

GLOBAL HEALTH SECURITY IN AFRICA: A COMPARATIVE ANALYSIS OF EU AND CHINA REGULATORY MEASURES FOR THE REGIONAL HEALTH PARTNERSHIPS

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Abstract

The purpose of the present work is to analyse the regional partnerships respectively of the EU and China in Africa, with the aim of promoting global health security (GHS). This article first focuses on the most recent developments concerning GHS, to stress the link of this health driver as a pivotal component of international health cooperation and joint regional partnerships. Indeed, GHS specifically dwells its attention on the African continent, with a view to promote fundamental health objectives such as primary healthcare and access to vaccines for African people. Second, an analysis of the legal nature of EU and China engagement in Africa is offered, with the intention to highlight the similarities and the differences of these two regulatory measures with specific regard to the management of national health systems as far as the African continent is concerned. Third, a comparative analysis of the legal rationales for regional health partnerships is made since the different legal measures for cooperation with African States. The aim is to bring out the legal nature of the cooperation obligations of the EU and China respectively with African countries on national health systems. The analysis is carried out by taking into consideration both binding and non-binding sources enacted by the EU and China, to implement the regulatory measures of international development cooperation with Africa in the North-South and South-South axis.

1. INTRODUCTION

Global health security (hereinafter, also defined as GHS) constitutes the set of actions deployed at an international level aimed at strengthening national health systems to prevent, detect and respond to infectious health threats occurring worldwide. The World Health Organization defines health security as ‘the activities required, both proactive and reactive, to minimise the danger and impact of

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acute public health events that endanger people's health across geographical regions and international boundaries'.¹ GHS is firstly referred to in the framework of public health context that has an impact on national health systems and, consequently, an international implication due to the spread of diseases or pathogens. As public health becomes an ever more critical element in international relations, GHS focuses on the sets of security policies, development strategies and trade agreements to tackle an increasing number of health challenges.² It is in this perspective that GHS focuses on many facets of public health, bearing in mind its unavoidable declination for international development cooperation, in the North-South and South-South axis. Multilateral cooperation to foster GHS is mainly dedicated by addressing health as a social and economic issue to support developing countries in the implementation of their national health priorities, such as access to health security, health promotion, disease control, access to medicines and technologies, food security, and the domestic implementation of Agenda 2030.³

Thus, it is worth noting the actions of the European Union and China to foster GHS in Africa. This international regime of cooperation is expressed through separate regional health partnerships that the two actors implement with a meaningful number of African countries. This paper intends to analyse from a legal perspective the regulatory measures of the EU and China to foster global health security within the African continent. On the one hand, the article will focus on the legal competence and legislation of the EU and China concerning international health cooperation with third countries, including Africa. On the other hand, the article intends to analyse the similarities and differences in legal terms of the European Union and China's dealings in this field. After providing an overview of the most recent developments of the GHS at an international level, the paper focuses precisely on the legal arrangements for the implementation of this health strategy on the African continent by the EU and China. Through a comparative methodology, this work scrutinises first the programmatic phase the two actors have focused on in order to relaunch the health partnership in Africa, then the subsequent conclusion of agreements, both bilateral and multilateral, focusing on different aspects of regional development cooperation, of which GHS is certainly a part.

1 World Health Organization, *Health security*, <https://www.who.int/health-topics/health-security>.

2 See, on this issue, the insightful contribution of STEFANIA NEGRI, SALUTE PUBBLICA, SICUREZZA E DIRITTI UMANI NEL DIRITTO INTERNAZIONALE 135- 174 (2018).

3 World Health Organization, *Health diplomacy - Global health needs global health diplomacy*, <https://www.emro.who.int/health-topics/health-diplomacy/about-health-diplomacy.html>. See also Stefania Negri, *Right to Health*, in ELGAR ENCYCLOPEDIA OF HUMAN RIGHTS, 395-405 (Christina Binder, Manfred Nowak, Jane A. Hofbauer & Philipp Janig, eds., 2022).

2. GHS: THE GLOBAL HEALTH SECURITY AGENDA ITS NEXUS WITH INTERNATIONAL DEVELOPMENT COOPERATION IN AFRICA

In order to analyse the theme of GHS in Africa, it should first be considered that it constitutes a health strategy that, at an international level, is expressed through the elaboration of international development cooperation programmes involving both industrialised countries and the economies of emerging or transition countries. From a legal point of view, GHS manifests itself through a programmatic health action that found its first affirmation through the Global Health Security Agenda (GHSA). The GHSA, adopted in 2014 by 70 States, together with the Food and Agriculture Organization (FAO), the World Organization for Animal Health (WOAH), the World Health Organization (WHO) and the World Bank, is the first strategic action plan designed to tackle the global threat that infectious diseases pose at an international level.⁴ The GHSA is a collaborative international effort aimed at enhancing global health security to prevent, detect, and respond to infectious disease threats. In its *ratio*, the GHSA aims to effectively implement GHS under a coordinated and multi-sectoral approach.⁵ Its initial purpose in 2014 was to accelerate the implementation of the WHO International Health Regulations, with a specific enactment of State capacity to prevent, detect and respond to infectious threats within the national health systems of developing countries.⁶

Overall, the GHSA is characterized by a comprehensive, collaborative, and forward-looking approach to address the complex and interconnected challenges of global health security. The Agenda operates on a framework that focuses on preventing the emergence and spread of infectious diseases, and responding rapidly and effectively to mitigate the impact of outbreaks. It involves collaboration among governments, international organizations, non-governmental organizations, private sector entities, and other stakeholders. The main features of the partnership are (a) capacity building,

4 Global Health Security Agenda, 2014, <https://globalhealthsecurityagenda.org/>.

5 David McCoy, Stephen Roberts, Salma Daoudi & Jonathan Kennedy, *Global health security and the health-security nexus: principles, politics and praxis*, 8 *BMJ GLOBAL HEALTH*, 7(2023): '[...] Present systems of global health security are mired by tensions between competing and conflicting perspectives on the nature of and response to public health crises, and the ways in which these perspectives intersect and interact with perceived security threats'.

