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China Confronts Public Health's 'New World Order'

How the victory was won

The successful handling of the SARS outbreak by WHO's global campaign was a significant victory for public health. The success of the SARS effort stands in marked contrast to a parade of worsening infectious disease problems identified in the 1990s and early 2000s under the moniker of 'emerging and re-emerging infectious diseases.' Thinking about why the SARS campaign achieved stunning results does not lead analysis into biomedical technologies, such as vaccines, which have contributed greatly to improvements in prevention, control, and eradication of other pathogenic threats, such as smallpox. The WHO-led global campaign contained SARS without having access to adequate diagnostic technologies, effective anti-viral therapies, or a vaccine. The public health instruments at the forefront of the SARS battle were surveillance, isolation, and quarantine, which were the main tools of infectious disease control in the historical era before the development of the arsenal of vaccines and antibiotics.

How, then, did a public health effort, armed only with essentially nineteenth-century public health instruments, succeed in stopping a contagious pathogen in twenty-first century, globalized conditions dead in its tracks within four months of the epidemic's first recognition? Answering this question involves understanding the governance context in which the SARS effort took place. Chapter 4 described the trends in governance with respect to infectious diseases that developed during the 1990s and early 2000s. A shift from Westphalian public health governance to a post-Westphalian governance framework is apparent in these trends; but, prior to SARS, the shift was still nascent or, as was the case with HIV/AIDS, tapped at a point when an epidemic was already

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out of control. As the first severe infectious disease to emerge in the twenty-first century, SARS represented a critical test of post-Westphalian public health governance. Understanding how the SARS victory was won requires examining how post-Westphalian public health governance – in both conception and implementation – passed the test posed by the SARS outbreak.

China: Epidemiological and governance epicenter

As Chapter 5 demonstrated, public health experts recognized that China represented the epidemiological epicenter of the SARS outbreak. WHO repeatedly argued that SARS would not be controlled globally unless China controlled SARS domestically. Therefore, China's behavior was critical to the functioning of post-Westphalian governance for infectious diseases. China was the governance epicenter because of the task it had in dealing with the largest SARS outbreak within its borders and how the Chinese management of this task interfaced with global SARS efforts. China provides the best case study for analyzing the governance shift in infectious disease control because China acted Westphalian in a post-Westphalian world.

For this reason, China's response to SARS proved a miscalculation of historic proportions. The miscalculation involves not only the damage China suffered to its economy but also China's failure to grasp the post-Westphalian context of infectious disease governance. The saga of the SARS outbreak in China tells the story of the humbling of the sovereignty of a rising great power. The humbling of Chinese sovereignty occurred in both traditional public health areas, such as surveillance and response, and matters of political ideology. As a result of its response to SARS, China suffered extensive and withering scrutiny and criticism of its attitude toward public health, its health care system, and the political ideology underlying governance in that country.

China, SARS, and Westphalian public health

As Chapter 5 detailed, China's response to SARS divides into three stages. The first stage, which began in November 2002 and lasted until early February 2003, witnessed the Chinese government's attempt to suppress information about a severe outbreak of a mysterious respiratory disease in Guangdong Province. These attempts to suppress information did not succeed, as news of the outbreak leaked out through the Internet, e-mail, mobile phone text messaging, and the local Chinese media.

The second stage of China's response began in mid-February 2003 and lasted until 17 April 2003. In this stage, China acknowledged an outbreak but attempted to deny and cover up the extent of the epidemic. A pattern emerged during this stage: China would admit there was a problem, make moves to appear to be enhancing international cooperation, but, after each strategic retreat, try again to cover up the full extent of the SARS outbreak. This pattern continued through the Chinese attempt to hide SARS patients from WHO personnel visiting Beijing hospitals to assess the real level of infection in the capital. China also made various claims during this period, such as the outbreak in Guangdong Province had been contained by mid-February and had not spread to other parts of China, all of which eventually proved to be deliberate falsehoods promulgated by the Chinese government. As during the first stage of its response, China could not control the flow of information about the SARS problem from reaching the outside world; and this information destroyed the credibility of the official claims of the Chinese government and brought the entire Chinese governance system into disrepute.

The third stage of China's response began on 18 April 2003 when China's Communist Party finally called a halt to the systematic deception it had been orchestrating on SARS. From that date on, China increased the information it provided to WHO, improved its cooperation with WHO and other countries, and heightened the seriousness of its SARS control efforts. As Chapter 5 indicated, the results from this reversal of policy were impressive because China succeeded in bringing a very bad SARS epidemic within its borders under effective control within two months.

Stepping back from the detailed analysis of events provided in Chapter 5, one can see that the first two stages of China's response to SARS conform to the patterns of the Westphalian approach to infectious disease control. As analyzed in Chapter 3, the central concept of Westphalian governance is sovereignty. A state has supreme power over the people who live, and the events that transpire, within its territory. Under the Westphalian framework, such supreme power remains unfettered until the state consents to exercise its sovereignty in the manner prescribed by rules of international law. This dynamic applied equally to public health as to other areas of international relations – states disciplined their sovereignty over public health within their territories through rules of international law negotiated and accepted by them.

From the perspective of Westphalian public health, the first two stages of China's response to SARS were understandable. China was

under no international legal obligation to report SARS cases to any state or international organization. The only set of international legal rules directly affecting surveillance for infectious diseases – the International Health Regulations (IHR) – did not include SARS on the list of diseases subject to the notification duties binding on WHO member states (IHR, 1969, Article 1). Similarly, China was under no international legal obligation to involve WHO in addressing the SARS problem within Chinese territory. China could utilize WHO in dealing with SARS, if it chose to do so, but remained in complete control over where WHO personnel could go and how WHO operated while in China. Demands to the contrary from WHO or any other state would represent intervention in China's domestic affairs and an affront to its sovereignty.

These observations challenge 'numerous comments from academics and politicians both here and abroad that China's apparent inaction is tantamount to dereliction of duty; i.e., that Beijing was obligated to take measures to prevent the spread of the disease and inform the international community of the danger posed by the virus' (Bishop, 2003). Many public health officials and political leaders have criticized the manner in which the Chinese government responded to the SARS outbreak. US Secretary of Health and Human Services Tommy Thompson argued, for example, that China's behavior cost lives in other countries (Pomfret, 2003o). Such comments and criticisms have raised the question of whether China's behavior created any responsibility for it under international law.

