



COVID-19 AND INTERNATIONAL  
LAW: A CRITICAL ASSESSMENT OF  
CHINA'S CULPABILITY.

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## **Abstract**

The damages caused by Covid-19 have led to calls for China to compensate other states of the world, premised on the notion that China failed its obligations in the way it handled the outbreak. This paper, therefore, sets out to evaluate China's culpability through the lens of existing international laws. The paper reached its conclusions through critical evaluation of the provisions of the World Health Organization's constitution, the International Health Regulations, and the Draft Articles on State Responsibility for Wrongful Acts. Several books, articles, and authoritative publications were consulted, while qualitative analysis was adopted for the research. An assessment of these laws proves China's culpability concerning the manner it handled the outbreak at the onset. However, the paper concludes that it would be difficult to enforce any legal decision(s) against China; and recommends a shift of focus to measures that would increase cooperation among sovereign states in international relations.

**Keywords: China, COVID-19, International Law, Culpability**

## 1.0. Introduction

The extent of the damages caused by the Covid-19 pandemic and the depths of the impending global health and economic crises have irked the fury of several individuals, groups, and agencies who make calls for legal suits against China regarding the manner with which the Asian nation's authorities handled the Coronavirus outbreak. The consensus is that China should be made to pay heavy compensations to other countries of the world. Interestingly, some parties have already taken steps to enforce legal claims against China. Lawsuits have been filed against China in some American states including Nevada, Florida, California, and Texas. The Texas lawsuit was specific about its claims, demanding a compensation of \$20trillion from China.<sup>1</sup> Meanwhile, experts in China have condemned these calls and actions as they constitute unnecessary distractions during this critical period. This paper does not intend to take sides with any party. Rather, it aims to critically evaluate China's culpability under the framework of existing international laws.

## 2.0. Facts about Covid-19?

According to the World Health Organization,<sup>2</sup> Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus. It was first discovered in the City of Wuhan in China from where it spread to other parts of the world. Figures from the World Health Organization as of 7<sup>th</sup> September 2020, suggest that there were 27,032,617 confirmed cases of Covid-19 with 881,464 deaths worldwide<sup>3</sup>. Aside from being a major health crisis with its associated loss of lives and reduction in global health quality, Covid-19 has also triggered an undesirable economic situation all over the world. National economies were locked down, schools, worship centres, and other public centres were shut down, businesses are facing one of the worst moments ever; unfortunately, many will not remain afloat after this pandemic. Sadly, millions of jobs have already been lost. In Nigeria, for instance, The economy was almost grounded following a stay-at-home order from the Federal government which restricted movement from March 29, 2020. Inter-state movement was banned; only essential services were allowed to go on<sup>4</sup>. However, the lockdown measures have been eased gradually since May 4, 2020<sup>5</sup>. Should China be singularly held responsible for all these damages? The study aims to take a critical assessment based on international Laws to answer this question.

## 3.0. Critical Assessment of China's Culpability

China's culpability with regards to the international spread of the Covid-19 pandemic and the damages it has caused can be assessed with the provisions of some international laws concerning such matters.

The first and perhaps, most vital instrument to evaluate the actions of China in handling the Covid-19 outbreak is the International Health Regulations (IHR) of 2005. The IHR, a legally binding instrument states clearly in its Article 6(1):

<sup>1</sup> See Aarshi Tirkey, Corrective Justice: Can China be Held Responsible for Covid-19, Accessed on July 20, 2020, <https://www.orfonline.org/expert-speak/corrective-justice-can-china-be-held-responsible-for-covid19-66060/>

<sup>2</sup> See WHO, Coronavirus, Accessed on July 20, 2020, [https://www.who.int/health-topics/coronavirus#tab=tab\\_3](https://www.who.int/health-topics/coronavirus#tab=tab_3)

