions from other actors.³⁴ For instance, Japan and the US have pledged US\$1 billion and US\$2 billion respectively to the AMC mechanism as of June 2021.³⁵ On 6 August 2021, at the International Forum on COVID-19 Vaccine Cooperation (hosted by China), China pledged US \$100 million to AMC for equitable access to COVID-19 vaccines for lower-income countries. This pledge has been China's largest voluntary contribution to an international organisation to date.³⁶

In addition to governmental donations, and potentially more importantly, two vaccines produced by Chinese pharmaceutical companies – Sinovac and Sinopharm – were included in COVAX. COVAX signed agreements with these two companies to buy more than half a billion doses of their COVID-19 vaccines by the first half of 2022.³⁷ And before this, Gavi held talks with China's state-owned Sinopharm (and other vaccine manufacturers) to expand the COVAX pipeline and to secure doses for distribution.³⁸

Yet China's participation in Gavi remains rather limited. On the one hand, China's donation to Gavi falls behind other major donors (such as the US and the UK), and it has not served as a Gavi board member. Frequently China provides vaccines direct to recipient countries³⁹ And this bilateral approach, outside of the multi-stakeholder framework of COVAX, may have a strategic purpose. It resonates with China's narratives that COVAX was slow in distributing the vaccines and that China moved quickly to support public good and to tackle the international emergency.⁴⁰ On the other

³²Historical data shows that China falls behind some major developed economies in donations to WHO, but is ahead of other developing countries. For instance, the US pledged a donation of US\$10 billion to COVAX. See World Health Organisation, 'Our Contributors' <<https://www.who.int/about/funding/contributors>> accessed 26 Jan 2022.

³³Gavi, 'COVAX Facility' <<https://www.gavi.org/covax-facility>> accessed 26 Jan 2022.

³⁴The Gavi COVAX AMC Explained' (Gavi, 15 Feb 2021) <<https://www.gavi.org/vaccineswork/gavi-covax-amc-explained>> accessed 26 Jan 2022.

³⁵'World Leaders Unite to Commit to Global Equitable Access for COVID-19 Vaccines' (Gavi, 2 Jun 2021) <<https://www.gavi.org/news/media-room/world-leaders-unite-commit-global-equitable-access-COVID-19-vaccines>> accessed 26 Jan 2022.

³⁶'China Pledges US\$ 100 Million towards Equitable Access to COVID-19 Vaccines for Lower-Income Countries' (Gavi, 6 Aug 2021) <<https://www.gavi.org/news/media-room/china-pledges-us-100-million-towards-equitable-access-COVID-19-vaccines>> accessed 26 Jan 2022.

³⁷Julia Hollingsworth, 'COVAX Signs Deal for 550 Million Chinese COVID-19 Vaccines amid questions over efficacy' (CNN, 13 Jul 2021) <<https://edition.cnn.com/2021/07/13/asia/covax-china-vaccines-intl-hnk/index.html>> accessed 26 Jan 2022.

³⁸GAVI in Talks with China's Sinopharm, Other Vaccine Makers for COVAX Doses' (Reuters, 10 May 2021) <<https://www.reuters.com/business/healthcare-pharmaceuticals/gavi-talks-with-chinas-sinopharm-other-vaccine-makers-covax-doses-2021-05-10/>> accessed 26 Jan 2022.

³⁹'China's COVID-19 vaccine to become global public good when available: Xi' (XinhuaNet, 18 May 2020) <http://www.xinhuanet.com/english/2020-05/18/c_139066851.htm> accessed 26 Jan 2022.

⁴⁰According to China's own account, as of October 2021, it has provided 1.5 billion doses of vaccine to 106 countries and regions. In contrast, COVAX had distributed 435 million doses out of 7.5 billion administered worldwide as of early November 2021. 'China to Provide 2 Billion Doses of Vaccine to World This Year' (Global Times, 5 Aug 2021) <<https://www.globaltimes.cn/page/202108/1230714.shtml>> accessed 26 Jan 2022; cf WTO-IMF COVID-19 Vaccine Trade Tracker (showing that China has exported over 1.3 billion doses of vaccines as of October 2021) (updated 19 Nov 2021) <https://www.wto.org/english/tratop_e/covid19_e/vaccine_trade_tracker_e.htm> accessed 26 Jan 2022. The WTO-IMF COVID-19 Vaccine Trade Tracker further shows that as of October 2021, vaccines supplied via COVAX either through contracted supply or donations only stands at 451.1 million doses, falling far behind those supplied via bilateral deals (2,238.7 doses).

hand, direct donation to COVAX is one component of China's multi-faceted approach in boosting its role in GHG. The small donation to Gavi suggests that China prefers a stand-alone approach under the BRI over GAVI and that China has very little power in this establishment which was started by the Gates Foundation and the major western donors.

China and the Human Rights Council

The UN lists the 'right to health' as a fundamental human right which is necessary for the exercise of other human rights.⁴¹ The normative content of the right to development, as prescribed in the UN Declaration on the Right to Development, requires states to ensure 'equality of opportunity for all in their access to basic resources,' inter alia access to 'health services.'⁴² COVID-19 has once again focused the attention of the international community on the right to development, particularly regarding the obligation of states to provide access to health services, given the alarming gap and inequality in health and social protection systems between rich and poor countries. The right to development, stressed the UN High Commissioner for Human Rights Michelle Bachelet, is not only an 'inalienable right' of persons, but also a collective right for people that shall be respected by other States.⁴³ By so interpreting, the legal and political significance of the right to development is elevated and it becomes a potent legal tool underpinning a more welfare-based approach towards health as well as global vaccine distribution. Moreover, the elevated status of the right to development also introduces the possibility of using this right to outweigh the patent system requirements created by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), thus imposing further obligations on States (particularly the vaccine-producing states) to fulfill the right to development and access to health by making vaccines more widely accessible.⁴⁴

It is also against the backdrop of COVID-19 that China has advocated more vigorously for the right to development and right to health,⁴⁵ actively participating in workshops organised by the HRC to discuss the significance and paths of the right to development, promoting vaccine accessibility, and, as a result, winning support from many countries.⁴⁶ This is a continuation of China's practice that focuses on the economic and social welfare aspects of the right to development vis-a-vis the civil and political aspects. For instance, Ambassador Chen Xu, the Permanent Mission of China to the UN (Geneva) made several statements at the HRC, stressing that 'the COVID-19 pandemic has severely impacted the economic and social development and people's livelihood of all countries, developing countries in particular, exacerbated inequality

⁴¹UN Doc E/C12/2000/4 (11 Aug 2000) 'The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)'.

⁴²UN Declaration on the Right to Development, UN Doc A/RES/41/128 (adopted by General Assembly on 4 Dec 1986), art 8.

⁴³United Nations Office of the High Commissioner for Human Rights, 'COVID-19 and the Right to Development: We Are All in This Together, 45th session of the Human Rights Council Biennial Panel discussion on the Right to Development' (17 Sep 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26254&LangID=E>> accessed 26 Jan 2022.

⁴⁴Diane Desierto, 'Equitable COVID Vaccine Distribution and Access: Enforcing International Legal Obligations under Economic, Social, and Cultural Rights and the Right to Development' (EJIL:Talk!, 2 Feb 2021) <<https://www.ejiltalk.org/equitable-covid-vaccine-distribution-and-access-enforcing-international-legal-obligations-under-economic-social-and-cultural-rights-and-the-right-to-development/>> accessed 26 Jan 2022.

⁴⁵United Nations Office of the High Commissioner for Human Rights, 'The 21st Session of the Working Group on the Right to Development' <<https://www.ohchr.org/EN/Issues/Development/Pages/21stSession.aspx>> accessed 1 Dec 2022.

⁴⁶Right to development: Report of the Secretary-General and the United Nations High Commissioner for Human Rights, UN Doc A/HRC/45/21 (23 Jul 2020).

and brought new challenges to the realization of the right to development.⁴⁷ Explaining the reason for the China-initiated resolution on 'the Contribution of Development to the Enjoyment of All Human Rights' at the HRC, Ambassador Chen highlighted China's commitments to 'promoting international cooperation, common development and the universal enjoyment of human rights,' before calling for 'protect[ing] the right to life and right to health, and in particular, do[ing] away from [sic] "vaccine nationalism" to ensure timely and equitable access to vaccines for developing countries.'⁴⁸

A Synopsis of China's Engagement with International Organisations

This part shows how China engages with several health-related and health-right-related organisations to pursue global cooperation in combatting COVID-19. During this process, China not only makes more financial and technological contribution to the global health structures, it also becomes deeply involved in the shaping of GHG in the health-right-related issues. This allows China to assume more discourse power in norm-setting. Moreover, China in the GHG building manifests a strong spirit of global cooperation. However, China's interest in international organisation cannot compare with its investment in bilateral cooperation. This is manifested in the limited donation from China to Gavi vis-à-vis its direct donation to African countries. But overall, China demonstrates continuous efforts in facilitating global cooperation in global health management.

