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WHO: Past, Present and Future

# China's position in negotiating the Framework Convention on Tobacco Control and the revised International Health Regulations



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## ABSTRACT

This paper examines China's position in the negotiations of the Framework Convention on Tobacco Control and the revised International Health Regulations. In particular, it explores three sets of factors shaping China's attitudes and actions in the negotiations: the aspiration to be a responsible power; concerns about sovereignty; and domestic political economy. In both cases, China demonstrated strong incentives to participate in the negotiation of legally binding international rules. Still, the sovereignty issue was a major, if not the biggest, concern for China when engaging in global health rule making. The two cases also reveal domestic political economy as an important factor in shaping China's position in international health negotiations.

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Global health governance relies on formal and informal rules, norms, and processes to address transnational health challenges. While there has been a dramatic increase in the number and variety of global health agreements in the past decade, only two have established new and formal binding rules in global health governance: the Framework Convention on Tobacco Control (FCTC) in 2003 and the revised International Health Regulations (IHR) in 2005.<sup>1</sup> The FCTC is the first use of the World Health Organization's (WHO) constitutional treaty-making power to negotiate a legally binding international convention, and it has helped to create an unprecedented, worldwide tobacco control movement. Likewise, the revised IHR establish rules and processes that enable the WHO and its member states to identify and respond to international public health emergencies more effectively.

Due to the critical role China has played in the dynamics of health, development, and security, its participation was

essential to successfully negotiating major international health agreements. China is the world's largest tobacco producer and has the world's largest smoking population. With 1.2 million people dying from smoking annually, China is also the country worst affected by tobacco use.<sup>2</sup> In addition, China plays a crucial role in global health security: many major disease outbreaks that had significant epidemiological, economic and political implications worldwide have originated in China. Indeed, it was the outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003 that highlighted the need for a new international legal framework for infectious disease control.

This paper examines China's position in the negotiations of the FCTC and the revised IHR. By drawing upon existing literature and key informant interviews,<sup>3</sup> it explores three factors that shaped China's attitudes and actions in negotiations: the aspiration to be a responsible power, concerns about sovereignty, and domestic political economy.

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## Negotiating the FCTC

The idea of having a framework convention protocol for tobacco control originated from a group of academics and anti-tobacco activists, but it did not gain momentum until it received strong support from the newly elected WHO Director-General Gro Harlem Brundtland in 1998. In May 1999, the World Health Assembly—the governing body of the WHO—unanimously passed WHA52.18, a resolution to establish an intergovernmental negotiating body (INB) to draft and negotiate a framework convention on tobacco control and a working group composed of WHO Member States to undertake preparatory work for the INB.

From the very beginning, China had been ambivalent towards the negotiation of a multilateral treaty limiting tobacco use. Starting in the 1990s, China aimed to redefine its place in the international system; it now wished to be viewed not as a rule breaker or a challenger, but as an internationally responsible power that actively engages in international affairs, even though moving in this direction entailed acceptance of more restraints on its sovereignty.<sup>4</sup> Driven by the new sense of accountability and commitment, many Chinese officials and scholars supported the ‘sacrosanct principle’ that public health concerns should be given precedence over tobacco-related trade.<sup>5</sup> Secondly, China was also hoping to use the FCTC to maintain the dominant status of domestic tobacco firms by blocking trade liberalization in tobacco production and curtailing tobacco smuggling by transnational tobacco companies.<sup>6</sup> Both of these factors might explain why China was among the 59 countries pledging financial and political support for FCTC while the Member States were voting for WHA52.18.