6 The Agenda focuses on several objectives related to global health security such as antibiotic resistance, biosecurity, immunisation, laboratory surveillance networks, personnel training, zoonoses, legal preparedness, pharmaceutical surveillance and financial sustainability. For additional information, see Congressional Research Service, *The Global Health Security Agenda (2014-2019) and International Health Regulations (2005)*, *In Focus*, 2014, <https://crsreports.congress.gov/product/pdf/IF/IF10022>; U.S. Department of Health and Human Services, Centres for Diseases Control and Prevention, *Advancing the Global Health Security Agenda: CDC Achievements & Impact—2017*, 2017, <https://www.cdc.gov/globalhealth/security/ghsareport/images/ghsa-report-2017.pdf>.

to effectively prevent, detect, and respond to public health emergencies; (b) information sharing and surveillance, emphasizing the need for transparent communication and data sharing to enable timely responses to potential health threats; (c) research and innovation to enhance global understanding of infectious diseases, improve diagnostic tools, and develop new technologies to address emerging health security challenges and international coordination for a unified and collaborative response to global health threats between States and international organizations.⁷ As far as the governance of the GHSA is concerned, the GHS implementation is supported by a comprehensive framework that includes work plans at the global, regional, and domestic levels.⁸ In terms of legal considerations, the programmatic framework of the GHSA precludes the establishment of a binding obligation for cooperation among States regarding capacity building, information sharing, research and innovation. The objective here is to delineate various cooperative measures, facilitated by technical and scientific assistance, which GHSA parties can discern through collaborative implementation efforts. Put differently, the GHSA's non-legally binding character endows Parties with both flexibility and discretion to identify cooperation mechanisms deemed most conducive to bolstering Global Health Security in their respective contexts. Concerning GHSA membership, it encompasses China along with numerous European and African nations. As far as China is concerned, the theme of public health in relation to security issues is to be ascribed to the recent launch of the Global Security Initiative of 2022,⁹ with the declared goal 'to improve security governance in such areas as cyberspace, data, biosecurity, counterterrorism, public health and artificial intelligence, and help develop a security governance architecture featuring coordination among governments and

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- 7 Gigi Gronvall, Crystal Boddie, Rickard Knutsson & Michelle Colby, *One health security: an important component of the global health security agenda*, 12 *BIOSECURITY AND BIOTERRORISM: BIODEFENCE STRATEGY, PRACTICE AND SCIENCE*, 221-224 (2014). See also Naomi DeShore et al., *An evaluation of the global health security agenda steering group governance interventions*, 30 *EUROPEAN JOURNAL OF PUBLIC HEALTH*, 593-594(2020); Sharifa Merali et al., *Community-based surveillance advances the Global Health Security Agenda in Ghana*, 15 *PLOS ONE*, 1-13 (2020); Azza Elnaiem et al., *Global and regional governance of One Health and implications for global health security*, 401 *THE LANCET SERIES ON ONE HEALTH AND GLOBAL HEALTH SECURITY*, 689 (2023).
 - 8 Laura Kanji, *Hidden dangers: The implications of the global health security agenda*, 37 *HARVARD INTERNATIONAL REVIEW*, 9-10 (2016); Soawapak Hinjoy et al., *Working beyond health: roles of global health security agenda, experiences of Thailand's chairmanship amidst of the uncertainty of the COVID-19 pandemic*, in 8 *GLOBAL SECURITY: HEALTH, SCIENCE AND POLICY*, 1-9 (2023). Cfr. on pandemic issues: Armin von Bogdandy & Pedro Villarreal, *International law on pandemic response: A First Stocktaking in Light of the Coronavirus Crisis*, 7 *MAX PLANCK INSTITUTE FOR COMPARATIVE PUBLIC LAW AND INTERNATIONAL LAW RESEARCH PAPER SERIES*, 1-29 (2020).
 - 9 Ministry of Foreign Affairs of the People's Republic of China, *The Global Security Initiative Concept Paper*, 2023, http://it.china-embassy.gov.cn/ita/xwdt/202302/t20230221_11028842.htm, § 17: 'Support the World Health Organization in playing a leading role in global governance in public health, and effectively coordinate and mobilize global resources to jointly respond to COVID-19 and other major global infectious diseases'.

international organisations and participation of non-governmental organisations'.¹⁰ Conversely, insomuch as the European perspective is concerned, despite the fact that the Union is not explicitly a member of the GHSA, it is worth noting that the topic of the GHS is explicitly mentioned as a health objective in the EU Global Health Strategy of 2022,¹¹ which constitutes the strategic tool through which the EU intends to develop its external action for EU health policies leading up to 2030.¹²

3. THE LEGAL NATURE OF EU AND CHINA ENGAGEMENT IN AFRICA: EUROPEAN COMPETENCES AND CHINESE LEGISLATION ON GLOBAL HEALTH ISSUES

The actions of China and the European Union regarding the partnership in Africa to foster GHS sets out from different assumptions given the different legal nature of the two entities.

