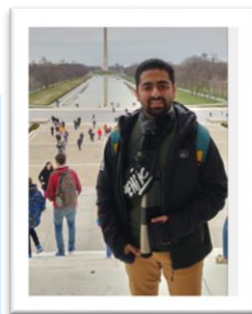


THE COVID-19 OUTBREAK : RESPONSIBILITY OF CHINA UNDER INTERNATIONAL TREATIES



Harshul Bangia

O.P. Jindal Global University, Sonipat

Abstract

Covid-19 has transformed the world into an event of global uncertainties', where people are even uncertain of what will happen with the world next week, let alone planning for future. Perhaps the biggest uncertainty in modern times concerns the role of the country where it all started i.e., Wuhan, China.

There are various questions regarding the role of China and whether the virus is state-sponsored in order to injure the economy of its rival countries? Whether China was wholly responsible for this cause? China is a party to the major international agreements regulating the biological weapons, having acceded to the Geneva Protocol in 1952 and the Biological and Toxin Weapons Convention (BTWC) in 1984.

This paper would focus on the International Human Rights violations and whether The Republic of China have violated the international Human Rights instructions such as UDHR, ICCPR along with IHR 2005? This paper will present the arguments for and against the state and find out whether the China is actually liable for the spread of Covid-19.

INTRODUCTION

The international outbreak of COVID-19 has brought the world and their governments from around the world to take serious steps of health measures in reaction to the public health demanding situations which have arisen, in addition to their corresponding social, financial, and political ramifications. The primary international organization known as the World Health Organisation (WHO) is helping the world in coping up with this time of global health crisis and a pandemic situation. There have been various international treaties which were formed with the aim of collaboration and collective peace of the world, especially after the World War II. The treaties like UDHR, ICCPR and IHR were formed as a result of various violations of basic human rights and their health issues and these treaties were aimed to provide benefits to the humans irrespective of their country. The signatories of these treaties have to follow them and any violation to their provisions can lead a country to a miserable position.

This paper is divided into several parts where in the Part II the importance of international treatise have been explained. The Part III deals with the responsibility of China and it's violation of these treaties. The Part IV deals with the arguments in favour of China in respective to these treaties. The Part V provides a conclusion of the whole paper and answers the question that whether the Republic of China be actually held liable for the outbreak of Covid-19.

I. IMPORTANCE OF INTERNATIONAL TREATIES

At the beginning of the twenty-first century, there are more than 50,000 international treaties which have been signed covering nearly every aspect and every facet of international relations and state authority respectively:

1. All the signatory of treaties have agreed to limit their powers to act in variety of ways – from limiting civil and political rights through ICCPR, to how they behave towards their own citizens under UDHR. During last decade, most of the scholars have agreed to open door to understand role of international law in shaping state behavior.
2. The states usually commit to these treaties, once they analyses the anticipated positive and negative impacts of all the international laws that will be applicable on them after being a signatory

to the treaty. Unless a state chooses to ratify a treaty, the effect of such treaty won't be applicable on their state i.e. non-binding. It becomes quite obvious that the states will join a treaty because they will derive some benefits from it which will be more than suffering harm. For example, if an agreement requires state to put low tariff charges on imports, then it will have the same treatment on the exports of that state.

3. Various scholars have agreed to the notion that these treaties are usually bought so that it benefits the powerful state including China.

Therefore, it becomes important to understand that what importance and role these treaties play when they are ratified by the powerful states.

A) Universal Declaration of Human Rights (UDHR)¹

The Universal Declaration of Human Right was formed post the World-War 2. The basic aim for forming this was to ensure people around the world to respect and claim their basic rights as humans. The UDHR provides a common standard of achievement for all peoples and all nations. The States commitment on human rights treaties have been very critical to understand because they constitute a paradigmatic hard case. These treaties like UDHR of 1948, don't really offer any reciprocal benefits to the state, as many other treaties do. But in reality, UDHR was a breakthrough especially because it came after the Second World War. This treaty was a revolution in international relations and has remained an inspiration till date. It is a part of UN Practice and also a part of international customary law. The UN even have held many countries responsible under the UDHR, irrespective of whether they are a part of treaty or not.

B) International Covenant Civil and Political Rights (ICCPR)²

The International Covenant on Civil and Political Rights (ICCPR) puts out large commitment to a wide array of both civil and political rights, including equality of persons before courts and tribunals, right to peaceful assembly, liberty and security of the person and freedom to form association. Along with Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the state parties have to submit reports on

¹ Juan E. Mendez, The 60th Anniversary of the UDHR, 30 U. PA. J. INT'L L. 1157 (2009)

² Shiyun Sun, Understanding and Interpretation of the ICCPR in the Context of China's Possible Ratification, 6 Chinese J. INT'L L. 17 (2007)

measures taken by them to give effect to the rights placed in the treaty. An optional protocol to the ICCPR to which states individually have to ratify which allows Individual to claim to be victims of any violation of rights set forth in the covenant. They can file a complaint with the Human Rights Committee.

