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Accountability for a Global Pandemic Scope of litigation against China

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ABSTRACT

The COVID-19 Pandemic has wreaked incredible loss across the world; be it financial, social or human loss, causing humanitarian crises of unprecedented natures in all countries. With the curve refusing to flatten, the Governments across the world find their capacity to respond being exceeded by the raging pandemic. With a growing frustration worsened by the stress on revenue there's been an accompanying sense of resentment towards China. An unclear picture of the timeline leading up to the detection of patient zero has led many to allude that the reporting of the virus was deliberately suppressed by the Chinese Government. Many governments have even threatened litigation against China at the International Court of Justice. However, the normative nature of the International Law is heavily influenced, or rather weakened by the political authority and economic clout of a State like the People's Republic of China. Therefore, establishment of a dispute and on its basis therein, taking China to the Court will be two key, as well as, incredibly challenging tasks. This article offers an overview on the scope of litigation against China at the ICJ, as well as an evaluation of the feasibility of the same.

I. TIMELINE OF THE OUTBREAK

On December 1st, 2019 Wuhan Municipal Health Commission, China, reported a cluster of cases of unusual pneumonia in Wuhan, Hubei Province.[3] Several of those infected worked at the city's Huanan Seafood Wholesale Market, which was shut down on January 1.[4] But on 5th January Chinese officials had ruled out the possibility that this was a recurrence of the SARS virus. The virus was eventually identified as the new coronavirus. The World Health Organisation declared the outbreak a Public Health Emergency of International Concern (PHEIC) on 30 January 2020, and a pandemic on 11 March 2020. And upto the point of writing

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[3] Archived: WHO Timeline - COVID-19, Newsroom (Apr. 27, 2020), https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19
[4] Elizabeth Melimopoulos, Shereena Qazi & Kate Mayberry, Coronavirus cases in the US exceed 3.5 million: Live updates, Health (Jul. 17, 2020), https://www.aljazeera.com/news/2020/07/bolsonaro-backs-unproven-drug-coronavirus-battle-live-updates-200716001526677.html

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this article the confirmed cases reported were 13.4M, out of which 7.45M people have recovered, and the deaths total around 580k.

II. DEMAND FOR LEGAL ACTION AGAINST CHINA

The SARS-CoV-2 has been classified as a "Public Health Emergency of International Concern" (PHEIC) as under the International Health Regulations (2005). A PHEIC is an extraordinary event which is determined (i) to constitute a public health risk to other States through the international spread of disease and (ii) to potentially require a coordinated international response.[5] With the curve refusing to flatten, the governments across the world find their capacity to respond being exceeded by the raging pandemic. With a growing frustration worsened by the stress on revenue there's been an accompanying sense of resentment towards China. It has been contended that the first cases were noticed in November 2019 but the WHO was only notified much later on January 10.[6] Such a murky picture of the timeline and the unanswered question of when the patient zero was detected, has led many to allude that the reporting of the virus was deliberately suppressed. This has motivated several lawyers to even sue China for damages in domestic courts. Though the concept of "state sovereign immunity" prohibits the jurisdiction of domestic courts of a country to sue another, these lawsuits have given rise to two important questions regarding international law:

A. Did China act in breach of its international obligations under a Public Health Emergency of International Concern (PHEIC), as defined under International Health Regulations, 2005?

B. If such obligations are found to be in breach, are the affected states entitled to compensation for all the human, economic and social damage suffered?

III. THE WHO AND INTERNATIONAL HEALTH REGULATIONS (2005)

The expansion of international trade and travel has made the world vulnerable to outbreaks of diseases spanning across borders. The first attempts at international governance, in fact, was to harmonise the response to curb the spread of outbreaks such as cholera or the plague as far back as the year 1859. In 1948 the World Health Organisation (hereinafter the WHO) was founded as a specialised international agency of the United Nations which was responsible for all matters of international public health. It has been the pivoting authority in directing and

[5] International Health Regulations (2005) Third Edition (hereinafter the IHR or the IHR 2005), Article 1 "Definitions"
[6] The Associated Press, China delayed releasing coronavirus info, frustrating WHO, AP news (Jun. 3, 2020), https://apnews.com/3c061794970661042b18d5aeaaed9fae

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coordinating the international response to the COVID-19 virus in the form of recommendations of travel bans, trade restrictions, quarantine and tracking all developments of the virus. The World Health Assembly (hereinafter the WHA), set up under the WHO constitution, is the agency's supreme decision making body and currently has 194 members. Under Article 21 of the Constitution the WHA is further granted powers to adopt regulations pursuant to matters such as a PHEIC, and Article 22 directs such regulations to come into power once the members are duly notified.

At the turn of the century there was much criticism pointing out the lack of proper utilisation of the provisions of Article 21 and 22 to adopt effective regulations to curb outbreaks and to enforce a harmonised international response framework. But a momentum for change was accelerated by the 2002 SARS outbreak in China's Guangdong province. Reports claimed that the delay of the Chinese Government to report the virus to the WHO did not allow other countries to prepare themselves.[7] And eventually, the virus spread to 28 countries and concluded with a death toll of 774. As a response to this the WHO drafted the International Health Regulations in 2005 (IHR 2005).