According to the draft Articles on Responsibility of States for International Wrongful Acts promulgated by the United Nations' International Law Commission, '[e]very internationally wrongful act of a State entails the international responsibility of that State' (International Law Commission, 2001, Article 1). An internationally wrongful act by a state occurs when a state's action or omission is attributable to that state under international law and constitutes a breach of an international legal obligation of the state (International Law Commission, 2001, Article 2). An act by a state 'does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs' (International Law Commission, 2001, Article 13).

In order for China's reluctance to share epidemiological information on disease events in its territory under its control, or China's non-cooperative attitude toward WHO in the first two stages of its response to SARS, to be an internationally wrongful act, China would have to be in breach of some international legal obligation that it consented to obey and that was applicable at the time the SARS outbreak occurred.

As indicated earlier, China's international legal obligations under the IHR are to report outbreaks of cholera, plague, and yellow fever. China is under no other international legal obligation to report other disease events to WHO or other states.

In terms of treaty law, the WHO Constitution does not impose on member states any specific duty to control infectious diseases or to cooperate with the Organization on infectious disease problems. The only concrete duties WHO member states have agreed to undertake in accepting the WHO Constitution are to pay their financial assessments and submit certain general reports to WHO (WHO, 1948, Articles 7, 61–65).

Under customary international law, states are under no obligation unless a rule of custom is supported by general and consistent state practice and a sense on the part of states that such practice is legally binding on their behavior (*opinio juris*) (Brownlie, 1998, pp. 3–9). Finding general and consistent state practice on reporting infectious disease outbreaks would be a futile effort for two reasons. First, this aspect of international relations has, since 1851, been handled as a matter of treaty law not custom. Second, the failure of states to comply with their treaty obligation on disease reporting found in the IHR render impossible the discovery of state practice and *opinio juris* supporting infectious disease notification obligations as a matter of customary international law.

In the absence of an international legal obligation that applies to its actions directly on SARS, China's behavior cannot be considered legally wrongful under international legal principles of state responsibility. China's behavior made the public health threat posed by SARS worse; but, given the configuration of international law in place at the time of China's actions, China's exercise of its sovereignty does not appear to trigger state responsibility under international law. To pursue China's international legal responsibility under these principles, we have to leave the specific context of infectious disease control and make analogies to contexts regulated by international environmental law.

Eminent scholars of international law on environmental protection have argued that '[i]t is beyond serious argument that states are required by international law to take adequate steps to control and regulate sources of serious global environmental pollution or transboundary harm within their territory or subject to their jurisdiction' (Birnie and Boyle, 1992, p. 89). One could argue that, under the general concept expressed by this purported rule, international law obligates states to take adequate steps to control and regulate sources of serious global public health threats or transboundary public health harm within their territory or subject to their jurisdiction. Recognizing that much of international

environmental law addresses threats to public health (Fidler, 2001b, p. 10048) strengthens the connection between the rule of international environmental law and cross-border threats from infectious diseases.

Two problems, however, undermine this argument by analogy to international environmental law. First, scholars have, in fact, challenged the assertion that international law, without question, requires states to control and regulate sources of global environmental pollution and transboundary harm within their territories or under their jurisdiction. This rule is presented as a rule of customary international law, and customary international law embodies the unwritten, common law rules for state interaction in anarchy. As indicated above, rules of customary international law form when states recognize as legally binding principles drawn from general and consistent state practice on a particular issue.

As scholars of international environmental law have observed, global and transboundary pollution by states is the norm not the exception, meaning that there is not general and consistent state practice that states act to reduce global and transboundary environmental harm (Bodansky, 1995, pp. 110–11; Schacter, 1991, pp. 462–3). The repeated resort to treaty law as a way to deal with global and transboundary environmental harm caused by state activities within their borders further illustrates the weakness of the purported rule of customary international law.

Second, the customary principle of responsibility to prevent, reduce, and control global or transboundary environmental harm translates awkwardly into the infectious disease context. To begin, one would search in vain for general and consistent state practice with respect to infectious disease control supporting a customary rule that states have to take adequate steps to control and regulate sources of serious global public health threats or transboundary harm within their territory or subject to their jurisdiction. As the historical experience of the IHR illustrates, states have addressed international infectious disease control through treaty law not customary international law. Again, the routine violation of the IHR by WHO member states during its lifetime underscores the futility of trying to use customary international law to find a general duty on infectious diseases applicable to China in the context of SARS.

Another reason why the analogy to international environmental law transfers badly to the infectious disease situation involves the breach element of international law on state responsibility. Even if a principle of international law existed requiring all states to address sources of global or transboundary infectious disease harm within their territories, what would constitute a breach of this obligation? Would China's

efforts to contain the initial outbreak in Guangdong Province from November 2002 and February 2003 represent a breach, even though it did take some steps (albeit in secret) to control the infectious disease problem? Is the standard for breach strict liability, gross negligence, or just negligence?

Perhaps China's failure to notify WHO and other states about the true extent of the outbreak within its territory constitutes the breach of a general customary duty to deal with infectious disease problems inside its territory. But we have come full circle analytically because, as the long history of the classical international legal regime on infectious diseases demonstrates, states have dealt with surveillance for purposes of international control of infectious diseases through treaty law not customary international law. And, at the time of the SARS outbreak, China's treaty commitments on infectious diseases did not involve obligations to report SARS cases. Thus, failure to report SARS information openly, transparently, and in a timely way constituted no violation of applicable international law. Attempts to catch China in violation of international legal principles developed for Westphalian public health resembles grasping for straws in the wind.

Another feature of China's response to SARS that resonates with the Westphalian model is China's status as a rising great power in the international system. As illustrated in Chapter 3, Westphalian public health functioned under the direction of the world's great powers. China's increasing political and economic importance in international relations provides evidence of China's power and position in world politics. The United States views, for example, China as a strategic competitor. China's accession to the World Trade Organization in 2001 solidified that nation's significance to world trade. In 2002, China surpassed the United States as the world's leading destination for foreign direct investment. China is also considered the critical player in managing the stand-off that has developed over North Korea's attempts to develop nuclear weapons.

