

# COVID 19: ASSESSING CHINA'S CULPABILITY

## THROUGH INTERNATIONAL LAW

Author-Ramawatar Singh ,IEDS,Assistant Director Incharge,Br.MSME-DI,New Delhi

### Abstract

*Covid 19 also known as Corona virus, a pandemic of the 21<sup>st</sup> century that sprang up from the negligence of the Chinese people and is now affecting the inhabitants of the 21<sup>st</sup> century. Corona virus originated from Wuhan a state in China in the late December of 2019. All efforts to find the cure of this virus have been futile. Therefore, in these writing I'll be assessing China as the one who is responsible for the blame of this virus, through international law. International law on the other hand is written in Latin as **jus gentium** (the law of Nations) this law is the Law that binds nations together. International law, also called law of nations, the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors. The term was coined by the English philosopher Jeremy Bentham (1748–1832)..*

**Introduction** According to Bentham's classic definition, international law is a collection of rules governing relations between states. It is a mark of how far international law has evolved that this original definition omits individuals and international organizations—two of the most dynamic and vital elements of modern international law. Furthermore, it is no longer accurate to view international law as simply a collection of rules; rather, it is a rapidly developing complex of rules and influential. In its broadest sense, international law provides normative guidelines as well as methods, mechanisms, and a common conceptual language to international actors—i.e., primarily sovereign states but also increasingly international organizations and some individuals. Although international law is a legal order and not an ethical one, it has been influenced significantly by ethical principles and concerns, particularly in the sphere of human rights. And under these law a nation is responsible for the welfare of the nations around her and the world at Large<sup>1</sup>.

The Republic of China is regarded as the principal source of this virus and it's worthy of bearing all the blame and havoc caused in the world at large. Globally as infection passes 12.5million, having a total of over 3million in the United States of America. the U.S. President, Donald Trump, claimed to have seen the evidence to substantiate the unproven theory that the Coronavirus originated at the Wuhan Institute of Virology<sup>2</sup>. Previously, Trump has frequently and deliberately referred to the Coronavirus as the “Chinese virus”, further emphasizing public sentiments on the likelihood of the COVID-19 being a biological weapon masterminded by China to wage war against the entire world.

The American president Donald Trump have been putting all blame on the republic of China for the damages and havoc caused, especially to the United States of America. Trump in one of his speech says that he may seek China for damages and China will pay for the damages caused by the virus,. US President Donald Trump suggested that he may seek damages from China over the coronavirus outbreak which began in the Chinese city of Wuhan and spread around the world. Trump said in his speech at white house that;

*"We are not happy with China," Trump said at a White House briefing. "We are not happy with that whole situation because we believe it could have been stopped at the source.It could have been stopped quickly and it wouldn't have spread all over the world," he said. "There are a lot of ways you can hold them accountable," Trump said. "We're doing some very serious investigations as you probably know."Trump was asked about a recent German newspaper*

<sup>1</sup> <https://www.britannica/.com/topic/intrenational/law>

<sup>2</sup> <https://www.bbc.com/news/amo/world-us-canada-52496098>

*editorial which called on China to pay Germany \$165 billion in reparations because of economic damage done by the virus. Asked if the US would consider doing the same, the US president said "we can do something much easier than that."Germany is looking at things, we are looking at things," he said. "We are talking about a lot more money than Germany's talking about."*

*"We haven't determined the final amount yet," Trump said. "It's very substantial. This is worldwide damage," he said. "This is damage to the US, but this is damage to the world. "There have been more than 55,000 coronavirus-related deaths in the United States and the pandemic has shut down huge swathes of the economy, leaving tens of millions unemployed<sup>3</sup>.*

Presently, almost all countries across the world are grappling with one common problem- Coronavirus or Covid-19. The Covid-19 has originated in central China's Hubei Province in wuhan which has claimed more than 560,000 lives so far and continues to adversely affect more than 213 countries, areas or territories with cases globally. However, the impact of this deadly virus could be lowered if China had been more expeditious in sharing information with the World Health Organization (WHO) and the whole world as per the provisions of International Health Regulations (IHR) (2005).

The following analysis is based on the claims that China failed to share timely information on Covid-19 to WHO. The delayed information sharing by China is seen at multi-level, such as- according to a report, the first confirmed case of Covid-19 can be traced back to 17th November 2019, while the WHO China Country Office was only informed about the virus on 31 December 2019. Moreover, China rejected offers from WHO and Centres for Disease Control and Prevention (CDC) to observe its coronavirus outbreak and help it. Further delay in providing timely information about 1,700 front-line infected medical workers and that too not reported directly to WHO are examples supporting claim that China failed to provide expeditious information on Covid-19 to the WHO.

The present position aims to analyse China's obligation under IHR to share timely information regarding the Covid-19 and the possibility of affected State Parties of IHR for approaching the international dispute resolution forum, particularly International Court of Justice (ICJ) to seek redress for such violations. It does not, however, look into any other possible claims being made against China with respect to Covid-19. Also, it is limited to analysing the violation of IHR by China and recourse to the ICJ only and does not explore other international instruments and international dispute resolution mechanism.

### **Obligation under IHR (International Health Regulations)**

The IHR, which were adopted by the World Health Assembly in 2005 and entered into force on 15th June 2007, are the only international legally binding instrument that explicitly regulates a State's obligations to the world on the spread of infectious diseases. The stated purpose and scope of the IHR under Article 2 are "to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade."The IHR empowers the WHO to act as the central repository of all required disease surveillance information, and it details the circumstances under which States have a legal obligation to report disease outbreaks to the rest of the world.

