Chinese NGOs and Global Health Governance: From the Perspective of International Law

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中国非政府组织与全球卫生治理：国际法的视角

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Abstract

Since China adheres to the government-led mode at home and Westphalian principle of state sovereignty abroad, Chinese NGOs play an auxiliary and limited role in global health governance. With the process of global civil society movement, and its internal governance reform, China is increasingly propelled by post-Westphalia international law to accept passively or advance actively its NGOs’ participation in global health governance, among which GONGOs play a larger role than grassroots NGOs. In fact, Chinese NGOs have made huge progress in urging the government to implement international law on public health. We can see the beginning of how Chinese NGOs are learning to participate in international lawmaking and dispute settlement on public health.

摘要

中国是一个对内政府主导、对外强调主权的国家，故总体上中国的非政府组织在全球卫生治理中的作用十分有限。诚然，伴随着全球公民社会运动及其内部治理变革进程，中国在后威斯伐利亚国际法的影响下日益被动接受或主动推动非政府组织对全球卫生治理的参与。其中，相比纯草根组织，政府建立的非政府组织扮演着更重要的角色。事实上，中国非政府组织在推动中国政府实施国际卫生法义务方面起到了重要作用，并在参与国际卫生立法和相关国际争端解决上开始崭露头角。
I. Introduction

In the West, global governance is generally defined as “the management of global problems and the pursuit of global objectives through the concerted efforts of state and other international actors.”¹ Martin Ortega thinks that there are five key elements in global governance: 1) management; 2) global problems; 3) global objectives; 4) concerted efforts; and 5) states and other international actors. There are probably other definitions of the concept, but this simple outline reflects its essence. Chinese leaders have never rejected the term, but they rarely use it. China has shown greater interest in multilateralism in global health security, and recognizes the new solutions to global health governance on the condition that it can maintain its national independence, influence, and security. According to the Chinese government, its aim is to build a “Harmonious World,” which is based on the Five Principles of Peaceful Coexistence and mainly consists of five elements: 1) a ‘win-win’ strategy; 2) peaceful development; 3) the respect for sovereignty and diversity; 4) intergovernmental negotiation and cooperation; and 5) construction of state capacity. China, thus, emphasizes sticking to a Westphalian orientation of international law, especially non-intervention, to solve global problems, including infectious diseases and other public health challenges.

According to China’s state-centric conception of international law, international and national security is privileged over the independence and territorial integrity of legally sovereign and theoretically equal states. Within this model the international system is characterized by cooperation and conflict amongst viable and rational states in an anarchic environment, reflecting pluralist norms of diplomacy, law and multilateralism. In the same way, a “Harmonious World” focused on lasting peace, sustainable development, and common prosperity is the important external social basis for China’s peaceful development, including public health security, as current international law lays down a legal foundation and guarantee for dealing with global problems. In fact, China’s peaceful development, especially the development of state capacity, makes great contributions to the world security and development, including the health of all human beings. By contrast, the orientation of global governance in international law reflects a broader transformation to a post-Westphalian world, which is conceived of as a world where states are no longer the sole or even the most important actors in many areas of international law; where the distinction between domestic and international law is irreversibly blurred in terms of causes and effects; and where solidarist norms related to governance and human rights are slowly transcending absolute norms of sovereignty and non-interference.² Consequently, on the one hand, China’s peaceful development means 1.3 billion peoples’ integration into the Westphalian mode of global governance, while not challenging to the leading international legal system. On the other hand, China takes on a dilemma in adapting to the post-Westphalian world and global governance mechanism.

As for China’s domestic rule of law, it is characterized by a government-led process accompanied by the interaction between the government and society. Following from the Chinese belief in benevolent government (renzheng, 仁政) and humanistic thought (minben, 民本), and given the low average level of public intellectual capacity, as well as the economic and cultural imbalances between different regions, Chinese governments at various levels have been inclined to interfere in public life with a strong hand, and to exert coercive approach to the public regardless of the preferences of the public. This approach to governance is similar to the notion of paternalism in the Western tradition. Considering China’s imperfect market economy, imperfections in its democratic system, and a lack of an autonomous civil society, it may be wise for the Chinese government to focus on economic development, the construction of state capacity, and the use of coercion to regulate economic and social development on the condition that this will not hinder progress towards the rule of law. China’s state-centric mode of governance recognizes that governing mechanisms and methods do not necessarily solely rest on state authority. What is more important, however, is that, the state still ‘steers’ society. The involvement of non-state actors and non-traditional governance methods occur under the terms prescribed by the state and tend to be carried out to accomplish the instrumental purposes of the state. These elements affect China’s external and domestic health law and policy, and consequently influence the participation of Chinese NGOs in global health governance.

II. NGOs and China’s health law and governance

China’s state-centric mode of governance is clearly reflected in its health law and governance. First, the governments at various levels lead the public health affairs, while leave limited space for individuals. According to the Law on Prevention and Treatment of Infections Diseases, 1) governments at various levels shall direct the work of preventing and treating infectious diseases (Article 5); 2) The health administration departments at various levels shall be in charge of the work of preventing and treating infectious diseases as well as exercising supervision and control over such diseases (Article 6); and 3) All units and individuals within the territory of China shall accept the preventive and control measures taken by disease prevention and control institutions and medical agencies for investigation, testing, collection of samples of infectious diseases and for isolated treatment of such diseases, and they shall provide accurate information about the diseases. In sum, the government leads national public health affairs, the construction of medical infrastructure, and the education and management of health professionals. The same statute indirectly recognizes the role and rights of non-state actors stating, ‘Units and individuals that have made remarkable achievements in or contributions to the work of prevention and treating infectious diseases shall be commended or awarded’ (Article 11). Besides, ‘Disease prevention and control institutions and medical agencies shall not divulge any information or materials relating to personal privacy’ (Article 12).

4 People's governments at or above the county level shall draw up programmes for prevention and treatment of infectious diseases and arrange for their implementation, and establish a sound system for prevention and control of diseases, medical treatment and supervision and control for prevention and treatment of infectious diseases.
5 Where health administration departments and other relevant departments, or disease prevention and control institutions and medical agencies infringe upon the lawful rights and interests of any units or individuals when exercising administrative
Second, it holds the view that coercive laws, policies, or institutions may legitimately prohibit citizens from engaging in self-harmful but voluntarily performed activities, which may require coercive measures based on public power. For example, according to Article 56 of China Tort Law, where the opinion of a patient or his close relative cannot be obtained in the case of an emergency such as rescue of a patient in critic condition, with the approval of the person in charge of the medical institution or an authorized person in charge, the corresponding medical measures may be taken immediately. However, in the West, medical compulsory measures should be limited in few circumstances, for example when there is an outbreak of infectious disease. So China’s state-centric mode of governance, may limit personal autonomy and increase the risk of “rule by man” (fazhi, 人治).

Third, the state-centric mode of governance is also reflected in the Chinese government’s management of NGOs in public health fields. Along with the abandoning of an all-inclusive role, the Chinese government has begun to encourage or tolerate greater participation of citizens and NGOs in public health governance. NGOs, because of their nonprofit character, professionalism and spontaneity can fill the gap created by the Chinese government’s market orientation to medical reform, and build up the healthcare service system for the public interest. Since Deng Xiaoping’s Southern tour Speeches in 1992, all sorts of social organizations have sprung up in public health fields. However, the Chinese government has limited itself to strengthening the supervision and control of social organizations, and set a high threshold for the registration of NGOs via such administrative directives as the Regulations on Foundation Administration and the Regulation on Registration and Administration of Social Organizations, etc, in order to limit the legal registration and financial development of Chinese NGOs. From one perspective, the Chinese government’s attitude toward NGOs has served the overall strategy of Openness. On the other hand, this attitude can also be characterized as being always dominated by politics and ideology. However, the Chinese government’s strength, in fact, does not match its ambitions to enhance supervision over NGOs, and therefore faces the problem of oscillating between reliance and suspiciousness. On account of this situation, governments at all levels do not have a consistent and coherent position over NGOs. Another ambiguous issue here is whether regulations apply to foreign NGOs or foundations.