Under Westphalian public health, China's status as a rising great power should have given China a preferential role in shaping responses to infectious disease problems. Similarly, other states and international organizations should defer to the great power's exercise of its sovereignty over matters taking place in its territory. The interests of the great powers in infectious disease control in the Westphalian template were two-fold: (1) to prevent and reduce disease importation from weaker, poorer countries; and (2) to minimize the burden public health measures impose on international trade. Westphalian public health governance

did not entail scrutiny of public health policy and practices within the territory of the great powers. The first two stages of China's response to SARS conformed to the Westphalian dynamic because China behaved in ways that indicated it believed the SARS problem in its territory was exclusively its sovereign concern.

Analysis of the traditional rules of international law on, and political dynamics of, infectious disease control support the argument that China's initial response to SARS follows the tenets of Westphalian public health. This argument does not claim that China responded to SARS by saying 'let's act Westphalian.' In fact, the reasons why China behaved in the way it did are more complex than simple analytical concepts. For example, the nature of Communist Party rule in China forms part of the story of China's actions in the face of SARS. But this factor again brings back the importance of the Westphalian template, under which the nature of a state's government and ideology are not diplomatic issues. Westphalian governance concepts, particularly the principle of non-intervention in the domestic affairs of other states, steer diplomacy away from the nature of a country's domestic political and economic structures toward management of the mechanistic interactions of states in their anarchical condition.

This extended discussion of international law and politics on infectious diseases underscores the main point of this section: The first two stages of China's response to SARS conform to the Westphalian template for public health governance. These observations do not mean that China's response to SARS was prudent merely because it conformed to Westphalian patterns. Nothing in the Westphalian model prevented China from responding more openly and cooperatively, as other nations did. More broadly, the absence of specific international legal obligations in the WHO Constitution on infectious diseases does not prevent WHO member states from working with WHO to prevent and control infectious disease problems in their territories. Most member states cooperate with WHO on public health problems in the absence of direct international legal obligations to do so.

The main point of connecting China's behavior to the Westphalian approach to public health is that this approach did not demand more from China with respect to SARS. Westphalian public health left China's sovereignty unfettered and to be exercised, for better or worse, as China's government saw fit. Westphalian public health is based on a governance model developed originally through nineteenth-century diplomacy on infectious diseases. The crisis in emerging and re-emerging infectious diseases had already begun to call this governance model into

question prior to SARS, and the SARS outbreak further revealed the mistake of trying to address twenty-first century infectious disease threats through a nineteenth-century governance framework.

Westphalian sovereignty v. global health governance

The best way to analyze the mistakes China made in connection with SARS is to examine the outcome of the confrontation between China's response to SARS, which resonates with the traditional Westphalian approach, and the emerging mechanics and objectives of post-Westphalian public health, namely global health governance and global public goods for health. This section focuses on China's experience with SARS in light of global health governance, and the subsequent section explores China's behavior with respect to the concept of global public goods for health.

In many ways, China exercised its sovereignty during the SARS outbreak in the same way that states often behaved with respect to past disease outbreaks. States have frequently failed to notify WHO and other states about outbreaks in their territories, even when international law (e.g., IHR) required such notifications. Even when news of outbreaks did reach the outside world, states often did not provide accurate information about the disease situation in their territories or cooperate fully with international organizations and other states. Typically, fear of economic damage resulting from the reactions and over-reactions of other states to disease outbreaks motivated states to exercise their sovereignty in non-transparent, uncooperative ways. Countries also tried to hide or downplay infectious disease outbreaks because of concerns about outbreaks tarnishing the images and reputations of the affected nations.

The IHR's collapse as an international legal regime attests to the frequency of state attempts to avoid economic and political fallout from infectious disease epidemics in their territories. The IHR were a Westphalian governance tool because states negotiated and accepted the IHR's disciplines on the exercise of sovereignty with respect to the diseases subject to the Regulations. Frequent violations of the obligations to notify WHO of certain disease outbreaks and to restrict measures in trade and travel to specified actions meant that the disciplines were not effective constraints on the exercise of sovereignty. Sovereignty, even within the framework of Westphalian public health, remained essentially unregulated.

The first two stages of China's response to SARS mirror the historical pattern of the way states exercised their sovereignty in connection with

infectious disease problems. China's attempts to hide the outbreak, deny its full scope, provide partial and non-transparent information, and limit cooperation with WHO are all familiar from the history of state responses to epidemics within their borders. Most experts attribute these features of the Chinese response to SARS to China's fears about how full disclosure of the outbreak would affect its economy and growing reputation as a place to invest, do business, and export. Full disclosure about the outbreak would also raise questions about the government's and the Communist Party's policies on public health that neither the government nor the Party wanted to answer.

The pattern of behavior exhibited by China on SARS and by other states during previous outbreaks serves as powerful evidence of the failure of international health governance on infectious diseases developed from 1851. The Westphalian approach to infectious disease control proved inadequate in implementing disciplines that would facilitate effective international action. The failure of Westphalian disciplines points to an underlying problem with the incentives and disincentives states faced when confronted with decisions on how to exercise their sovereignty with respect to epidemics.

The historical pedigree of the pattern of behavior described above means that, over time, states have exercised their sovereignty in a way that inhibits international cooperation and coordination. Under Westphalian public health, the incentives to cooperate apparently did not often outweigh the incentives to minimize damage to a country's reputation and economy by being less than forthright about infectious disease problems. The disincentives for dissimulation, such as the risk of getting caught being less than truthful and uncooperative at the expense of other states, also apparently were not significant enough to alter the rational calculations of states. Such low disincentives connect to the obscure and neglected status of public health as an issue in international relations. The short-term gains from dissimulating on infectious disease outbreaks outweighed any longer-term costs from being seen as selfish in connection with public health issues.

What happened to China in the SARS outbreak deviates from the traditional pattern of Westphalian sovereignty undermining international cooperation. Despite exercising its sovereignty in a manner consistent with applicable international law, the political dynamics of Westphalian public health, and the historical pattern of state behavior during outbreaks, China eventually engaged in an embarrassing and highly damaging retreat. China's retreat cannot be explained by the functioning of international health governance pursuant to the Westphalian model.

