

ASSESSING CHINA'S CULPABILITY THROUGH INTERNATIONAL LAW

Jimoh Maryam Ololade

Faculty of Law, Ahmadu Bello University, Zaria

marexjay@gmail.com

08107812348 / 07057718454

Abstract:

A common phrase in global health literature is that "diseases know no borders. This is the same issue with the spread of covid-19. Which originated in China and caused a global meltdown on the world's economy. Since then," Assessing China's culpability through international law has been a controversial topic. This topic has been hampered by a lack of empirical evidence, and also the lack of knowledge of international law by legal researchers. Here we discussed at length, what international laws are, how they are applied, the obligation of States under international public law, how to assess the culpability of the Republic of China, Through Justification on their culpability, China's legal obligation, Jurisdictional issues, remedies available to the aggrieved party. This article provides information about all the aforementioned, clearly and concisely. This article has critically assessed the culpability of China and otherwise, with clarification on both sides.

INTRODUCTION

COVID-19 -- a word that barely meant almost nothing at the beginning of this year now heralds an epoch of milestone suits, unlocking a floodgate of claims brought by activists, nations, and other disgruntled forces seeking to hold China culpable for the deaths, untoward economic hardship and global turmoil caused by the virus.

In the space of 20 years, China has taken the world through a gruesome path, twice. According to Yanzhong Huang, a global health expert specializing in China at Seton Hall University, during the

2002/2003 SARS pandemic which killed over 700 people worldwide,¹ patients were driven around to prevent them from being seen by the visiting delegation of W.H.O. experts.²

Barely two decades after being condemned for a sluggish reaction to SARS, China is once again facing worldwide scrutiny for its handling of the novel coronavirus. China repeated the obstruction of information that worsened the SARS crisis 18 years earlier. It tried to suppress the SARS epidemic, which led WHO member states to adopt the new International Health Regulations in 2005.³

In both cases, China and the world would have been spared thousands of unnecessary deaths had China acted forthrightly by following its legally binding international obligations.

Besides the unfortunate loss of lives, the COVID-19 pandemic has caused the global economy to suffer enormous setbacks: capital markets across the world have plummeted, the International Monetary Fund now projects a 3% drop in the global economy instead of the initially projected 3.3% rise, and 25 million people are expected to join the ranks of unemployed individuals.⁴

Transportation, tourism, manufacturing, and energy sectors have also been badly struck by the lockdowns imposed on various countries to mitigate the crises. Nigeria is not exempted from the socio-economic problems which have emanated from both the pandemic and measures to curb it. Many businesses have closed

¹ Severe acute respiratory syndrome (SARS) < <https://www.cdc.gov/sars/about/faq.html> > Accessed on 23rd July 2020.

² [New York Times 2020]: Trump slams W.H.O over coronavirus. He is not alone < <https://www.google.com/amp/s/www.nytimes.com/2020/04/08/world/asia/trump-who-coronavirus-china.amp.html> > Accessed on 23rd July 2020.

³ World Health Assembly Adopts new International health regulations < https://www.who.int/mediacentre/news/releases/2005/pr_wha03/en/ > Accessed on 23rd July 2020.

⁴ The Great Lockdown: Worst Economic Downturn Since Great Depression < <https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/> > Accessed on 23rd July 2020.

down due to reduced demand and inadequate cash flow; laborers and contract staff without alternatives have been left without means of livelihood. School children, many of whom are chronically undernourished, have missed up to a term's equivalent of school time in Nigeria while families staying at home have resorted to self-vigilante tactics to prevent robbery attacks by hoodlums.

Recently, a group of Nigerian lawyers led by Prof. Epiphany Azinge (SAN) sued the Chinese government before the Supreme Court of Nigeria for a 200 billion Naira claim. This suit might be unsuccessful because they were filed before municipal courts and are rooted in domestic law.⁵ About 14 similar suits have been filed by individuals, small businesses, and states.⁶ However, these claims have next to zero chances of success because foreign sovereign states are immune to prosecution before domestic courts.

Given the high cost - in terms of personnel and material - of China's negligence, it becomes necessary to examine the culpability of China through international law, since the virus originated from Wuhan, the Republic of China. First, we must ask this pertinent question: what international law safeguards exist to prevent disease outbreaks from spreading from one region of the world to another?

CRITICAL ASSESSMENT OF CHINA'S CULPABILITY UNDER INTERNATIONAL HEALTH REGULATIONS.