<sup>3</sup> See WHO, Coronavirus disease (COVID-19) Situation Report – 185, Accessed on July 20, 2020, [https://covid19.who.int/?gclid=CjwKCAjwNf6BRAwEiwAkt6UQsUFiDXyB\\_Di45adoAl\\_wyEJytnPvrtofuzBi8GKu9DNPhPgykXqRoCs2MQAvD\\_BwE](https://covid19.who.int/?gclid=CjwKCAjwNf6BRAwEiwAkt6UQsUFiDXyB_Di45adoAl_wyEJytnPvrtofuzBi8GKu9DNPhPgykXqRoCs2MQAvD_BwE)

<sup>4</sup> See OSAC, Health Alert: Nigeria, Phase Two Of Lockdown Begins June 2, accessed on September 28, 2020, <https://www.osac.gov/Content/Report/197cafd0-ea8c-4bb1-aa3f-18d51be66f02>

<sup>5</sup> See Kazeem, Nigeria is set to ease its coronavirus lockdown in major cities despite mounting cases, accessed on September 28, 2020, <https://qz.com/africa/1846758/nigeria-to-ease-coronavirus-lockdown-from-may-2-says-buhari/>

“Each State Party shall notify WHO, by the most efficient means of communication available, by way of the National IHR Focal Point, and within 24 hours of assessment of public health information, of all events which may constitute a public health emergency of international concern within its territory in accordance with the decision instrument, as well as any health measure implemented in response to those events.”<sup>6</sup>

The Coronavirus outbreak could rightly be described as an event that may constitute a public health emergency of international concern. Hence China, under the International Health Regulations, is under the obligation to report the Covid-19 outbreak to the World Health Organization within 24 hours. The scenario, however, was not the way it was expected. Even though some sources traced the first case of Coronavirus to November 17<sup>th</sup>, 2019,<sup>7</sup> Chinese authorities admitted that the first case was identified on December 27<sup>th</sup>, 2019, but the World Health Organization was only notified on the 31<sup>st</sup> of December 2019<sup>8</sup>. This proves that China failed to notify the World Health Organization within 24 hours of assessment. Hence, we can rightly say that China is culpable of violating an important provision of the International Health Regulations.

Secondly, the Biological Weapons Convention<sup>9</sup>, which was opened for signatures on 10<sup>th</sup> April 1972, and entered into force on 26<sup>th</sup> March 1975 offers another perspective to examine the guilt or otherwise of China in the spread of the coronavirus disease. Article 1 of the Biological Weapons Convention<sup>10</sup> forbids the “development, stockpiling, acquisition, retention, and production of Biological agents and toxins of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.” A biological agent has been defined as any organism which can cause death, disease or incapacity<sup>11</sup>. In line with this definition, the Coronavirus could rightly be included under the umbrella of biological agents of concern to the convention. We have established in the paragraph above that China notified the World Health Organization much later than it should. Therefore, China violated the Biological Weapons Convention.

Furthermore, Peter Tzeng provides another possible view of China’s culpability through the World Health Organization’s constitution.<sup>12</sup> Article 21 of the WHO constitution grants the World Health Assembly the authority to adopt regulations including the International Health Regulations. Article 22 of the same constitution also provides that regulations adopted pursuant to Article 21 shall come into force for all Members after due notice has been given<sup>13</sup>. China is a member of the World Health Organization. Hence, it could be argued that violation of the International Health Regulations (on grounds of delayed notification) directly affects the interpretation of the World Health Organization’s constitution.

#### **4.0. The Possibility of Advancing Claims against China**

Having established that China violated a couple of international regulations; it’s pertinent to evaluate the possibility of bringing the claims against the Asian country. The First port of call would be the 2001 Draft Articles on the Responsibility of States for Wrongful Acts<sup>14</sup>. This Article provides that a state violating international law has an obligation to make full reparation for the injury caused

<sup>6</sup> See WHO, International Health Regulations, Accessed on July 21, 2020, <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1>

<sup>7</sup> See Fadi Farhat, Has China violated any International Law on the Virus Outbreak? Accessed on July 20, 2020, <https://thearabweekly.com/has-china-violated-international-law-virus-outbreak>

<sup>8</sup> See NHC, Sixteen COVID-19 Rumours about China, Accessed on September 28, 2020, [http://en.nhc.gov.cn/2020-04/28/c\\_79717\\_3.htm](http://en.nhc.gov.cn/2020-04/28/c_79717_3.htm)

