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**Impact of Covid 19 on International Law**

**By: Mr. Ritayan Ghosh and Miss Dishani Sen**

## ABSTRACT

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*In what is now a universal truth, the COVID 19 pandemic currently rages throughout the globe. The situation is changing on a daily basis and in a peculiar way. This pandemic has affected different sections of the society as well as the economy in general and global trade and investment in particular. Numerous people all over the world have lost their jobs due to complete or partial lockdown imposed by the government of the majority of the countries of the world to control the spreading of the virus. In the US, nearly 20lac people have filed for unemployment benefits and the numbers are increasing day by day. Birth and transmission of the Cov-2 virus and the COVID 19 illness it generates are matters of international law. The Director-General of the World Health Organization(WHO) has said, "All the countries need to work together to control and mitigate the spreading of the virus and understand the broad implications of this pandemic." Various restrictions have been implemented all over the world to control the spreading of the virus as this virus respects no borders between countries and it spreads in a community-based manner. The international community is in a mix up to make sense of the situation in which we are in now. Various scholars, intellectuals and medical experts have offered to understand, it has also revealed hidden realities, it has cautioned the world about the various risks associated with this virus and also how to remedy the challenges we face. If we have learned anything from this pandemic period is that we need our government to act efficiently, we cannot act alone as it should be a community-based act and we must maintain social distancing for the foreseeable future.*

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## **INTRODUCTION**

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As the COVID 19 pandemic continues to unravel throughout the world, we are seeing some unprecedented steps taken by the whole world which we have not even thought about before. The governments of all the countries of the world are taking numerous and unprecedented steps that can protect people from this coronavirus. Imposing lockdown, closure of borders, closure of economic activities barring essential activities, are some of the common steps the governments have taken since the pandemic enraged the world. Countries around the world are faced with both public health and economic issues on a scale not previously seen not even during the time of The Great Depression of 2008. The International Monetary Fund(IMF) has revised its global GDP growth estimate from 3.3% just 3 months ago to a contraction of 3%, something not seen since The Great Depression of the 1930s.

The birth and transmission of the Sars Cov-2 virus and the COVID 19 illness it generates and the response to it are matters of international law. From this COVID 19 pandemic, we have learned that we are inter-connected, we need the government to act efficiently and quickly, we cannot act alone, it should be a community-based act. The World Health Organization(WHO) on March 11, 2020, had declared the COVID 19 novel coronavirus disease as a global pandemic. WHO has been severely criticized by the US government and Australia's Prime Minister Scott Morrison for its attitude and laziness in declaring this disease as a pandemic. WHO has been criticized for enabling China to spread the virus throughout the world. These are some of the criticisms which are aimed at WHO. As a result of this, the American Government has stopped providing funding to the WHO which amounts to more than \$400 billion.

## **INTERNATIONAL HEALTH REGULATIONS(IHR)**

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COVID 19 pandemic has brought every country in its toes and the main purpose of all the countries is to seek a mechanism so as to balance between individual interests and economic interests as the world economy has been severely affected by this pandemic. The Coronavirus originated from an exotic wet market of Wuhan in China. This market was closed on 1 January 2020 after 320 people mainly employers, shopkeepers, workers, and customers of the wet market of Wuhan got infected on 31 December 2019 and more than 300 people of whom the majority belonged to the wet market of Wuhan in China



got infected. Several countries especially the USA has filed several suits against China for the failure to comply with the International Health Regulations 2005 which is formulated by the World Health Organization(WHO). But domestic laws are unsuited to this task because of the principle of sovereign immunity which prevents local courts from making any rulings against the acts of foreign governments. International Health Regulations are key not only to prevent but also to protect, control, and also provide a timely response to the international spread of disease. These regulations are internationally recognized regulations which were entered in 2005. After WHO declared this disease as a global pandemic, 193 member countries of the United Nations(UN) has adopted two resolutions:

- A) One that underscored the need for cooperation and global response based on unity, solidarity and multi-lateral efforts,
- B) For the need for global access to medicines, vaccines, and medical equipment required to face this pandemic.

Every country that is a member country of WHO has to abide by the International Health Regulations(IHR). IHR oblige states to report on health emergencies promptly to the WHO and considering WHO's recommendations in good faith. Through IHR, countries have agreed to build their capacities to detect, assess, and report public health events. These regulations also include specific measures at ports, airports and ground crossings to limit the spread of health risks to neighboring countries and to prevent unwarranted travel so that traffic and trade disruption is kept to a minimum<sup>1</sup>.

