



AN EVALUATION OF THE  
EFFICACY OF INTERNATIONAL LAW  
IN HOLDING CHINA CULPABLE FOR THE  
CORONAVIRUS PANDEMIC

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## **Abstract**

The huge loss of lives and economic tragedy triggered by the global spread of the Covid-19 pandemic has led many to finger China's initial response as being responsible for the global disaster occasioned by the virus. Consequently, several countries have called for an independent investigation of China's management of the crisis. As a result, actions have been filed across the world with the object of holding China liable for the crisis. The efficacy of these actions and the possibility of holding China culpable have thus engaged the minds of international law enthusiasts.

Stemming from the above, this paper assesses China's culpability by the principle of state responsibility under international law. The paper concludes that although grounds exist for China's culpability, the frailty of international law has made this difficult, if not impossible.

**Keywords: State Responsibility, International Law, China, Coronavirus, and Economy.**

## 1.0. INTRODUCTION

Since the beginning of the 20<sup>th</sup> century, increased global interdependence amongst nations have brought a new dimension to the culpability of countries for roles played in the breakout of international disasters. Consequently, when the flames which engulfed Europe in 1914 was put out, and the First World War ended in 1918, the “Treaty of Versailles” held Germany liable and required her to pay heavy reparations for her role in causing the war<sup>1</sup> which killed no less than 16 million persons.<sup>2</sup>

Today, unlike 1918, the world is faced with the challenge of combating a global pandemic; the novel Coronavirus. As the world struggles to minimize the economic and health effects of the crisis, statements issued by governments of various countries have hinted that the world would have been better poised to manage the pandemic if China, the country from which the virus originated, had demonstrated State responsibility by timeously reporting the outbreak and sharing useful information which other countries could employ in containing the disease.

At the forefront of the strictures against China, is Donald Trump of America who has referred to the coronavirus as “Chinese Virus” in an apparent indictment of Chinese government role in the escalation of the virus.<sup>3</sup> Furthermore, Donald Trump has criticized the World Health Organization (WHO) handling of the crisis, insinuating a conspiracy between the organization and China. Reacting to this presumed conspiracy, the American government in June of 2020 announced it would cut her funding to the WHO, and by early July, the administration of Donald Trump commenced the formal withdrawal of America from the organization.<sup>4</sup>

Since the emergence of these accusations against China, scholars have reacted with worrying interest on the possibility of holding China culpable for the global spread of the virus. Indeed, while many have rushed to affirm China’s culpability, others have not been so starry-eyed. Thus, opinions have been kaleidoscopic in this regard!

In the wake of the aforesaid, this paper makes an informed assessment of the culpability of China, paying due attention to relevant international principles and laws.

### 1.1. Brief Facts On Coronavirus Pandemic

At the center of the controversy regarding China’s management of the virus, is the Coronavirus pandemic itself. Considering that much of this essay would revolve around the virus, the topic of “Coronavirus” is indeed deserving of our attention.

The Covid-19 pandemic is an ongoing outbreak of coronavirus disease which is caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).<sup>5</sup> This virus was reported to originate in the wet markets of Wuhan in the Hubei province of China.<sup>6</sup> It is highly contagious and transmitted through respiratory droplets of infected persons.<sup>7</sup> Symptoms of the virus range from high-grade fever to persistent coughs and breathing difficulties in severe cases.

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<sup>1</sup>R. Henig, *Versailles and After: 1919-1933*, Routledge (1995), p.63

<sup>2</sup>Reperes, module 1-10- explanatory notes: World War 1 casualties — EN, NadegeMougel, *CVCE*, 2011, 2011.

<sup>3</sup>Dan Magan, “Not racist at all”: Donald Trump defends calling coronavirus the ‘Chinese virus’” published on The Guardian. Available at <https://www.guardian.com/world/video/2020/mar/18/not-racist-at-all-donald-trump-defends-calling-coronavirus-the-chinese-virus-video> (Last accessed 18th July, 2020)

<sup>4</sup>Zachary Cohen, “Trump administration begins formal withdrawal from World Health Organization” published on CNN. Available at <https://www.cnn.com/2020/07/07/politics/us-withdrawing-world-health-organization/index.html> (Last accessed 18th July, 2020)

<sup>5</sup>“Symptoms of Coronavirus” published on Medscape. Available at <https://emedicine.medscape.com/article/2500114-overview#a1> (Last accessed 12:05pm on 17<sup>th</sup> July 2020)

<sup>6</sup>CDC. 2019 Novel Coronavirus, Wuhan, China. CDC. Available at <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>. (Last accessed 12:09pm on 17<sup>th</sup> July 2020)

<sup>7</sup>“Symptoms of Coronavirus” published on Medscape. Available at <https://emedicine.medscape.com/article/2500114-overview#a1> (Last accessed 12:05pm on 17<sup>th</sup> July 2020)

The outbreak of the novel coronavirus is unlike anything which has been seen before. Though the pandemic bears close semblance with the Spanish flu of 1918 and the Severe Acute Respiratory Syndrome of 2002, they do not compare with the novel coronavirus both in terms of global spread and effects on global economy.