The European Union owns shared competences in the field of international development cooperation (Article 4 TFEU),¹³ as well as complementary competences with regard to the protection and improvement of human health (Article 6 TFEU).¹⁴ Although Article 209(2) TFEU recognises the European Union's capacity to conclude international agreements with regard to international development cooperation,¹⁵ the case of health cooperation falls within a "grey area" for the EU since, under Article

10 Ministry of Foreign Affairs of the People's Republic of China, *Jointly Implementing the Global Security Initiative For Lasting Peace and Security of the World*, Keynote Speech by H.E. Nong Rong Assistant Minister of Foreign Affairs At the 10th Beijing Xiangshan Forum, 2023, https://www.mfa.gov.cn/eng/wjbxw/202311/t20231102_11172214.html.

11 European Union, *EU Global Health Strategy, Better Health For All in a Changing World*, 2022, https://health.ec.europa.eu/system/files/2023-10/international_ghs-report-2022_en.pdf.

12 *Id.*, at 4: 'There is a massive unfinished agenda in global health, as progress *inter alia* towards the universal health targets enshrined in the 2030 Agenda for Sustainable Development and its Goals (SDGs) has reversed in many countries collectively, countries have only achieved about a quarter of what is needed to reach the SDG health targets by 2030. Major infectious diseases represent a heavy burden on many countries and high infant and maternal mortality, and malnutrition remain matters of concern among others. At the same time, it is essential to address global health security swiftly and comprehensively, to better prevent and be more resilient to face pandemics. High-quality risk-preparedness in the health sector will show significant positive impacts on the resilience of other key sectors'.

13 Treaty on the Functioning of the European Union, Dec. 13, 2007 (entered into force on Dec. 1, 2009), art. 4(4): 'In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs'.

14 *Id.* at art. 6: 'The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health [...]'

15 *Id.* at art. 209(2): 'The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 21 of the Treaty on European Union and in Article 208 of this Treaty. The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements'.

6 TFEU, it constitutes only a complementary competence where the Union can operate.¹⁶ The development of policy instruments may also be encompassed into the conclusion of any development cooperation agreement with third countries and relevant international organisations, without prejudice to the competence of the Member States to negotiate and to conclude agreements (Article 209, para. 2). In addition, the Commission may take any useful initiative to promote the coordination of development cooperation programmes (Article 210, para. 2).¹⁷

The combined reading of these articles outlines the limits and legal rationale of the European Union's health partnership in the African context, with reference to GHS. Despite development cooperation is a shared competence of the EU, health partnerships fall within a very delicate area of treaty-making power of the EU. In this case, the European Union establishes, through legislative instruments, the legal framework through which to identify the financial instruments useful to support health issues for the benefit of developing countries. To this end, the Commission promotes and coordinates the Union's actions regarding financial assistance measures deployed in health partnerships. While this may constitute a limit as to the effectiveness of the Union's action in particular African sub-regional contexts in relation to GHS, such action is compliant with the EU competences under the TFEU.¹⁸

The Chinese health partnership falls within the legal category of international development cooperation in the context of the 2013 Belt and Road Initiative (BRI).¹⁹ Two are the Chinese set of norms that need to be taken into account to understand China's commitment on GHS. The Law of the People's Republic of China on Basic Medical and Health care and the Promotion of Health adopted on December 28, 2019, states, in Article 14, the encouraging of international exchange and cooperation

16 *Id.*

17 On this point, see Markus Klamert, *Article 210 TFEU*, in *THE EU TREATIES AND THE CHARTER OF FUNDAMENTAL RIGHTS: A COMMENTARY*, 1617, (M. Kellerbauer, M. Klamert, J. Tomkin, eds., 2019).

18 See Luo Jianbo, Zhang Xiaomin, *Multilateral cooperation in Africa between China and Western countries: from differences to consensus*, in *37 REVIEW OF INTERNATIONAL STUDIES*, 1793-1813 (2011).

19 The People's Republic of China, The State Council, *Action plan on the Belt and Road Initiative*, issued by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization, on March 28, 2015, https://english.www.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm. On this point, see Lorella Tosone, *Il multilateralismo cinese fra Nazioni Unite e organizzazioni regionali. Il caso della cooperazione allo sviluppo*, in *L'ORGANIZZAZIONE INTERNAZIONALE TRA UNIVERSALISMO E REGIONALISMO*, 167-189 (G. Finizio, ed., 2020); Heng Wang, *The Belt and Road Initiative Agreements: Characteristics, Rationale, and Challenges*, in *20 WORLD TRADE REVIEW*, 282-305 (2021); Vincent Wong, *Racial capitalism with Chinese Characteristics: analyzing the political economy of racialized dispossession and exploitation in Xinjiang*, *3 AFRICAN JOURNAL OF INTERNATIONAL ECONOMIC LAW*, 21-23 (2022).

in medical healthcare and the promotion of health at an international level.²⁰ The notion of basic medical and healthcare services is given by Article 15 of the Law, including basic public health services and basic medical services such as prevention, diagnosis, and treatment of infectious diseases and health threats in the domestic context as well as in the international cooperation on global health.²¹ Additionally, the Law on Foreign Relations of the People's Republic of China, adopted on June 28, 2023, is the legal basis for the conclusion of agreements between China and third countries.²² Article 27 provides the legal basis for China's development cooperation.²³ This Article regulates development cooperation through the provision of economic, technical, material, human resources, management tools, to ensure the economic and social growth of developing States.²⁴ This is also confirmed by Article 28 of the Law, which expressly mentions public health as a genus of the Chinese international development cooperation, with a view to fostering China's external relations on the many tenets related to public health.²⁵

4. THE PROGRAMMATIC PHASE OF INTERNATIONAL DEVELOPMENT COOPERATION OF EU AND CHINA IN AFRICA: COMMON AND DIFFERENTIATED STRATEGIC PATHWAYS