### **CHINA'S OBLIGATION TO OTHER STATES**

As we all know by now, COVID 19 pandemic was caused by bats from the exotic wet market of Wuhan in China. This has caused immense human and economic loss directly and indirectly for all the countries of the world. Due to strict lockdown protocols imposed in the majority of the countries, poor people were left with no jobs, money, and food. More than 3 lac people in the USA have filed for unemployment benefits during this COVID 19 pandemic. People working in factories and under different government schemes were left with no jobs when the lockdown was announced. In India, the Government of India gave a 4-hour notice to its people before announcing lockdown and four-hour notice is not sufficient time to close down all the activities. This had led to

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<sup>1</sup> <https://www.who.int/ihr/about/en/> WHO: About IHR

poor people walking on the highways, streets, railway tracks to reach their homes without any food and money. One such instance of indirect loss caused by the COVID 19 pandemic occurred when 20 people were run over by a goods train in Punjab, India. 20 people were taking rest on the railway tracks while they were returning to their homes. Numerous people have died due to hunger and sickness.

China should be held partially responsible for causing this pandemic. According to the International Health Regulations 2005(IHR), if there is any disease that affects a large number of people, WHO should be promptly reported of this disease so that they can take adequate steps if need be. But China reported lately<sup>2</sup>. The first case of coronavirus in China was in December 2019 and WHO declared coronavirus a global pandemic on 11 March 2020<sup>3</sup>. Till then many people already were infected by the virus and it spread to different countries of the world as there were no travel restrictions in the month of January and February. Article 6 of the International Health Regulations(IHR) mandates 'each member countries to notify WHO, by the most efficient means of communication available, by way of National IHR focal point, and within 24 hours of assessment of public health information'. This is one of the most important obligations of international law that must be met in other states.

Article 7 of the International Health Regulations(IHR) mandates 'if a country has evidence of unexpected or unusual public health within its territory, irrespective of origin and source, which may constitute a public health emergency of international concern, it shall provide to WHO all relevant public information'.

## **CAN CHINA BE SUED UNDER INTERNATIONAL LAW?**

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Private persons in the USA have filed suits in Missouri, Mississippi, and a \$20 trillion lawsuit in Texas but there are obstacles under the Foreign Sovereign Immunities Act of 1976, as sovereigns can only be sued when acting in their commercial capacity or for torts on US soil. According to the principles of International Law, national courts are not competent to entertain an international dispute between states. If any local court makes a

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<sup>2</sup> WORLD HEALTH ORGANIZATION: Timeline of Events of Covid 19 pandemic.

<sup>3</sup> <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19> Timeline of Events of Covid 19.

decision and ordered compensation from China, the decision will be null and void and will not be enforceable. Moreover, the judicial doctrine called sovereign immunity offers foreign governments protection against prosecution in American courts. Therefore, local courts cannot sue China according to law.

A lawsuit can be filed in the International Court of Justice(ICJ). The ICJ is one of the six principal organs of the United Nations. It settles disputes between states and gives its opinions on international legal issues to it by the United Nations. To be competent for settling any claim, the ICJ must obtain the consent of the parties or the states involved in the dispute to resolve their differences. But here neither USA nor China recognizes the jurisdiction of the court, so the ICJ has no competence to render a decision against China for this lawsuit.

International Criminal Court(ICC) can be another option where China can be sued and ICC has the power to exercise its jurisdiction over persons or states for the most serious crimes of international concern such as crimes of genocide, crimes against humanity, war crimes and crime of aggression. But here, in this case, neither China nor the USA has ratified the Rome Statute of the International Criminal Court. In United Nations Human Rights Council(UNHRC), the International Council of Jurists, headed by the Indian Jurist Adish Agarwala requested the UNHRC to make China pay “exemplary damages” for its ‘grave offence against humanity’. He alleged that China has violated human rights(right to health), the government and its authorities were negligent and incompetent, and this COVID 19 pandemic is a biological war conspiracy to propel Beijing to power. The UNHRC is not a judicial body and its main mission is to promote and protect human rights around the world and so it cannot direct China to pay “exemplary damages”. The UNHRC is a United Nations body and is responsible for strengthening the promotion and protection of human rights.

A question can arise that WHO’s 2005 IHR guidelines were violated by China, but what about state responsibility and reparations? IHR 2005 is a legally binding document adopted by the WHO member states. Its main aim is to provide a public health response to the international spread of diseases. It mandates the member states to notify WHO within 24 hours that constitute a public health emergency of international concern which has been stipulated in Articles 6 of International Health Regulations 2005. Experts of International Law have argued that due to China’s deliberate inaction to notify the WHO, it has breached an international obligation and committed an internationally wrongful act

under the Responsibility of States for Internationally Wrongful Acts 2001(RSIWA 2001). Some countries have failed to implement the IHR guidelines due to a lack of capacity and political will<sup>4</sup>. In the analysis of David Fidler, he has argued that such viruses can originate in any country and if any country finds itself in China's position in the future, no country would want to face a trillion-dollar lawsuit for deadly viruses. Another main point that makes China more powerful is that a global health emergency was declared in January end, but the majority of the countries sat back and did not act efficiently at that point of time leading to a huge number of cases in the world. The majority of the countries implemented lockdown protocols from the month of March but in Wuhan, lockdown was implemented from January. It is difficult to establish whether China can be sued in an international adjudicatory body for violating the International Health Regulations of 2005.