<sup>9</sup> See ICRC, Biological Weapons Convention, Accessed on September 28, 2020, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/450>

<sup>10</sup> See UN, The Biological Weapons Convention, Accessed on July 21, 2020, <https://www.un.org/disarmament/wmd/bio/>

<sup>11</sup> See Thavaselvam, & Vijayaraghavan, Biological warfare agents, Accessed on September 28, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3148622/>

<sup>12</sup> See Peter Tzeng, Taking China to the International Court of Justice over Covid-19, Accessed on July 21, 2020, <https://www.ejiltalk.org/taking-china-to-the-international-court-of-justice-over-covid-19/>

<sup>13</sup> See WHO, Constitution of the World Health Organization, Accessed on September 28, 2020, [https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf)

<sup>14</sup> See UN, Responsibility of States for Internationally Wrongful Acts 2001, Accessed on September 28, 2020, [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)

by the internationally wrongful act.<sup>15</sup> It would be justifiable to go down the history line to observe the role of state responsibility and other international laws in the settlement of disputes with regards to infectious diseases. It has been observed that the customary rule of state responsibility has played no discernable role in the spread of infectious diseases over the long history of international health cooperation.<sup>16</sup> Similarly, the records show that state practice has shown little interest in principles of state responsibility for acts alleged to be legally wrongful with respect to the transboundary movement of pathogens. Even when states have argued that countries violated applicable treaties, they have not seriously pursued compensation against countries accused of breaching treaty obligations.<sup>17</sup> Also, no country has been held responsible under the international legal framework for an infectious disease outbreak.<sup>18</sup> The H1N1 influenza, HIV, and the Ebola virus disease are interesting instances to note. However, if parties decide to bring claims against China, they would have to slug it out with a handful of challenges. This paper will look at these challenges under two broad categories - the challenge of interpretation and application; and the challenge of competence.

#### **4.1. *The Challenge of Interpretation and Application***

It would be an uphill task to interpret and apply the provisions of the various international regulations to advance legal claims against China. First of all, it could be argued that although the International Health Regulations provided for a dispute settlement mechanism, it has no specific provision requiring the payment of compensation for damages associated with the violation of its rules. This situation is not peculiar to the International Health Regulations<sup>19</sup> alone. Most treaties do not address whether the violation of their rules creates an obligation to compensate those state parties adversely affected by harms caused by the violation<sup>20</sup>. Hence it would be a challenge to identify a legal basis for the financial claims advanced by parties who demand compensation from China with regards to the damages caused by Covid-19.

Another difficulty of interpretation and application lies in the international principle of responsibility of states. The state responsibility applies when there is a causal link between the alleged violation of an international obligation and the damage suffered by affected states. The International Law Commission has explained that the causation requirement focuses on “the injury from and ascribable to the wrongful act, rather than any and all consequences flowing from an intentionally wrongful act.” This explanation means that China can only be held responsible for the damages directly linked to its roles in the spread of the coronavirus. It’s obvious that many countries did not implement adequate measures to prevent or at least, check the spread of the virus within their territories. Hence, the challenge here lies in subtracting the actual damages linked directly to China’s wrongful acts from the entire damages caused by the pandemic.

Article 21 of the World Health Organization’s constitution which grants the World Health Assembly the authority to adopt regulations could also be faced with the challenge of interpretation (WHO, op. cit., p.4). It could be argued that the article concerns only the authority to adopt regulations and the process of the regulations coming into force, and not the legal obligation of Member States to comply with those regulations<sup>21</sup> (Tzeng 2020, op. cit., p.4).

<sup>15</sup> See UN, Responsibility of States for Internationally Wrongful Acts 2001, Accessed on July 22, 2020, [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>16</sup> See Huo ZHengxin, Suing China for COVID-19 is not taking international law seriously, Accessed on July 21, 2020, <https://news.cgtn.com/news/2020-04-11/Suing-China-for-COVID-19-is-not-taking-international-law-seriously--PAXE13o8GA/index.html>

<sup>17</sup> See David Fidler, Covid-19 and International Law, Accessed on July 20, 2020, <https://www.justsecurity.org/69394/covid-19-and-international-law-must-china-compensate-countries-for-the-damage-international-health-regulations/>

<sup>18</sup> See Tirkey, Corrective Justice: Can China be Held Responsible for Covid-19?