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- 20 Ministry of Justice of People's Republic of China, *Law of the People's Republic of China on Basic Medical and Health care and the Promotion of Health Article* (adopted at the 15th Meeting of the Standing Committee of the 13th National People Congress), December 28, 2019, art. 14: 'The state encourages and supports international exchange and cooperation in the field of medical and healthcare service and health promotion. International exchange and cooperation activities in the field of medical and healthcare service and health promotion shall be carried out in a way that complies with laws and administrative regulations, and upholds state sovereignty, national security and public interests'.
- 21 *Id.*, art. 15: 'Basic medical and healthcare services refer to such services as disease prevention, diagnosis, treatment, nursing and rehabilitation that are essential to maintaining human health, adapted to the level of economic and social development, equitably accessible by all citizens, and provided through the application of appropriate medicines, techniques and equipment. Basic medical and healthcare services include basic public health services and basic medical services. Basic public health services are provided by the state free of charge'. See, for a detailed analysis, Eric C. Ip, *The Political Determinants of China's New Health Constitution*, 29 MEDICAL LAW REVIEW, 3-23 (2021).
- 22 Ministry of Justice of People's Republic of China, *The Law on Foreign Relations of People's Republic of China* (adopted at the Third Meeting of the Standing Committee of the 14th National People Congress), June 28, 2023.
- 23 *Id.*, art. 27: 'The People's Republic of China provides foreign aid in the form of economic, technical, material, human resources, management, and other assistance to boost economic development and social advances of other developing countries, build up their capacity for sustainable development, and promote international development cooperation. [...] In providing foreign aid, the People's Republic of China respects the sovereignty of recipient countries and does not interfere in their internal affairs of attach any political conditions to its aid'
- 24 *Ibid.*
- 25 *Id.*, art. 28: 'The People's Republic of China carries out, as needed in the conduct of foreign relations, exchanges and cooperation in educational, science and technology, cultural, public health, sports social, ecological military, security, the rule of law and other fields'.

GHS has had a remarkable incidence on the programmatic phase of cooperation, of both EU and China, to foster regional health partnerships in Africa.

As far as the European Union is concerned, it is worth considering the new EU Global Health Strategy (EU GHS) of 2022²⁶ and the European and Developing Countries Clinical Trials Partnership (EDCTP3) of 2023.²⁷ The EU GHS focuses on improving health preparedness and response at all levels to increase the EU health security framework both in the territory of EU Member States, both through its external relations. In particular, the EU GHS highlights the need to improve preparedness and response in medical countermeasures. Three are the EU Global Health priorities emphasized in the 2022 Strategy: (1) the need to increase global health well-being of people across the life course; (2) the empowerment of international, regional and national health systems and the advancement of universal health coverage; and the (3) prevention and treatment of all health threats, including pandemics.²⁸

The EDCTP is one of the most noteworthy health initiatives amongst EU and sub-Saharan African countries. It aims to accelerate the development of new or improved drugs, vaccines, microbicides, and diagnostics against HIV/AIDS, tuberculosis, and malaria, as well as other poverty-related infectious diseases.²⁹ The EDCTP promotes collaboration between European and African researchers, facilitates clinical trials in Africa, and supports capacity building in the region. Moreover, the partnership focuses on addressing the specific health needs of sub-Saharan Africa and aims to strengthen the capacity of African researchers and institutions to conduct clinical trials and other health research. The proposal for the EDCTP Programme is based on Article 185 of the TFEU, which allows the Union, in implementing the multiannual framework programme, to make provision, for participation in research and development programmes undertaken by several Member States, in agreement with the Member States concerned, including participation in the structures created for the execution of public health programmes.³⁰ In particular, the scope of EDCTP3 is to accelerate the clinical development of new or improved health technologies for the identification,

26 European Union, *supra* note 11.

27 EDCTP, *Strategy and scope*, <https://www.globalhealth-edctp3.eu/about-us/strategy-and-scope>.

28 *Id.*, at 8.

29 Council Regulation (EU) 2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014, *OJ L* 427, 30.11.2021, 17–119.

30 The reference document for understanding EU action in Africa is the Governing Board of The Global Health EDCTP3, *Joint Undertaking Decision N° GB 05/2023*, Annual Work Programme 2023, 2023, https://research-and-innovation.ec.europa.eu/system/files/2023-04/edctp_work_programme_2023.pdf.

treatment and prevention of poverty-related and neglected infectious diseases, including re-emerging diseases in south-Saharan African States.³¹ The objective is to identify a mechanism for international development cooperation with particular focus on sub-Saharan African countries, through the funding of scientific research in the prevention of possible epidemic diseases.³²

China's pathways to foster GHS in Africa is significantly represented by the China's strategic document entitled "China's International Development Cooperation in the New Era" of January 2021³³ and the Forum on China-Africa Cooperation (FOCAC)³⁴ document named "China and Africa in the New Era: A Partnership of Equals" of November 2021.³⁵ In China's programmatic document entitled "China's International Development Cooperation in the New Era", China identifies this cooperation forum as the main channel through which to cooperate with African States on the topics of industrialisation, agricultural modernisation, infrastructure, finance, green development, trade and investment facilitation, poverty reduction, public health, cultural and people-to-people exchanges, and peace and security.³⁶ In these terms, China points out international development cooperation through many different forms of foreign assistance, including international development projects, the exchange of goods and materials, technical cooperation, cooperation in human