China's Interactions with African Countries – A Pattern of Continuity

Beyond engaging with multilateral institutions, China has also interacted with developing countries more proactively on a bilateral basis during the pandemic in the spirit of solidarity. This Part thus turns to focus on bilateral interactions between China and African countries. The analysis is situated in the long history of the China-Africa relationship. It questions the quality and benefits of China's medical assistance to Africa since the 1960s. It first describes the Sino-Africa relations, then details the GHG offered by China to African countries, and lastly, compares and contrasts that with GHG assistance (or the lack thereof) by other developed economies. It shows that the Chinese government accelerated and consolidated its economic cooperation with African states by leaning in favour of vaccine equity and accessibility across the continent. It posits that China's COVID-19 interventions in Africa have so far been an important watershed that has the potential to cement and further stimulate Sino-Africa health and economic cooperation. This part of the Article interrogates the standard and efficacy of Chinese COVID-19 vaccines in Africa in light of the opaque clinical results of the drugs.

A Long History of Strong Economic and Political Alliances

China has an enduring relationship with African countries. Beginning in 1955 at the Bandung Conference,⁴⁹ Afro-Asian States have built ideological solidarity against Western imperialist international economic order and advocated for a global system that is responsive to the needs and

⁴⁷Joint Statement Delivered by H.E. Ambassador Chen Xu at the Interactive Dialogue with the Expert Mechanism on the Right to Development at the 48th Session of the Human Rights Council' (16 Sep 2021) <http://www.china-un.ch/eng/dbtxwx/202109/t20210917_9899530.htm> accessed 26 Jan 2022.

⁴⁸Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organisations in Switzerland, 'Opening Remarks by Ambassador Chen Xu at the Intersessional Seminar on the Contribution of Development to the Enjoyment of All Human Rights' (29 May 2021) <http://www.china-un.ch/eng/dbtyw/rqsw/202105/t20210529_9129797.htm> accessed 26 Jan 2022.

⁴⁹One of the objectives of the Bandung Conference that was held in Indonesia was to consider problems of mutual and special interest to Asian and African peoples such as national sovereignty, racism, and colonialism. See A Appadorai, 'The Bandung Conference' (1955) 11 *India Quarterly* 207.

aspirations of Third World⁵⁰ people.⁵¹ Although it has been contended that the Bandung Conference is being recreated by some postcolonial scholars as the mythical foundation of anti-imperialist policy,⁵² the enduring Sino-African relationship that began in Bandung extends to public health cooperation. Starting from the twilight of colonialism in Africa, China has played pivotal roles in the continent by providing medical expertise and treating diseases such as malaria, Ebola, HIV/AIDS, Lassa fever, and cholera, to mention but a few.⁵³ If the COVID-19 outbreak in late 2019 came at an inauspicious time in China's international economic and diplomatic relations with the West, it did coincide with a period when Sino-African economic investment cooperation had begun to flourish. China is Africa's biggest investor in critical national infrastructure projects as it has increasingly constructed friendship hospitals,⁵⁴ malaria prevention and control centres, railways, highways, seaports,⁵⁵ airports, electricity-generating plants, among others.⁵⁶ Because of the long historical relationship between China and Africa and the health infrastructure it has financed, China is able to tap into the existing infrastructure to provide new GHG in the continent during COVID-19, including, for example, the ongoing construction of the Africa Centre for Disease Control (CDC) headquarters in Ethiopia.⁵⁷

⁵⁰In this article, we use the geographical, economic, and political phraseology 'Third World' advisedly. This is at the backdrop of the fact that there are persuasive arguments in law and international political economy literature to the effect that the category is no longer apposite in light of the widening gulf in industrialisation and development between Asian countries such as China and India on the one hand and African and some Caribbean countries such as Mauritania and Jamaica on the other hand. Also, it has been argued that there is a 'Third World' within the 'First World' and that the converse is true. See eg. James H Mittelman & Mustapha Kamal Pasha, *Out from Underdevelopment Revisited: Changing Global Structures and the Remaking of the Third World* (1997 edn, Palgrave Macmillan 1996). On the argument for the continued relevance of 'Third World', see Balakrishnan Rajagopal, 'Locating the Third World in Cultural Geography' (1999) 15 *Third World Legal Studies* 2. See also Makau Mutua & Antony Anghie, 'What Is TWAIL?' (2000) 94 *Proceedings of the Annual Meeting of the American Society of International Law* 31 (arguing that the term 'Third World' is different from 'less-developed', 'crisis-prone', 'industrialising', 'developing', 'underdeveloped', or 'the South' because it correctly captures the oppositional dialectic between the European and the non-European and identifies the plunder of the latter by the former. That it places the state of the crises of the world on the global order that the West has created and dominates); Karin Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse' (1998) 16 *Wisconsin International Law Journal* 353.

⁵¹Matthew S Erie, 'Introduction to the Symposium on Legal Dimensions of Chinese Globalization: China and Global Health Governance' (2020) 8 *The Chinese Journal of Comparative Law* 281 (arguing that Third World and Marxist-Leninist ideologies are essential characteristics of Chinese economic globalisation); Suzanne Ogden, 'Sovereignty and International Law: The Perspective of the People's Republic of China' (1974) 7 *New York University Journal of International Law and Politics* 1; Tin Hinane El Kadi & Sophie Zinser, 'Beijing's Vaccine Diplomacy Goes Beyond Political Rivalry' (Chatham House – The Royal Institute of International Affairs, 22 Feb 2021) <<https://www.chatham-house.org/2021/02/beijings-vaccine-diplomacy-goes-beyond-political-rivalry>> accessed 30 Aug 2021.

⁵²Partha Chatterjee, 'The Legacy of Bandung', in Eslava Luis, Fakhri Michael & Nesiiah Vasuki (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press 2017) 657–674 (arguing that such claim is an exaggeration and that the present invocation of Bandung is not the regurgitation of a mythical story, but the declaration of a contemporary set of demands of global politics).

⁵³Lai-Ha Chan, *China Engages Global Health Governance: Responsible Stakeholder or System-Transformer?* (Palgrave Macmillan 2011).

⁵⁴China Donates Federal Staff Hospital/ China-Nigeria Friendship Hospital' (China Aid Data, 2017) <<https://china.aiddata.org/projects/30629/>> accessed 7 Jun 2020. See also Embassy of the People's Republic of China in the Federal Republic of Nigeria, 'China-Assisted Hospital Commissioned in Nigeria' (29 Jan 2013) <http://za.china-embassy.gov.cn/eng/zfgxss/ca00/201301/t20130129_7688639.htm> accessed 7 Jan 2020. 'China Constructs Sierra Leone-China Friendship Hospital' (China Aid Data) <<https://china.aiddata.org/projects/2254/>> accessed 27 Aug 2021.

⁵⁵Lekki Port, 'Nigeria's Deepest Sea Port' <<https://lekkiport.com/>> accessed 10 Dec 2022.

⁵⁶Olufunmilayo B Arewa, 'Constructing Africa: Chinese Investment, Infrastructure Deficits, and Development' (2016) 49 *Cornell International Law Journal* 101; Global Development Policy Centre – Boston University, 'China's Overseas Development Finance' <<http://www.bu.edu/gdp/chinas-overseas-development-finance/>> accessed 30 Aug 2021.

⁵⁷African Union, 'Groundbreaking and Unveiling Ceremony for Africa CDC HQ' (14 Dec 2020) <<https://au.int/en/press-releases/20201214/ground-breaking-and-unveiling-ceremony-africa-cdc-hq>> accessed 28 Aug 2021. Donald Trump's US government had peddled a data theft theory about the Chinese funding of the Africa CDC construction project and opposed it. Their claim and opposition to it were never substantiated with concrete evidence. See Katrina Manson & David Pilling, 'US

Despite the many years of Sino-Africa economic relations and the provision of medical aid and infrastructure to Africa, the conditions of health facilities in many African countries are still abysmal. At the time of writing, many African states lack basic medical facilities to confront a pandemic and an epidemic such as COVID-19 and Ebola. In Nigeria, for example, there is a high mortality rate in public hospitals because of poor healthcare infrastructure. The Nigerian ruling class is known for travelling to India and industrialised countries in the West to receive medical care.⁵⁸ That the long history of Chinese medical aid to Africa is yet to address some of the challenges of healthcare infrastructure in the continent has at least one telling implication. It puts Beijing's principle of win-win foreign policy concept and its ideology that international economic and investment relations should not take a dominance-dependence structure on trial. It casts doubt on the utility and quality of some Chinese-built health infrastructure in some African countries. From the standpoint of GHG, the Sino-Africa engagements and Beijing's claimed solidarity with the continent have not yet provided tangible benefits to Africa.

Bilateral interactions during COVID-19

The first official case of COVID-19 in Africa was detected in Egypt on 14 February 2020.⁵⁹ As of the time of writing, data from the CDC of the African Union (Africa CDC)⁶⁰ shows that there has been a total of 11,287,599 coronavirus cases, 250,422 deaths, and 10,555,195 recoveries in the African continent.⁶¹ However, the vaccination rates in African countries remain the lowest in the world. Africa CDC reports that as of 16 March 2022, only 14.99% of Africa's population have been immunised completely against the novel virus.⁶² The need for vaccines, treatment, and materials is further exacerbated by the more transmissible variants and severe economic suffering.⁶³ Although many African countries have received COVID-19 vaccines from COVAX and the African Vaccination Acquisition Task Team initiatives, the availability of vaccines provided via multilateral efforts, as has been demonstrated in Part 1, is limited and the need for vaccines remains strong.