Rather, China's retreat occurred because Chinese sovereignty could not withstand the forces brought to bear on China by global health governance.

As explained in Chapter 4, global health governance is a concept that challenges and moves beyond the state-centric approach of Westphalian public health. Global health governance represents a strategy that seeks to build stronger governance roles for non-state actors in international relations. Much of the energy for the movement toward global health governance comes from the realization that state-centric governance approaches, such as the IHR, are inadequate because the state-centric strategy cannot effectively regulate sovereignty. Expecting sovereign states to formulate, accept, and actually obey formal rules of behavior on infectious diseases had, by the 1990s, begun to look like a fool's errand.

As discussed in Chapter 4, prior to the SARS outbreak, WHO had begun to move beyond the state centrism of Westphalian public health with its proposal to include epidemiological information from non-governmental sources in global surveillance efforts. The World Health Assembly approved this policy shift in 2001, and WHO was developing and refining its ability to mine non-governmental sources of information through its Global Outbreak Alert and Response Network (Global Network) before SARS emerged.

China's refusal to provide SARS outbreak information to WHO in a timely, transparent, complete, and verifiable manner ran headlong into the global health governance mechanism of formal integration of non-governmental information into global infectious disease surveillance. Information provided by non-state actors provided the catalyst for WHO and other countries to intensify pressure on the Chinese government, forcing it to retreat repeatedly until the charade could no longer be sustained in any form.

For example, WHO's initial approach to China on 10 February 2003 was provoked not by information coming from the Chinese government but from information provided by non-state actors concerning an outbreak of severe respiratory illness in Guangdong Province. It is not by accident that WHO first approached the Chinese government on the same day (10 February) the WHO office in Beijing received an e-mail from the son of a former WHO employee in China about a worrying outbreak in Guangdong Province (Piller, 2003) and ProMED-mail posted an e-mail asking for information about an epidemic in Guangdong Province being linked in Internet chat rooms to hospital closings and fatalities (ProMED-mail, 2003). Government prohibitions on the media reporting WHO's 15 March global alert did not prevent news of the

alert circulating in China by mobile phone, e-mail, and the Internet (Huang, 2003, p. 69). With news of the outbreak in Guangdong Province escaping government attempts to suppress it, China had to respond, in some fashion, to WHO inquiries.

This pattern repeated itself a number of times during China's response to SARS. The accusations of a prominent Chinese physician and Communist Party member on 9 April that the Chinese government was not telling the truth about the number of SARS cases in Beijing provided momentum for WHO's insistence that the Chinese government permit it to investigate the Beijing outbreak. The physician's accusations 'were posted on the Internet and became the talk of Beijing' (Pomfret, 2003p). Unofficial information provided by Chinese physicians also undermined the government's claims about the number of SARS cases in Beijing, helping create the context in which WHO issued its highly unusual public criticism of the Chinese government on 16 April. The flow of non-governmental information materially advanced the progress of WHO's investigations on the SARS outbreak in China. In the battle to control information about SARS, China was always on the defensive.

This analysis does not mean that WHO depended only on non-state actors to provide information about SARS during the global campaign to control the epidemic. Other countries significantly affected by SARS openly shared information on SARS cases with WHO and cooperated closely with WHO in containing SARS. The global campaign against SARS benefited greatly from such government-provided epidemiological information. WHO personnel in Asia also contributed to the surveillance and response effort, as Dr Carlo Urbani's work in Vietnam illustrated. Global surveillance for SARS comprised a mosaic of different sources of information that was valuable to the global effort to contain the spread of SARS.

With China, however, the non-governmental sources of information proved critical in the face of Chinese official intransigence to come clean on the extent of the SARS problem. Unlike past situations of governmental denial and difficult behavior in outbreak situations, on this occasion WHO had stronger epidemiological and political positions vis-à-vis China.

Epidemiologically, WHO's ability to gather and use information from non-governmental sources helped the Organization develop arguments about the outbreak in China that proved extremely powerful in WHO's dealings with the Chinese government. Politically, the World Health Assembly's 2001 approval of WHO collection and use of non-governmental sources of information strengthened WHO in its use of such information with respect to China's SARS outbreak. The SARS

outbreak illustrates the power of the global health governance strategy of bringing non-state actors into the process of global infectious disease surveillance.

The premise behind expanding global surveillance to include non-governmental sources of information was that countries can no longer hide outbreaks from the world because of the revolution in information technologies. As a WHO consultation on the revision of the IHR stated in 1995, 'in this age of wide media coverage, nothing can be hidden' (WHO, 1995, p. 10). The globalization of information facilitated by new information technologies, such as the Internet and e-mail, radically transformed the political context in which states exercised their public health sovereignty. Incentives to cover up or deny outbreaks disappear when cover-up and denial are doomed to rapid, embarrassing, and damaging failure.

Expanding infectious disease surveillance from reliance only on governmental information to include non-governmental sources of epidemiological data merely reflects the reality of an increasingly globalized world. As WHO (2003b, p. 8) stated in May 2003 reflections on lessons learned from SARS:

> This is the most important lesson for all nations: in a globalized, electronically connected world, attempts to conceal cases of an infectious disease, for fear of economic and social consequences, must be recognized as a short-term stop-gap measure that carries a very high price – loss of credibility in the eyes of the international community, escalating negative domestic economic impact, damage to health and economics of neighboring countries, and a very real risk that outbreaks within the country's own territory can spiral out of control.

Most of the international community recognized this lesson when the World Health Assembly approved WHO's use of non-governmental information for surveillance purposes in 2001, and virtually all SARS-affected countries acted in accordance with this lesson in their handling of SARS. Technological transformations altered the environment in which states faced the sovereign decision whether to be open or closed concerning infectious disease outbreaks. Under the Westphalian model, this sovereign decision was only constrained by rules of international law, which were of limited application and of even more limited utility. Bringing non-governmental sources of information to bear on surveillance has forced sovereignty to transition into a much more demanding and unforgiving environment.