Generally, only when the government and their departments need social organizations to deal with some troublesome public health affair, will they be glad to set up social organizations specialized in public health fields. Some government departments have established social organizations in their professional field with the apparent purpose of making it possible to advance charitable, research, information and policy objectives, to conduct exchanges with international organizations, and to receive expertise and

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control or taking preventive and control measures in violation of law, the units or individuals concerned may apply for administrative reconsideration or initiate legal proceedings according to law.

6 For example, the current regulations concerning NGO registrations require a two-tier management system. In order to be legally registered at the Ministry of Civil Affairs or its provincial and municipal affiliates, NGOs are required to have a governmental line agency as their sponsoring agency. Only after NGOs become affiliated with the sponsoring agency are they able to register with the Ministry of Civil Affairs or its subordinate affiliates. The regulations also demand the sponsoring agency be responsible for supervising the affiliated NGO’s operations and for reviewing its work annually. This requirement encourages the registration of NGOs to be closely linked with the departments of the government, making it much easier for the government to monitor and control the NGOs’ operations, while also hindering the development of NGOs. Although Law on Donation for Public Welfare in 1999 encourages the social donation provided by NGOs and other social channels, it can not produce enough incentive to push more peoples to pay attention public welfare.
philanthropic funding that the government itself finds hard to access, particularly from international sources including INGOs.\(^7\) These creatures are commonly called “GONGOs” (government-organized NGOs), and include the Chinese Medical Association (CMA), the Chinese Preventive Medical Association (CPMA), the Chinese Association of STD Prevention and Control (CASRC), the Chinese Association on Tobacco Control (CATC), the China Entry-Exit Inspection and Quarantine Association (CIQA), and the Chinese Medical Doctor Association (CMDA) among others.

After government entities and departments, GONGOs play the next most important role in China’s health governance. However, because political and financial resources are monopolized by the government, these GONGOs have few opportunities to exercise any autonomy. Their leaders, mainly retired high officials with specialized expertise, are appointed by the relevant overseeing government agency. Although most Chinese GONGOs fail to provide any financial information at all, it might be assumed that funding for service provision, formerly channeled through GONGOs, would now go directly to governments via budget support. So these GONGOs, to some extent, are affiliated with governmental departments or organizations, and are inevitably open to manipulation by the Communist Party. However, GONGOs do not always follow the government’s directives. On the contrary, they often play a role as the communicator and coordinator between the government and the public. Because most of the technocrats in charge of GONGOs have strong professional consciousness and respect scientific laws, it is not surprising that they sometimes represent the public and express their own ideas. Moreover, when different departments have different positions on some subjects, GONGO’s can enjoy more autonomy.

Foreign funded NGOs are another kind of organization that have been able to survive and develop normally in China. They not only grew up in the background of the development of Chinese civil society, but also are promoted by the international climate of the global community. So they may not only represent the public interest and needs, but also act as the agents of foreign financial groups and NGOs. With the globalization of China’s economy, society, and public health, China has begun to search for international resources. Some INGOs (International Nongovernmental Organizations) were permitted to build up their branches or to found some local NGOs in China in recent years. They also created international pressure to yield to pro-NGO international legal norms, and thus created some legal recognition and political space for NGOs. For instance, about 80% of the AIDS NGOs depend on the Global Foundation. In addition, Beijing Aizhixing Institute of Health Education was founded by National Endowment for Democracy, the Open Society Foundation (OSF), and the Levi Strauss Foundation, to carry out activities on AIDS and human rights in China.\(^8\) Yunnan Province’s government has adopted a policy of opening up to NGO’s and even facilitated INGO's activities. Yunnan thus developed a reputation as the ‘Cradle of Chinese NGOs’. Among these, Ruili Women and Children Developing Center is the most famous one, which was founded by Save the Children, a leading UK charity

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\(^7\) Chen Jie, The NGO Community in China, Expanding Linkages With Transnational Civil Society and Their Democratic Implications, China Perspectives, 68, 2006, from http://chinaperspectives.revues.org/3083

\(^8\) National Endowment for Democracy is a private, nonprofit, grant-making organization created to strengthen democratic institutions around the world. Open Society Foundations (OSF) is working to improve the lives of the world's most vulnerable people and to promote human rights, justice, and accountability.
organization.\(^9\)

Many excellent local NGOs have been devoted to less politically sensitive concerns, like poverty alleviation, health, or education. For example, Keypoint PR Company, and Think Tank Research Centre for Health Development have chosen to register as private enterprises or as science research organizations. As was discussed above, it is very difficult for the public to apply to create grass roots local NGOs. Although the role of the government is shifting, its power still permeates all aspects of Chinese society. To facilitate NGO’s work in China, it may be preferable for the NGO to develop a good relationship with relevant government agencies and INGOs. Moreover, it is well accepted that sustainable projects usually come from working with existing structures.\(^10\)

To be frank, few NGOs either with Chinese government support or international backing can play a major role in China’s health governance. For example, Dong Jian has attempted to establish an “Eye Protection Association” since 1991, aiming to promote knowledge of eye protection and to boost research and application of eye disease treatments and treatment methods. However, no formal reply has been received over the last decade, despite Dong Jian continually applying to register the NGO. According to an investigation carried out by Tsinghua University, among 53 grass roots NGOs on AIDS, only 26.4% of them have been formally registered, while 62.3% have no legal status, the remaining 11.3% have had to be affiliated with other GONGOs.\(^11\) In fact, beyond those dealing with HIV/AIDS, the numbers of grass-roots organizations remains relatively small, and their activities are continually being impinged upon by government agencies.\(^12\)

According to Western scholars, civil society is neither family nor state, but occupies a space between family, market and state. However, when introduced into the special setting of China’s social transformation, the term NGO, which was imported from the West, inevitably has its transitional and double meanings. In a Chinese setting the term encompasses emerging community organizations as well as government-founded organizations. In fact, even in the West, large NGOs receive a significant proportion of their income from official sources. So the growth of INGOs can, to a large extent, be attributed to support from Northern governments.\(^13\)

III. Chinese NGOs and the implementation of international law on public health

In general, China has demonstrated that it is ready to establish and observe international

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\(^9\) The Save the Children is working to create a better world for children, in order to improve children’s’ HIV/AIDS control and prevention work.

\(^10\) Deyong Yin, China’ attitude toward foreign NGOs, WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW, VOL. 8, at 521, available at law.wustl.edu/WUGSLR/Issues/Volume8_3/Yin.pdf


\(^13\) For example, according to the study by UNRISD, Oxfam, a UK NGO, receives large amount from the public but it is also traditionally supported by the UK government. It now funds approximately 50 per cent of its overseas work from official sources. Care USA, an example of a large INGO, receives the vast majority of its funding from the US government. See Catherine Agg, Trends in Government Support for Non-Governmental Organizations, Is the “Golden Age” of the NGO Behind Us? Civil Society and Social Movements Programme Paper Number 23 June 2006, United Nations Research Institute for Social Development.
legal rules on public health at what is known as “lowest common denominator” standards.\textsuperscript{\textcolor{red}{14}} However, global health governance goes well beyond setting and enforcing ‘hard’ international legal norms for states to obey. Instead, ‘soft law’ and non-state actors are playing increasingly important roles in global health governance.\textsuperscript{\textcolor{red}{15}} Hence, the trend of NGOs’ participating in the implementation of international law on public health poses a new challenge to China, as it consistently attaches importance to notions of Westphalian sovereignty and intergovernmental cooperation. Of course, China has had to gradually recognize the role of NGOs in post-Westphalian international law. Chinese NGOs can propel the government to adopt administrative, judicial, and legislative measures to comply with international law. Especially, in cases when the government and the legislature take no active measures, NGOs have an opportunity to play a role in enhancing respect for international law. Representative examples of this phenomenon will be discussed below.

