

INTERNATIONAL LAW AS CATALYST OF JUSTICE IN TIMES OF PANDEMIC COVID-19

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Introduction

The Corona virus outbreak has been declared a global pandemic, which is rampaging day by day. It has challenged the preparedness of international community. This outbreak came into light when China informed World Health Organization of its rampaging nature. Entire World has come to standstill because of this rampaging virus. Amidst this, there are many countries alleging China for delays and breach of legal duty. This is a small critical note discussing those international legal responsibilities, which China was obliged but refrained from performing.

Critical Analysis of International Health Regulations amidst outbreak

China is member to 2005 International Health Regulations, which are binding and bestow duty on State to rapidly gather information about Public health emergency with potential international implications and

contribute to a common understanding. The legally binding International Health Regulations were adopted by the World Health Assembly in 1969, to control six infectious diseases: cholera, plague, yellow fever, smallpox, relapsing fever, and typhus. The 2005 revision added smallpox, poliomyelitis due to wild-type poliovirus, SARS, and cases of human influenza caused by a new subtype, set forth in the second annex. Article 6 of the *International Health Regulations* requires “states to provide expedited, timely, accurate, and sufficiently detailed information to WHO about the potential public health emergencies identified in the second annex in order to galvanize efforts to prevent pandemics”.

WHO also has a mandate in Article 10 to seek verification from states with respect to unofficial reports of pathogenic microorganisms. China was also expected to

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participate in collaborative assessment and provide transparent, timely information within 24 hours to WHO, however it vehemently ignored all these mandates. However, this would be wrong to say that only China is entirely at fault. The objective of WHO is “the attainment by all peoples of the highest possible level of health”. There have been various delays on part of WHO as well, these delays indicate irresponsibility on part of it. There had been reckless tweets made by WHO on corona outbreak, they instead of handling the situation meticulously, took thinks lightly.

Statements in media like, “China has set new standard for outbreak control”, were not much needed that time, instead there was a sheer need of handling situation, directions on travel advisory and special health screening. It would be diligent to refrain from going into the veracity of the facts but this true that accurate information and proper responses were unnecessary delayed by China and WHO did nothing to either reprimand it or control the situation itself. Therefore, things fell prey to disaster to which today entire world is victim of.

China’s Legal Responsibility vis-à-vis International Law

¹Factory at Chorzow (Germ. v. Pol.), 1927 P.C.I.J.

²Corfu Channel, United Kingdom v Albania, Judgment, Merits, ICJ GL No 1, [1949] ICJ Rep 4.

³Nicaragua v United States, Merits, Judgment, (1986) ICJ Rep 14, ICGJ 112 (ICJ 1986), Article 11

If China has legal responsibility, what are those have been discussed briefly in forthcoming paras. China’s conduct is wrongful, it is unlawful as well and other states definitely have a legal remedy as well. Under Article 1 of the International Law Commission’s 2001 **Responsibility of States for Internationally Wrongful Acts**, *states are responsible for their internationally wrongful acts and this has been imbibed in various precedents as well*¹. This commission’s restatement of the law of state responsibility was developed with the input of states to reflect a fundamental principle of international customary law, which binds all nations².

An “organ of the state” includes any person or entities that are acting in accordance with national law³. Therefore, local authorities to National government of China are covered under this definition as interpreted by ICJ and Customary international laws. China’s failure to expeditiously and transparently share information with WHO in accordance with the International Health Regulations constitutes an early and subsequently extended breach of its legal obligations fall under wrongful acts as defined under Article 11 of ARSIWA. China may *not have intentionally created a global pandemic*,

International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, (ARSIWA).

but its malfeasance is certainly the cause of it.

Its delay has led to Pandemics, large-scale outbreaks of infectious disease that can greatly increase morbidity and mortality over a wide geographic area and cause significant economic, social, and political disruption. The cost of the coronavirus grows daily, with increasing incidents of sickness and death. The mitigation and suppression measures enforced by states to limit the damage are wrecking the global economy.

Under Article 31 of the Articles of State Responsibility, states are required to make full **reparations** for the injury caused by their internationally wrongful acts⁴. Injuries include damages, whether material or moral⁵. Injured states are entitled to full reparation “in the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition” (Article 34)⁶. **Restitution** in kind means that the injured state is entitled to be placed in the same position as existed before the wrongful acts were committed (Article 35)⁷. To the extent that restitution is not made, injured states are entitled to compensation (Article 36) even. However, the damage caused here is of lives, which are irreparable, but definitely, reparations can seek to better the future. Finally, injured states are entitled to

guarantees of **non-repetition**, although the 2005 International Health Regulations were designed for this purpose after SARS but still the another pandemic due to recklessness of few knocked the doors of entire world.