The SARS outbreak witnessed the humbling of China's sovereignty by global health governance. In the Westphalian framework, sovereignty is supreme power over territory; and such supreme power extends to the generation and dissemination of information. Efforts by China to maintain control over SARS information within its territory failed badly. As the *Washington Post* reported, the Chinese 'government could not control the dissemination of information to the World Health Organization' (Pomfret, 2003p). The loss of control of epidemiological information in the SARS outbreak represents an excellent case study of one of the defining characteristics of globalization – the sovereign state increasingly loses control over politics, economics, and culture within its own territory. Issues and problems become denationalized or deterritorialized, which renders the traditional exercise of Westphalian sovereignty ineffective, counter-productive, and harmful to others. China's behavior in the SARS outbreak provides further evidence that globalization alters the context in which states exercise their sovereignty and perhaps alters the very concept of sovereignty itself.

Ironically, the SARS outbreak represented China's second major mishandling of infectious disease surveillance and response in recent years. In 2001, China admitted that the HIV/AIDS problem in its territory was far worse than it previously acknowledged. A UNAIDS assessment of the HIV/AIDS epidemic in China conducted at the end of 2001 argued that China was 'on the verge of a catastrophe that could result in unimaginable human suffering, economic loss and social devastation' and was 'witnessing the unfolding of an HIV/AIDS epidemic of proportions beyond belief, an epidemic that calls for an urgent and proper, but currently yet unanswered quintessential response' (UNAIDS, 2002c, p. 7). The same UNAIDS study observed that, in China, '[c]ensorship and restrictions on information concerning HIV/AIDS severely hinders an effective response' (UNAIDS, 2002c, p. 70).

Yet, in spite of the embarrassing revelation about the extent of the HIV/AIDS problem in China and UNAIDS' criticism of China's censorship of HIV/AIDS-related information, in 2002 China detained a prominent HIV/AIDS activist, Wan Yanhai, for distributing by e-mail government information on the true scale of the HIV/AIDS epidemic in Henan Province, the epicenter of HIV transmission through unsanitary blood transfusions at government-run clinics (Pan, 2002). In an editorial, the *Washington Post* observed that a 'striking conclusion that emerges from Dr. Wan's disappearance, aside from the atmosphere of secrecy, is how shortsighted are the regime's policies. Facing the risk of an Africa-style AIDS crisis that could decimate its population and economy, any

forward-looking government would welcome the efforts of such activitists' (*Washington Post*, 2002).

As was the case with SARS, China was under no international legal obligation to report HIV/AIDS cases to WHO or UNAIDS, or to engage in international cooperation on the Chinese HIV/AIDS problem. Resonance with the Westphalian framework did not, however, spare China from being subjected to intense and withering scrutiny of its governance approach to HIV/AIDS because the international community had information about the growing scale of the Chinese HIV/AIDS epidemic. This incident also reveals the futility of Westphalian concepts of public health sovereignty in a world of globalized information on infectious diseases.

China's mishandling of SARS demonstrated that it still had not grasped the new context for public health governance – epidemiological information about germs does not recognize borders. In connection to SARS, China played the sovereignty card only to retreat when its sovereignty was seen, again, to be a deliberate attempt to hide an outbreak about which the world already knew. In some respects, China's behavior with respect to SARS was more inexplicable than with HIV/AIDS because SARS-CoV, unlike HIV, is more transmissible through respiratory means and thus was dangerous in a world dependent on global air travel.

Both on its own and in combination with HIV/AIDS, the Chinese approach to SARS raised questions about why China exercised its sovereignty on public health issues in the ways it did. Much commentary on the Chinese response to SARS focused on the nature of Communist Party rule and how such rule played a major role in China's historic miscalculations on SARS. In the Westphalian template, the nature of a state's government or ideology is not an issue because the principles of sovereignty and non-intervention mean that a state is free to determine its own political and economic structures. Whether a government is a democracy by the people or a dictatorship of the proletariat does not matter in Westphalian public health. Post-Westphalian public health does not share this agnosticism. Global health governance contains assumptions about what constitutes 'good governance' and how such governance is achieved.

For example, in its report on the HIV/AIDS crisis in China, UNAIDS (2002c, p. 70) argued that 'good governance and sustainable human development are indivisible and represent each other's underpinnings.... Therefore a successful response to HIV/AIDS is strongly linked to sustainable human development and good governance.' UNAIDS (2002c, p. 70) described good governance with respect to HIV/AIDS as follows:

'Worldwide, societal openness, transparency and broad participation of people living with or affected by HIV/AIDS have shown over and over to be at the core of effective HIV/AIDS responses.' Similarly, Human Rights Watch (2003, p. 28) observed: 'International experience with the HIV/AIDS pandemic over the past two decades has shown that the ability to share and access information (central to freedom of expression) has been absolutely essential for rights and improvements in treatment for those with the virus or disease as well as to any successful prevention program.' For China, 'important aspects of good governance in relation to the response to HIV/AIDS are the access to free flow of information, greater involvement of civil society and affected people in the processes of decision making regarding HIV/AIDS prevention and care' (UNAIDS, 2002c, p. 70). This concept of 'good governance' does not stop at the border but pierces sovereignty in order to focus on internal methods of addressing infectious disease problems.

The concept of global health governance maintains that increasing the quantity and quality of global surveillance requires openness, transparency, and wide participation in public health within and among countries in the collection, analysis, and dissemination of epidemiological information. The involvement of non-governmental actors in global health governance mechanisms alters the Westphalian linkage of sovereignty with formal governments and makes sovereignty more participatory and accountable. Global health governance requires political recognition of, and commitment to, an 'open public health society' in which (1) citizens have a right to receive and disseminate information important to the protection and promotion of their health; and (2) non-state actors can hold governments accountable for their management of the public's health. In short, global health governance requires the exercise of a *certain kind of sovereignty*, which differs radically from the Westphalian approach to sovereignty.

The Chinese handling of both its HIV/AIDS and SARS epidemics reflects, however, an antithetical governance philosophy to the one promulgated by the notion of global health governance. Under Chinese law and Communist Party policy, information about infectious disease epidemics is considered a state secret (Huang, 2003; Mirsky, 2003; Pomfret, 2003r); and people, such as Wan Yanhai, who reveal state secrets can be subject to arrest and punishment. Laurie Garrett (2003) reported that her Chinese journalist contacts indicated that the reporters in Guangdong Province who published stories on the outbreak in February 2003 were 'severely repressed' for these actions. Human Rights Watch (2003, p. 28) argued that, in China, the rights to freedom of

expression, association, and assembly are routinely violated in connection with HIV/AIDS. The Chinese approach to epidemics is, thus, light years from the template for 'good governance' prescribed by the concept of global health governance.