1. The implementation of the Framework Convention of Tobacco Control

The World Health Organization (WHO)'s Framework Convention on Tobacco Control (FCTC), the world’s first public health treaty was designed in the 1990s. To date it has been ratified by over 150 countries, including China. The Chinese government pledged to implement the FCTC when it went into effect in China in January 2006, but it has not adopted enough steps to carry out the treaty within the planned time period. So far, there has been no legislation regarding tobacco control or the application of the FCTC. This inaction shows the government’s hesitation about its participation in the global tobacco control system. On the one hand, the government feels it is difficult to abandon the interests and tax revenue of a major industry. On the other hand, it doesn’t want to refuse the Convention and damage its international reputation.\textsuperscript{\textcolor{red}{16}} In 2007, the China Inter-Ministry Group on the Implementation of the FCTC, led by the Ministry of Industry and Information Technology, was set up to manage and coordinate the administrative issues involved with tobacco control. However, so far, only the Ministry of Health has taken practical actions to control tobacco, and the State Tobacco Monopoly Administration (also the world's largest cigarette manufacturer—China Tobacco Corporation) are also one of the participating member units.

Although the Chinese government requires that implementation of the FCTC should be guided by the relevant government departments, there is no prohibition or requirement for the participation of NGOs, which leaves room for Chinese NGOs to promote the implementation of the FCTC. Moreover, the Preamble of FCTC emphasizes that, “the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women’s, youth, environmental and

\textsuperscript{\textcolor{red}{14}} So far, the application of international law in China is proscribed statute by statute in laws and regulations involved. Judging from the Constitution and the Procedural Law on Conclusion of Treaties, China follows both the ‘incorporation’ and ‘transformation’ ways to comply with international treaties. For example, the application of International Health Regulations (2005) in China goes by the modification of Frontier Law Health and Quarantine including the declaration that ‘Where the provisions of this Law differ from those of international treaties on health and quarantine that China has concluded or joined, the provisions of such international treaties shall prevail, with the exception of the treaty clauses on which China has declared reservations’.


\textsuperscript{\textcolor{red}{16}} Not only does China have the largest population of smokers, it also is the chief producer of tobacco products in the world. The national tobacco monopoly is the leading manufacturer and seller of cigarettes, earning billions in tobacco profits and excise tax revenues (WHO, 2003).
consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts.” So China’s government feels it has an international obligation to comply with the requirement of an international treaty, i.e. NGOs should be permitted to participate in the application of the FCTC in China. The Notice on Preparation for the Implementation of FCTC, promulgated by the Ministry of Health in 2004, recognized formally NGOs’s vital role in tobacco control, and called on “all the departments, social organizations and enterprises to participate tobacco control together, to strive for the whole country’s broadest support.” For example, the Chinese Association on Tobacco Control (CATC), a classic GONGO with deep official backing, has achieved a great deal in terms of networking, scientific research, and tobacco control activities, which sometimes offended the government. I will discuss two examples of this activity.

According to the Constitution of CATC, the association's objective is to cooperate extensively with local tobacco control organizations and voluntary workers of all sectors for participating and promoting in national tobacco control activities and with the implementation of the FCTC in China. On August 8th, 2011, the State Tobacco Monopoly Administration published the Notice on Strengthening the Warning Labels on Cigarette Packaging online, saying that the new warning characters' height should be no shorter than 4 millimeters, double the previous minimum size. Three days later, CATC gave negative comments on this, declaring that, 1) the changes are too slight and the revamped version will still lag far behind the international standard of FCTC. The barely noticeable "Smoking is harmful to your health" on domestic cigarette packs does not serve the intended purpose of alerting the user; 2) the selection of the Review Panel on Warning Labels on Cigarette Packaging should not be monopolized by the Administration, otherwise it will become a internal regulation of the tobacco industry. Only by filling in the legal blanks and proceeding in strict accordance with the law can China go forward with anti-smoking education and tobacco control; 3) according to FCTC, it is illegal for a organization with identities both as the state administration and tobacco company to be the member of state implement plan of the Convention.

Another example is that CATC protest against the election of Xie Jianping to the national organization, Chinese Academy of Engineering. Xie Jinaping, 52, who works for a research institute of the state-owned China Tobacco Corporation, was elected to the Chinese Academy of Engineering in 2011. CATC declared in public that, Xie's election is our country's compromise to tobacco industry, and the shame of Chinese Academy of Engineering, and that the government should pay the money to protect the public health but not the cigarette promotion. Those two cases show that, because different departments of Chinese government do not have the same position over tobacco control, CATC as a GONGO, although is dependent on the government’s foundation and support, also can maintain its own position

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17 CATC originally named the Chinese Association on Smoking and Health which was changed on 21st June 2004 by the approval of Ministry of Civil Affairs, was established in February 1990. It is a national academic mass organization on the non-profit basis, supervised and administrated by the Ministry of Health. Wu Jieping, the former Vice Chairman of the Standing Committee of the National People’s Congress, was the first President; another two Vice Chairmen of NPCSC - He Luli and Han Qide - and the Vice-chairperson of the CPPCC National Committee Qian Zhongying had been the Honorary President of CATC. Cao Ronggui, the former Vice Minister of Ministry of Health, was the President for the Second and Third Council, and Huang Jiefu, the current Vice Minister of Ministry of Health, is the current President for the Fourth Council of CATC.
and do something for the public. Because of this, STMA criticized that CATC have to express different opinions to embody its autonomy as it had gained international foundation, particularly from two US foundations.\(^\text{18}\)

As China’s first private non-profit research establishment in the area of public health, the practice of ThinkTank Research Center for Health Development (TTH) shows that Chinese NGOs in deed can play an important role in improving public health policy making and the implementation of FCTC. TTH’s main practice includes, 1) advocating of tobacco control; 2) promote strong tobacco control policies; 3) to increase tobacco control related knowledge among the media and raise awareness of tobacco control policy priorities on the government’s agenda. TTH also tried to lobbying a representative of National committee, Chinese people's Political Consultative Conference and Director General of State Industry and Commerce Administration to submit a Bill (NO:2347), which says that, "Government should make sure there is no cigarettes advertisements in Formula One Racing of Shanghai". National Administration of Sports formally responded to the Bill positively. It also hold media forums to support passage and implementation of strong smoke-free legislation in the city of Beijing, for example convening a workshop to propose revisions for the “Several regulations concerning smoking ban in public places in Beijing Municipality” published in May of 2008.\(^\text{19}\)

Compared with GONGOs’ mild criticism, grassroots NGOs are more radical. For example, TTH is conducting a lawsuit to the State Administration for Industry and Commerce (SAIC). In 2009, TTH submitted a petition to the Trademark Appraisal Committee under SAIC, asking it to discontinue the use of ‘Zhongnanhai’ - the name of the central leadership compound - as a cigarette brand. But the Trademark Appraisal Committee under SAIC refused to accept the petition. Two years later, TTH decided to take legal action, and pointed out that, printing such information on the cigarette packs is misleading and against Article 5.3 of the FCTC. Besides, according to Article 10 of China's Trademark Law, names of a central government office location cannot be used as a brand. Based on this Article, TTH request the trademark authority to cancel the use of Zhongnanhai as a brand. Of course, it tries to keep good relationship with the government, as its main leaders are also retired officers. So a successful NGO should learn to handle a butcher's cleaver skillfully, that is, to gain support from some government departments to cope with the suppression of other department.