To address the lack of equitable access to COVID-19 vaccines, China struck bilateral deals with African states for the donation and sale of Sinopharm and SinoVac-Corona vaccines.⁶⁴ China appears to be on track to fulfill the pledge it made to African governments at the June 2020

Warns Over Chinese "Spying" on African Disease Control Centre' (Financial Times, 6 Feb 2020) <<https://www.ft.com/content/cef96328-475a-11ea-aeb3-955839e06441>> accessed 28 Aug 2021.

⁵⁸Nigeria Losing \$1B Annually to Medical Tourism, Authorities Say' (Voice of America, 10 May 2019) <<https://www.voanews.com/a/nigeria-health-care-medical-tourism/4912005.html>> accessed 12 Jul 2020; Emmanuel Akinwotu, 'Nigeria's President Draws Criticism for Seeking Medical Care Abroad' (The New York Times, 8 May 2018) <<https://www.nytimes.com/2018/05/08/world/africa/nigeria-president-buhari-health.html>> accessed 12 Jul 2020.

⁵⁹Africa CDC, 'Africa Identifies First Case of Coronavirus Disease: Statement by the Director of Africa CDC' (15 Feb 2020) <<https://africacdc.org/news/africa-identifies-first-case-of-coronavirus-disease-statement-by-the-director-of-africa-cdc/>> accessed 19 Jul 2021.

⁶⁰Established in 2016, Africa CDC is a specialised technical institution of the African Union that supports public health initiatives of Member States and strengthens the capacity of their public health institutions to detect and manage disease outbreaks. See Africa CDC, 'Our History' <<https://africacdc.org/about-us/our-history/>> accessed 17 Mar 2022.

⁶¹Africa CDC, 'Coronavirus Disease 2019 (COVID-19): Latest updates on the COVID-19 crisis from Africa CDC' <<https://africacdc.org/COVID-19/>> accessed 17 Mar 2022.

⁶²Africa CDC, 'COVID-19 Vaccination: Latest Updates from Africa CDC on Progress Made in COVID-19 Vaccinations on the Continent' <<https://africacdc.org/COVID-19-vaccination/>> accessed 17 Mar 2022.

⁶³OECD/International Labour Organisation, *Tackling Vulnerability in the Informal Economy* (OECD Publishing 2019) ch 1 <<https://www.oecd-ilibrary.org/deliver/939b7bcd-en.pdf?itemId=/content/publication/939b7bcd-en&mimeType=pdf>> accessed 1 Dec 2022 (That, the COVID-19 pandemic and the consequential public health restrictive measures have exacerbated poverty among the low-income population in a continent where 85.8% of workers are in the informal sector).

⁶⁴Economist Intelligence Unit, 'Africa Faces Major Obstacles to Accessing COVID Vaccines' (2021) <<https://www.eiu.com/n/africa-faces-major-obstacles-to-accessing-COVID-vaccines/>> accessed 22 Aug 2021; 'Togo Receives China-Donated Sinovac Vaccines' (Xinhua, 24 Apr 2021) <http://www.china.org.cn/world/Off_the_Wire/2021-04/24/content_77435517.htm?F=pad&a=true> accessed 28 Aug 2021; Liu Yang & Zhao Jing, '50 African Diplomats Visit Chinese Coronavirus

Extraordinary China-Africa Summit on Solidarity against COVID-19 to increase vaccine distribution in the continent as a priority.⁶⁵ Since 9 January 2021, Sinopharm and Sinovac vaccines have been donated to and administered in 45 States in the continent under an MoU between China and the African States.⁶⁶ According to a Beijing-based consultancy firm Bridge, as of 8 November 2021 China has delivered 15 million doses of vaccine to African countries through donations.⁶⁷ Consequently, China is considered the foremost country making its vaccines available to African countries and the major vaccine supplier to Africa.⁶⁸

Concerns regarding the quality, efficacy and safety of Chinese COVID-19 vaccines emerge. The Sinopharm and Sinovac vaccines suffer from transparency and scientific issues because their manufacturers were reluctant to share experimental results of the vaccines with the WHO and the public at large. Although the state-owned vaccine producers claimed that their jabs are 79.3 per cent effective, a laboratory trial carried out in Brazil reported a low efficacy rate of 50.4 per cent.⁶⁹ The Chinese drugmakers' opaque approach to the results of the clinical trials of Sinopharm and Sinovac and unreliable data could adversely affect the acceptance rate of the vaccines in Africa in comparison with vaccines produced by Western companies such as Pfizer, Moderna, and Johnson & Johnson.

In addition to vaccine donation, China has entered into agreements with African countries to manufacture vaccines locally in Africa and to invest in the vaccine supply chain infrastructure. China and Egypt reached a bilateral agreement in December 2020 to produce COVID-19 vaccines in the North African country following legislative and regulatory approval granted by the Egyptian government.⁷⁰ The vaccine production plant, jointly operated by Chinese and Egyptian firms, currently has a production capacity of one million doses. Similarly, China has signed a deal with Morocco to use the existing facilities of a Moroccan pharmaceutical company to produce Sinopharm vaccines. African countries, with the assistance of Chinese state and non-state actors, have invested in vaccine supply chain infrastructure such as pharmaceutical storage facilities to ease vaccine rollout challenges across the continent.⁷¹ However, this article recognises that transportation of vaccines and immunisation of the rural population remains challenging for many reasons including because many towns and villages in Africa are flashpoints of ethno-religious conflict and violence. Beyond internecine conflict, vaccine hesitancy is a phenomenon often observed across the

Vaccine Maker' (CGTN, 16 Oct 2020) <<https://news.cgtn.com/news/2020-10-16/50-African-diplomats-visit-Chinese-coronavirus-vaccine-maker-UDKAcH773O/index.html>> accessed 31 Aug 2021.

⁶⁵Forum on China-Africa Cooperation, 'Xinhua Commentary: Timely Vaccine Arrivals in Africa Show China Honoring Its Commitment to Global COVID-19 Vaccination' (26 Feb 2021) <https://www.fmprc.gov.cn/zfhzlt2018/eng/zfzs_1/t1856527.htm> accessed 28 Aug 2021; Forum on China-Africa Cooperation, 'Cameroon Receives First Batch of COVID-19 Vaccines from China' (13 Apr 2021) <https://www.fmprc.gov.cn/zfhzlt2018/eng/zfgx_4/rwjl/t1868363.htm> accessed 28 Aug 2021.

⁶⁶Africa CDC, 'COVID-19 Vaccination' <<https://africacdc.org/COVID-19-vaccination/>> accessed 11 Nov 2021. Some of the countries that have benefitted from the COVID-19 bilateral pact with the Chinese government include Ethiopia, Tunisia, Algeria, Mozambique, Kenya, Libya, Uganda, Angola, Cote d'Ivoire, Mauritius, Sudan, Tanzania, Rwanda, Niger, Somalia, Guinea, Benin, Lesotho, Zambia, Mauritania, Congo Republic, Namibia, Sierra Leone, Comoros, Chad, Gabon, Cape Verde, Seychelles, Botswana, Djibouti, Senegal, Equatorial Guinea, Egypt, Togo, Morocco, Nigeria, and Cameroon.

⁶⁷China COVID-19 Vaccine Tracker' (Bridge Consulting 2021) <<https://bridgebeijing.com/our-publications/our-publications-1/china-COVID-19-vaccines-tracker/>> accessed 11 Nov 2021.

⁶⁸Hans Von Der Burchard, 'Borrell: EU's "Insufficient" Vaccine Donations Open Door for China' (POLITICO, 30 Jul 2021) <<https://www.politico.eu/article/josep-borrell-eu-vaccine-donations-insufficient/>> accessed 15 Aug 2021.

⁶⁹Darren Choi & Sean Janke, "'Vaccine Diplomacy'? – China's Global Vaccine Efforts and Controversies' (University of Alberta China Institute, 21 Jul 2021) <<https://www.ualberta.ca/china-institute/news/the-latest/2021/july/vaccine-diplomacy.html>> accessed 18 Aug 2022.

⁷⁰Ministry of Foreign Affairs of the People's Republic of China, 'Wang Yi and Egyptian Foreign Minister Sameh Shoukry Attend the Ceremony Marking the Joint Production of One Million Doses of COVID-19 Vaccine in Egypt' (19 Jul 2021) <https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1893144.shtml> accessed 7 Aug 2021.

⁷¹'Africa Faces Major Obstacles to Accessing COVID Vaccines' (n 64).

continent during every public immunisation programme thus slowing down the pace of vaccine rollout in Africa.