The International Health Regulations (IHR), which was revised in 2005, was developed to prevent the international spread of diseases and provide a suitable response to international public health emergencies.⁷ China is one of the 194 signatories of the 2005

⁵ In Defense of China's Sovereign Immunity <, <https://www.legalnaija.com/2020/04/in-defence-of-chinas-sovereign-immunity.html>> Accessed on 23rd July 2020.

⁶ What's in the Many Coronavirus-Related Lawsuits Against China? <https://www.lawfareblog.com/whats-many-coronavirus-related-lawsuits-against-china> Accessed on 23rd July 2020.

⁷ Strengthening Health Security by Implementing the International Health Regulations (2005) <

International Health Regulations, which is legally binding.⁸ However, pandemics such as the 2009 H1N1 flu pandemic, the 2014 Ebola pandemic, and the ongoing Covid-19 pandemic have defied these measures. China has been accused by intelligence officials of providing false data on the COVID-19 pandemic. The chairman of the France-based World Medical Association said, "China's figures aren't credible".⁹ This is in contravention to Article 6 of the International Health Regulations (2005) which states that: *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 following the decision instrument, as well as any health measure implemented in response to those events.*¹⁰

Article 7 of the International Health Regulations (2005) further states that: *If a State Party has evidence of an unexpected or unusual public health event within its territory, irrespective of origin or source, which may constitute a public health emergency of international concern, it shall provide to the WHO all relevant public health information under Article 6.*¹¹

In December 2019, Li Wenliang, an ophthalmologist at Wuhan Central Hospital, voiced out in an online chatroom on December 30. That night, Wuhan public health authorities solicited information

<https://www.who.int/ihr/publications/9789241580496/en/> > Accessed on 23rd July 2020.

⁸ International Health Regulations < https://www.who.int/health-topics/international-health-regulations#tab=tab_1 > Accessed on 23rd July 2020.

⁹ Coronavirus: China hid the scale of the Outbreak — US Intelligence report < <https://www.google.com/amp/s/amp.dw.com/en/coronavirus-china-hid-scale-of-outbreak-us-intelligence-report/a-52988929> > Accessed on 23rd July 2020.

¹⁰ International health regulations 2005 < <https://www.globalhealthrights.org/instrument/international-health-regulations-2005/> > Accessed on 23rd July 2020.

¹¹ Ibid

on the emergence of a “pneumonia of unclear cause,” but omitted Li’s discussion about the possibility of SARS or a novel coronavirus. Medical practitioners who tried to disclose the emergence of the virus was suppressed or jailed.¹²

On the 30th of December 2019, China officially informed the World Health Organization but claimed that there was no human to human transmission of the virus and that it was completely zoonotic or passed only from animals to humans. This information provided to the W.H.O was false because as at that time more than one-third of those with the Covid-19 sickness have not visited the Wuhan market.¹³ Furthermore, the Chinese government rejected requests for an independent investigation of the epidemic by international scientists until late January, without explanation;¹⁴ this is a violation of Article 10 which states that *when WHO receives information on an event that may constitute a public health emergency of international concern, it shall offer to collaborate with the state party concerned in assessing the potential for international disease spread.*

Besides the misinformation, China did not send vital information to the World Health Organization as at when due.¹⁵ Various, researchers and scholars in the medical field unanimously agreed that, if the Chinese government had given accurate information and taken proactive measures, Covid-19 would have been an epidemic and not a pandemic. From the foregoing, we are led to only one logical conclusion and that the Chinese government has breached Article 6, Article 7, and Article 10 of the International health regulations. This makes them Culpable under International Law.

¹² Liability of china for the covid-19 outbreak, states responsibility and jurisdictional challenges < the <https://moderndiplomacy.eu/2020/04/13/liability-of-china-for-covid19-outbreak-state-responsibility-and-jurisdictional-challenges/>> Accessed on 23rd July 2020.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

We could also conclude, that China cannot be held culpable because the arguments that China can be held are based on the allegations that China failed to inform the W.H.O about the viral outbreak (Art.6) and to provide “timely, accurate and sufficiently detailed and available public health information” about it (Art.7). Accusing that China has violated the IHR would have to navigate how the WHO has evaluated China's performance.¹⁶ The senior officials of the W.H.O have repeatedly praised China's leadership for its "openness to share information" with the international community in January. Praising them implies that they have been cooperative in terms of communication and measures to stop the upsurge of the pandemic. Though the W.H.O is not entitled to decide how states and parties interpret the IHR, the IHR itself gives the WHO such prominence and authority that its actions in this context can by no means be ignored.¹⁷

With this line of events, we could also safely conclude that the Chinese government cannot be held culpable because of the timely informing the W.H.O and also putting the measures in place to curb the spread of the disease.