Nearly all Chinese NGOs active in anti-tobacco action get financial support from INGO’s, such as, Bill & Melinda Gates Foundation, Campaign for Tobacco-Free Kids, International Union Against Tuberculosis and Lung Disease, and World Lung Foundation (WLF), etc. For example, TTH not only depends on the vast majority of its funding from scientific research funds provided by the government, enterprises, and the society, but also

\(^{18}\) Zhu Xuefeng, CATA was criticized by STMA for its criticism to STMA（中国控烟协会质疑国家烟草专卖局反被质疑）, Public Interest Times (公益时报), August 23th, 2011.

\(^{19}\) Related information was collected and sorted and experts concerned were invited to participate in specific seminars or workshops for the purpose of providing necessary data to NPC /CPPCC delegates/members for drafting relevant proposals/suggestions, including, 1) Institutional separation of the Chinese Tobacco Corporation from the State Tobacco Monopoly Administration; Comprehensive ban of tobacco advertisements; 2) Smoking quit service to be covered by social medical insurance; 3) Advocating smoking-free TV dramas and films; Raising tobacco product taxation; 4) Inhibition of consuming tobacco products in public affairs by spending public fund; 5) Developing national tobacco control strategy; 6) Adopt large, clear, visible and legible warning labels on tobacco packaging; 7) Early promulgation of national legislation on smoking ban in public places, etc.
receives donations from INGOs, including Gates Foundation. In the same way with INGOs’ founding, All-China Environment Federation, the biggest GONGO in environmental protection field, at the 2010 Annual Meeting of Chinese Environmental Civil Society Organizations on Sustainable Development in Hangzhou on Nov 13, called for all civil society organizations to form an alliance to reject support from tobacco enterprises in any form. Chaoyi Jiankang (Pioneers for Health), which calls itself the first NGO specifically established to reduce tobacco’s role in China, has received a multi-year grant from the Michael Bloomberg Global Initiative to Reduce Tobacco Use, and established its mission is to promote the implementation of FCTC. After receiving a $14 million, five-year grant from The Bill & Melinda Gates Foundation, Emory University Global Health Institute established the Emory Global Health Institute – China Tobacco Partnership to help reduce the burden of tobacco use in China. The Partnership has supported many Chinese NGOs’ tobacco prevention and control initiatives that address China’s unique needs and challenges.

2. The implementation of international law on infectious diseases control

International law on infectious diseases control is a field developing quickly with the globalization of public health. Among it, international human rights law became leading characteristics of the post-Westphalian approach to infectious diseases. The key international human rights treaties, including International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR), have important legal implications to public health policies of the governments ratifying them. Particularly, the global infectious diseases control embodied the inter-dependence and indivisibility of civil and political and economic, social, and cultural rights claimed in international human rights discourse. For example, WHO International Health Regulations (IHR 2005) incorporate human rights principles, recognizing the effects of public health interventions on civil and political rights, such as security of person and freedom of movement.

Moreover, the right to freedom of association and NGOs’ right and status is today gaining authority of customary international law since the Universal Declaration of Human Rights. For example, persons infected with HIVAIDS’ freedom of association is one of citizens’ basic rights, which shall not be disfranchised for factors other than public interest and national security, nor in any illegal procedures. IHR (2005) allows WHO to "take into account reports from sources other than notifications or consultations" from or with governments and to seek verification of such information from states parties in whose territories the events are allegedly occurring (Articles 9.1 and 10.1). States parties must

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20 Chaoyi is situated in a uniquely important urban laboratory for tobacco control, the city of Kunming, the provincial capital of Yunnan. Chinese citizens regularly refer to Kunming as ‘China’s tobacco kingdom’ because cigarette production now accounts for over 70 percent of Yunnan’s tax revenue.
22 For example, Article 3.1 proclaims that ‘the implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons’.
23 This right that has been embodied in a number of generalist and specific international human rights treaties: 1) Articles 22 and 25 of the International Covenant on Civil and Political Rights; 2) Article 8 of the International Covenant on Economic, Social and Cultural Rights; 3) Articles 5 (d) (ix) and 5 (e) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination; 4)Article 5 of the Freedom of Association and Protection of the Right to Organise Convention, 1948.
respond to WHO verification requests (Article 10.2). The new IHR also require WHO to share information it receives from non-governmental sources with all states parties and relevant intergovernmental organizations when necessary to enable responses to public health risks (Article 11.1).24 The International Guidelines on HIV/AIDS and Human Rights promulgated by UNAIDS and Office of the High Commissioner for Human Rights in 1998,25 and the United Nations’ Declaration of Commitment on HIV/AIDS and other international documents all require the participation of NGOs in global AIDS governance.26 Now the international communities have accepted the Principle of Greater Involvement of People with AIDS and Affected Communities (GIPA).

China declared that the International Health Regulations apply to the ‘entire territory’ of the PRC, including Hong Kong, Macao and Taiwan. After the long-time discussion, Taiwan’s CDC can take part in WHO information-sharing groups, which means that China can accept the priority of human health over state sovereignty in some circumstances. China also endorsed the key international human rights treaties, including ICESCR and ICCPR, which have important legal implication for public health policies of the governments ratifying them. ICESCR has already come into effect while ICCPR has not,27 as ICCPR is not much compatible with the Chinese tradition of state-centric realism. 28 Besides those international treaties, China signed several international documents relating to this field, including the International Guidelines on HIV/AIDS and Human Rights and the UN Declaration of Commitment on HIV/AIDS. In order to implement these ‘soft rules’, Chinese government has provide financial and technical support to associations of people living with infectious diseases. In some contexts Chinese lawyers or other trained advocates have been engaged to advise and represent the disadvantaged living with or affected by HIV/AIDS or other infectious diseases.

What’s more, in order to implement Chinese governments’ international obligation to public health and human rights law, there have been some signs of legal reform. First, China’s discriminatory laws and regulations against since 2003 are being gradually amended or deleted. Second, the AIDS NGOs role is gradually recognized by China, In March 2004, the 10th National People’s Congress (NPC) endorsed a series of Constitutional amendments to enshrine the rights and interests of the private sector. These amendments included, 1) protecting the lawful rights and interests of private sector actors; 2) encouraging, supporting and guiding private sector development and supervising and administrating the sector according to the law. This legislative development was explained as the Party and Central

24 By contrast, the old IHR limited WHO to officially using information provided by states parties. This limitation handicapped WHO’s ability to respond to disease events if a government refused to notify WHO of incidents, supply needed information, or otherwise cooperate.
26 UNAIDS, From principle to action, Greater Involvement of People Living with HIV/ AIDS (GIPA). 1999.
27 The two international documents have different requirements on state parties in their performance obligations. As ICESCR requires state parties to gradually realize the requirements, China has adopted measures to ensure the rights involved, including strengthening its legislation on social security and social relief and the protection of vulnerable groups, so as to create a legal environment for promoting the realization of the economic, social and cultural rights, for example, the right to health in the context of HIV.
28 The Chinese government is afraid that its sovereignty will be intervened anytime when the government imposes ‘paternal love’ to its people, consequently, there are many things that need to be studied, probably, China will make some reservations or explanatory statements when ratifying the Covenant.
Government’s commitment to provide greater support for the development of NGOs in the future. In theory, therefore, any restriction on the development of NGO runs against the Constitution and social need. In March 2006, the State Council of the People's Republic of China officially announced the first legislation directly aimed at controlling HIV/AIDS: the AIDS Prevention and Control Regulations. These regulations, which encouraging the participation of the private sector and, to some extent, NGOs, are an important step in the development of government policy related to the care and prevention of HIV/AIDS. In fact, the new legislation resulted from communication and coordination among many agencies, including administrators, GONGO, grass root NGOs, and policymakers.