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- 31 In this regard, it is also worth mentioning the European Union's Strategic Agenda for Funded Research and Innovation 2023, focusing on antimicrobial resistance. See European Partnership on One Health Antimicrobial Resistance (EUP OH AMR), *Strategic Research and Innovation Agenda European Partnership on One Health Antimicrobial Resistance*, 2023, https://www.jpiaamr.eu/app/uploads/2023/05/Draft-OH-AMR-SRIA_v2023-05-22.pdf. This health objective is a fundamental corollary of the One health approach at the universal level, which in the perspective of this document is also declined through the international partnership towards sub-Saharan African countries with a particular focus on late-stage clinical development and vulnerable groups.
- 32 Moreover, starting from November 24, 2023, Global Health EDCTP3 Joint Undertaking has acquired financial autonomy from the European Commission to implement its own budget. The GB 05/2023 Decision of the 2023 EDCTP has to be considered as a further implementation of an additional strategic plan carried out by the EU, i.e. the health cooperation with the WHO. See WHO, *EU and WHO join forces to improve global health security and access to medical products and health technologies in Africa*, 2022, <https://www.who.int/news/item/23-03-2022-eu-and-who-join-forces-to-improve-global-health-security-and-access-to-medical-products-and-health-technologies-in-africa>.
- 33 The People's Republic of China, The State Council, *China's International Development Cooperation in the New Era*, 2021, https://english.www.gov.cn/archive/whitepaper/202110/10/content_WS5ffa6bbbc6d0f72576943922.html.
- 34 On the FOCAC, see JINYAN ZHOU, CHINA'S HEALTH ENGAGEMENT IN AFRICA: SOFT POWER, PUBLIC GOODS OR INVESTMENT OPPORTUNITIES?, Research Report, (2019); Angela E. Micah *et al.*, *Tracking Development Assistance for Health from China, 2007–2017*, in 4 BMJ GLOBAL HEALTH, 1-13 (2019); Zhou Taidong, Ma Tianyue, *Enhancing China–Africa Health Cooperation for a Healthier and Safer World*, in 8 CHINA QUARTERLY OF INTERNATIONAL STRATEGIC STUDIES, 35-59 (2022).
- 35 FOCAC, *China and Africa in the New Era: A Partnership of Equals*, 2021, http://www.focac.org/focacdakar/eng/pthd_1/2021111/t20211129_10458125.htm,
- 36 The People's Republic of China, *supra* note 32, at 5.

resources development, the South-South Cooperation Assistance Fund (SSCAF), the sending of medical teams in developing countries and emergency humanitarian aid.³⁷ While this document delves into the dimension of China's international development cooperation in its global projection, the document of November 2021, entitled 'China and Africa in the New Era: A Partnership of Equals' specifically addresses how the FOCAC operates about health issues. Section II, point 3 of the FOCAC strategic document reiterates the South-South cooperation model that characterises the health partnership with African countries. China's objective here is to provide highly qualified training to African medical personnel.³⁸ Moreover, Section IV, point III (named "Raising China-Africa Relations to a New Level") states China's intention to continue providing anti-pandemic assistance to African countries, to share its experience in coordinating routine epidemic prevention and control with social and economic development, and to accelerate cooperation with Africa on vaccines.³⁹ China-Africa health cooperation is thus focused on assisting Africa to improve its public health system and its ability to control and prevent major communicable diseases, to promote a Chinese-African community of health for all.⁴⁰

5. THE IMPLEMENTATION THROUGH INTERNATIONAL AGREEMENTS CONCERNING REGIONAL HEALTH PARTNERSHIPS IN AFRICA

The planning phase subsequently found an implementation procedure through the adoption of legally binding instruments by both the European Union and China on the African continent. In particular, this legal phase regarded the two actors concluding binding agreements with international organisations operating *ratione loci* and *ratione materiae* in Africa.

In the case of the European Union, the 2022 EU GHS finds a legal framework through the Samoa Agreement, signed by the European Union and the Organisation of African, Caribbean and Pacific States (OACPS) on November 15, 2023, with a provisional application regime of the Agreement under Article 25 of the Vienna

37 *Id.*, in part. Ch. II, *Achieving New Progress in International Development Cooperation*, at 12-20.

38 FOCAC, *supra* note 35, Section II, pt. 3: '[...] China has helped African countries respond to various epidemics and plagues and build a public health system, promoting a China-Africa community of health. One of the longest and most effective cooperation projects that involves the greatest number of African countries is the dispatch of Chinese medical teams'.

39 *Id.*, Section IV, pt. III: 'China will continue to provide anti-pandemic assistance to African countries, share its experience in coordinating routine epidemic prevention and control with social and economic development, and speed up cooperation with Africa on vaccines. China-Africa health cooperation is not a short-term measure, but a long-term and far-sighted strategy. It focuses on assisting Africa to improve its public health system and its capacity for controlling and preventing major communicable diseases, so as to promote a China-Africa community of health for all in the new era'.

40 *Ibid.*

Convention on the Law of Treaties of 1969.⁴¹ The OACPS counts 48 African Member States, representing the wide majority of the memberships in the Organization.⁴² The Samoa Agreement, which succeeds the Cotonou Agreement, underscores a heightened commitment to addressing public health challenges. It prioritizes collaborative efforts to enhance healthcare infrastructure, strengthen disease prevention, and facilitate the equitable distribution of medical resources. By emphasizing public health issues, the Agreement seeks to foster a resilient partnership that effectively addresses health disparities within the OACPS countries. In particular, the Agreement focuses on the African Health Partnership under Article 29 (Part I), and the Africa Regional Protocol, Article 32.