On the other hand China was concerned that the FCTC negotiation might undermine its sovereignty. Internally, because the tobacco industry was considered an important contributor to the state coffers, China worried that an internationally binding treaty might restrict its policy options in promoting economic development (upon which the regime’s legitimacy hinges). Externally, because the convention would be a treaty, which only state actors can join by definition, China was concerned that Taiwan, which it considers a renegade province, might use the negotiations as an way to expand its international space and pursue a ‘two China’ or a ‘One China, One Taiwan’ agenda. According to a US negotiator, ‘the biggest issue’ China had with WHO at that time was ‘ensuring that Taiwan did not get observer status at the organization or any other UN agency.’<sup>7</sup>

The need to balance these multiple interests and concerns was reflected in the four seemingly contradictory principles that the Chinese government set for the negotiation: 1) the treaty should not undermine the important status of tobacco industry in China’s national economy; 2) China should explicitly support tobacco control; 3) treaty making should respect state sovereignty; and 4) China should not concede on matters of principle, but could be flexible on minor issues.<sup>8</sup>

China’s deep aspirations and concerns underscored the importance for it to engage actively in the treaty-making process. When the WHO convened the first meeting of the

intergovernmental negotiating body (INB1) in October 2000, China sent a large delegation consisting of representatives from 13 central ministries.<sup>9</sup> From then on, China participated in all six INB sessions. The Ministry of Health (MOH) was the primary central ministry supporting strong tobacco control. It had a champion at the WHO to support its tobacco control cause – a Chinese public health expert named Yang Gonghuan – who happened to be working in the WHO’s Tobacco Free Initiative. But to the surprise of all the other participating countries, which did not allow the tobacco industry to officially participate in the negotiations, the Chinese delegation included a representative from the State Tobacco Monopoly Administration (STMA). Unlike its regulatory counterparts in other countries, STMA shares its management staff with the China National Tobacco Corporation (CNTC), a state-owned manufacturer of tobacco products and also the world’s largest cigarette maker. This unique governance arrangement made STMA the de facto representative of China’s giant tobacco industry.

With the involvement of multiple bureaucratic agencies from different functional domains, consensus building became less likely in the policy process. Furthermore, in the single-minded pursuit of economic growth in post-Mao China, public health has often been relegated to a backburner issue. As a result, the MOH is bureaucratically weak and often has to rely heavily on interagency cooperation to accomplish its policy goals.<sup>10</sup> By contrast, the economic clout of the STMA/CNTC have placed it in a strong position to lobby and influence policy. Beginning in 1987, tobacco has provided the biggest single source of tax revenue in China. In 2002, the tobacco industry generated 8% of China’s annual fiscal revenue through taxation; in Yunan Province, the share was as high as 49%.<sup>11</sup>

The head of delegation was theoretically responsible for the negotiations. Xiong Bilin, an official from the National Development and Reform Commission, was the head of the Chinese delegation between INB3 and INB6. He was keenly aware of the importance of balancing different bureaucratic interests. On the one hand, he stressed the importance of the tobacco industry, saying that ‘For a long time, Chinese economic development will depend on the tobacco industry to accumulate fiscal revenue and to partially solve the employment issue.’<sup>8</sup> On the other hand, he noted that as a responsible power, China should support tobacco control. Yet, a compromise between the MOH and the STMA/CNTC was difficult to reach not only because of the tobacco industry’s fundamental conflict of interest with public health, but also because of the MOH’s lack of leverage in the interdepartmental bargaining process. Perceiving the FCTC as a threat to China’s tobacco industry, the STMA formed a working group to study the treaty and proposed counter-strategies for the Chair’s Text from INB3 through INB6 in early July 2001.<sup>12</sup>

The conflict between the MOH and the STMA/CNTC first surfaced in INB1. The STMA representative found fault with the FCTC wording concerning ‘the devastating health, social, environmental and economic consequences of tobacco consumption’ and insisted that the word ‘devastating’ be removed.<sup>13</sup> His frequent speeches at INB1 gave the WHO officials the impression that China was not serious about

tobacco control.<sup>13</sup> Within the delegation, the STMA representative did not hide his hostility toward tobacco control. On one occasion, an STMA official even allegedly accused an MOH official of being ‘traitorous’ for advocating tobacco control and claimed that ‘one tenth of your salary comes from us.’<sup>14</sup> The deadlock would eventually have to be broken by the top leadership.