<sup>19</sup> See WHO, International Health Regulations Third Edition (2005), Accessed on September 28, 2020, <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf;jsessionid=1FD446DFBDAC5C7E37C780DE387C0574?sequence=1>

<sup>20</sup> See Fidler, Covid-19 and International Law

<sup>21</sup> <sup>21</sup> See Tzeng, Taking China to the International Court of Justice over Covid-19

#### 4.2. *The Challenge of Competence*

Having examined the difficulties posed by interpretation and application of regulations, it is therefore pertinent to also evaluate the possible courts or forums which are competent enough to hear a lawsuit against China and enforce its decisions. As reported by John Bellinger in the Washington Post, some lawsuits have been filed against China in some domestic courts in the United States of America<sup>22</sup>. However, it should be noted that the principle of sovereign immunity of states enshrined in Article 1 of Chapter 2 of the United Nations' Charter<sup>23</sup> protects China from being dragged to domestic courts. Hence domestic courts are not competent to hear a lawsuit against China in this issue.

Secondly, by virtue of the authority granted the World Health Assembly in Article 21 of the World Health Organization's constitution to adopt relevant regulations (WHO, op. cit., p.4), a breach of the International Health Regulations, a regulation adopted by the World Health Assembly, could be rightly described as a question concerning the interpretation and application of the World Health Organization's constitution. Also, Article 75 of the same constitution provides that any question or dispute concerning the interpretation or application of the constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice. Therefore, the International Court of Justice becomes another possible option where lawsuits could be filed against China. However, the court must obtain the consent of the countries affected by a particular case to settle their differences. In the case of Covid-19, China is unlikely to consent to any legal process filed at the International Court of Justice.

Finally, the matter could be referred to the United Nations Security Council, one of the six principal organs of the United Nations established by the United Nations Charter<sup>24</sup>. Again, China is a permanent member of this council. Hence it is likely to veto any decision of the council which is not in China's best interest. It should be noted that a veto by a single permanent member of the Security Council on any resolution blocks the adoption of such resolutions. With this in mind, the United Nations Security Council may not be able to enforce decisions against China.

#### 5.0. Conclusion

This paper has established that even though the culpability of China can be proved under the framework of international law, there's no court or forum competent enough or fully capable of enforcing legal claims against China with regards to its roles in the spread of the Coronavirus disease. Therefore, it may not worth the while to push claims against China at this moment. Rather, the principle of cooperation should guide the decisions and actions of members of the international community as we struggle to push this virus back. The Coronavirus might have triggered a fast-evolving new normal, but we need to focus and minimize its potential harms. Going forward, there is the need to establish clear mechanisms to guide the responsibility of states with regards to the prevention and control of infectious diseases. In conclusion, the international community should focus on increasing cooperation amongst sovereign states in the practice of international relations and establishing specific legally binding measures against the failure of any country to cooperate. This strategy will equip the international legal system better to settle international disputes in the future.

<sup>22</sup> See Bellinger, Suing China over the coronavirus won't help. Here's what can work, Accessed on September 28, 2020, <https://www.washingtonpost.com/opinions/2020/04/23/suing-china-over-coronavirus-wont-help-heres-what-can-work/>

<sup>23</sup> See UN, Charter of the United Nations, Accessed on September 28, 2020, <https://www.un.org/en/charter-united-nations/>

<sup>24</sup> See UN, United Nations Security Council, accessed on September 28, 2020, <https://www.un.org/securitycouncil/content/what-security-council> China first used its veto on 25 August 1972 to block [Bangladesh's](#) admission to the United Nations. The Asian country also vetoed, along with UK, a resolution calling on the immediate cessation of military action by the Israeli army against Egypt in 1956 during the [Suez Crisis](#). Also in December 1989, the United Kingdom, France and the United States vetoed a draft resolution condemning the [United States invasion of Panama](#)

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