C) International Health Regulations (IHR)³

The International Health Regulation was formed in response to reemergence of international disease threat along with a lot of international trade and travel. The purpose and scope of IHR was "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."⁴ This regulation was made not only to deal with specific disease, rather it applies to every health risk including sanitation and other important issues. This regulation was originally adopted at the World Health Assembly in 1969 and was revised last in 2005. This regulation empowers the World Health Organisation (WHO) to act as a global surveillance system.

II. REASONS AGAINST CHINA

There are more than 26 million confirmed cases and around 8,50,000 deaths in the world due to the spread of Covid-19. The question among is that was it possible to prevent this huge loss of life? Could China have done something in order to prevent the disease from spreading to the whole world?

LJR- ALLYING LAW WITH SOCIETY

³ Ching-Fu Lin, COVID-19 and the Institutional Resilience of the IHR (2005): Time for a Dispute Settlement Redesign?, 13 CONTEMP. Asia ARB. J. 269 (2020).

⁴ International Health Regulations (2005), World Health Organization (2020), <https://www.who.int/ihr/publications/9789241596664/en/#:~:text=The%20stated%20purpose%20and%20scope,international%20traffic%20and%20trade.%22%20Because> (last visited Aug 6, 2020).

A) *Question that whether China violated the provision of UDHR*

Universal Declaration of Human Rights, is the modern world's first human rights declaration which granted equal rights as well as other civil and political rights. Under the banner of the Republic of China, China was a signatory to both the UN Charter and the UN Universal Declaration of Human Rights. However, with the Chinese civil war, the communist victory on the mainland and the Nationalist flight to Taiwan (from where it represented China at the UN until it was unseated by the People's Republic of China in 1971), mainland China was unrepresented at the UN and therefore subscribed to none of the UN's human rights regimes.

In 1971, the leaders of the People's Republic of China reaffirmed their acceptance of the UN Charter and Universal Declaration of Human Rights by re-joining the UN. But as China was in the midst of the throes of the Cultural Revolution (1966-76), it did not participate actively in the UN until the late 1970s. China further became signatory to ICCPR but it has yet to ratify the latest changes to it.

According to a study⁵, it was found out that creating awareness can not only lower the infection rate of the disease but can even stop it from becoming epidemic, but Khynese authorities stopped the doctors to disclose any information about this new disease to the public which made awareness next to impossible and the disease which could've been stopped before becoming epidemic, became pandemic.

The Article 19 of the UDHR states that Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁶ Therefore, it provides that right for every person to have freedom of opinion and expression as well as to hold opinions and share them through media or anywhere as they deem fit, but the approach of

LJR- ALLYING LAW WITH SOCIETY

⁵Sebastian Funk, Eraz Gilad, Chris Watkins and Vincent A.A. Jansen, "The Spread of awareness and its impact on epidemic outbreaks" *Proceedings of the National Academy of Sciences of the United States of America* 2009

⁶ Universal Declaration of Human Rights 1948, Article 19.

Chinese government not to disclose any information⁷ about the contagious disease was violative of this provision of Article 19 of UDHR.

B) *Question that weather China violated the provision of ICCPR*

The China was also signatory to ICCPR, which Article 19 dictates that, “*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*” The World Health Organisation in a press conference held in the 1st week of July admitted that the China kept everyone in dark about the contagious virus outbreak. Therefore, this article was also violated by Chinese government when they tried to cover-up the pandemic and did not disclosed any information to public.⁸

C) *Question that weather China violated the provision of International Health Regulations 2005*

The Republic of China has also violated the provision provided under Article 7 of International Health Regulations 2005 stating “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 WHO all relevant public health information.”⁹ This provides that the state party has to provide the information to World Health Organization if it finds any unexpected or unusual public health events in its territory. Such a situation China faced when Covid-19 started spreading in its territory and China refrained itself from sharing the information with WHO except the genome of the virus¹⁰ and deliberately misled the WHO so that whole world cannot be ready to sustain their economy and such actions led the local outbreak to become pandemic.

⁷ China was slammed for initial COVID-19 secrecy, but its scientists led the way in tackling the virus, Science|Business (2020), <https://sciencebusiness.net/covid-19/international-news/china-was-slammed-initial-covid-19-secrecy-its-scientists-led-way> (last visited Aug 16, 2020).

⁸ China hid truth about Covid-19 pandemic from its people for almost a week, Hindustan Times (2020), <https://www.hindustantimes.com/world-news/china-hid-truth-about-covid-19-pandemic-from-its-people-for-almost-a-week/story-8CiFkBxJh37CEl67eK5paN.html> (last visited Aug 18, 2020).

⁹ International Health Regulations 2005, Article 7.