Article 6, of the IHR which states as follows

**1. Each State Party shall assess events occurring within its territory by using the decision instrument in Annex 2. 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. If the notification received by WHO involves the competency of the International Atomic Energy Agency (IAEA), WHO shall immediately notify the IAEA.**

<sup>3</sup> [https://www.google.com/amp/s/m.economictimes.com/news/international/world-news/trump-says-us-may-look-for-damages-from-china-over-virus/amp\\_articleshow/75422744.cms](https://www.google.com/amp/s/m.economictimes.com/news/international/world-news/trump-says-us-may-look-for-damages-from-china-over-virus/amp_articleshow/75422744.cms).

**2. Following a notification, a State Party shall continue to communicate to WHO timely, accurate and sufficiently detailed public health information available to it on the notified event, where possible including case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health measures employed; and report, when necessary, the difficulties faced and support needed in responding to the potential public health emergency of international concern.<sup>4</sup>**

This article lays down the obligation of notification by the State parties regarding the public health emergency. The timely information sharing is required at two stages under Article 6 stated above which is applicable in the present situation as well. Firstly, as per its clause (1), China was required “to notify WHO, 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.” China failed to comply with this obligation as it has not notified WHO within 24 hours of its assessment of the Covid-19 situation. Secondly, clause (2) of Article 6 obliges China to “continue to communicate to WHO timely, accurate and sufficiently detailed public health information available to it on the notified event, where possible including case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health measures employed; and report, when necessary, the difficulties faced and support needed in responding to the potential public health emergency of international concern.” China failed again at specifically two occasions to comply with Article 6(2) requirements. Firstly, by delaying in providing information about 1700 infected healthcare workers, it has not followed the requirement of providing timely information regarding number of cases. Secondly, China has refused the help offered by WHO and CDC which was needed to respond to this public health emergency of international concern.

China is a party to IHR (2005) and stated in its declaration that it applies to the entire territory of the People’s Republic of China, including the Hong Kong Special Administrative Region, the Macau Special Administrative Region and the Taiwan Province. China has not made any reservation to this Regulation, making itself legally bound by each and every provision of the regulation, including Article 6.

#### **Possible Recourse to the ICJ (International Court of Justice)**

Article 56 titled ‘dispute settlement’ do not explicitly refer to ICJ as forum for dispute resolution, but they do not rule out the possibility to approaching the same either. This can be inferred from its clause (4) of Article 56 which states that;

***“Nothing in these Regulations shall impair the rights of States Parties under any international agreement to which they may be parties to resort to the dispute settlement mechanisms of other intergovernmental organizations or established under any international agreement”.*<sup>5</sup>**

The right to State Parties to approach the dispute settlement mechanisms of other intergovernmental organizations or established under any international agreement.”ICJ is one such dispute settlement mechanism which is established under a international agreement i.e. ICJ Statute.

The jurisdiction for the ICJ in the present case can be established under Article 56 of the ICJ Statute which says jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the treaties in force, for instance, IHR. The present case also partially fulfils the requirement of Article 56(2) which states that;

***“In the event that the dispute is not settled by the means described under paragraph 1 of this Article, the States Parties concerned may agree to refer the dispute to the Director-General, who shall make every effort to settle it.”*<sup>6</sup>**

<sup>4</sup> The international health regulations {2005} Article 6 pg 12

<sup>5</sup> The international health regulations {2005} Article 56(4) pg 42

<sup>6</sup> The international health regulations {2005} Article 56 (2) pg 42

The article 56(2) as stated above, which lays down the matter of legal disputes which involves interpretation of Article 6 of IHR to determine whether China has breached its international obligation under Article 6 of IHR and if the answer is affirmative, the nature or extent of the reparation to be made for the breach of this international obligation by China. However, the only glitch in adjudicating a dispute in ICJ is that jurisdiction of the Court as given under Article 56(2) in contentious proceedings is based on the declaration of consent of the States. In present case, there is a high chance that China is not going to give consent for such jurisdiction as it has recently cancelled the United Nations (UN) Security Council meeting on Coronavirus.

However, ICJ jurisdiction can be invoked through other ways also, i.e., Article 65 of ICJ Statute which deals with the advisory jurisdiction of the Courts whereby UN organs can request ICJ to give its advisory opinion on the legal question. This route can be followed in present case to establish liability of China. Although such opinions of ICJ are non-binding in nature, it carries legal as well as moral authority and also contributes to the clarification and application of IHR.

#### **Conclusion:**

China is a party of both the international instrument i.e. ICJ Statute and IHR without any reservations. Hence, Article 6 and Article 56 of IHR and Article 36 of ICJ is equally applicable to China and a case can be brought against it in the ICJ for its violation of IHR, provided China declares that it recognises ICJ jurisdiction as required under Article 36(2). The possibility of such declaration coming from China remains extremely doubtful in present scenario as it is not even willing to convene a meeting on Covid-19 on international forum. Another possible legal recourse can be by opting for advisory opinion as per Article 65 of ICJ, which seems to be a more practical choice in present case, owing to not so co-operative approach of China as highlighted above. One can explore other form of mechanism for adjudicating the violation of Article 6 of IHR by China also which can be either under Article 56 of IHR such as- arbitration or under general International Law such as- UN Security Council. I hereby conclude by saying that China is indeed Worthy of the blame of Corona virus by violating article 6 and 56 of the IHR.

#### **References**

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