Today, the virus has spread to over 190 countries; resulting in severe global socioeconomic disruption and widespread fears of supply shortages which have necessitated panic buying. Further, a writer has noted that the pandemic has caused the largest global recession in history, with more than a third of the global population being placed on lockdown.<sup>8</sup>

From an economic perspective, the pandemic has resulted in massive loss of jobs all over the world. In a fresh data released by the International Labor Organization, working hours reduced by 14% resulting in a loss of 400 million jobs globally.<sup>9</sup>

In the same vein, the pandemic has trenchantly shaken the global financial markets as the global equity market alone has lost \$24 trillion dollars since when the virus first broke out in December, 2019.<sup>10</sup> The Nigerian Stock Exchange (NSE) is not spared of the calamitous events in the financial markets as the NSE stock market capitalization dropped to N13.136 trillion in June even as investors lost N16.88billion.<sup>11</sup>

To compound this problem, the commodities and money markets are in disarray due to the crude oil war between Russia and Saudi Arabia in March through April 2020, which injected uncertainty into other assets.<sup>12</sup>

The mitigation of the economic catastrophe of the pandemic has come at a great cost to the governments of various countries. Monies which should have been utilized for budget financing and execution of capital projects are now being directed towards the resuscitation of crumbling economies. As an instance, the Central Bank of Nigeria in March 2020 announced policy and fiscal measures worth approximately N3.5 Trillion to counter the economic effects of the pandemic.<sup>13</sup> The Bank of England equally announced £100 billion in June 2020 as stimulus package for Britain's economy amid fears of a surge in unemployment in Britain following the end of the government's furlough scheme in the autumn.<sup>14</sup>

In the light of the above circumstances, the criticism of China's handling of the crisis is perfectly understandable. The leaders of most countries are speaking from a place of pain. After all, the International Monetary Fund has predicted a 3% contraction of the global economy in 2020 which is a more precarious situation than that caused by the 2008 financial crisis.<sup>15</sup>

As the race for the development of vaccines continues, with Russia and Great Britain leading the rally,<sup>16</sup> much uncertainty persists as to the socioeconomic and political future of the globe.

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<sup>8</sup>Mcfall-Johnsen, Juliana Kaplan, Lauren Frias, Morgan, "A third of the global population is on coronavirus lockdown — here's our constantly updated list of countries and restrictions" published on Business Insider. Available at <https://www.businessinsider.com/countries-on-lockdown-coronavirus-italy-2020-3>

<sup>9</sup>"Hard times forecast for global job recovery in 2020, warns UN labour agency chief". Available at <https://news.un.org/en/story/2020/06/1067432> (Last accessed 18th July, 2020). A survey has also confirmed huge loss of jobs by many Nigerians due to the pandemic. See "Covid-19: Survey confirms job losses, hardship for Nigerians." Available at <https://nairametrics.com/2020/06/08/covid-19-survey-confirms-job-losses-hardship-for-nigerians/> (Last accessed 20<sup>th</sup> July, 2020)

<sup>10</sup>Olumide Adeshina, "Covid-19, a virus that shakes global financial markets" published on Naira Metrics. Available at <https://nairametrics.com/2020/03/23/covid-19-a-virus-that-shakes-global-financial-markets/> (Last accessed 20<sup>th</sup> July, 2020)

<sup>11</sup>Olumide Adeshina, "Nigeria's stock market drops by N16.88 billion." Available at <https://nairametrics.com/2020/06/12/nigerias-stock-market-drops-by-n16-88-billion/> (Last accessed 20<sup>th</sup> July, 2020)

<sup>12</sup>Olumide Adeshina, "Nigeria's stock market drops by N16.88 billion." Available at <https://nairametrics.com/2020/06/12/nigerias-stock-market-drops-by-n16-88-billion/> (Last accessed 20<sup>th</sup> July, 2020)