In a move to clarify China’s positions, the State Council prior to INB2 explicitly instructed the delegation that it should 1) work proactively toward the success of the treaty making; 2) not be too critical over the wording of the text; and 3) not allow the negotiation to become a forum for Taiwan to pursue a ‘two China’ agenda.<sup>15</sup> From then on, China became more cooperative in negotiations. ‘China was not a big vocal player,’ noted a US negotiator, but it ‘did go along with the public health issues, especially if they were not trade or commerce related.’<sup>17</sup> China was praised for supporting some key FCTC provisions, for which it won an Orchid Award from the NGO Framework Convention Alliance (FCA). Indeed, China was considered the least vigorous opponent of the FCTC among the ‘big four’ (China, Japan, Germany, and the United States).<sup>16</sup>

Despite the attitude change, China continued to prefer a more generic FCTC, which would leave implementation guidelines to future protocols and domestic laws, and there was no indication that the STMA was willing to soften its opposition to certain provisions. During INB3, the STMA representative opposed having pictorial warning labels on tobacco packages, contending that doing so would be against Chinese traditional thinking and its domestic laws.<sup>8</sup> During INB5 in October 2002, China received an FCA Dirty Ashtray Award after the STMA representative made lengthy remarks seeking to water down the provisions on ‘responsibilities and liabilities’ (which initially would allow people to use the convention to sue tobacco industries for compensation). Upset about the activities of NGOs in the negotiation during INB6, China joined the United States in seeking to deny NGOs’ access to the informal sessions.

Throughout the negotiations, the STMA’s opinion carried significant weight in the Chinese delegation’s deliberation and decision-making process. Toward the end of INB6, the STMA’s refusal to enact graphic warning labels that cover at least 30% of tobacco package forced the Chinese delegation to reopen the negotiations.<sup>17</sup> Lack of Chinese support for some key provisions contributed to a less robust and more generic FCTC, especially over issues such as the use of pictorial warning labels and responsibilities and compensation.

China signed the treaty in October 2003, and in 2005, the Standing Committee of the National People’s Congress—China’s top legislative body—ratified the treaty.

## Negotiating the IHR revisions

The process of revising the IHR began in 1995, although significant progress was not made until 2003, when the SARS outbreak provided a ‘powerful rationale and catalyst’ for accelerating the process.<sup>18</sup> In May 2003, while the world was still combating the virus, the 56th World Health Assembly (WHA) requested that the WHO director-general establish an Intergovernmental Working Group (IGWG) for the revision of

the IHR. Starting in March 2004, the WHO convened regional meetings and two IGWG meetings to negotiate the IHR revisions. The work was completed in May 2005, immediately prior to the 58th WHA, which adopted the revised IHR by acclamation. According to David Fidler, the new IHR ‘constitute[d] one of the most radical and far-reaching changes in international law on public health since the beginning of international health cooperation in the mid-nineteenth century.’<sup>19</sup> Different from its predecessors, the revised IHR not only covers a larger number and broader array of public health threats, but also expands the scope of participation. In addition to the involvement of non-state actors in disease surveillance, the IHR introduces the universality principle, which states that the implementation of the regulations ‘shall be guided by the goal of their universal application for the protection of all people of the world from the international spread of disease’ (Article 3.3).