Article 29 (Part I) of the Agreement states the obligation upon the contracting Parties to strengthen national health systems with appropriate health financing mechanisms, with a view to sustainable balance of operational infrastructures, skilled health workforces, and appropriate medical technologies.⁴³ These objectives must be carried out in accordance with universal health coverage (UHC), under para. 3 of Article 29. This paragraph highlights the fundamental components of the UHC, i.e., the individual right to access to essential health services without financial hardship, the promotion of healthcare equity and well-being for everyone.⁴⁴

Article 32 of the African Regional Protocol sets out many objectives that have a clear reference to the GHS: the preventive dimension in the spread of diseases from viral vectors and neglected tropical diseases (para. 3);⁴⁵ the obligation to cooperate

⁴¹ Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of the African, Caribbean and Pacific States, of the other part, 8372/1/23 REV 1, July 19, 2023.

⁴² The collaboration between the European Union (EU) and the Organisation of African, Caribbean, and Pacific States (OACPS) was initiated in 1975 through the First Lomé Convention. However, the roots of this collaborative effort can be traced back to the establishment of Europe as a structured regional entity. The Treaty of Rome, signed in 1957, paved the way for cooperation between the EU and the Overseas Countries and Territories (OCTs) associated with the six signatory nations: Germany, Belgium, France, Italy, Luxembourg, and the Netherlands. Essentially, these OCTs comprised West and Central African countries with historical ties to France.

⁴³ Partnership Agreement, *supra* note 41, art. 29(2): ‘The Parties shall strengthen national health systems with sustainable health financing mechanisms and resources, operational infrastructures, skilled health workforces, including as regards recruitment and retention, and appropriate technologies, such as digital tools, in support of mobile health development’.

⁴⁴ *Id.*, art. 29(3): ‘The Parties shall promote universal health coverage, equitable and universal access to comprehensive and quality healthcare services and access to safe, effective, quality and affordable essential medicines and vaccines’.

⁴⁵ *Id.*, *Africa Regional Protocol*, art. 32(1-3): ‘1. The Parties shall aim at achieving universal health coverage and equitable access to quality essential healthcare services, including through strengthened national health systems and functioning modern healthcare facilities. [...] 3. The Parties shall cooperate to tackle

to strengthen emergency preparedness to prevent health threats (para. 4);⁴⁶ and an explicit reference to antimicrobial resistance.⁴⁷ Indeed, Article 32, para. 4, underlines the obligation, on behalf of EU and OACPS Member States, to plan enhanced regional health partnerships focused on financial assistance to provide for essential treatment for the prevention and treatment of viral vectors at a regional and international level. In the case of China, the Centre for Disease Control and Prevention (CDC) HQ Implementation Agreement represents the legal basis for establishing a legal regime of cooperation with the African Union. China-AU cooperation is focused on the establishment of the CDC Headquarter in Addis Ababa, which happened with the signing of the Exchange of Letters of Agreement on June 24, 2019.⁴⁸ This was followed by an Implementation Agreement on the Africa CDC HQ's building project in July 2020⁴⁹, with the official inauguration of the CDC headquarter January 12, 2023.⁵⁰ In this case, China-AU cooperation projects on a long-term partnership pathway on the prevention and treatment of epidemics and pandemics that may affect the African continent under the GHS strategic drivers.⁵¹ The Implementation Agreements aims at China-Africa partnership through joint research, information sharing and capacity building with training programmes to local healthcare workers, focusing on disease prevention, control measures, and emergency response, and early warning systems for infectious disease surveillance. This is further recognised by the Dakar Action Plan (2022-2024), drawn up in November 2021 by the 8th FOCAC Ministerial

communicable and vector-borne diseases, including neglected tropical diseases. They shall cooperate to address pandemics such as HIV/AIDS, tuberculosis and malaria, and to reduce substantially the rate of resultant deaths. They shall support access to safe and affordable essential medicines, vaccines and diagnostics, including universal access to anti-retroviral treatment for people with HIV/AIDS'.

46 *Id.*, para. 4: 'The Parties shall strengthen capacity for emergency preparedness and response to detect, prevent and respond to disease outbreaks and other health threats, such as antimicrobial resistance, taking a "One health" approach. They agree to scale up support for national and regional health prevention, surveillance and monitoring systems'.

47 *Ibid.*

48 African Union, *AUC and government of China sign exchange of letters of agreement for the construction of Africa CDC Headquarters building*, 2019, <https://africacdc.org/news-item/auc-and-government-of-china-sign-exchange-of-letters-of-agreement-for-the-construction-of-africa-cdc-headquarters-building/>.

49 Mission of the People's Republic of China to the African Union, *China-aided Africa CDC Project Implementation Agreement Signed Successfully*, 2020, http://au.china-mission.gov.cn/eng/sghd_1/202007/t20200727_8205384.htm.

50 African Union, *China Foreign Affairs Minister H.E Mr. Qin GANG visits the AU and takes part in the Inauguration of the new Headquarters of the Africa Center for Disease Control and Prevention (Africa CDC)*, 2023, <https://au.int/en/pressreleases/20230112/inauguration-new-headquarters-africa-cdc>.

51 At this juncture, China's objective is to focus on the prevention and immediate treatment of epidemic and pandemic diseases that could have a significant impact on African health systems. The partnership is therefore expressed both through financial assistance measures, which have significantly contributed to the establishment of a CDC headquarter in agreement with the African Union, and the consequent provision of technical assistance measures to provide African medical personnel with adequate equipment, scientific machinery and technical knowledge through which to operate in the African national health contexts.