<sup>13</sup>Olaniwun Ajayi "The Economic Effects of Covid-19". Available at [https://www.instagram.com/p/B-elkk\\_l6Ou/?igshid=1ees3vwyq6d8c](https://www.instagram.com/p/B-elkk_l6Ou/?igshid=1ees3vwyq6d8c) (Last accessed 20<sup>th</sup> July, 2020)

<sup>14</sup>"Bank of England pumps an extra £100bn into UK economy" published on The Guardian Available at <https://www.theguardian.com/business/2020/jun/18/bank-of-england-uk-economy-quantitative-easing-coronavirus-crisis> (last accessed 20th July, 2020)

<sup>15</sup>M. Sokol & L. Pataccini, "Winners and Losers in Coronavirus Times: Financialisation, Financial Chains and Emerging Economic Geographies of the Covid-19 Pandemic" in *Wiley Online Library*. Available at <https://onlinelibrary.wiley.com/doi/full/10.1111/tesg.12433> (Last accessed 20th July, 2020)

<sup>16</sup>Arpan Rai, "Russia is trying to beat the west to a Covid-19 vaccine" published on Hindustan Times. Available at <https://www.hindustantimes.com/world-news/russia-is-trying-to-beat-the-west-to-a-covid-19-vaccine/story> (Last accessed 20<sup>th</sup> July, 2020)

## 1.2. China's Response to the Covid-19 Crisis

There are good reasons to believe that China's response in the early stage of the outbreak is partly responsible for the pandemic status of the novel coronavirus. There is evidence to suggest that when the coronavirus first broke out in early December 2019 in Wuhan, the Chinese government played ostrich by downplaying the human transmission of the virus.<sup>17</sup> Again, in January 2020, the Chinese government began to arrest doctors responsible for spreading information about the disease.<sup>18</sup> Moreover, the tardiness of China in disclosing the scale of the Virus to the WHO has been attributable to the global spread of the virus. It is also believed that China hid the severity of the virus to hoard urgent medical supplies — while refusing to shut its borders until late January — thereby allowing her citizens to carry the virus with them to various parts of the world.<sup>19</sup> Consistent denial of human transmission by China did not help other countries know when they should have shut their borders before it was too late. Consequently, by January 31<sup>st</sup> 2020, Britain and Russia recorded their first two cases with America confirming human transmission a day before.<sup>20</sup>

There have also been suspicions of China's development of the virus in a laboratory. This has led more than 100 countries to support the resolution sponsored by Australia in May 2020, calling for a probe of the virus origins in China.<sup>21</sup> Meanwhile, no less than 14 class actions have been filed against China in various courts across the world as at the time of writing.<sup>22</sup> The efficacy of these actions or any action at all in bringing China to book, has opened a Pandora box on the possibility of holding China culpable for the economic and health distress caused by the global spread of the virus.

### 1.2.1. An Assessment of China Culpability Under International Law

If there is one thing that is now clear; it is the fact that class actions privately filed against a sovereign state like China is nothing short of a fool's errand. This is because by the principle of "state immunity", a sovereign state or country is immune to the jurisdiction of foreign courts and the enforcement of their orders.<sup>23</sup>

However, the fact that China could not be held liable by actions filed in foreign courts does not imply that her culpability cannot be determined under international law. Thus, by the international doctrine of "State Responsibility", China could be held responsible for the socioeconomic crises of the globe due to her mismanagement of the Covid-19 outbreak.

Broadly speaking, the doctrine of state responsibility refers to principles which govern when and how a state is held responsible for a breach of an international obligation.<sup>24</sup> In this wise, several principles of state responsibility exist which may be invoked against China to hold her culpable.

<sup>17</sup> "Coronavirus: What did China do about early outbreak" Published on BBC. Available at <https://www.bbc.com/news/world-52573137> (Last accessed 20th July, 2020)

<sup>18</sup> "Coronavirus: What did China do about early outbreak" Published on BBC. Available at <https://www.bbc.com/news/world-52573137> (Last accessed 20th July, 2020)

<sup>19</sup> "China hid severity of the virus so it could hoard supplies, intelligence documents show" published on CNBC Available at <https://www.cnbc.com/2020/05/03/us-intelligence-documents-accuse-china-of-covering-up-coronavirus-outbreak.html> (Last accessed 20th July, 2020)

<sup>20</sup> Coronavirus Updates. Available at <https://www.worldometers.info/coronavirus/#countries> (Last accessed 20th July, 2020)