Moreover, China and African countries have also worked together to provide medical equipment and personnel assistance to address critical shortages during the pandemic. China deployed COVID-19 medical teams⁷² and donated relief materials (face masks, disposable protective clothing, testing kits, forehead thermometers, medical gloves, shoe covers, goggles, ventilators, and oxygen generators)⁷³ to African states including Ghana, Nigeria,⁷⁴ Namibia, Kenya, Zambia, Rwanda, Sierra-Leone, and Togo, among others.⁷⁵

China's multi-pronged COVID-19 assistance to Africa is remarkable considering the governance deficit in global public health. The Chinese government has been consolidating its economic and health cooperation with African states by supporting vaccine equity and accessibility. The distribution of vaccines to various African countries was carried out while Beijing was confronting the virus in its own country – the most populous nation in the world.⁷⁶ In expressing his deep gratitude to China for its intervention with COVID-19 vaccines, the Zimbabwean president remarked that

Our dear friends of China, these vaccines are certainly providing a new light of positivity to the people of Zimbabwe in these tough times — a light at the end of a dark tunnel. We are most grateful for this life-saving gesture. From our people to yours — thank you to my dear brother President Xi Jinping — and thank you to all the people of China.⁷⁷

There is a need for a reconfiguration of GHG structures based on an inclusive humane globalism.⁷⁸ Although both China and the US have donated vaccines to Africa, the different approaches adopted by China and the US in the fight against COVID-19 with respect to the pace of getting vaccines to Africa may lead to changing international economic interest alignments and become a key defining factor in the granting of natural resource exploration and production rights by African governments in the future. It also may cause Third World states to pursue a different kind of world order that reflects multiple centres of authority and capacity in global governance.⁷⁹ In this connection, China has begun to take a leadership position by becoming a dependable source of GHG in Africa through the provision of vaccines, relief materials, and other assistance. Yet China's new GHG in Africa is inextricably interwoven with its broader international economic

⁷²Spotlight: China's Medical Teams Help Cement China-Africa Friendship Amid COVID-19' (XinhuaNet, 18 Aug 2020) <http://www.xinhuanet.com/english/2020-08/18/c_139299532.htm> accessed 27 Aug 2021.

⁷³Chinese Medical Experts Arrive in Algeria to Help Fight COVID-19' (XinhuaNet, 15 May 2020) <http://www.xinhuanet.com/english/2020-05/15/c_139057565.htm> accessed 7 Aug 2021.

⁷⁴Nigerian Federal Ministry of Health, 'FG: Chinese Government Donates Items to Fight COVID-19' <https://www.health.gov.ng/index.php?option=com_k2&view=item&id=630:fg-chinese-government-donates-items-to-fight-covid-19> accessed 8 Aug 2021.

⁷⁵China International Development Cooperation Agency, 'Chinese Medical Supplies for 18 African Countries Arrive in Ghana' (6 Apr 2020) <http://en.cidca.gov.cn/2020-04/06/c_470880.htm> accessed 28 Aug 2021.

⁷⁶Lori Hinnant, Maria Cheng & Aniruddha Ghosal, 'Vaccine inequity: Inside the cutthroat race to secure doses' (Associated Press, 19 Jul 2021) <<https://apnews.com/article/coronavirus-vaccine-inequality-dac9c07-b324e29d3597037b8dc1d908a>> accessed 1 Dec 2022 (quoting Strive Masiyiwa, the African Union's envoy for vaccine acquisition lamenting that it's like a famine in which 'the richest guys grab the baker').

⁷⁷Office of the President and Cabinet (OPC), 'President Hails China for Vaccines' (15 Feb 2021) <<http://www.theopc.gov.zw/index.php/627-president-hails-china-for-vaccines>> accessed 5 Aug 2021.

⁷⁸Obijiofor Aginam, 'Between Isolationism and Mutual Vulnerability: A South-North Perspective on Global Governance of Epidemics in an Age of Globalization' (2004) 77 Temple Law Review 297.

⁷⁹Obijiofor Aginam, 'Global Village, Divided World: South-North Gap and Global Health Challenges at Century's Dawn' (2000) 7 Indiana Journal of Global Legal Studies 603 (arguing that global health policies must, by necessity, focus on health disparities between poor and rich nations). Amitav Acharya, 'A "Third Way" for World Order After COVID-19' (Council on Foreign Relations, 21 Jul 2021) <<https://www.thinkglobalhealth.org/article/third-way-world-order-after-covid-19>> accessed 29 Aug 2021.

cooperation with the continent and engagements usually overlap and converge. Beijing's GHG and assistance to the African states flow through multiple mechanisms and platforms. Beijing deploys various strategies and multiple actors in the provision of COVID-19 aid to Africa. In addition to the Chinese government, state-owned enterprises⁸⁰ operating in the continent as well as Chinese philanthropists⁸¹ have donated pandemic relief materials to African states and the African Union.⁸² China's COVID-19 interventions in Africa enhance health measures established through multilateral mechanisms such as the June 2020 Extraordinary China-Africa Summit on Solidarity Against COVID-19 and various public healthcare initiatives under the Forum on China-Africa Cooperation (FOCAC), as well as the HSR.⁸³

Although there have been isolated pockets of Sinophobia in some African countries⁸⁴ and scores of xenophobic attacks against the African community in China that have triggered diplomatic rows between Beijing and African governments,⁸⁵ by and large, Chinese COVID-19 interventions in the continent are being received with gratitude and fanfare.⁸⁶ This might be a result of limited options for COVID-19 vaccines by African governments. Moreover, the ongoing Chinese GHG in Africa may lead to increased international economic interest alignments between China and African countries, presenting the continent with the opportunity to develop a sustainable healthcare infrastructure that is resilient to future public health challenges. As this part of the article has noted, the Sino-Africa health and economic relations have not yielded substantial and sustainable gains for Africa. Thus, the COVID-19 pandemic provides Africa with the opportunity to leverage Chinese funding as well as scientific and medical expertise for its own sustainable development.

China's Treaty Experiences Regarding the Right to Regulate and Health

Keeping in mind China's interactions with multilateral institutions and African countries, this Part reviews terms of existing treaties China has joined, focusing on right to regulate in health space in trade and investments treaties. The 'right to regulate', one of the enumerated general principles of the UN Draft Convention in the realisation of the right to development, reassures governments of their ability to take regulatory measures in the public interests, such as the protection of public

⁸⁰Mo Jingxi, 'Nigeria Appreciates Chinese Support in COVID-19 Fight' (China Daily, 9 May 2020) <<http://global.china-daily.com.cn/a/202005/09/WS5eb5fed9a310a8b241154601.html>> accessed 11 Jul 2020; Jerry Omondi, 'Chinese Built Health Facility Ready to Aid Nigeria's COVID-19 Fight' (CGTN Africa, 13 May 2020) <<https://africa.cgtn.com/2020/05/13/chinese-built-health-facility-ready-to-aid-nigerias-covid-19-fight/>> accessed 10 Jul 2020.

⁸¹Ministry of Foreign Affairs of the Peoples Republic of China, 'Second Batch of Anti COVID-19 Donation from Jack Ma and Alibaba Foundation Arrives in Juba' (19 Apr 2020) <https://www.fmprc.gov.cn/mfa_eng/wjw_663304/zwjg_665342/zwbdt_665378/t1771208.shtml> accessed 27 Aug 2021; African Union, 'Receiving of 3rd Consignment of Medical Supplies from Jack Ma Foundation' (29 Apr 2020) <<https://au.int/en/newsevents/20200429/receiving-3rd-consignment-medical-supplies-jack-ma-foundation>> accessed 28 Aug 2021.

⁸²African Union, 'China Donates Medical Supplies to African Union Commission' (23 Oct 2020) <<https://au.int/en/press-releases/20201023/china-donates-medical-supplies-african-union-commission>> accessed 28 Aug 2021.

⁸³Ministry of Commerce of the People's Republic of China, 'Elaboration on the Eight Major Initiatives of the FOCAC Beijing Summit' (19 Sep 2018) <<http://english.mofcom.gov.cn/article/policyrelease/Cocoon/201809/20180902788698.shtml>> accessed 22 Aug 2021.

⁸⁴Barney Walsh & Hubert Kinkoh, 'COVID-19 and the Conundrum of China-Africa Relations' (King's College London, 30 Apr 2020) <<https://www.kcl.ac.uk/COVID-19-and-the-conundrum-of-china-africa-relations>> accessed 28 Aug 2021.

⁸⁵Joyce Lau, 'China Moves to Smooth Relations with African Students' (Times Higher Education, 20 Apr 2020) <<https://www.timeshighereducation.com/news/china-moves-smooth-relations-african-students>> accessed 29 Aug 2021; 'China: COVID-19 Discrimination Against Africans' (Human Rights Watch, 5 May 2020) <<https://www.hrw.org/news/2020/05/05/china-covid-19-discrimination-against-africans>> accessed 29 Aug 2021.

⁸⁶President Hails China for Vaccines' (n 76). Forum on China-Africa Cooperation, 'Ambassador Li Jie Attends Handover Ceremony for China-Donated COVID-19 Vaccines to Zambia' (10 Aug 2021) <http://www.focac.org/eng/zfgz_4/rwjl/t1898307.htm> accessed 19 Aug 2021; Embassy of the People's Republic of China in the Republic of Seychelles, 'The Sinopharm Vaccines Donated by the Chinese Side Arrived in Seychelles' (25 Jun 2021) <<http://sc.china-embassy.org/eng/zxhd/t1886911.htm>> accessed 8 Aug 2021.

health, safety, and environment, without fearing incurring states liabilities.⁸⁷ While seemingly focusing on states' 'national' right, the UN Draft Convention obliges states to cooperate to '[s]olve international problems of an economic, social, cultural, environmental or humanitarian character', among other duties.⁸⁸ This Part assesses existing treaties' application to and impacts on China's actions regarding the provision of adequate access to health services and cooperation to solve global health problems. It analyses relevant WTO agreements and efforts to update them, discusses regional treaties such as the RCEP, examines bilateral free trade agreements (FTAs) and bilateral investment treaties (BITs), and assesses China's contributions to international norms setting more generally through the BRI. This Part adopts a textual approach,⁸⁹ whilst also paying attention to comparative analysis and normative aspects. As this Part reveals, the right to regulate provision is more often seen in regional and bilateral treaties that China has negotiated and signed, and less frequently in multilateral and regional treaties where China has played little role in their formulation.