These deeper political implications of global health governance help explain why China's mishandling of the SARS outbreak provided commentators with material for critically analyzing China's communist rule. The SARS outbreak made the Communist Party and its leadership appear woefully out of touch with the globalized context of public health. The *Washington Post* reported that 'China's response to SARS has angered and befuddled Western scientists and policymakers' (Pomfret, 2003h). The *Wall Street Journal* observed that '[t]he Chinese response to SARS looks like a textbook case of how not to react to a public health emergency' (Fritsch, Pottinger, and Chang, 2003).

In critical discourse on China's response to SARS, the culprit was not a novel, respiratory pathogen against which public health officials had no diagnostic, therapeutic, or vaccine responses; the culprit of the mess in China was communism. As the *Washington Post* stated, '[f]rom the start, China's reaction to the disease was textbook Chinese communism' (Pomfret, 2003h). Xu Wenli, one of the founders of the democracy movement in China, noted that 'while SARS is a frightening phenomenon, a political system in such a condition that it would hide a dangerous disease from its own people and from the world is far more frightening' (Xu, 2003). Commenting on the SARS outbreak, an editorial in the *Wall Street Journal* argues that 'China's other disease is its secretive dictatorship' (*Wall Street Journal*, 2003b). Echoing the tenets of 'good governance' for public health, Anthony Saich (2003) argued that 'China's new leaders need to draw the lesson that for continued rapid economic growth they must allow greater freedom of information, reduce coercion, promote transparency and enhance accountability.' The verdict rendered by many commentators was that communism proved itself ill-equipped to manage sovereignty in the context of globalized anarchy.

Literature critical of China's response to SARS frequently raised the question of whether the SARS outbreak would represent 'China's Chernobyl' (*The Economist*, 2003, p. 9; *Washington Post*, 2003b; Goldgeier, 2003). Making the analogy between the Chernobyl disaster in the Soviet Union in 1986 and the SARS outbreak in China focused attention on whether SARS would trigger a cascade of reforms that could weaken communist control and introduce and nurture forms of more democratic governance. *The Economist* (2003, p. 9) succinctly captured the analogy:

> The [Chernobyl] explosion . . . is now regarded as a great accelerator of the programmes of *glasnost* and *perestroika*, of 'openness' and 're-structuring.' These helped, just three years later, to bring down first the Soviet empire, then the Soviet Union itself and the Communist Party. So is SARS China's Chernobyl; or will the chain-reaction this time be controlled?

For purposes of my analysis, whether SARS will eventually have the impact on communist rule in China that many believe Chernobyl had on communism in the Soviet Union is not the central issue. The analogy, at present, is interesting speculation; but not enough time has passed to move much beyond speculation. Cogent arguments have been made that SARS will not represent China's Chernobyl. Saich (2003) argued, for example, that '[a]s China's leaders begin to win their war against severe acute respiratory syndrome (Sars), the prospect of a dramatic systemic change – the "Chernobyl factor" – looks remote' because '"old politics" has . . . reasserted itself, . . . while the party as a whole is extolling its virtues in taming the viral beast.' Evidence is already appearing that China may return to heavy-handed censorship to prevent public debate and discussion about political reform, shutting the window of opportunity for less restricted speech created by the SARS crisis (Pomfret, 2003t).

In addition, the impact of Chernobyl on Soviet communism might be more symbolic than substantive. The Chernobyl disaster was a symbol of a sick and dying political system. Chernobyl was not the source of the sickness and terminal illness, only a particularly memorable symptom. Chernobyl occurred as the Soviet Union accelerated toward its ultimate demise, a horrific accident revealing why this great power was headed for the ash heap of history. By contrast, SARS hit China as a rising great power in international relations. At the end of the day, the Chernobyl analogy does not take critical analysis very far.

What is more relevant for my analysis is the mere fact that the Chernobyl–SARS analogy was made so frequently. The analogy itself supports the argument that public health has moved beyond the Westphalian framework. The criticisms heaped on the Communist Party in China because of its response to SARS illustrate the more demanding procedural and substantive nature of global health governance. In Westphalian public health, sovereignty presumes supreme power over information within the state's territory; and how a state regulated the flow of information within its territory was not an issue of diplomatic concern. Global health governance on infectious diseases sweeps this

Westphalian presumption aside and demands openness, transparency, accountability, and international cooperation on surveillance and response. Any country that tightly controls information about infectious diseases within its territory would find this sovereign choice significantly challenged by the surveillance dynamic created by global health governance. China's loss of control over epidemic information on both HIV/AIDS and SARS shows how radically the post-Westphalian context of public health challenged, penetrated, and exploded Chinese public health sovereignty.

As the Chernobyl–SARS analogy indicates, exploding public health sovereignty reverberates throughout China's governing system and political ideology. This reverberation may or may not contribute to more general challenges to communist rule in China and systemic liberalization of the political regime, but the fact that a public health emergency triggered wide-ranging criticism of a rising great power's governance and ideological system further demonstrates the emergence of post-Westphalian public health. In the Westphalian system of international politics, public health was not on the agenda of 'high politics' and represented an obscure, neglected area of international relations. In addition, infectious disease problems did not produce a political dynamic through which the sovereignty of great powers could be challenged. For China, the SARS outbreak became a matter of 'high politics' and a crisis for this rising great power's government, leadership, ideology, and sovereignty. As Huang Yanzhong (2003, p. 71) argued, '[t]he SARS epidemic is not simply a public health problem; it has caused the most severe socio-political crisis for the Chinese leadership since the 1989 Tianamen Square crackdown.'

As Chapter 8 explores in more detail, my argument that global health governance trumped Chinese sovereignty during the SARS outbreak is not an argument about the 'end of sovereignty' in global public health. The main point about this trumping is that the conception of sovereignty embedded in Westphalian public health has been superseded, through global health governance, by an epidemiological and political context that demands that sovereignty be exercised in certain ways. These demands represent disciplines on the exercise of sovereignty that do not emanate from formal international legal agreements, which were the main source of disciplines on Westphalian sovereignty. The disciplines flow from the growth of globalized interactions among states and peoples, transformations in information technologies, and deliberate policy choices to expand surveillance to include non-governmental sources of information.