According to Article 75 of the International health regulations, it provides that any dispute concerning its rules and breach of rules could itself be referred to the International Court of Justice (I.C.J) for dispute adjudication. Sadly, the international dispute adjudication is a consent-based system.¹⁸ The I.C.J can only exercise its jurisdiction when a State has given its consent, which is not the

¹⁶ Suing China for covid-19 is not taking international law seriously < https://www.google.com/amp/s/news.cgtn.com/news/2020-04-11/Suing-China-for-COVID-19-is-not-taking-international-law-seriously--PAXE13o8GA/share_amp.html > Accessed on 23rd July 2020.

¹⁷ Ibid.

¹⁸ Wikipedia: Jurisdiction of International Court of Justice < https://en.m.wikipedia.org/wiki/Jurisdiction_of_the_International_Court_of_Justice#:~:text=The%20key%20principle%20is%20that,has%20no%20true%20compulsory%20jurisdiction.&text=Article%2036%20outlines%20four%20bases,contentious%20cases%20before%20the%20ICJ. > Accessed on 23rd July,2020.

case because China is one of the few countries, along with the US, which has not accepted the jurisdiction of the International Court (I.C.J), so it would always be open to the CCP — Communist Party of China to reject that court's intervention.¹⁹

CHINA'S LEGAL OBLIGATION UNDER INTERNATIONAL LAW COMMISSION

Having established that the Chinese government has wronged other member states of the W.H.O and may be held culpable under the international law, we have to look at the International Law Commission, which can also be known as the Draft Articles to further assess the culpability of China. According to Article 1 of this law **“Every internationally wrongful act of a State entails the international responsibility of that State”**; therefore, a state bears responsibility for an internationally wrongful act it commits. This authorization rendition of the law of the state was formulated with the infusion of countries to reflect a fundamental principle of international customary law, which binds all nations.

According to Article 2 of the International Law Commission, *"An act or omission qualifies to be an internationally wrongful act only when that act or the omission can be attributable to the State under international law and constitutes an international obligation of the State. It further explains a wrongful act to be an act attributable to a state which constitutes a breach of an international obligation"*.

The local Wuhan authorities as well as the Chinese Central Government - which are parts of the Chinese state - may be held responsible and their alleged wrongful conduct can be attributed to China. The Chinese government refused to give accurate information, which under the international health regulation 2005, they are expected to report timely, accurate, and sufficiently detailed

¹⁹ Coronavirus: CCP Beware, the Lawyers Are Coming <
<https://bitterwinter.org/coronavirus-ccp-beware-the-lawyers-are-coming/> >
Accessed on 23rd July 2020.

public health information about the events happening in its territory to the WHO. They failed to do and that makes them culpable under the International wrongful act which violates Article 14(3) of the International Law Commission. Which states

“The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.”

Even after, knowing the situation of things they continued to violate these laws. In the case of *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania 1948)*. The court held that no state may knowingly allow its territory to be used for acts contrary to the rights of the other states. The Chinese government allowed the activities that took place in its country to harm other states intentionally.

Having established that the Chinese government are can be held culpable for mishandling the Covid-19 pandemic. It is pertinent to note that the international law commission is a customary international law. This law has played little to no role in the spread of infectious disease over the long history of international health cooperation. Similarly, no proof has been found to ascertain that the causation prerequisite has been satisfied. Tedros Adhanom Ghebreyesus, W.H.O director-general, stated that China “has bought the world time” regarding the Covid-19 pandemic. By locking down the whole city for 76 days to contain the spread of the pandemic. This effort made by the Chinese government has effectively postponed the international spread of the virus.

Article 34 of the Draft Articles states that a state that “intentionally breached an international obligation is liable to full reparation for the injury caused by the internationally wrongful act,” Reparation shall be made available in the form of restitution, compensation, satisfaction, and even in the form of assurance of non-repetition of the wrongful act. One thing we failed to note however is that no

International law or the convention contains rules requiring payment of compensation for damage to other countries associated with violations of convention rules. The reason is simple, as it was rightly stated above. The outbreak of a pandemic has no boundary, no one knows where and when the next pandemic is going to come from. Therefore, requiring a country where the pandemic started to start paying compensation involves challenging scientific, public health, and political questions.

CONCLUSION

China is a member of the World Health Organization and is legally bound like other countries to prevent outbreaks like this. However, its perceived failure to meet up with its obligations has raised questions on whether it should be held responsible or not. Different factors point for and against an affirmation of China's culpability. However, it is left to major international stakeholders to decide whether or not to pursue litigations against China in unprecedented lawsuits that will undoubtedly make history.