Multilateral and regional treaties

The web of international trade and investment treaties can influence states' policy choices and regulatory measures, thus affecting states' responses to health emergencies.⁹⁰ As a member of the WTO, China is not only subject to the same rights, privileges, and obligations as other members under the constituent agreements, but also to specific commitments it made in its accession documents. Our research shows that, despite the general lack of specific provisions providing governments with the right to regulate (with a few exceptions discussed below), China has supported the provision's inclusion at the WTO, the multiple fora.

The Marrakesh Agreement Establishing the World Trade Organisation (the WTO Agreement) – the legal instrument establishing the WTO and governing every member – does not explicitly recognise the right to regulate nor does it mention health in its text, although one of its stated objectives is to 'rais[e] standards of living' of all parties.⁹¹ While the General Agreement on Trade in Services (GATS) preamble recognises governments' right to 'regulate ... the supply of services ... to meet national objectives,' right to regulate does not appear in the General Agreement on Tariffs and Trade 1994 (GATT1994), the counterpart regulating *goods* trade. Nevertheless, both GATT1994's Article XX and GATS's Article XIV allow governments to adopt and implement measures to protect human health as long as it is not done in an arbitrary or discriminatory manner, nor more trade restrictive than necessary. GATT1994's Article XXI and GATS's Article XIV**bis** further permit measures to protect essential security, but it is unclear whether they apply to public health emergencies as current jurisprudence only touches upon 'a situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing or surrounding a state.'⁹² Moreover, under

⁸⁷Other scholars have adopted similar definition. See Catharine Titi, *The Right to Regulate in International Investment Law* (Nomos/Hart 2014) 33. Prominent legal scholars have opposed the right to regulate in the international investment law context, arguing that instead of relying on the unworkable right to regulate vis-à-vis investment protection, states are better off terminating investment treaties. M Sornarajah, *Resistance and Change in the International Law on Foreign Investment* (Cambridge University Press 2015) chs 6–7.

⁸⁸Draft Convention (n 5) art 13.

⁸⁹Scholars also refer to this as 'law positive'. See Matthew Erie, 'China, Law and Development' (2021) 62 *Harvard Journal of International Law* 51, 60.

⁹⁰United Nations Conference on Trade and Development, 'Investment Trends Monitor' (27 Oct 2020) 1 <https://unctad.org/system/files/official-document/diaeianf2020d4_en.pdf> accessed 26 Jan 2022; World Trade Organisation, 'Services trade recovery not yet in sight' (26 Jan 2021) <https://www.wto.org/english/news_e/news21_e/serv_26jan21_e.htm> accessed 26 Jan 2022; Chad P Bown, 'COVID-19: Demand spikes, export restrictions, and quality concerns imperil poor country access to medical supplies', in Richard E Baldwin & Simon J Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won't Work* (CEPR Press 2020).

⁹¹Marrakesh Agreement Establishing the World Trade Organisation, Preamble.

⁹²Panel Report, *Russia – Measures Concerning Traffic in Transit*, para 7.76, WTO Doc WT/DS512/R (adopted 26 Apr 2019).

those provisions, governments must defend themselves *ex post*, rather than acting with affirmation *ex ante*.⁹³ Consequently, governments face uncertainties when trying to rely on those provisions. Although GATT1994 also permits governments to impose '[e]xport prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of ... other products essential to the exporting contracting party,⁹⁴ the burden of proof still falls upon states imposing such restrictions.⁹⁵ Furthermore, the collective of Article 31 of TRIPS, the 2001 Doha Ministerial Declaration on TRIPS and Public Health (the Doha Declaration), and the 2003 and 2005 decisions concerning the Doha Declaration, though permitting states to impose compulsory license requirements on intellectual property right (IPR) holders under prescribed circumstances, appears to be of limited utility during COVID-19.⁹⁶ So far, only Brazil has passed a bill that specifically authorises compulsory licenses for COVID-19 vaccine patents.⁹⁷ Thus, the current WTO agreements do not appear to be addressing current problems satisfactorily.

China joined other WTO members in initiating efforts to reform WTO rules. Regarding GHG under WTO, China supported an IPR waiver for COVID-19 vaccines under the TRIPS Agreement.⁹⁸ China's position is in the middle ground between India and South Africa's full IPR waiver proposal that not only covers vaccines patents, but also diagnostics, equipment, and treatment, etc,⁹⁹ on the one hand, and the EU and Japan's strong opposition,¹⁰⁰ on the other (and the US¹⁰¹ before its sudden change of heart in May 2021).¹⁰² Compromise on the vaccine waiver was achieved in June 2022 at the 12th Ministerial Conference, with China making binding commitments not to availing itself to the vaccine waivers.¹⁰³

⁹³For a more detailed discussion, see Jingyuan Zhou, 'Navigating International Services Trade during Health Emergencies: A Scientific Approach to Emergency Measures' (2022) 23 *Oregon Review of International Law* 25. There is, however, an exception to this statement, namely, Article XI clause 8, which allows governments to impose temporary quantitative restrictions when facing short stock.

⁹⁴GATT1994, art XI:2(a).

⁹⁵Panel Reports, 'China – Raw Materials', para 7.213, affirmed by Appellate Body Report, 'China – Raw Materials', WT/DS394/AB/R, WT/DS395/AB/R, WT/DS398/AB/R.

⁹⁶Prior to COVID-19, on only one occasion did a WTO member – Canada – invoke the special compulsory licensing system that grants compulsory licenses for export purposes to Rwanda.

⁹⁷Britain Eakin, 'Brazil's Senate Passes COVID Vaccines License-Waiver Bill' (Law360, 12 Aug 2020) <<https://www.law360.com/articles/1412275/brazil-s-senate-passes-COVID-vaccines-license-waiver-bill>> accessed 12 Aug 2021.

⁹⁸China's clear support for IP waiver on COVID vaccines came during a 17 May Foreign Ministry Press Briefing, where the spokesperson Zhao Lijian stated that 'China fully understands and is supportive of the developing world's call for an IPR waiver for COVID-19 vaccines': Ministry of Foreign Affairs of the People's Republic of China, 'Foreign Ministry Spokesperson Zhao Lijian's Regular Press Conference on May 17, 2021' (17 May 2021) <https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/202105/t20210517_9170745.html> accessed 26 Jan 2022. Since then, China has consistently supported WTO vaccine waiver discussions.

⁹⁹Council for Trade-Related Aspects of Intellectual Property Rights, 'Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19: Communication from India and South Africa', World Trade Organization, IP/C/W/669 (2 Oct 2020) paras 12, 13 <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?file-name=q:IP/C/W669.pdf&Open=True>> accessed 26 Jan 2022.

¹⁰⁰World Trade Organisation, 'Members to continue discussion on proposal for temporary IP waiver in response to COVID-19' (10 Dec 2020) <https://www.wto.org/english/news_e/news20_e/trip_10dec20_e.htm> accessed 26 Jan 2022.

¹⁰¹Hannah Monicken, 'U.S., EU oppose WTO effort to waive IP protections amid pandemic' (World Trade Online, 20 Oct 2020) <<https://insidetrade.com/daily-news/us-eu-oppose-wto-effort-waive-ip-protections-amid-pandemic>> accessed 26 Jan 2022.

¹⁰²Office of the United States Trade Representative, 'Statement from Ambassador Katherine Tai on the COVID-19 Trips Waiver,' (5 May 2021) <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/statement-ambassador-katherine-tai-COVID-19-trips-waiver>> accessed 26 Jan 2022.

¹⁰³World Trade Organisation, 'Members welcome Quad document as basis for text-based negotiations on pandemic IP response' (10 May 2022) <https://www.wto.org/english/news_e/news22_e/gc_10may22_e.htm> accessed 14 Jul 2022; Ministerial Decision on the TRIPS Agreement, WT/MIN(22)/30 (22 Jun 2022).

At the regional level, FTAs China recently concluded see the inclusion of the right to regulate provision.¹⁰⁴ The RCEP – signed and became effective in the midst of the health emergency – first explicitly ‘reaffirm[s] the right of each Party to regulate in pursuit of legitimate public welfare objectives’¹⁰⁵ in the Preamble. The parties further agree that governments may adopt ‘measures necessary to protect public health,’¹⁰⁶ linking to the right to regulate in the health area. An explicit reiteration of the right to regulate in public health comes when the RCEP states that:

- (a) the Parties affirm the right to fully use the flexibilities as duly recognised in the Doha Declaration on the TRIPS Agreement and Public Health;
- (b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and
- (c) the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party’s right to protect public health and, in particular, to promote access to medicines for all.¹⁰⁷

The inclusion of the right to regulate in the health area and recognition of regulatory autonomy for governments by both developed (Japan, Australia, and New Zealand) and developing economies is noteworthy, suggesting the potential for adopting similar provisions in other overarching treaties encompassing both developing and developed economies. Moreover, within the RCEP, China committed to opening market access and providing national treatment in hospital services and professional medical services, which could facilitate improved health care. However, it should be noted that because RCEP fully incorporates GATS’s Article XIV, RCEP Parties are subject to the same limitations of that article as discussed earlier.