A final feature of global health governance's trumping of Chinese sovereignty involves the changed role of WHO in the post-Westphalian context of public health. A striking element of the SARS saga in China is the power exercised by WHO. As indicated earlier, international organizations traditionally have not publicly confronted and embarrassed member states during controversies, and particularly not member states that are great powers. This Westphalian approach of international organizations toward their member states did not characterize what happened between WHO and China during the SARS outbreak. Chapter 5's narrative of the SARS epidemic reveals WHO's growing confrontational attitude toward China, leading to WHO's publicly delivered rebuke on 16 April 2003.

This rebuke is dramatic in its own right, but behind the rebuke are deeper developments that connect to global health governance. The highly fragmented nature of political authority in the Westphalian framework concentrates authority for public health inside sovereign states, with international health organizations only possessing very limited authority defined by formal treaties. Literature on the globalization of public health points out that public health risks and resources increasingly escape the ability of sovereign states to control on their own. The typical policy response reached in analysis of the globalization of public health is advocacy for broader, deeper, and better international cooperation among states.

Informing arguments for improved international cooperation was a sense, not always made explicit, that tinkering with the traditional Westphalian framework would not be sufficient for addressing globalized public health risks. As Chapter 4 explored, the concept of global health governance emerged as a strategy to move public health beyond the state-centric system. Although much attention focused, quite rightly, on the involvement of non-state actors, global health governance as a concept had significant implications for WHO as the leading international health organization. Building non-state actors more directly into public health governance requires organization and coordination functions that no single sovereign state could shoulder. Tapping non-governmental sources of epidemiological information also requires authoritative vetting of such information to ensure that accurate, verifiable data is separated from unsupported rumors.

In many respects, the heightened importance of WHO in coordinating global surveillance mirrors the functional need states realized in the late nineteenth and early twentieth centuries that international cooperation on infectious diseases required a permanent, central international

organization. At both the 1874 and 1881 international sanitary conferences, delegates discussed the creation of a permanent international health organization to facilitate cooperation on infectious diseases (Fidler, 1999, pp. 47–8). Although nothing came of these efforts, the creation of four international health organizations in the first 25 years of the twentieth century attests to the importance states placed on the existence of international organizations to assist states to cooperate on infectious disease control.

The same functional need for WHO exists in today's world of globalized anarchy. Given the expansion of surveillance to include non-governmental sources, the need for WHO leadership and capabilities in this area is increased. Casting the surveillance net wider gives WHO better information and opportunities to work with states to intervene more rapidly and effectively against outbreaks. In addition, WHO (2002d, p. 7) stresses that a key feature of its activities under the Global Network is to protect states from the potential harmful impact of unverified news stories or rumors of outbreaks circulating in global communication networks.

Before SARS, WHO was beginning to shoulder the organizational, coordination, and verification functions produced by the global health governance strategy. The SARS outbreak highlighted the increased responsibility and power WHO has in post-Westphalian infectious disease control. (See also Chapter 7's discussion of WHO's issuance of travel advisories as evidence of the Organization's increased importance and power in post-Westphalian public health governance.) WHO's handling of China's recalcitrance also serves as evidence of how global health governance increases the importance and power of WHO compared with WHO's constrained role and reality in the Westphalian framework.

National interest v. global public goods for health

China's confrontation with public health's 'new world order' involves another feature of post-Westphalian public health that China failed to grasp – the importance of global public goods for health (GPGH). The first two stages of China's response to SARS revealed its leaders pursuing a narrowly constructed national interest. Until the policy collapsed under the weight of its own deceit, China approached SARS in a hyper-introverted manner, almost as if the rest of the world did not exist or have legitimate concerns about China's behavior. The first two stages of China's response exhibited the Chinese government's myopic focus on 'social stability' in China, continued trade and investment flows into China, and the power and image of the Communist Party.

Even in the face of a novel, respiratory pathogen spreading rapidly and China's increasing integration with the globalizing world, China behaved as if its national interest could be constructed and pursued without serious consideration of the concerns of other countries and non-state actors, such as multinational corporations (MNCs) and non-governmental organizations (NGOs). China's conception of its national interest shattered in the post-Westphalian atmosphere of SARS.

Westphalian public health permitted states to construct national interests narrowly because the formal disciplines on the exercise of sovereignty required little from states. These disciplines focused on how infectious disease outbreaks might affect the mechanistic interactions of states, leaving considerable room for countries to construct their national interests on public health without the need to consider significantly the concerns of other nations. Westphalian principles, such as non-intervention, bolstered the ability states had to craft their national interests on infectious diseases narrowly.

China's narrow construction of its national interest in the SARS outbreak ran headlong into the much less forgiving, more demanding context of post-Westphalian public health. The shift to global health governance in infectious disease surveillance and response changed the ground rules for sovereign states. Expanding global surveillance to include non-governmental sources of information seeks to improve the quantity and quality of infectious disease surveillance. As Giesecke (2003, p. 209) argued, 'open reporting and sharing of information on outbreaks, which makes it possible for the international community to eliminate them early[,] is a clear GPGH.'

The SARS outbreak demonstrates the same thing – improved global surveillance represents a GPGH that benefits governments, MNCs, NGOs, and individuals. China's decision not to contribute to the production of timely and accurate global surveillance on SARS undermined this GPGH and alienated the Chinese government from the global community. China's short-sighted approach to its national interest backfired badly because it proved incapable, during the first two stages of its response, of understanding its role in, and responsibility for, the production of a GPGH.

Just as global health governance proved more demanding of sovereignty than Westphalian public health, the GPGH concept reflects a radically different context in which states formulate their national interests with respect to infectious diseases. As the collapse in tourist trade to China and fears of SARS in the foreign business community demonstrated, China's crafting of its national interest could not be state-centric in

orientation. Chinese participation in the GPGH of global surveillance was perhaps as important in reassuring non-state actors as it was for Chinese relations with fellow sovereign states. This reality again reflects the post-Westphalian environment of global public health.