### **Guiding Principles of International Law.**

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Is China really responsible for causing this disease? Here are two guiding principles of International Law that can be applied to this disease and China's responsibility in it:

A) **The No Harm Principle:** This principle is the most important principle of International Law and it comes into the picture when some activities of one state cause significant cross-boundary damage to other states. No harm principle ensures that states must ensure that activities within their jurisdiction do not cause significant cross-boundary damage. This principle is mainly applied in environmental pollution cases where one state's activity cause significant damage to another state. The best decision of No Harm Principle can be seen in a decision by the ICJ in its advisory opinion in the Legality of the threat of Nuclear Weapons case:

“The existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to environment<sup>5</sup>.”

States causing international harm can be brought under the purview of the No Harm Principle under International Law. But this has been confined only to International Environmental Law and more specifically water law cases. In most cases, due diligence is

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<sup>4</sup> [www.orfonline.org](http://www.orfonline.org)

<sup>5</sup> Legality of Threat of Nuclear Weapons(Advisory Opinion) (1996) ICJ Rep 226, 29.

done between the countries to determine whether any activity can cause significant cross-boundary damage to another country. If any state can produce such proof, then any harm caused becomes irrelevant. There are no precedents of the application of No harm principle to the case of COVID 19 pandemic. This principle has been mainly used in cases of climate change and causing trans-boundary pollution. Climate change and water law are the two oldest regimes that can provide answers to questions like what happens when one states activity causes damage to another state.

**B) ILCs Draft Articles on State Responsibility:** In 2001, the International Law Commission adopted a complete draft on the Responsibility of States for Internationally Wrongful Act(RSIWA). It is extremely difficult to hold China responsible according to this draft on Internationally Wrongful Act. According to the draft articles, every internationally wrongful act entails the responsibility of that state which is provided in Article 1 of the draft article. Article 2 of the Draft states that an internationally wrongful act must- I) be attributable to the state under International Law, II) constitute a breach of an international obligation of the state.

### **How it affects International Environmental Law(IEL)?**

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The COVID 19 pandemic originated from bats which makes us realize that the international community has failed to a large extent to protect the forests, its wildlife and govern land use which has led to the disappearance of the traditional buffer zones that used to separate humans from animals and its pathogens<sup>6</sup>. As a zoonotic disease, COVID 19 is the latest newcomer in a long list of what Jared Diamond calls the ‘deadly gifts from our animal friends’. From ancient times, it is known that human health is linked with that of animals and the environment. International Environmental Law is a body of international law concerned with protecting the environment, primarily through bilateral and multilateral international agreements. If the fact that the virus originated in a live animal wet market in Wuhan is true, it would be a failure on the part of the existing legal regimes to protect the wildlife.

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<sup>6</sup> Guns,germs and steel: The Fates of Human Societies 1997

The consequences of the pandemic on environmental protection can be short term and it will affect in the long term too. In the short term, the pandemic has been a positive impact on the environment. Due to strict lockdown protocols emissions of pollutants from cars, factories, and greenhouse gas emissions have decreased significantly in countries where there is a strict lockdown. But the response to the pandemic can lead to the construction of an unprecedented number of hospitals without any proper Environmental Impact Assessment(EIA). Some countries are using sanitizer and disinfectants in those places where a huge number of cases are found to eradicate the virus. The long term impacts can be seen and felt when this pandemic is over. Due to a decline in global trade, funding towards environmental protection may get reduced from countries severely affected by this pandemic such as the USA, UK, China, Russia, India, Brazil, etc. As this crisis is completely linked with the inability to protect animals by the international community, existing legal structures need to be amended which have failed to protect the animals.

## **CONCLUSION**

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This COVID 19 pandemic has affected every sector of people be it the low-income group people or high-income group, people. Internationally this virus has spread to the majority of the countries of the world and the cases of COVID 19 are increasing day by day. Due to this pandemic, China's relations with other countries have drastically deteriorated as they had failed to report earlier about the virus to the World Health Organization. In this type of case, prompt action is required to ensure people are safe and making sure the virus doesn't spread to other countries. International flights should have been stopped earlier, movement of people should have been restricted. The steps taken by the majority of the governments were late. A special task force needs to be formed at the international level to check the spread of the virus and provide future solutions on how to mitigate the virus and lead a normal life without any restrictions. But for that to happen we need to have patience, perseverance, and cooperation among the countries so that we can come out of this thing.