<sup>21</sup> Arpan Rai, "Ahead of big WHO meet, 100+ countries back calls for probe into Covid-19 origin" published on Hindustan Times. Available at <https://www.hindustantimes.com/india-news/ahead-of-big-who-meet-100-countries-back-calls-for-probe-into-covid-19-origin/story> (Last accessed 20th July, 2020)

<sup>22</sup> "What's in the Many Coronavirus-Related Lawsuits Against China." Available at <https://www.lawfareblog.com/whats-many-coronavirus-related-lawsuits-against-china> (Last accessed 20th July, 2020)

<sup>23</sup> By the principle of "State Immunity" decisions issued by a foreign court cannot bind a sovereign state neither can it be enforced against her. See generally P. Oguno "The concept of state immunity under international law: An overview" in *International Journal of Law*, Volume 2; Issue 5; September 2016; pp.10-24. Available at [www.lawresearchjournal.com](http://www.lawresearchjournal.com) (Last accessed 20th July, 2020)

<sup>24</sup> Ipshta Chaturvedi, "China's State Responsibility for the Global Spread of COVID-19: An International Law Perspective". Available at <https://www.orfonline.org/research/chinas-state-responsibility-for-the-global-spread-of-covid19-68322/> (Last accessed 21<sup>st</sup> July, 2020)

First, by the principle of “No-Harm” under international law, sovereign states must ensure that activities or events within their borders do not cause any quantifiable damage to other countries.<sup>25</sup> This principle has been utilized in a panoply of instances to hold states liable for environmental pollution and degradation of other states.<sup>26</sup> Though precedent set by the application of this rule have been traditionally restricted to environmental issues,<sup>27</sup> the emergence of the novel Coronavirus may soon expand the frontiers of the applicability of the rule to cover instances whereby poor management of an health crisis by a country has resulted in monumental economic losses for others. By suppressing information about the virus and allowing the spread of the virus overseas to continue unchecked in its crucial early weeks, China can arguably be said to have breached the No-Harm principle.<sup>28</sup>

While it is uncertain what an invocation of this rule may yield, it is undoubtedly an explorable option to hold China liable under international law.

Secondly, China could be held liable for global spread of the virus under the international law principle of “Obligations *erga omnes*” which is a doctrine which stipulates that — sovereign states have an obligation to protect certain rights that are considered important to the international community.<sup>29</sup> Although the concept of *erga omnes* as recognized in the leading case of *Belgium v. Spain*<sup>30</sup> highlights only “the outlawing of acts of genocide; protection from slavery; and protection from racial discrimination” as *erga omnes* obligations, the continuous development of international law may extend to accommodate state responsibility in managing health crisis of global proportions as *erga omnes* obligations. This may operate to hold China liable for the global spread of the virus.

Thirdly and most likely, China’s culpability for the global spread of the virus may be tied to a breach of the International Law Commission’s *Draft Articles on State Responsibility for Internationally Wrongful Act*.<sup>31</sup> Article 2 of the Draft stipulates that to hold a state responsible for an internationally wrongful act, the following conditions must be satisfied: (a) The wrongful act must be attributable to the state under international law; and (b) The wrongful act must constitute a breach of an international obligation of the state. In the instant case and with respect to the first condition, little controversy exists over the attribution of the alleged acts or omissions to China. This is because the allegations pertain to the actions or omissions of local Chinese government officials in suppressing critical information about the virus in the early weeks following the virus.<sup>32</sup> Even though such officials may belong to the local/provincial government, from the vantage point of international law, a state is unitary, and no differentiation can be sought to be made between provincial and central government.<sup>33</sup> Correspondingly, the alleged actions/omissions may be deemed attributable to China under international law.

With respect to the second condition, the *International Health Regulations, 2015* adopted by the World Health Assembly, is the relevant binding legal instrument dedicated towards the prevention and control of “international spread of diseases”.<sup>34</sup> Article 6 & 7 of these regulations obliges States to assess events occurring within their territory and notify the WHO within 24 hours of any

<sup>25</sup>P. Sands & J. Peel, *Principles of International Environmental Law*, (Cambridge: Cambridge University Press, 3<sup>rd</sup> ed, 2012) p.239

<sup>26</sup>*Ibid.*

<sup>27</sup>T. Brownville, *Principles of Public International Law*, 7<sup>th</sup> ed., 2008, pp.275-285; P. Birnie, A. Boyle & C. Redgwell, *International Law and the Environment*, 3<sup>rd</sup> ed., Oxford 2009, pp.143-152