IGOs and INGOs also exert great pressure on the Chinese government to respect human rights, encourage NGOs to participate fully in the fight against infectious diseases, and accept the Principle of Greater Involvement of People with AIDS and Affected Communities. 29 The most hopeful sign was China’s 2003 application to the Global Fund to Fight AIDS, Tuberculosis and Malaria (or “the Global Fund”), which acknowledges some facts for the first time. In the application, Chinese government admitted the role of AIDS NGOs. Hence, the ability of grass root NGOs to work with high-risk groups, especially those that engage in behaviors deemed to be illegal or immoral, and to provide care and outreach where overstretched health services cannot, is recognized. In 2011, the Global Fund had come under intense pressure over the corruption issue and froze disbursements of its AIDS grant to China in November and then all other grants in May over suspected misuse of the money and the government’s reluctance to involve community groups. The Fund’s suspension of funding was seen as a rebuke to the authoritarian government over its customary suspicion of independent NGOs. Until recently, the high profile fund decided to resume funding for programs, because the Chinese government agreed to ensure sufficient civil society engagement in The Global Fund-supported programs. 30

Based on the funding provided by INGO, China’s AIDS NGOs witnessed a period of seemingly fast development after 2004. Particularly, this development climaxed in 2006-07 China Global Fund CCM Membership Election of Community-Based Organizations and Other NGOs and People Living with AIDS, TB, and Malaria, in particular. This period of development was, however, followed by a bottleneck—monopolization of and scrambling for resources between NGOs as well as inner strife over power within them were all escalating. The bad result of all these developments was an emerging lack of supervision and transparency of grassroots groups. This situation resulted from the following reasons: the lack of trust between the government and NGOs; the consequent incomplete legal framework for NGOs; insufficient government resource input; and the absence of government regulation. 31

As mentioned before, in forming an NGO in China, one must find a “supervisory unit” to

29 During the 2008 Olympic Games in Beijing, in an open letter to the Joint United Nations Programme on HIV/AIDS (UNAIDS), leading HIV/AIDS experts and advocates are calling attention to the ongoing crackdown on AIDs activists in China. In particular, the letter calls for a special UN conference to address China’s HIV/AIDS challenges. Those signing the letter include an unprecedented number of Asian AIDS organizations, and such notable global figures as Stephen Lewis, former UN Special Envoy for HIV/AIDS in Africa, and Mark Heywood, Chair of the UNAIDS Reference Group on HIV and Human Rights.

30 In order to furthering civil society organizations’ engagement in the fight against HIV/AIDS and expanding the contributions of civil society organizations to China’s AIDS response, the China Global Foundation will allocate 25% of the annual program budget (minus procurement costs) to support community-based organizations and PLHIV organizations in 2011-2012.

31 Hong Tao, NGO Development and AIDS Governance, China Global Fund Watch Issue No. 15 July 2011.
sponsor and supervise its activities. These “watchdog” or “father-in-law” sponsors are usually Party or government agencies that have similar functions with the applicant. For those AIDS NGOs that still want to gain a legal status but not through troublesome legal procedures, they can find short-cuts, that is, to be “affiliated” with the GONGOs. So GONGOs are also potentially very important bridging institutions. With significant government support, GONGOs often have extensive networks across China, which enable them to be an effective mobilizing force nationwide. With the feminizing of the HIV epidemic in China, the potential role of some national women’s group, such as the China Women’s Federation, is likely to expand. Another GONGO, I was founded as a “government grassroots intermediary organization” in 1993.32

As a result of persuasions and explanations of the China Association for STD and AIDS Prevention and Control, Chinese government scraped a decades-old health ban and allows foreign HIV carriers to enter the country. Foreigners with infectious diseases such as HIV/AIDS, venereal disease and open tuberculosis, were banned from entering China, according to the Detailed Rules for the Implementation of the Law on the Administration of Entry and Exit of Foreigners, revised in July 1994, which is not in conformity with the new International Health Regulations. ‘The lifting of the ban will help create a less discriminating environment for HIV/AIDS sufferers, who will be more willing to cooperate with the authorities for treatment and control efforts,’ said Wu Zunyou, Dai Zhicheng, director of the Chinese Association of STD & AIDS Prevention and Control. This case shows that GONGOs truly can play their special role in the implementation of international law on infectious diseases control.

However, Chinese mode of Westphalian sovereignty and government-led method in public health consistently limit NGOs’ role and right in the implementation of international law. First, originally, the SARS and avian influenza outbreaks in China successively teach the lesson that WHO should have the power of having access to non-governmental sources of information, and the information and verification provisions should privilege global health governance over state sovereignty.33 According to the Law on Prevention and Treatment of Infectious Diseases, however, When an infectious disease breaks out and prevails, the government departments involved monopolize the power to publish information on the epidemic situation,34 while NGOs are prohibited from releasing Information or announcing the Epidemic Situation, although ‘the State supports and encourages units and individuals to participate in the work of preventing and treating infectious diseases’ (Article 9). Second, for the uncertainty about the law on NGOs and the freedom of association in China, at times the government has permitted grass-roots organizing, but at other times it has arbitrarily disturbed or clamped down on grass-roots organizations. For instance, Aizhixing Institute

34 ‘the health administration department under the State Council shall be responsible for announcing to the public information on the epidemic situation of the infectious disease, and may authorize the health administration departments under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Governments to announce to the public information on the epidemic situation of the infectious disease in their own administrative areas’ (Article 38)
was warned to remove information about Hu Jia from its website, and banned in the end.

The public health turn toward international human rights law, evident from the preamble to the WHO Constitution and the strategy of UNAIDS, was designed to prevent significant infectious disease crises through respect for civil and political rights and fulfillment of economic, social, and cultural rights. 35 Shifting these premises from its traditional Westphalian template toward making international human rights law, the centerpiece of China’s policy on infectious diseases, and the limited progress of NGOs’ role in dealing with the crises, are both the challenges to its pursuits of peaceful development and Harmonious World. To be frank, Chinese government’s shift to supporting NGOs is mainly driven by the international and internal pressure and the practical need of the public health crisis; that is to say, the government has not realized throughout that, it is not only the government’s duty to provide political, financial, and material aids to NGOs, but also the people’s right to develop NGOs and enjoy respect from the government.

IV. Chinese NGOs and the development of international law on public health

The trend of Post-Westphalian legal order argue that NGOs participate in elaboration of international law by proposing rules in human rights, environmental protection, and public health, etc. In fact, present international law has entitled NGOs some rights. Thus NGOs can participate in international public health affairs with the status such as observer of IGOs’ decision occasions, or as ‘the friend of court’ in judicial procedures. But China has not prepared well for the transformation of international law on public health. So it is time for China to reconsidering the role of NGOs and to develop their capacities in international public health affairs.