This recent development differs from that of an older regional agreement, the Asia-Pacific Trade Agreement (APTA; formerly known as the Bangkok Agreement), acceded by China in 2001.¹⁰⁸ APTA mainly concerns tariffs reduction and thus lacks specific mention of the right to regulate. The term ‘health’ only appears once in the exceptions provision (Article 35), in a way similar to GATT1994’s Article XX. During COVID-19, the APTA secretariat expressed needs for further revisions such as the removal of non-tariff barriers to better cope with future health emergencies,¹⁰⁹ which presumably could include provision for the right to regulate.

In summary, the newer generation of regional treaties that China is negotiating reflects a general recognition of the right to regulate, especially in the health area, and aligns with China’s negotiations in the WTO multilateral forum and other fora, as discussed above and below. However, it should be noted that China’s treaty practice on right to regulate coincides with the raising awareness and recognition of right to regulate in trade and investment treaties, including treaties spearheaded

¹⁰⁴Ministry of Commerce of the People’s Republic of China, ‘Give play of China’s Important Role and Accelerate RCEP Negotiations’ (1 Sep 2014) <<http://english.mofcom.gov.cn/article/newsrelease/significantnews/201409/20140900720384.shtml>> accessed 26 Jan 2022.

¹⁰⁵RCEP, Preamble.

¹⁰⁶RCEP, art 11.4.

¹⁰⁷RCEP, art 11.8.

¹⁰⁸United Nations Economic and Social Commission for Asia and Pacific, ‘Asia-Pacific Trade Agreement (APTA)’ <<https://www.unescap.org/apta>> accessed 26 Jan 2022. The current membership of APTA includes Bangladesh, China, India, Lao PDR, Republic of Korea, Sri Lanka, and Mongolia. See United Nations Economic and Social Commission for Asia and Pacific, ‘Mongolia accedes to the Asia-Pacific Trade Agreement as its seventh member’ (29 Sep 2020) <<https://www.unescap.org/news/mongolia-accedes-asia-pacific-trade-agreement-its-seventh-member>> accessed 26 Jan 2022.

¹⁰⁹United Nations Economic and Social Commission for Asia and Pacific, ‘A Note on the Status of APTA Trade in Healthcare Sector Related Products in the Context of the Response to the COVID-19 Pandemic’ (27 Apr 2020) 2–4 <<https://www.unescap.org/sites/default/d8files/knowledge-products/APTA-trade-and-COVID19.pdf>> accessed 26 Jan 2022.

by developed economies like the EU and the US, such as the Multilateral Agreement on Investment¹¹⁰ and the new US model BITs.¹¹¹

Bilateral Agreements

China currently has signed 19 bilateral FTAs with other states, including updates of previously signed FTAs, but excluding regional FTAs and economic arrangement pacts signed between the mainland, Hong Kong, and Macau,¹¹² and aspirational MoUs.¹¹³ Between 2020 and August 2021, two new bilateral FTAs were signed¹¹⁴ and one other FTA became effective.¹¹⁵ These FTAs cover goods trade, services trade, and investments. Whilst overall bilateral FTAs share many common characteristics with WTO instruments, they still possess unique characteristics dependent on specific treaty parties, as shown below.

Our research reveals that six of China's bilateral FTAs contain explicit language recognising the importance of the right to regulate in the preamble.¹¹⁶ For example, the Preamble of the recently effective China-Mauritius FTA (the first FTA between China and an African country) states that both China and Mauritius '[u]phold[] the rights of their governments to regulate in order to meet national policy objectives, and to preserve their flexibility to safeguard the public welfare.'¹¹⁷ The examination further shows that FTAs signed after 2015 all contain the 'right to regulate' expression. Moreover, while other FTAs do not explicitly refer to right to regulate, some in essence offer governments powerful tools by affirming governments' ability to deviate from treaty obligations to adopt or implement measures '[w]here urgent problems of ... health... arise or threaten to arise for a Party.'¹¹⁸ For instance, the China-Singapore FTA (including the recent update) authorises both governments to *suspend* the 'operation of any Annex, in whole or in part, immediately'¹¹⁹ when health problems arise. This ability to suspend the operation of a treaty for the protection of health essentially affirms governments' authority to take action and therefore, can be a powerful tool in managing health crises. Other FTAs contain language that preserves flexibility to allow governments to take action for the purpose of protecting public welfare, though not explicitly referring to the right to regulate. For example, the China-Switzerland FTA states that they '[r]ecogniz[e] that this Agreement should be implemented with a view to promoting the public welfare in the Parties' in the preamble. Similar statements can also be found in China-South Korea FTA and the trade in goods agreements in the China-Pakistan FTA and China-ASEAN FTA, among others.

¹¹⁰The Multilateral Agreement on Investment (Report by the Chairman of the Negotiating Group), DAF/MAI(98)17 (4 May 1998), Annex 3, art 3 <<http://www1.oecd.org/daf/mai/pdf/ng/ng9817e.pdf>> accessed 1 Dec 2022.

¹¹¹See UNCTAD, 'US Model Treaty (2012)' <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2870/download>> accessed 1 Dec 2022.

¹¹²Ministry of Commerce of the People's Republic of China, 'China FTA Network [中国自由贸易区服务网]' <<http://fta.mofcom.gov.cn/>> accessed 26 Jan 2022.

¹¹³According to the official account, as of 2 September 2021, China has signed 205 MOUs with 171 states and international organisations: 'China has Signed 205 Cooperation Documents on the Joint Construction of BRI [我国已签署共建“一带一路”合作文件205份]' (Belt and Road Portal, 30 Jan 2021) <<https://www.yidaiyilu.gov.cn/xwzx/gnxw/163241.htm>> accessed 26 Jan 2022.

¹¹⁴China-Cambodia FTA reported to be voted on by the Cambodian National Assembly soon, see Hin Pisel, 'Ratification of FTA with China in sight' (The Phnom Penh Post, 5 Jul 2021) <<https://www.phnompenhpost.com/business/ratification-fta-china-sight>> accessed 26 Jan 2022.

¹¹⁵Ministry of Commerce of the People's Republic of China, 'China-Mauritius FTA takes effect today' (1 Jan 2021) <http://fta.mofcom.gov.cn/article/zhengwugk/202101/44124_1.html> accessed 26 Jan 2022.

¹¹⁶They are China-Mauritius FTA (first FTA between China and an African country), China-Georgia FTA (first FTA with an Eurasia country; a first FTA since the BRI was initiated), China-Australia FTA, China-ASEAN FTA (in the services trade agreement), China-Pakistan FTA (in the services trade agreement), and China-New Zealand FTA.

¹¹⁷*ibid* China-Mauritius FTA.

¹¹⁸China-Singapore FTA, art 58.

¹¹⁹*ibid* (emphasis added).

This survey also shows that provisions relating to public health exist in nearly all China's FTAs, with explicit reference to health, the Doha Declaration, and the Protocol Amending the TRIPS Agreement, December 2005. Such explicit reference to health is exhibited in two ways: in the general exceptions provision and in the IP chapters. Eleven FTAs incorporate the general exceptions provisions provided in GATT1994's Article XX and/or in GATS's Article XIV. One FTA, explicitly referring to neither, nevertheless allows actions to be taken for the protection of human health.¹²⁰ Seven FTAs expressly recognise the Doha Declaration as the necessary limitation on the appropriate protection of IPR in the IP chapters,¹²¹ with six further acknowledging the Amendment to the Doha Declaration.¹²² Furthermore, almost all FTAs contain essential security exception provisions, under which governments can take actions in times of emergency, arguably including a health emergency, with one notable exception being the China-Pakistan FTA Goods Agreement.

Briefly, China has increasingly recognised the right to regulate and emphasised states' regulatory autonomy over public health measures in international investment laws by recognising it in the preamble and exempting those measures from the investor-state dispute settlement (ISDS) mechanism. For instance, the Comprehensive Economic Agreement between the EU and China explicitly states that member states 'recognise the right of the Parties to adopt and enforce measures to achieve legitimate public policy objectives' in the preamble.¹²³ Moreover, the investment chapter in China-Chile FTA carves out generally applicable, non-discriminatory measures designed and applied to protect public health from the ISDS 'indirect expropriation' claim.¹²⁴ Comparatively speaking, worldwide, 'more than 92 per cent of [international investment] treaties concluded since 2018 (for which texts could be analyzed) contain at least one explicit reference to health in the operative part of the treaty.'¹²⁵ Thus, China's treaty practices largely align with international practices, to which it plays an increasingly important role in shaping.¹²⁶

Lastly, although some of China's FTAs lack the right to regulate provision, regulatory flexibility can still be found in provisions relating to medical goods and health professionals. For example, the 'temporary admission of goods' provision obliges China and its FTA partner(s) to grant duty-free temporary admission for professional equipment, including for medical activities.¹²⁷ The 'grant of temporary entry' of professionals relating to public health and safety¹²⁸ similarly allows governments to take swift actions where such needs or urgencies arise.

This section shows that China has consistently included the right to regulate provision – for the protection of public health – or its equivalent where right to regulate is not explicitly stated in its bilateral FTAs, aligning with international trends it helps shape.