In part because of China’s slow and secretive handling of SARS and the huge damage the virus’ transnational spread has caused internationally, China had strong incentive to repair its tarnished international image. Meanwhile, the crisis also provided an opportunity for China to update its conception of national sovereignty. One important lesson China learned was that it could no longer handle a public health emergency of international concern (PHEIC) without the involvement of regional and international actors. Premier Wen Jiabao, for example, admitted that the cross-boundary spread of a disease like SARS could ‘only be effectively countered by cooperative efforts at the regional and international levels.’<sup>20</sup> Even though it was considered one of the most ardent supporters of state sovereignty, China, especially in the later stage of the SARS outbreak, appeared to have acquiesced to WHO’s leadership on global health governance.<sup>21</sup> These developments prompted China to actively participate in the IHR revision. In sharp contrast to India, which sent only three delegates to each of the three IGWG meetings, China sent 12 delegates in November 2004, 15 in February 2005, and 17 in May 2005.<sup>22</sup> The relatively large delegation size enabled China to have enough negotiators to cover concurrent sessions, ‘corridor negotiations’ and other processes.

Unlike the Chinese delegation to FCTC talks, the delegation to the IHR revision was represented by only three central agencies: the MOH; the Ministry of Foreign Affairs (MFA); and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), which made coordination and consensus building much easier. Further, none of the agencies appeared to stand to lose from the revised IHR. For the MOH and the AQSIQ, the new requirements of building core surveillance and response capacities might lead to increased workload, but they could also be used to justify significantly more central budgetary investments, which would boost their morale and status in the bureaucratic hierarchy. Equally important, the MOH was entrusted to ‘take the lead’ (*qiantou*) in the negotiations. Neither of the other two members were bureaucratically strong enough to challenge the MOH’s lead role, especially over technical issues; the AQSIQ had a lower bureaucratic rank than the MOH and the MFA, and the MFA traditionally has little autonomy in the foreign policy process.<sup>23</sup> The delegation of the first two IGWG meetings, however, was headed by Sha Zukang, the Chinese ambassador to

the United Nations office in Geneva, who was noted for his outspoken nationalist tones.

While domestic politics did not prevent China from acting constructively and responsibly in the revision process, the focus of the negotiations highlighted the importance of balancing the traditional emphasis on state sovereignty against the universalistic ambitions inherent in addressing the global spread of infectious diseases. Prior to the revision of the IHR, the reporting of disease outbreaks and the nature of responses to them was solely the domain of sovereign states. However, individual states were incentivized to suppress the flow of information regarding endogenous epidemics that are of international concern. For example, the Implementing Regulations on the State Secrets Law regarding the handling of public-health related information classified any occurrence of infectious diseases as a state secret before it was announced by the Ministry of Health or organs authorized by the Ministry.<sup>24</sup> China initially argued vehemently against the proposal to include a formal list of specific infectious diseases for fear that it might be compelled to reveal information that would hurt its national interests. China also resisted the idea of sending WHO investigative teams to countries without consent.<sup>25</sup> This emphasis on state sovereignty led to a state-centric approach to domestic health governance that excludes the participation of NGOs. In spite of the growing recognition of the importance of non-state actors in disease surveillance (which the revised IHR acknowledges), China maintained that sovereign states should remain the primary actors in implementing the IHR. Similar to what its stance in the FCTC talks, China, along with many other Asian countries, also sought to limit the role of NGOs in the IGWG meetings.

Concern about infringement of its state sovereignty also affected China's position on Taiwan in negotiations. Lest Taiwan took advantage of the revision process to become a signatory member of the IHR, China welcomed Taiwan to join the Chinese delegation prior to negotiations, as Hong Kong and Macau did. It also expressed interest in talking with Taiwan to find a solution for the latter to participate in the WHO activities. During the IGWG meetings, however, China continued to block Taiwan's request to become a signatory party of IHR. In November 2004, Nicaragua proposed an amendment that would allow non-member states to participate as signatory parties to IHR, but this amendment was rejected by Member States. At the closing plenary session of the first IGWG meeting, Ambassador Sha made it clear that 'health is a very important issue, but sovereignty and territorial integrity are more important to a sovereign state. China will firmly defend its sovereignty and territorial integrity at all cost.'<sup>26</sup> Playing China's sheer population size as a trump card, he further warned that 'the future IHR has no universality without China's participation.'<sup>26</sup>