¹⁰ World Health Organization: China not sharing data on coronavirus infections among health-care workers, The Washington Post (2020), https://www.washingtonpost.com/world/asia_pacific/world-health-organization-china-not-sharing-data-on-health-care-worker-coronavirus-infections/2020/02/26/28064fda-54e4-11ea-80ce-37a8d4266c09_story.html (last visited Sep 6, 2020).

III. REASONS IN FAVOR OF CHINA

The United Nations Human Rights Committee has described freedom of expression as of paramount importance for any democratic society¹¹, but Republic of China has not adopted democracy, but a communist state who believes in controlling the media and have control over the society and that is the way they have been flourishing and rising as next superpower. It is a matter of sovereignty for China.

The question that China violated the provisions of International Human Rights instruments are far-fetched from the truth as along with all the world, Republic of China has also suffered at the hands of this virus, but as China had control and strictness over its society, it could prevent the virus from spreading in the country but whereas the democratic countries of the west were not able to control their societies and couldn't take drastic measures and hence they became the bigger victim to the virus.

A) Question that Republic of China Violated the provisions of UDHR

China is a signatory to both the UN Charter and the UN Universal Declaration of Human Rights and had ratified the same and China is obliging with the provisions ever since. The actions taken by China to not to disclose any information about the new outbreak, comes under the ambit of Article 29(2) and Article 30.

Article 29(2) provides for the reasonable restrictions on the rights provided under the declaration. This provision states that a state can put restrictions upon these rights “*to such limitations as are determined by law*”. Further this restriction can only be put up when there is a question of;

- i. Securing Due Recognition
- ii. Respect of the rights and freedom of others
- iii. Morality
- iv. Public order

¹¹Tae Hoon Park v Republic of Korea (628/1995), CCPR/C/64/D/628/1995 (1998), 20 October 1998; 6 IHRR 623 (1999) at para 10.3.

v. General welfare

The Republic of China took the necessary actions in order to maintain public order and not to create chaos amid its citizen which could have incited fear and might have led to panic buying, riots, depletion of stocks etc. such as what happened in other western countries¹². Whereas, the Article 30 of the UDHR provides that nothing in this declaration can bind the state and that its provisions does not have any binding authority over the Republic of China

B) Question that China violated the provisions of ICCPR

Republic of China is a signatory to International Covenant on Civil and Political Rights but have not yet ratified it and hence the treaty has no binding authority it. Considering this, the state has yet not violated its provisions.

Almost all the jurisdictions, states, declarations, conventions etc., provide some type of restrictions along with rights. So does ICCPR, it provides certain limitations¹³ in case of;

- i. When such restrictions are imposed by law
- ii. Such restrictions are for rights and reputation of others
- iii. For protection of;
 - a. Public Order
 - b. Public Health
 - c. Morals.

Thus, China respected the provisions of ICCPR and took actions appropriate to the restrictions as disclosing such information at an early stage might cause the fear and have the same reaction as in western countries.

LJR- ALLYING LAW WITH SOCIETY

¹²Paulina Cachero, Photos of ravaged grocery stores show how people are panic-buying across the US in the wake of the coronavirus pandemic, *INSIDER*, 13.03.2020, available at <https://www.insider.com/americans-panic-buying-grocery-stores-food-toilet-paper-coronavirus-pandemic-2020-3> (Last visited on 05.04.2020)

¹³International Covenant of Civil and Political Rights 1966, see art 19(3).

C) Question that China violated the provisions of International Health Regulations, 2005

The Article 7 of International Health Regulations 2005 provides the state to provide the information to WHO if it finds any evidence of an unexpected or unusual public health event within its territory. The Republic of China did not have any reasonable apprehension or any evidence that the virus could be this much contagious and deadly as it was considered as “pneumonia like illness”. It is obvious that China did not imposed strict regulations or lockdowns in cases of pneumonia. When the outbreak got out of hands of Khynese authorities and the Republic of China got sufficient evidence and information of this unexpected and unusual public health, then China did share the genome sequence of the virus with WHO and did its part.

IV. CONCLUSION

The Covid-19 was declared a pandemic disease by the WHO after it's outbreak round the globe, which initially was in China. There have been various organisation, scholars, and journalists that are talking about the liability of China under various international provisions and the popular on-going debate to make China responsible for the spread of disease. The WHO's funding was also stopped by the US Government for favouring the China which led to a numerous hurdles for WHO in this pandemic. As the paper above highlights the importance of international treaties, the violation of China of the treaties and the reason which might help China to not be held liable for the spread of the disease. But it still is very evident that even though there are claims which might support China but still China could easily be held responsible for the violation of human rights for the death of about a million people in the world. There are various international treaties and conventions like the Biological and Toxin Weapons Convention (BTWC), the responsibility of States for Internationally Wrongful Acts, and various Public Law which have been violated by the China making them liable for the spread of the Covid-19.

LJR- ALLYING LAW WITH SOCIETY