¹²⁰China-ASEAN FTA.

¹²¹They are China-Australia FTA, China-South Korea FTA, China-Switzerland FTA, China-Costa Rica FTA, China-Chile FTA, China-Peru FTA, and China-Georgia FTA.

¹²²They are China-Australia FTA, China-South Korea FTA, China-Switzerland FTA, China-Costa Rica FTA, China-Georgia FTA, and China-Chile FTA.

¹²³EU-China Comprehensive Agreement on Investment, Preamble <https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159341.pdf> accessed 19 Sep 2021. As noted before, this echoes the EU's own approach to the right to regulate.

¹²⁴China-Chile Free Trade Agreement, Annex A (Expropriation), art 3(b): 'Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.' Such exemption can also be seen in the US-Chile FTA (Annex 10-D).

¹²⁵'International Investment Policies and Public Health' (IIA Issues Note no 2, Jul 2021) 2 <https://unctad.org/system/files/official-document/diaepcbinf2021d5_en.pdf> accessed 26 Jan 2022.

¹²⁶See Gregory Shaffer (ed), *Emerging Powers and the World Trading System: The Past and Future of International Economic Law* (Cambridge University Press 2021). See also Erie (n 82).

¹²⁷China-Costa Rica FTA, ch 3 (National Treatment and Market Access for Trade in Goods), art 10.

¹²⁸See eg, China-Costa Rica FTA, ch 9 (Investment, Trade in Services and Temporary Entry of Business Persons), art 103 (Grant of Temporary Entry): 'Each Party shall grant temporary entry to business persons who comply with immigration measures applicable to temporary entry and other related measures, such as those relating to public health and safety and national security, in accordance with this Chapter.'

Norms Setting

China's practices on the right to regulate and the protection of public health through policies, unilateral conduct, and joint declarations can also inform the development of formal treaties¹²⁹ thus projecting China's desire to (re)shape the discussion of international cooperation and influencing the framework of GHG.

The norms may flow from BRI practices, namely, the HSR.¹³⁰ The HSR traces its domestic roots to the 2015 National Health Commission document – 'A Three Year Implementation Plan for Advancing BRI Health Cooperation (2015–2017)' – to enhance international health cooperation and prevent the spread of communicable diseases under BRI's 'people-to-people exchanges' pillar.¹³¹ After Xi's 2016 speech on the HSR, the Belt and Road High Level Meeting on Health Cooperation¹³² – organised by the International Health Exchange and Cooperation Center NHC PRC in 2017¹³³ – issued the Beijing Communique of the Belt and Road Health Cooperation (the Beijing Communique).¹³⁴ The Beijing Communique 'calls for great attention from governments' to 'emerging and reemerging infectious disease outbreaks' under the articulated principles of cooperation. It sets forth nine cooperation measures, ranging from the establishment of The Belt and Road Health Policy Research Network and the Belt and Road Hospital Alliance to the facilitation of personnel exchange and the dispatch of Chinese foreign aid medical teams to BRI nations, and to the strengthening of cooperation and coordination in international organisations such as the WHO, UNAIDS, the Global Fund and Gavi.

China appears to be following through on the deliverables in the Beijing Communique. As the part describing China's engagement with international organisations details, during COVID-19, China has enhanced cooperation with the WHO, Gavi, and COVAX by increasing donations of funds and vaccines, although its bilateral provisions outweigh those made to multilateral institutions. China has also hosted an online training session on COVID-19 treatment with officials and health professionals from Mongolia, Kenya, and the Philippines in attendance.¹³⁵ As the part on China's interactions with African countries further noted, China increased bilateral provisions of materials and vaccines, professional aid and medical teams, shared knowledge on combating COVID-19, and supported, for example, local vaccine manufacturing plants in African countries.¹³⁶

¹²⁹Gregory Shaffer & Henry S Gao, 'A New Chinese Economic Law Order?', in Gregory Shaffer (ed), *Emerging Powers and the World Trading System: The Past and Future of International Economic Law* (Cambridge University Press 2021); Jingyuan Zhou, 'A New Multilateralism? A Case Study of the Belt and Road Initiative' (2020) 8 *The Chinese Journal of Comparative Law* 384.

¹³⁰Since an earlier part of this article has described the interaction between China and the WHO, including before and during the current health emergency, this subsection will focus on China.

¹³¹National Health Commission of the People's Republic of China, 'A Three Year Implementation Plan for Advancing BRI Health Cooperation (2015–2017)' [国家卫生计生委关于推进“一带一路”卫生交流合作三年实施方案 (2015-2017)] <<http://www.nhc.gov.cn/ewebeditor/uploadfile/2015/10/20151023161915772.docx>> accessed 19 Sep 2021.

¹³²National Health Commission of the People's Republic of China, 'Belt and Road High Level Meeting for Health Cooperation: Towards A Health Silk Road' <<http://en.nhc.gov.cn/Beltandroadforumforhealthcooperation.html>> accessed 19 Sep 2022.

¹³³'Grand Opening of the Belt and Road High Level Meeting for Health Cooperation: towards a Health Silk Road [“一带一路”暨“健康丝绸之路”高级别研讨会隆重开幕]' <http://www.ihecc.org.cn/news.html?_id=1503045803306> accessed 26 Jan 2022. IHECC is a unit within the National Health Commission of the People's Republic of China.

¹³⁴National Health Commission of the People's Republic of China, 'Beijing Communiqué of The Belt and Road Health Cooperation & Health Silk Road' <http://en.nhc.gov.cn/2017-08/18/c_72257.htm> accessed 26 Jan 2022. Its principles of cooperation are 'peace, cooperation, openness, inclusiveness, transparency, equality, mutual learning, mutual benefit and mutual respect in strengthening cooperation on the basis of extensive consultation, joint efforts, shared benefits, the rule of law and equal opportunities for all.'

¹³⁵IHECC, 'Training Course on COVID-19 Diagnosis and Treatment for BRI Countries Held in Beijing [“一带一路”国家新冠肺炎诊疗技术培训班在京举行]' (26 Apr 2021) <http://www.ihecc.org.cn/news.html?_id=1619074490221> accessed 26 Jan 2022.

¹³⁶IHECC, 'China Africa Health Cooperation' <http://www.ihecc.org.cn/health-cooperation.html?_id=1001> accessed 26 Jan 2022.

Beyond the BRI HSR platform, China's participation in international fora such as the Group of Twenty (G20) and the Asia Pacific Economic Cooperation (APEC) further reflects its approach to global health governance. At both fora, China joined calls for smooth and accessible distribution of essential goods and vaccines and the support for the WTO.¹³⁷

As this Part illustrates, the right to regulate provision in health space can largely be divided along the lines of limited inclusion in multilateral instruments such as the WTO Agreement, GATT1994, and GATS on the one hand, and explicit recognition or affirmation in TRIPS and China's regional and bilateral FTAs, on the other. Informal processes such as the BRI, especially the HSR, and other practices both domestically and internationally, may also contribute to formalising the right to regulate in health space in treaties.

It is worth emphasising that a state's exercise of 'right to regulate' over health and other domestic issues should focus on the realisation of adequate protection based on scientific evidence and balance the development level, government resources and capabilities, and social conditions, etc. As the ultimate goal of 'right to regulate' is to facilitate the enjoyment of 'right to development', due considerations of negative spillovers and cooperation over international issues are necessarily implied in the decision-making process. In this regard, a coordinated international response can stem from and may even facilitate individual exercise of domestic 'right to regulate'. Such coordination requires strong political will and determination from all parties concerned.

China's Practices to Build New Initiative

Our legal and historical analysis reflects China's tendency to build new initiatives on existing infrastructures, including institutions (multilateral and bilateral), rules, and practices and initiatives in areas including health, when promoting 'a new platform for better global governance.'¹³⁸ This tendency may stem from the wide-ranging consequences associated with COVID-19: its international nature requires global cooperation¹³⁹ to meet the world-wide requirement for vaccines and other materials which cannot be met by any single state.¹⁴⁰

Multilaterally, China recently proposed a new Global Developmental Initiative (GDI) that builds on existing UN infrastructure and emphasises balanced, coordinated, and inclusive growth and development.¹⁴¹ The all-encompassing GDI prioritises development – echoing the right to development movement within the UN and stressing the centrality of humanity, emphasising assistance to

¹³⁷See generally 'APEC Ministers Responsible for Trade Meeting Joint Statement 2021' (5 Jun 2021) <https://www.apec.org/Meeting-Papers/Sectoral-Ministerial-Meetings/Trade/2021_MRT> accessed 26 Jan 2022. See also European Union, 'Rome Declaration' (21 May 2021) <https://global-health-summit.europa.eu/rome-declaration_en> accessed 26 Jan 2022.

¹³⁸Ministry of Foreign Affairs of the People's Republic of China, 'Wang Yi Presides over Asia and Pacific High-level Video Conference on Belt and Road Cooperation' (23 Jun 2021) <https://www.fmprc.gov.cn/mfa_eng/topics_665678/kjgzbdffyq/202106/t20210624_9171076.html> accessed 19 Sep 2021.

¹³⁹United Nations Development Programme, 'Global Dashboard for Vaccine Equity' <<https://data.undp.org/vaccine-equity/>> accessed 19 Sep 2021.