But Beijing's insistence on blocking Taiwan from participating in the WHO activities would leave gaps in the global surveillance and response network, which was against the universality principle in implementing the new IHR. Indeed, Taiwan's request for participation elicited widespread international sympathy.<sup>27</sup> Concerned that Taiwan used the principle to justify its direct interaction with the WHO without China's involvement, China pushed for the incorporation of

additional three principles including 'respecting sovereignty of all countries' and 'abiding by the United Nations Charter and the World Health Organization (WHO) Constitution.' It also refused to include the universality principle in the WHA resolution without referring to other principles after the conclusion of the negotiations. In May 2005, China signed a Memorandum of Understanding (MOU) with the WHO Secretariat in which it agreed that Taiwanese medical experts could enjoy 'meaningful participation' in WHO-related activities. While allowing the WHO to interact with Taiwan, the implementation memo set out clear restrictive procedures on such contact.<sup>28</sup>

In hindsight, China's emphasis on sovereignty did not impede its flexibility in revising the IHR. China dropped its opposition to the universality principle when the chair of the draft committee substituted 'all countries' with 'all people' in the new text.<sup>29</sup> Similarly, China, a country which attaches utmost importance of social-political stability, showed flexibility by allowing the WHO to take into account sources of information provided by non-state actors in making decisions. Its negotiators indicated that China preferred WHO to deal with these 'rumors' and found it acceptable when the wording was changed to 'sources other than notifications or consultations.'<sup>29</sup>

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## Conclusion

An examination of the two cases helps us to better understand China's new health foreign policy dynamics since the 1990s. In both cases, China demonstrated strong incentives to participate in the negotiation of legally binding international rules. This growing interest in global health governance has been driven by its aspiration to be a responsible power as well as the need to defend its core national interests in international relations. This interest in global health governance, coupled with the recognition of its role as a critical stakeholder in addressing major global health challenges (i.e., tobacco use and PHEIC), also exerted sufficient normative pressures for China to be more flexible and constructive in global health rule making. This is especially true after the 2003 SARS outbreak, which reinforced the incentives for China to accept restraints on its state sovereignty and become more cooperative in handling transnational challenges. Such normative pressure may explain why China has ratified both FCTC and the revised IHR despite their potential negative impact on state sovereignty.

Still, sovereignty issues are a major, if not the biggest, concern for China when engaging in global health rule making. In both negotiations, there was inclination to allow sovereignty trump public health. In the negotiating of IHR revisions, the sovereignty issue became the only major issue China had with the WHO. While the issue may have become less sensitive with Taiwan obtaining its WHA observer status in 2009, China's growing international influence may encourage its pursuit of an increasingly individualistic and state-centric approach that narrows the space for future international health cooperation.

The two cases also uncover domestic political economy as an important factor in shaping China's position in international health negotiations. Compared with its overwhelming concern over Taiwan in IHR revisions, China seemed to be

more concerned about the ability to pursue its own development options in the FCTC talks. The inclusion of the powerful tobacco industry in the Chinese delegation not only changed the discourse from protecting public health to protecting the interests of the tobacco industry, but also effectively undermined the bargaining power of the MOH, making China a ‘spoiler’ in negotiations. In contrast, ‘big tobacco’ appeared to have played a less prominent role in influencing US positions in the FCTC talks, even though it might have contributed to the US failure to ratify the treaty.<sup>30</sup> Domestic political economy was not found to be a significant factor when China was negotiating IHR revision. Indeed, it can be argued that it was precisely the lack of the interference of powerful special interests that made the issue of sovereignty a dominant concern of the Chinese delegation in negotiating the IHR.

In short, while sovereignty concerns will continue to be a major facet of China’s engagement in future international health negotiations, domestic political economy issues have strong potential to determine the direction and discourse of such engagement.

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