In November 2002, nostalgia to 2020 outbreak, a form of atypical pneumonia called severe acute respiratory syndrome (SARS) was a worldwide health threat and at that time, also China was the most effected with huge devastation of population. From the perspective of international actors, helping China to fight future epidemics also helps themselves. Against the background of a global economy, diseases originating in China can be spread and transported globally through trade, travel, and population movements. Moreover, an unsustainable economy or state collapse spawned by poor health will deal a serious blow to the global economy. It was a deadly flu virus, which terrified the entire world economy.

The Chinese government promised to enhance its capacity to combat future outbreaks of SARS and other infectious diseases, reform-minded leaders in the forefront assured of fighting epidemic diseases and supporting public health in 2002, but their repetitive action in 2020 needs to be heavily reprimanded, as this is part of International Responsibility⁸. Disease caused

⁴*Supra* 1

⁵ New Zealand v. France (1990) 82 I.L.R. 500. (Rainbow Warrior Case)

⁶ *ibid*

⁷ *ibid*

⁸ Germany v. USA 2001 ICJ Rep 466. (LaGrand Case)

by the new corona virus, isn't the first threatening disease that's surged around the world nor will it be the last, but this is something really threatening as compared to SARS, MERS. "*Evidence suggests that the likelihood of pandemics has increased over the past century because of increased global travel and integration, urbanization, changes in land use, and greater exploitation of the natural environment, these trends likely will continue and will intensify*"⁹. Therefore it can be concluded COVID-19, is a pandemic on a large scale which is likely to intensify as our world has turned into global village.

*Still, injured states are not without remedy.*¹⁰

Barring any prospect for effective litigation, states could resort to self-help as well. ARSIWA permits States to take lawful countermeasure is due consonance with Legal order but it should not be disproportionate.¹¹ The choice of countermeasures that injured states may select is wide open, with only minimal limitations¹². For example, countermeasures may not involve the threat or use of force or undermine the human rights of China (Article 50)¹³. The recent instance of counter measure is USA, Taipei Act. This act is a

strong non-committal to bullying strategy adopted by China since ages preventing state recognition to Taiwan. This act will shun all the efforts of China done to isolate Taiwan; as every nation who refrains to recognize Taiwan will have to bear the brunt of USA. Thus, this is a legal countermeasure against China.

However, the questions, which arise, are whether any Country will take initiative to fight against the giant super power China to ICJ, appropriate forum for Justice. The recent instance where UNSC refrained to discuss on rampaging virus COVID-19 as China misused its veto power is a sufficient example. The entire silence silences when UNSC, epitome of international peace and harmony refrains from discussing the pandemic, which has not just obliterated the international peace but also left the entire humanity to standstill. "*This is because public interest norms should be considered as erga omnes or jus cogens norms and UN should actively play a pivotal role in promoting these interactions*"¹⁴. The U.N. has the mandate and the competence to promote the progressive development of international law. UN nations should at least

⁹ Jones K E, Patel N G, Levy M A, Storeygard A, Balk D., and others. 2008. "Global Trends in Emerging Infectious Diseases." *Nature* 451 (7181): 990–93.

¹⁰ *Supra* 1

¹¹ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ GL No ... (Official Case No): [1996] ICJ Rep 226, ICGJ 205 (ICJ 1996), Article 51 ARSIWA.

¹² *Supra* 3, Gabčíkovo-Nagymaros Project, Hungary v Slovakia, Order [1997] ICJ Rep 3.

¹³ *Ibid.*

¹⁴ Delbruck, Jost, "The Role of the United Nations in Dealing with Global Problems," *Indiana Journal of Global Legal Studies*: Vol. 4: Iss. 2, Article 3(March, 27, 2020) <http://www.repository.law.indiana.edu/ijgls/vol4/iss2/3>

perceive to work on most basic fundamental rights which include global health¹⁵.

The ability of individual States, particularly the larger ones, to choose freely to opt out of a global governance for survival, cannot be viewed as compatible with the notion of a legal order as has been recently done by China and Russia, which should highly be condemned. It seems they have forgotten that ***UN is not a system of self interested states but of an emerging global society.***

Conclusion

In conclusion, Economy of countries have bruised with prolonged hardships and no

near hope of revivals, although developed economies will bounce back, what creates worry is about developing and under-developed economies, where labor class has been reduced to abject poverty.

Justice is required against wrong doings of State but this justice is at a very high cost to come!

But if you want a bauble

Slap that Bass

Slap away your trouble

Learn to Zoom Zoom

¹⁵Philip Allott, The International Court of Justice and the Voice of Justice, in FIFTY YEARS OF THE

INTERNATIONAL COURT OF JUSTICE 17. (Vaughan Lowe & Malgosia Fitzmaurice eds., 1996).