1. International lawmaking on public health

As far as NGOs’ role in international lawmaking, the major academic works continue to center the state as the primary locus of lawmaking authority, while some scholars recognize independent NGO power, inside public international institutions under the former approach and outside public institutions altogether under the latter. Surely, we can see a segment of NGOs’ participation in international public health lawmaking. Except WTO, United Nations and its Organs allowing the indirect influence of NGOs on the shape of international decisions, WHO also makes suitable arrangements for consultation and cooperation with NGOs in carrying out its international health work, as stated in Article 2 and 71 of the WHO Constitution. The privileges conferred by official relationship shall include the right to appoint a representative to participate, without right of vote, in WHO's meetings or in those of the committees and conferences convened under its authority. 36 But it is still the case that, even though NGOs have, on occasion, been granted formal participation rights, these remain

36 The rights also include, (1) access to non-confidential documentation and such other documentation as the Director-General may see fit to make available through such special distribution facilities as WHO may establish; (2) the right to submit a memorandum to the Director-General, who would determine the nature and scope of the circulation. See WHO, Principles Governing Relations with Nongovernmental Organizations, available at http://www.who.int/civilsociety/relations/principles/en/
the exception to the rule and are generally limited in scope and subject to the will of states which nonetheless retain the monopoly on decision-making – a position the authors themselves take when concluding that a NGO participation right does not presently exist.  

While many INGOs today enjoy greater access to intergovernmental negotiations, such privileges are by no means uniform or universally guaranteed for developing countries’ NGO. Similarly, Chinese NGOs have little political willingness and financial and human resources to participate international decisions. Among the dozens of Chinese NGO studied by this article, few of them have materials and information for international exchange, although most of them have build up cooperative relations with INGOs. Even the Chinese Association for STD and AIDS Prevention and Control, one of the greatest GONGO in China, has not set up English website online. It is thus evident that they pay more attention to gaining international money than to participating in international health affairs. Of course, they not only care about China’s international image as a responsible state, but also their international status as Chinese NGOs. For example, the scope of business of the Chinese Association of STD&AIDS Prevention and Control includes ‘strengthening international cooperation and exchange, erecting and propagandizing the Association’ status and image in international society as the paragon of Chinese NGOs’.

Theoretically, NGOs often play a critical role in advocating for developments in international law and public policy. In practice, NGOs from developing countries bring the stories of the individual states they serve to the process. These stories form an important part of the evidence needed to convince international policymakers of the needed changes. In 1997, CATC successfully played host to the 10th World Conference on Tobacco or Health in Beijing with more than 1800 delegates form 114 countries or regions, especially the presence of Chinese President Jiang Zeming at the opening ceremony. The conference approved a resolution that recommends governments consider the international implications of tobacco control policies or settlements with the tobacco industry, and to ensure that: (1) such measures do not contribute to an increase in the worldwide epidemic of tobacco-related death and disease; (2) the legal rights of those not party to any agreement or policy are fully protected; (3) such measures do not inhibit full public scrutiny on the past, present, and future activities of the tobacco industry; and (4) that the tobacco industry pay the costs of damage caused by tobacco. Undeniably, the Chinese government intended to impose its position to the conference through the voice of Chinese GONGOs, but these resolutions indeed form the elements of WHO FCTC in 2005.

Anyhow, Chinese GONGOs have carried out many collaborative programs on public health with international counterparts, which may have implication for the international health decision. For instance, at the international conferences on AIDS control, Chinese GONGOs made every endeavor to introduce China’s unified national -level plan and centralized supervisor of the HIV/AIDS response. Of course, we can not arbitrarily conclude these activities’ international effect, however, in fact, day after day, there was strong consensus on the ‘Three One’ principles applicable to all stakeholders in the country-level HIV/AIDS response: 1) One agreed HIV/AIDS Action Framework that provides the basis for  


WORLD HEALTH ORGANIZATION, FIRST MEETING OF THE WORKING GROUP A/FCTC/WG1/6, ON THE WHO FRAMEWORK CONVENTION 8 September 1999 ON TOBACCO CONTROL, Provisional agenda item 7.
coordinating the work of all partners; 2) One National AIDS Coordinating Authority, with a broad based multi-sector mandate; 3) One agreed country level Monitoring and Evaluation System.  

Especially to deserve to be mentioned, Chinese NGOs may act as the ‘lawmaker of international rules’ in some particular fields. For example, The Scope of World Federation of Chinese Medicine Societies (WFCMS) ’s activities includes: 1) are to study, formulate, release and promote the international organizational standards related to the field of Chinese Medicine; 2) to regulate management, increase the international position, and to accelerate the development continuity through the establishment of Chinese Medicine Standardization. In the same way, The World Federation of Acupuncture-moxibustion Societies (WFAS), which has formal relations with the WHO as a INGO, undertake the following responsibilities: 1) Disseminate information on and promote the medical science of acupuncture-moxibustion; 2) strive for legal status of acupuncture-moxibustion in all countries; 3) Create and promote internationally the international standardization of acupuncture-moxibustion.  

In general, Chinese grassroots NGOs are less capable of participating in the international public health lawmaking than the northern NGOs. Although they can express their interest and demand as the representative of the disadvantages in some international conferences, they do not have the human and financial resources to give a consistent impact to the international opinion, let alone to play a part as the representative of the developing countries in the formal treaty drafting inside intergovernmental processes or the adoption of some international instruments outside the intergovernmental processes. Of course, if the grass-roots NGOs can gain sufficient money or special-purpose fund for international exchanges, they will be glad to attend international conference on public health. For example, TTH Attended the Third Session of the Conference of the Parties to FCTC (COP3) in Durban November 2008, which adopted strong guidelines for the implementation of Article 5.3 (industry interference), Article 11 (warning labels) and Article 13 (tobacco advertising, promotion and sponsorship). It was reported that almost 300 NGOs from more than 100 countries around the world formed the Framework Convention Alliance, which plays a key role in educating policymakers and strengthening cooperation for strong tobacco control issues across borders.  

In fact, NGOs’ participation can improve International lawmaking on public health. For example, T. Richard Corcoran, Volunteer at Health GAP (Global Access Project) and Health GAP representative at the Programme Coordinating Board of UNAIDS explained, “Because we’re not member states we’re somewhat less beholden to diplomacy and we can get away with saying some things in the room that member states could not say.” However, although

42 Tao Tongxue, the founder of the first grass-roots AIDS NGO in china was invited to attend the 7th International Congress on AIDS in Asia and the Pacific in 2005. 
the remit of the International Monetary Foundation, World Bank, and World Health Organization programmes may affect all states’ domestic policy and legislation, the contribution of NGOs to international public health law-making is not balanced in terms of the participation of Northern and Southern NGOs, which is a big limitation, as the ‘Northern NGOs cannot really reflect the perspectives of the poorest countries of the world’. Hence, Chinese NGOs’ participation in international health lawmaking will help to effectively set priorities, for example, helping poor states develop and maintain health systems.

The absence of the full contribution of Chinese NGOs is a weak element in international public health lawmaking, as China is the most populous state, the second economic power, and the biggest developing country. The emergence of Japanese INGOs during the early 1990s gives China a good example of the state/NGO interdependence in contemporary international law. First, it can be attributed to a shift in Japanese government policy in an active attempt to build up an INGO sector. The changing policy is further attributed to international norms and pressures, in particular, the incorporation of INGOs as “partners” within multilateral institutions such as the WTO, World Bank and UN agencies.44

2. The resolving of international disputes on public health

In modern times, NGOs have already played an extremely important role in the international judicial proceedings, for example, WTO Dispute Settlement Mechanism, especially taking the form of amicus curiae. Though NGOs have not become the subject of international law hitherto, they have already taken the position of international legal person. Those northern NGOs with the greatest legal and political resources would probably benefit most from an expansion of participation. After the ‘Shrimp – Turtle’ dispute, CIEL, one of the three NGOs submitted briefs to WTO Panel during the course of the proceedings, commented on the acceptance of its brief by the Appellate Body as follow: “the decision yielded a victory for civil society participation in the WTO. The Appellate Body accepted the CIEL brief and overturned the Panel’s ruling that submissions by civil society could not be considered. The decision thus marks a significant step forward in increasing openness and transparency at the WTO.”45 However, a large imbalance also exists between northern and southern NGOs.