¹⁴⁰See repeated calls from WHO and UN respectively: World Health Organisation, 'Vaccine inequity undermining global economic recovery', (22 Jul 2021) <<https://www.who.int/news/item/22-07-2021-vaccine-inequity-undermining-global-economic-recovery>> accessed 19 Sep 2021; 'COVID vaccines: Widening inequality and millions vulnerable' (UN News, 19 Sep 2021) <<https://news.un.org/en/story/2021/09/1100192>> accessed 19 Sep 2021.

¹⁴¹Ministry of Foreign Affairs of the People's Republic of China, 'Xi Jinping Attends the General Debate of the 76th Session of the United Nations General Assembly and Delivers an Important Speech' (22 Sep 2021) <https://www.fmprc.gov.cn/mfa_eng/topics_665678/kjgzbdffyq/202109/t20210923_9591806.html> accessed 27 Sep 2021. At the same event, US President Joseph R Biden called for a 'new mechanism to finance global health security that builds on our existing development assistance, and Global Health ... [Threat Council].' 'Remarks by President Biden Before the 76th Session of the United Nations General Assembly' (The White House, 21 Sep 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/21/remarks-by-president-biden-before-the-76th-session-of-the-united-nations-general-assembly/>> accessed 27 Sep 2021.

developing countries, and addressing climate change.¹⁴² Ultimately, the GDI calls for strengthened cooperation on COVID-19 and vaccines¹⁴³ and seeks to build ‘a global community of development with a shared future.’¹⁴⁴ Implementing the GDI to help combat COVID-19, China proposed the Global Vaccine Cooperation Action Initiative (GVCAI), a six-prong approach (largely) reflecting approaches China has been taking or calling for at multiple fora, including technology sharing, vaccine waivers, equitable distribution of vaccines, and financial support for developing countries, etc.¹⁴⁵

Features in the GDI and GVCAI are also present in bilateral cooperation agreements between China and African countries, helping to form and build on synergies with Africa’s own initiatives and agenda such as Agenda 2063.¹⁴⁶ However, given the heterogeneity of Africa, the developmental impact of Chinese health and economic cooperation will almost certainly vary country by country. The deciding factor in each case is likely not to be China, but individual African countries and their governments as they seek to leverage Chinese support to accelerate their own national responses to COVID-19.¹⁴⁷

The phrases ‘shared community’ and ‘shared future’ in the GDI and GVCAI are also key words in the BRI, thus synergy can be expected between GDI, GVCAI, and BRI.¹⁴⁸ An Initiative for Belt and Road Partnership on COVID-19 Vaccines Cooperation was launched in June 2021, which calls for more solidarity and cooperation in vaccine regulation, production, and research and development, among other issues.¹⁴⁹ Chinese entities have also utilised special economic zones (SEZ) to provide health-related manufacturing and services to BRI countries under the HSR.¹⁵⁰

The above-discussed new initiatives link to existing multilateral institutions. For instance, many GDI priorities, including health, align with the UN SDGs. The GVCAI calls for support to the WTO and stresses the importance of meeting the targets set by the WHO. The BRI COVID-19 Vaccines Cooperation Initiative explicitly calls upon states to support COVAX of the WHO. Viewed holistically, China’s multilayered approach to promoting GHG can be seen as a refinement and continuation of its past methods and experiences rather than any dramatic and unforeseen change in approach.

¹⁴²*ibid*; Ministry of Foreign Affairs of the People’s Republic of China, ‘Xi Jinping Attends the General Debate of the 76th Session of the United Nations General Assembly and Delivers an Important Speech’ (22 Sep 2021) <https://www.fmprc.gov.cn/mfa_eng/topics_665678/kjgzbdffyq/202109/t20210923_9591806.html> accessed 27 Sep 2021.

¹⁴³ ‘Action in Solidarity for a Shared Future’ (China Daily, 1 Nov 2021) <<http://epaper.chinadaily.com.cn/a/202111/01/WS617f227aa31019b029ba16e6.html>> accessed 6 Nov 2021.

¹⁴⁴*ibid*.

¹⁴⁵*ibid*. The six prongs include strengthening joint vaccine R&D cooperation; fair, equitable, and just distribution of vaccines; a WTO decision on vaccine waiver, encouraging the voluntary transfer of vaccine knowledge to and production in developing countries; scaling up and smoothening trade in vaccines and related raw and auxiliary materials; fair treatment of WHO-recognised vaccines; and provision of financial support to developing countries at the G20 Summit.

¹⁴⁶See African Union, ‘Agenda 2063: The Africa We Want’ <<https://au.int/en/agenda2063/overview>> accessed 26 Jan 2022.

¹⁴⁷Deborah Brautigam, *The Dragon’s Gift: the Real Story of China in Africa* (Oxford University Press 2009).

¹⁴⁸Ministry of Foreign Affairs of the People’s Republic of China, ‘Building Consensus and Synergy for a Bright Future of Global Development -- Address by State Councilor Wang Yi At the Sustainable Development Forum 2021’ (26 Sep 2021) <https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/202109/t20210926_9580295.html> accessed 26 Jan 2022 (stating that the DGI ‘will form synergy with other initiatives including the Belt and Road Initiative’).

¹⁴⁹Ministry of Foreign Affairs of the People’s Republic of China, ‘Initiative for Belt and Road Partnership on COVID-19 Vaccines Cooperation’ (24 Jun 2021) <https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/202106/t20210624_9170568.html> accessed 26 Jan 2022.

¹⁵⁰‘Promoting Investment in Health Post-Pandemic: A Global Trend?’ (UNCTAD, Issue 11, Jul 2021) 7–8, <https://unctad.org/system/files/official-document/diaepcbinf2021d4_en.pdf> accessed 26 Jan 2022. See also World Health Organisation, ‘WHO provides technical support for Kilinto Pharmaceutical Industry Park (KPIP) in Ethiopia on preparing a roadmap that meets international standards’ (22 Jul 2020) <<https://www.who.int/news/item/22-07-2020-who-provides-technical-support-for-kpip-in-ethiopia>> accessed 26 Jan 2022.

Conclusion

China's active pursuit of GHG has faced intense scrutiny. Its relationship with the WHO during the pandemic was sometimes tense, especially regarding the investigation of the origins of COVID-19 and the release of the virus origins report. Whilst China is the second largest vaccine provider to the world by far,¹⁵¹ it was criticised for not engaging sufficiently with Gavi and COVAX by providing vaccines bilaterally, thus bypassing these institutions and mechanisms.¹⁵² Some further criticised that the number of donated vaccines was insufficient in proportion to its sales.¹⁵³ China also faced questions on the efficacy of the vaccines it produced and exported.¹⁵⁴ Moreover, with the US's determination to show 'America is back' by engaging in a vaccine pledge duel,¹⁵⁵ and the EU's continued provision of vaccines, China probably needs to do more, for example by increasing donations of vaccines via COVAX, to continue its pursuit of leadership in GHG. The mutation of the virus and the spread of more infectious variants of the virus call for prudent and nimble exercise of the 'right to regulate' based on scientific evidence and balancing the measures societal and economic impacts, domestically and abroad.

The article, through a legal and historical analysis, has assessed potential changes in GHG that China may bring about. It has shown that, institutionally, China continues its collaborative interaction with multilateral institutions such as the WHO, Gavi, other UN agencies, and the WTO despite the challenges and pressure from them respectively. It also noted that China has enhanced its bilateral engagement and cooperation with some trading partners and developing countries, for example, African countries and Asian countries along the BRI. It demonstrated that China's enhanced interactions coincide with the desire of other governments to better guard their regulatory autonomy. The article thus contends that from a legal and normative perspective, this coincidence can facilitate the formation of formal international trade and investment instruments that emphasise governments' right to regulate, especially in the health area. Moreover, such interaction helps diffuse the norms – not legally binding but generally regarded as persuasive – that associate with China's practices.

The article further notes challenges ahead for China in pursuing its ongoing efforts, including through the BRI and HSR, the GDI, and the GVCAL to shape international governance structure and posits that further adjustments by China and other international actors may be needed.

¹⁵¹World Trade Organisation, 'WTO-IMF COVID-19 Vaccine Trade Tracker' <https://www.wto.org/english/tratop_e/covid19_e/vaccine_trade_tracker_e.htm> accessed 1 Dec 2022. Note that as of 31 May 2022. China has exported 1,986.4 million doses of vaccines, accounting for 32.2% of the total of world exports.

¹⁵²ibid (showing that worldwide, supply through bilateral deals far outweigh all other means including via COVAX, direct donations, and via AVAT).

¹⁵³'US-China coronavirus vaccine diplomacy heats up but can donations sway allegiances?' (South China Morning Post, 13 Oct 2021) <<https://www.scmp.com/news/china/diplomacy/article/3152098/us-china-coronavirus-vaccine-diplomacy-heats-can-donations>> accessed 6 Nov 2021.

¹⁵⁴Smriti Mallapaty, 'China's COVID vaccines are going global — but questions remain' (2021) 593 Nature 178.

¹⁵⁵'The U.S. will be a 'formidable competitor' to China in COVID vaccine diplomacy, professor says' (CNBC, 10 Jun 2021) <<https://www.cnbc.com/2021/06/10/COVID-expert-on-us-china-competition-in-vaccine-diplomacy.html>> accessed 6 Nov 2021.