Conference,⁵² that was drafted on the premises of the CDC HQ Implementation Agreement between China and the African Union. Section 4.2 of the Dakar Action Plan (concerning Medical Care and Public Health) dwells on China's commitment to strengthening international development cooperation with African States about the GHS.⁵³

Regarding the implementation of the above-mentioned agreements, it should be noted that China followed up the CDC Implementation Agreement in a timely manner through the Dakar Action Plan, which specifically focuses on the various aspects concerning public health and the promotion of the GHS as a specific object of FOCAC cooperation. Conversely, due to the ongoing provisional implementation regime of the Samoa Agreement, a lack of programmatic documents capable of implementing cooperation based on the Samoa Agreement is noteworthy. Nevertheless, an implementation document to this end can be expected through the bilateral bodies of the EU-ACP partnership, such as the ACP-EU Council of Ministers, the ACP-EU Committee of Ambassadors, which assists the Council of Ministers and monitors the implementation of the Cotonou Agreement, and the ACP-EU Development Finance Cooperation Committee, which reviews the implementation of development finance cooperation and monitors progress.

6. THE DIFFERENT RATIONALE OF EU AND CHINA'S INTERNATIONAL HEALTH COOPERATION: A CRITICAL APPRAISAL

The legal cooperation regimes of, respectively, China and the European Union in Africa have specified similarities, although they own considerable elements of differentiation about the rationale for cooperation with African countries.

52 FOCAC, *Forum on China-Africa Cooperation Dakar Action Plan (2022-2024)*, adopted at the 8th Ministerial Conference of the Forum on China-Africa Cooperation (FOCAC) in Dakar, 2021, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/202112/t20211202_10461183.html. On this point, see Daniel Large, *China, Africa And The 2021 Dakar Focac*, in 121 AFRICAN AFFAIRS, 299-319 (2022).

53 FOCAC, *supra* note 52, see in part, Section 4.2.3: 'China will continue to scale up medical assistance to African countries and step-up cooperation with Africa on COVID-19 prevention and control. China will support African countries in building national public health institutions, and will carry out information sharing and technical cooperation on public health, and support Africa in comprehensively improving its health situation, strengthen its capacity for self-reliant development, and build a more responsive public health system. China will provide African countries with technical support for strengthening health-related capacities under the International Health Regulations (2005), and jointly safeguard global public health security'.

Both the EU and China intend to project international development cooperation through regional health partnerships,⁵⁴ especially with those African countries that could be most affected by issues related to the protection of public health and the prevention of the spread of possible pathogens at a regional and sub-regional level.⁵⁵ In particular, both EU and China regional health partnership is aimed at (1) the prevention and treatment of epidemics and pandemics (2) that could particularly affect African territories (3) through a security and health approach that finds its systematic expression through GHS. In legal terms, this translates into the conclusion of international agreements, albeit with diverse legal constraints and implementation procedures.

Concerning the enactment of these plans, the common element of the cooperation regimes in Africa lies in the development of particularly recent partnership instruments, which provide for the creation of legally binding agreements that include public health issues coherent with the objectives of GHS. The Samoa Agreement and the CDC Implementation Agreement are the two legal cooperation sources that focus on the GHS, with a view to effectively practice regional health partnerships on the African continent. In both cooperation regimes, the Agreements have international organisations as counterparts. In the case of the European Union, the counterpart of the Samoa Agreement is the OACPS whose founding treaties (the Georgetown Agreement of 1975, as revised in 2019) explicitly mention public health as a cooperation objective between OACPS Member States. Article 5, in the revised text of 2019, refers to a very broad obligation of cooperation between the Parties, as well as between the Organisation and other States and international organisations, through a reference to

54 See The People's Republic of China, *supra* note 32, at 8: 'Development is the top priority of all countries. When carrying out development cooperation, China emphasizes coordination of plans and strategies with partner countries and responds to the priority needs of developing countries for social and economic progress. Aiming to improve people's wellbeing and provide them with tangible gains, it increases investment in poverty alleviation, disaster relief, education, health care, agriculture, employment, environmental protection, and climate change response, and actively participates in emergency humanitarian relief operations', and European Union, *EU Global Health Strategy*, *supra* note 11, at 23: 'The EU is expanding partnerships in health at regional level. Regionalism is important in global health, and regional stakeholders play an increasingly important role. Deepening health partnerships at regional level, including in Africa, Latin America and the Caribbean, the Asia-Pacific region, as well as supporting South-South cooperation will be essential'.

55 See The People's Republic of China, *supra* note 32, § 2, Achieving New Progress in International Development Cooperation, at 12-20; European Union, *supra* note 11, Guiding Principle 2, at 10: 'Ensure that innovative vaccines, treatments, and diagnostics for new, prevalent, or neglected infectious and non-communicable diseases, are developed and used, including through funding from Horizon Europe and the EU-Africa Global Health European and Developing Countries Clinical Trials Partnership (EDCTP3) for research, capacity building and strengthening of the regulatory environment in sub-Saharan Africa'.

sustainable development in its many facets.⁵⁶ Indeed, the European Union intends to focus on a 'typical' international development cooperation regime with African countries, aimed at implementing several sustainable development objectives, among which the GHS stands out, through financial and technological assistance instruments. This underlying rationale of the EU-OACPS cooperation regime therefore also explains the intention of the Samoa Agreement to ensure continuity and legal coherence with the two Organisations' partnership with wide-ranging cooperation objectives.

On the side of China, the CDC Implementation Agreement involves the African Union as an international organisation with specific competences in the promotion of public health on the African continent, as stated by the Constitutive Act of the African Union according to Article 3(n).⁵⁷ In addition, China's differentiation from the European Union's partnership action lies in the creation of a cooperation regime with African countries through the conclusion of FTAs or BITs.⁵⁸ The deployment of further development assistance is therefore subordinate to the commercial perspective,⁵⁹ which, as seen in the case of the Dakar Action Plan,⁶⁰ is implemented through programmatic *ad hoc* measures focused on the health needs of the beneficiary African country. In this perspective, the close correlation between the BRI and the health partnership stands out, through the creation of a legal regime strongly focused on economic cooperation with a direct incidence on BRI-related projects in Africa.