It does not mean that, as to the controversial issues, the southern NGOs accomplish nothing in defend their own country’s interest based on international law. For example, Brazil has been vocal internationally in the debates on access to medicines and offered support to developing countries to help them increase manufacturing capacity by transferring technology and know-how. Under fierce pressure from the international NGO community, including the southern NGOs (for example, the Third World Network, South African Treatment Action Campaign), the United States have to withdraw its WTO panel against Brazil.46 With the help of the NGOs, India, Indonesia, Malaysia, Brazil and recently Thailand have used TRIPS-compliant compulsory license (CL) provisions, product patents, extend the

term to face up the public health crisis. Unlike Brazil, Thailand and those African countries with high HIV prevalence rate, China has largely complied with the rules of intellectual property rights since its entry into the WTO in 2001. Moreover, for fear of destroying the commercial relationship with the USA and other developed states, China even dares not to take use of the flexibility provided by the TRIPS Amendment. And only a few Chinese NGOs, among which the Happy Life Association of Health Promotion, Medicine Accessibility Research Group in China are the notable examples, are working in the field of access to HIV drugs and patent. For example, they published the Chinese version of “The Right to Life”, which carries great significance for government officers and experts from public health, law and policy fields, as well as the general public. Without the government’s support, however, they have difficulty in taking a step to promote the fairness and accessibility of medicine, and make little progress.

Certainly, the fact that China has not issued any compulsory licenses, although it has the right to do so, is a sign that China has no intention of overturning the current West-dominated international legal system. However, Chinese NGOs’ incompetence in international dispute settlement will limit its due role in post-Westphlian international law regime on public health, not to mention the so-called Harmonious World. Subjected to their state-centric thoughts, most Chinese officers view the increased openness to NGOs in international dispute settlement as favoring the positions of western, developed country NGOs. China should learn from the pertinent modus operandi in the international dispute settlement mechanism to further perfect its international activities. First of all, China should cultivate its NGOs to have enough capabilities to participate the international dispute settlement. Consequently, we can expect that some independent non-profit international networks of organizations and individuals, similar to the Third World Network (TWN), will come out in China to involve in issues relating to global problems and settlement of international disputes, to facilitate experience sharing between developing countries.

In fact, the interaction between the government and GONGOes has helped China to deal with the international dispute settlement on public health issues. In October 2007, the Congress of USA enacted the FY2008 Agriculture Appropriations Bill, which contains language that seeks to continue its prohibition on imports of certain processed poultry and poultry products from China sparked by the 2004 avian flu outbreak. China Animal Agriculture Association (CAAA), a national-level GONGO, expressed again and again protest and objection through its ‘Solemn Statement’, said that, the United States ‘fundamentally violate relevant WTO rules,’ and ‘substantially impair the rights and benefits that Chinese enterprises deserve to enjoy under the multilateral trading system.’ It require the central government to make the following steps: 1) China should lodge solemn representations on the action of USA; 2) China should publish a temporary ban on meals from USA for its ill quality and safety; 3) China should treat cautiously at the Sino-USA beef trade negotiation as the BSE outbreak in USA has not been completely eliminated.
June to July 2008, CAAA organized a group to carry out civil lobby and discussion in USA. It exchanged its positions with some members of the US Congress and some agriculture and animal associations. At the same time, CAAA prepared carefully for supporting Chinese government to file WTO complaints over U.S. poultry ban. But unlike the west NGOs, Chinese NGOs have not the capacity to participate the WTO procedures.

In addition, Chinese NGOs’ participation in international platforms can remove the international communities’ misunderstanding about Chinese government, and then reduce the disputes. At the UN Special Assembly on AIDS on 2 June 2005, Wang Long-de, the leader of the Chinese Preventive Medical Association (CPMA), stated that China is at a critical juncture in the battle against AIDS, and Chinese NGOs are "becoming an indispensable force in AIDS prevention and control." 49 Part of the reason why the high profile Global Fund could resolve its foregoing disputes with China quickly, is that the Chinese NGOs explained again and again the management and operation of the projects, and guaranteed Chinese AIDS program would not be impeded by the ongoing efforts to strengthen fiduciary controls. For this purpose, Chinese Association of STD Prevention and Control gained the technical support from a US NGO ‘Family Health International’ to improve its project administration. In 2009, China carried out a medical quarantine of some passengers who had traveled on the same flight with a Mexican man who was infected with H1N1. The Mexican Foreign Ministry had ever reminded Mexican citizens not to travel to China. In fact, according to WHO’ declaration, the measures concerned are not targeted at Mexican citizens and there is no discrimination. But if Chinese NGOs such as China Entry & Exit Inspection and Quarantine Association could take more initiative measures to communicate with the Mexican government departments and NGOs relating to it, this pure medical quarantine issue would has not upgraded to a diplomatic issue. This is a wrong lesson for China to think highly of NGOs’ role.

Some conservative Chinese officials and industrialists see NGOs as troublemakers. On the contrary, they can act as problem solvers to prevent Chinese overseas development projects from engaging in misconduct, and thus help Chinese actors avoid unnecessary international conflict. For instance, in 2011, the Global Environmental Institute (GEI), a Chinese NGO, helped SINOHYDRO, a big Chinese state corporation, construct a 32 biogas digester (8 m3 each) in Laos. This project will help enhance life quality in Ban Chim, a dam-affected village near Nam Ngum 5 (NN5) Hydropower Station, Luang Prabang Province, in China’s neighbor, Laos. In addition, with this innovative technology, local health and hygiene can be improved and the resources of the fuel wood can be saved. During the Tianjin United Nations climate-change conference in 2010, which was for the first time held in China, sixty Chinese NGOs organized 20 events and published a position paper on the civil society response to climate change, and brought everyone’s original plans together and combined several events, such as a fringe meeting on corporate innovation jointly held by WWF, the Institute for Environment and Development (IED) and Alashan Society of Entrepreneurs and Ecology, among other. Chinese NGOs’ activities will spread over time from international environmental protection to global public health governance.

To summarize, it could be said that, compared with the northern NGOs, Chinese NGOs

have not played an active role in the settlement of international disputes on public health. This is a reflection of the fact that China’s ‘soft power’ is far less than that of the US and other Western powers. In contrast with military and economic power, soft power involves attraction and agenda setting; the primary currencies of soft power are values, culture, policies and institutions. In a global information age the relative importance of soft power is increasing.  

However, in China, where international law is simply equated with the exercise of hard power and the rhetoric of international law is on occasion harnessed to justify hard power, international law can not readily be conceived of as “soft” power.

3. The moral transformation of international law on public health

The turn to ethics in post-Westphalian international law is triggered by the great global crises caused by the injustice of the system of global distribution of wealth, including an intellectual property law system that allows hundreds of thousands of developing countries march into early death by infectious diseases. In August 2008, WHO published a report, which reveals the appalling levels of health inequality, i.e. ‘a majority of people in the world do not enjoy the good health that is biologically possible... Social injustice is killing people on a grand scale.’ Dr. Margaret Chan, WHO director-general, stated, “Health inequity really is a matter of life and death... health systems will not naturally gravitate towards equity. Unprecedented leadership is needed that compels all actors, including those beyond the health sector, to examine their impact on health.” Hence, the moral transformation of international law on public health calls for policies that promote human dignity for all members of the international community equitably.  