<sup>28</sup>“Covid-19 Outbreak: Can China be Legally Made to Pay ‘Damages’?”. Available at <https://www.thequint.com/voices/opinion/china-covid-19-who-responsibility-international-law> (Last accessed 22nd July, 2020)

<sup>29</sup>Ishita Chaturvedi, “China’s State Responsibility for the Global Spread of COVID-19: An International Law Perspective”. Available at <https://www.orfonline.org/research/chinas-state-responsibility-for-the-global-spread-of-covid19-68322/> (Last accessed 21<sup>st</sup> July, 2020)

<sup>30</sup>[CJ Rep 1970 3 @ paras.33

<sup>31</sup> Full text of draft available at [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)

<sup>32</sup>Jay Manoj Sanklecha, “Covid-19 Outbreak: Can China be Legally Made to Pay ‘Damages’?”. Available at <https://www.thequint.com/voices/opinion/china-covid-19-who-responsibility-international-law> (Last accessed 22nd July, 2020)

<sup>33</sup>Jay Manoj Sanklecha, “Covid-19 Outbreak: Can China be Legally Made to Pay ‘Damages’?”. Available at <https://www.thequint.com/voices/opinion/china-covid-19-who-responsibility-international-law> (Last accessed 22nd July, 2020)

<sup>34</sup>Jay Manoj Sanklecha, “Covid-19 Outbreak: Can China be Legally Made to Pay ‘Damages’?”. Available at <https://www.thequint.com/voices/opinion/china-covid-19-who-responsibility-international-law> (Last accessed 22nd July, 2020)

“unexpected or unusual public health event” which is likely to constitute a public health emergency of international concern.<sup>35</sup> China being a member of WHO is bound by these obligations, and suppression of information about the virus in spite of available information, is arguably a breach of China’s international obligations which makes it culpable for the global spread of the virus.

Notwithstanding the foregoing submissions, there exist impediments which make China’s culpability under international law cumbersome. These impediments border on competence of courts to try China. First, if an action is filed at the International Court of Justice, consent of China is required,<sup>36</sup> and if history is anything to go by, China is unlikely to grant this consent.<sup>37</sup> Again, a suit cannot be brought against China before the International Criminal Court because she hasn’t ratified the Rome Statute.<sup>38</sup> Finally, if the UN Security Council attempts to adopt a resolution against China based on its responsibility of maintaining international peace and security, China could veto this resolution by virtue of her permanent member status of the Security Council. From the above discussions, it is pellucid that while the basis for suing China exists, no court appears competent to try China under international law.

## 2.0. Conclusion

As it stands, the world is between a rock and a very hard place because while the grounds to sue China exist, there is no way to do so. More than ever, the inefficacy of international law and courts to bring big countries to justice is playing out again — and if there is any message it sends to the world — it is that big countries can flagrantly breach international obligations and laws recklessly. Countries like Russia and America have withdrawn their signature of the Rome Statute, and others like China and India have consistently opposed the jurisdiction of the International Criminal Court. It is clear that the most powerful world actors show scant regard for international law by refusing to sign instruments which would punish them for breaches. The consensual jurisdiction of the ICJ in contentious matters is the greatest weakness of the body and unless there is a compulsory submission of erring States before the body, countries like China will continue to get away with atrocities similar in proportion to that hatched by the Covid-19 pandemic.

Save for the loss of moral posture on the global scene, China appears to have gotten away with the coronavirus with no chance of being held culpable, at least not with the current regime of international law.

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<sup>35</sup>Jay Manoj Sanklecha, “Covid-19 Outbreak: Can China be Legally Made to Pay ‘Damages’?”. Available at <https://www.thequint.com/voices/opinion/china-covid-19-who-responsibility-international-law> (Last accessed 22nd July, 2020)

<sup>36</sup>By the provisions of Article 38 of the Statute of the International Court of Justice, jurisdiction of the ICJ is based on the consent of the States to which it is open. See the case(s) of *United Kingdom v. Chile* (Order, 1956 I.C.J. 15 (Mar.16)), *United States of America v. Czechoslovakia* (Order, 1956 I.C.J. 6 (Mar.14)).

<sup>37</sup>Resistance to ICJ jurisdiction and defiance of its decision is commonplace among world powers like China and USA. In 2016, China declined the jurisdiction of the ICJ over the South China Sea crisis between China and The Philippines.

<sup>38</sup>B. Bing Jia, “China and the International Criminal Court: Current Situation” in *Singapore Year Book of International Law and Contributors*, (2006) 10 SYBIL 1-11

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