56 See The Revised Georgetown Agreement, art. 5, December 6, 2019, ACP/27/005/18Rev.13 (entered into force Apr. 12, 2020). See also NIELS KEIJZER, LORAND BARTELS, ASSESSING THE LEGAL AND POLITICAL IMPLICATIONS OF THE POST-COTONOU NEGOTIATIONS FOR THE ECONOMIC PARTNERSHIP AGREEMENTS, in part. at 1-15 (Bonn: 2017); Maurizio Carbone, *The rationales behind the EU-OACPS agreement: process, outcome contestations*, in 26 EUROPEAN FOREIGN AFFAIRS REVIEW, 243-264 (2021); Johanne Døhlie Saltnes, *Ambiguities in the EU's rights-based approach to liberal order*, in 99 INTERNATIONAL AFFAIRS, 2241-2259 (2023).

57 Constitutive Act of the African Union, art. 3(n), July 11, 2000 (entered into force on May 26, 2001): « The objectives of the Union shall be to: [...] work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

58 See, *inter alia*, China – Dem. Rep. Congo BIT, Aug. 8, 2011 (entered into force on Nov. 17, 2016); China – Un. Rep. of Tanzania BIT, Mar 24, 2013 (entered into force on Apr. 17, 2014); Angola - China BIT, Dec. 6, 2023 (not in force). A particularly relevant case of bilateral cooperation practice is the Mauritius-China Free Trade Agreement (FTA), Oct. 17, 2019 (entered into force on Jan. 1, 2021), art. 12.9(2): 'The Parties agree to enhance collaboration in the following manner: (a) encouraging cooperation between private sectors of the Parties by means of: (i) exchange of researchers, students and those involved in relevant industries; (ii) joint research programs and projects and their commercialization; (iii) product quality upgrade, supply-chain networking and technology trade; and (iv) promotion and facilitation of mutual investment opportunities; (b) encouraging training and capacity building in areas such as manufacturing of pharmaceutical products, pharmaco-vigilance practices, and clinical pharmacy practices, and enhancing quality control systems and testing of pharmaceutical products [...].'

59 Won L. Kidane, *Agreements and Dispute Settlement in China-Africa Economic Ties*, in CHINA-AFRICA AND AN ECONOMIC TRANSFORMATION, 216-238 (Arkebe Oqubay & Justin Yifu Lin, eds., 2019).

60 Daniel Large, *supra* note 52, at 299-319.

7. CONCLUSIONS

GHS has recently witnessed significant implementation through, respectively, EU and Chinese health partnerships with African countries. The legal developments through partnerships aimed at preventing and treating the spread of pathogens, with a particular focus on the African regional context, replies to the strengthening of international development cooperation through regional health partnerships. The coherence of the EU mandate and the Chinese legislation on international development cooperation concerning the GHS in the African context appears to be satisfied, albeit the different legal pathways and objectives that these actors pursue on the African continent. The European Union's international development cooperation underscores the objective of maintaining a cooperation regime with numerous African beneficiary countries, also focusing on public health.⁶¹ China, on the other hand, foresees the strengthening of regulatory instruments concerning the regional health partnership as a useful tool to increase its trade relations with African countries, under the BRI perspective.

Even though the rationale of the partnerships aims to achieve different objectives from the EU and Chinese point of view, it is necessary to consider how from a legal standing there is a substantial similarity that develops through three distinct phases. The first phase envisages the elaboration of a legal framework of reference where to specify the action of the EU and China as far as external relations are concerned, through the identification of the competences and functions of the different bodies to be set up for regional partnerships. The second phase focuses on the programmatic measures through which the EU and China focus their regional partnership with regard to the African continent. In this context, the GHS constitutes a health objective that clearly falls within the design of international development cooperation programmes that African countries may be interested in. Then there is a third (and concluding) phase, which is obviously the most relevant in legal terms. It consists of the drafting of legally binding agreements of both a multilateral and bilateral nature. These agreements focus primarily on many public health tenets, highlighting the link between health issues and regional security in the African context. From a perspective rooted in legal obligations, there exists a discernible commitment among the involved parties to enhance the exchange of information, best practices, as well as technical and scientific support. These elements are deemed essential for the tangible reinforcement of the

61 William Aldis, *Health security as a public health concept: a critical analysis*, in 23 HEALTH POLICY AND PLANNING, 369-375 (2008); James Smith, *Global health security: a flawed SDG framework*, in 385 THE LANCET, 2249 (2015); Laura Kanji, *supra* note 8, at 8-11; Mateja Steinbrück Platise, *The Changing Structure of Global Health Governance*, in THE GOVERNANCE OF DISEASE OUTBREAKS, 83-111 (Leonie Vierck, Pedro A. Villarreal & A. Katarina Weilert, eds., 2017).

GHS. Within this framework, both the European Union (EU) and China are engaged in formulating regulatory mechanisms aimed at incrementally fostering regional collaboration with African nations that express interest in partnerships for health development.

A final consideration deserves to be made concerning the limits of the regional health partnership of the two actors in Africa. The EU limit of cooperation is mainly 'functional', through the mainly financial instruments to support health cooperation with African countries to foster GHS, by the EU health competences conferred under the TFEU. The Chinese model of engagement in Africa is structurally different since it allows for China's operational autonomy and a particularly flexible development cooperation regime. Nevertheless, the Chinese regional health partnership has as its goal the strengthening of FTAs and BITs with African countries. The limit of the cooperation is in this case 'strategic', because of China's intention to achieve as an end goal the progressive expansion of the BRI-related projects in Africa.