Medical beneficence is the sources of traditional Chinese medical idea. The traditional Chinese doctors deem medical care as a benevolent activity. This leads to the wide spread of using medicine as a means by missionary. Health care development and medical assistance have been one of the main successful areas of Sino-Africa cooperation since the early 1960s. The medical teams (yiliaodui, 医疗队), have treated more than 170 million patients. China has put public health high on their foreign policy agenda since SARS. They provide development assistance and global public goods for health. As such, China is now using public health as a means to strengthen its diplomatic relations with the developing world, including African countries.  

Fair to say, China’s health aid to Africa shows Chinese traditional culture of benevolence and justice, and provides a paragon for the moral transformation of international law on public health. WHO Constitution’s preamble asserts, 1) the enjoyment of the highest attainable standard of health is a fundamental human right; 2) the health of all peoples is fundamental to attaining peace and security. The Health for All strategy was articulated in the Declaration of Alma-Ata by the WHO/UNICEF International Conference on Primary Health Care in 1978. However, Based on its Westphalian mode of international law and the idea of Harmonious World, China’s health aids have three

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characteristics: (1) place emphasis on the construction of state capacity, including infrastructure building and Human resources support, but not advancing the value invasion and system reform; (2) disregard legislation on foreign assistance, hence its foreign health aid is not transparent; (3) Thus far, China’s health aid, as other aid, has almost entirely been dependent on the government, while the role of civil society has almost nearly been missing. On one side, China’s health aid is consistent with the value of social justice, the moral foundation of international law on public health, on the other side, Chinese aid with no strings attached is criticized by the west for that China pays no attention to the internal good governance of the recipient countries.

Compared with Chinese solutions to the global health inequality, which focused on state capacity building and no-intervention principle, the health aid mode of USA and EU emphasis the humanitarian intervention and the responsibility to protect in international law, which export ‘good governance’. What’s more, USA’s assistance to Africa is often subcontracted to NGOs. It also works with USA private philanthropic organization, such as the Bill & Melinda Gates Foundation. This practice is not common in the case of China’s aid, and some African NGOs are even skeptical about Chinese engagement. Without the NGOs acting as the buffer to dilute the political color, China’s governmental aids are sometimes not easy to be accepted by the peoples of developing countries. However, the expanding Chinese private sector and NGOs can potentially engage themselves in health aid as well. And indeed there have already been instances of this kind in the past decade. For example, a number of Chinese NGOs played an active role in the emergency rescue operations after the Indonesian Tsunami in 2004-2005, and more recently after Haiti was hit by a severe earthquake. Lately, private hospitals have begun to participate in Chinese health aid to foreign countries as well with the permission of the government. 54

Undoubtedly China has been learning from itself as well as from other developed countries the importance of providing sustainable development and global public goods for improving one’s reputation on the world stage. Once the Chinese Central Government can acknowledge that, public diplomacy differs from traditional diplomacy in that it involves interaction not only with governments but primarily with non-governmental individuals and organizations,55 we can expect that, more Chinese NGOs, both GONGOs and grassroots NGOs, will be founded by the government to carry out international health cooperation, as NGOs activities are more transparent, painstaking, and as a result, will be more suitable for the local of recipient states. For example, the China Association for NGO Cooperation (CANGO) was set up to promote China’s civil society development and uses available resources to participate in international events, enhance the communication with foreign NGOs, participate in regional NGO communication and cooperation. Since its founding, CANGO has developed good relations with 170 foreign NGOs as well as bilateral and multilateral organizations, and gained the Special Consultative Status with the Economic and Social Council of the United Nations. Besides, In order to embody its internationalization strategy of ‘shouldering international responsibility with great love, civil charity going to the world stage’, in 2010, China Foundation for Poverty Alleviation (CFPA), a great china GONGO in social aid field, established its International Development Project, and

54 Jenny Qu Wang, Minquan Liu, Aming Liu, Tao Wei, Hang Li, Global Health Governance in China: The Case of China’s Health Aid to Foreign Countries, www.bisa.ac.uk/index.php?option=com...no...
55 Leonard, Mark with Catherine Stead and Conrad Smewing, Public Diplomacy (Foreign Policy Centre 2002), at 1.
successively completed many activities, such as donating medical supplies to Sudan, filming basic social situations in Sudan, holding ‘Sudan Civil Organizations Training Class of Poverty Alleviation Abilities’, etc. CFPA is not a ‘social’ organization in the strict meaning, but its attempt maybe can open the mind and sight of the government, thereby permit NGOs further involvement in international affairs.

As mentioned above, China has its own sovereignty philosophy and espouses a form of cooperation in which no conditional strings are attached, whereas the west makes conditionality a strong component of its aid programs. If this Chinese mode which emphasizes the state capacity construction can be integrated with the West idea of good governance and Chinese traditional benevolence culture, the equity and justice of international law on public health will be improved. Maybe there are some new signs. In 2011, on the opening ceremony of a new NGO, the Research Union for China South-South Health Cooperation, many scholars called for NGOs participation in health aid and the governance reform of African states.56 First of all, on the condition that the universal value is recognized, China need to develop its own INGOs to advance its essence of traditional culture, which ‘has the source to surpass the world, even the world order’, exert the spirit of benevolence and justice into the international law on public health, which is compatible with the Western tradition of “natural law.”

IV. Conclusion

To summarize, Chinese NGOs play an auxiliary and limited role in global health governance. Firstly, Chinese NGOs provide public health service, hence supplement the gap led by the Chinese government, and in some extents advocate public health policy. Secondly, based on INGOs foundation and the internal reform of China’s governance, Chinese NGOs have made huge progress in urging the government to implement international law on public health, especially the FCTC and rules on infectious diseases control. Thirdly, we can see the beginning which Chinese NGOs learn to participate in the international lawmaking and dispute settlement on public health. Although the impact of Chinese NGOs on global governance is constrained by China’s Westphalia sovereignty and state-centric governance thoughts, actually china has been propelled by the post-Westphalia international law to accept passively or advance actively its NGOs’ participation in global health governance.

In general, China is a stakeholder and observer of the international health system. But most of its international health cooperation is guided by the government, leaving little space for the NGOs and civil society. Certainly, in dealing with public health problems, the role of government is essential and indispensable, which is especially the case in China since it has practiced market economy for a comparatively short time and the civil society and NGOs lack the ability to participate in global health governance. In fact, China’s NGOs development is characterized with the fact GONGOs act as the bridge between the government and the mass NGOs. The role of the true grass-root NGOs in global health

56 Peking University Global Health Research Centre, Chinese Institute of International Studies of Ministry of Foreign Affairs, Chinese Academy of International Trade and Economic Cooperation of the Ministry of Commerce and other units established this Unit. Zhao Baige, the vice Minister of the National Population and Family Planning Commission said that China-Africa health cooperation will focus on capability building, which means the transform from the dispatch of Medical Teams in the past, to the promotion of African countries’ overall health development in the future.
governance is more limited. Compared with the west powers, the health NGOs’ limitation in global health governance reflects China’s shortage of ‘soft power’, which is out of proportion to its growth of GDP and other ‘hard power’. Hence, not only shall Chinese government’s rule method and idea be changed, but NGOs’ abilities shall also be strengthened while internationalization of NGOs shall be advocated. If greater institutional reform can take place after the 18th Party Congress of CPC, Chinese NGOs will gain greater governmental support; as a result, will play a greater role in global health governance.