As with the confrontation between Chinese sovereignty and global health governance, the collapse of China's initial framing of its national interest in SARS has deeper political implications. The idea that a country's national interest with respect to infectious diseases can no longer be narrowly tailored and insular is not new. Many states affected by SARS took a globalized approach to their national interests and, thus, contributed proactively to the GPGH of global SARS surveillance.

One aspect of Singapore's behavior provides an excellent example of a country formulating its national interest in harmony with the globalized reality of the SARS threat. WHO initially scheduled Singapore's removal from the list of SARS-affected countries on 11 May. Such removal would have represented WHO's clean bill of health for Singapore and a testament to Singapore's efforts to contain SARS. Shortly before removal from the list of SARS-affected areas, Singapore identified one new case. Disclosure of the case would delay Singapore's removal from the list of SARS-affected areas, and such delay could prove economically expensive as tourists and business might continue to stay away. Despite temptations not to disclose this new case, Singapore reported the case to WHO. WHO did not remove Singapore from the list of SARS-affected areas until 31 May because of this one case. This incident illustrates Singapore's formulation of its national interest in a manner that fully reflected the importance of the GPGH of accurate global SARS surveillance.

Singapore's commitment to global SARS surveillance stands in stark contrast to China's repeated, calculated, and futile efforts to deny and cover up the SARS problem within its borders. While Singapore responded impressively to the post-Westphalian climate of infectious disease control, China's construction of its national interest in the same climate was surreal. Of the countries and areas hit hard by SARS, China alone adopted an attitude completely out of touch with epidemiological and political realities. The fact that all other SARS-affected countries participated actively in the production of the GPGH of global SARS surveillance is impressive evidence of post-Westphalian public health. Countries produced this GPGH despite the complete absence of any rules of international law applicable to the crisis. The formulation of national interests in many countries harmonized rapidly around the WHO strategy for global SARS control. Such harmonization of national public health policy in the face of an infectious disease threat is truly remarkable.

China's conspicuous place outside the harmonization of national interests that occurred raises more questions about communism's ability to understand post-Westphalian public health governance. The diversity of government types among the countries that developed harmonized national interests suggests that China's failure cannot be attributed to authoritarianism alone. China's Communist Party proved painfully incapable of crafting the country's national interest in a manner that reflected the globalized reality of China's place in the world. China's success at containing SARS after its policy reversal does not redeem the Communist Party's monumental miscalculation.

These observations connect with the arguments about SARS as 'China's Chernobyl' described earlier. Running through both sets of arguments is the common concern with Chinese communism's inability to adjust to the demands of post-Westphalian public health. For historical and ideological reasons, China has long exhibited sensitivity about outside interests interfering with its sovereignty. China has also prided itself on forging political and economic systems that exhibit 'Chinese characteristics.' These Chinese tendencies fit the Westphalian framework well but appear as anachronistic and illegitimate phobias in the context of post-Westphalian public health. Communist China has yet to demonstrate that it grasps how embedded the Middle Kingdom is in global public health. The SARS outbreak teaches the lesson that the formulation of the national interest about germs cannot recognize physical and ideological borders.

SARS, China, and Taiwan

China's confrontation with public health's 'new world order' also involves the impact of SARS on China's traditional notions of sovereignty and national interest with respect to Taiwan. China fiercely defends its claim to sovereignty over Taiwan, leading some experts to worry that China will risk war to preserve sovereignty over Taiwan. China's uncompromising approach to Taiwan has also involved China opposing and blocking any formal or informal connections between Taiwan and any entity within the United Nations' system. For this reason, Taiwan has had no contact or relationship with WHO since Taiwan lost its United Nations membership to China three decades ago.

China's unbending position on Taiwan created problems for Taiwan's handling of its SARS outbreak. As Chapter 5 described, Taiwan's SARS epidemic grew worse in May 2003, leading to Taiwan requiring more international assistance. International help for Taiwan early in its

outbreak came bilaterally from the United States because China blocked WHO assistance. The deterioration of the SARS situation in Taiwan in May 2003 confronted China's Taiwan policy with a dilemma. In May 2003, the SARS outbreak bent the unbendable as China permitted a WHO team to travel to Taiwan to provide outbreak assistance. As noted in *The Lancet*, the WHO team's visit to Taiwan 'was a historic moment: the first visit by any representative of a UN-affiliated organization since China took Taiwan's seat on the world body 30 years ago' (Watts, 2003, p. 1709).

This development illustrates the power of post-Westphalian public health to challenge states in deeply and fiercely held political positions. The SARS outbreak did not break the political deadlock over Taiwan between Beijing and Taipei. Because of Chinese opposition, WHO rebuffed Taiwan's attempts to use the SARS crisis to gain formal observer status at WHO. But China's refusal to allow WHO to interact with Taiwan could not withstand the political pressure SARS placed on China. Chinese leaders probably realized that continuing to prohibit WHO assistance for Taiwan would only exacerbate the terrible situation China had produced in its reaction to SARS. Even China's uncompromising stance on Taiwan could not stand in the way of the need to incorporate Taiwan into the global effort to bring SARS under control.

Conclusion

As the epidemiological and governance epicenter of the SARS outbreak, China played a critical role in the global effort against SARS. China's behavior jeopardized this effort until the country retreated in the face of the consequences of its terrible miscalculations. This retreat tells the story of the humbling of the sovereignty and ideology of one of the world's rising great powers. For this reason alone, the episode is unprecedented in the history of international efforts on infectious disease control.

China's response to SARS makes public health history in other ways as well. The emergence of SARS as a threat would have severely challenged public health governance regardless of China's behavior. The nature of China's response dramatically increased the governance stakes of the SARS outbreak, which makes the global campaign's triumph over SARS all the more stunning.

Equally important and historic is the fact that global health governance and GPGH routed China's exercise of sovereignty and formulation of narrow, insular national interests. Nothing in this confrontation followed the tenets and patterns of Westphalian public health. As much

or more than anything else, China's capitulation to the dynamics of public health's 'new world order' confirms SARS as the first post-Westphalian pathogen and the coming-of-age of a governance strategy for infectious diseases more radical than any previous governance innovation in this area of international relations.