The purpose and scope of the IHR (2005) were "to prevent, protect against, control and provide a public health response to the international spread of disease…and which avoid unnecessary interference with international traffic and trade." The IHR (2005) contained a range of innovations, including (i) State Party obligations to develop certain minimum core public health capacities; (ii) obligations on States Parties to notify WHO of events that may constitute a public health emergency of international concern according to defined criteria; (ii) provisions authorising WHO to take into consideration unofficial reports of public health etc. The IHR 2005 were more stringent regulations in contrast to its previous versions and its mandate emphasised on creating obligations for member States. [8]

IV. IS THE IHR A LEGALLY BINDING INSTRUMENT?

The IHR 2005 is an atypical legal instrument. The WHO defines the IHR as a representation of "an agreement between 196 countries including all WHO Member States to work together for global health security". So the question arises: as an international "agreement" is the IHR a binding instrument? Though the Regulation is not a treaty, it has been adopted under the provisions of Article 21 and 22 of the WHO constitution which in turn, is a treaty. The IHR hence becomes binding on all member nations of the WHO, and also non-members who are

[7] id. At 4
[8] International Health Regulations (2005) Third Edition, Foreword.

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party to the agreement of the IHR 2005. Regulations under the aforementioned Articles do not require a ratification procedure, but come into force for all Members after due notice has been given by the Health Assembly of their adoption.[9] However, in the event of non-compliance there isn't a clear mandate under the WHO constitution or the IHR 2005 to invoke state responsibility. Hence the obligations are rendered legally binding only to a normative extent.

V. STATE OBLIGATIONS UNDER THE WHO CONSTITUTION AND THE IHR

Retaining the possibility of litigation, what are the obligations under the IHR and WHO Constitution? The WHO's primary function is that of disease surveillance, and it heavily relies on the States obligation to promptly and fully share information regarding any alarming developments. Without this co-operation the Organisation is effectively rendered blind. Article 64 of the WHO Constitution provides: "Each Member shall provide statistical and epidemiological reports in a manner to be determined by the Health Assembly." Article 6 and Article 7 of the International Health Regulations extend on the same principle and lay down obligations of prompt notification within 24 hours and information sharing. Further Article 6(2) requires State Parties, after notifying the WHO of an event which may constitute a public health emergency of international concern (PHEIC), to "communicate to WHO timely, accurate and sufficiently detailed public health information available to it …, where possible including … number of cases and deaths". Article 7 is even broader, requiring State Parties, if they have evidence of an event which may constitute a PHEIC, to "provide to WHO all relevant public health information."

In light of the timeline over which the virus was detected illustrated earlier, it could be argued that China did not furnish the reports accurately and in a timely manner. Hence, the suppression of reports could go against Article 64 of the WHO constitution and Article 6 and 7 of the IHR. These obligations are necessary to enable state parties to respond to public health risks. By not complying with these obligations, China could be said to be defeating the object and purpose of the treaty, i.e., the WHO Constitution, as laid down under Article 18 of the 1969 Vienna Convention on the Law of Treaties (VCLT).

The challenge to litigation, though, is that of evidence. To establish that the fact Chinese Government made efforts to suppress information and to corroborate the loopholes in the timeline, the primary evidence available are journalistic accounts and reports which only qualify as hearsay evidence. Further, Article 18 of VCLT neither defines nor determines its

[9] Constitution of The World Health Organisation, Basic Documents, Forty-fifth edition, Supplement, October 2006, Article 22.

own ingredients, and under which conditions it is considered to be breached. Therefore, the legal consequences of a possible breach of this provision are left unclear which ultimately weakens its normative force.

Article 75 of the WHO Constitution

The International court of Justice (hereinafter called ICJ or the World Court or the Court) is the principal judicial organ of the UN, where the States can avail avenues of litigation.[10] Seventy four states have unilaterally declared that they accept the jurisdiction of the Court as compulsory and China is not one of them. Hence once a claim against China is filed, it would be for China to accept or reject the Court's jurisdiction in such matters.

A jurisdictional route the states can adopt which also serves as a way around the problem of obtaining China's consent would be to bring a case to the ICJ on the basis of the Court's jurisdiction in Article 75 of the constitution, which reads as: "Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement."

It is pertinent to note the judgement of the ICJ in Armed Activities on the Territory of the Congo, wherein the ICJ was of the opinion that Article 75 of the WHO Constitution provides for the Court's jurisdiction under "any question or dispute concerning the interpretation or application" of the WHO Constitution.[11] The Article requires that a question or dispute must specifically concern the interpretation or application of the Constitution.[12]

VI. Establishing the Existence of a Dispute

The fundamental challenge that the States will face while exercising jurisdiction under Article 75 of WHO Constitution is the establishment of a dispute arising out of the COVID-19 pandemic. [13]

According to Article 36 of the Statute of ICJ, the Court has jurisdiction pertaining to all legal disputes. In particular to disputes that deal with (i) the interpretation of a treaty; (ii) any question of international law; or (iii) the existence of any fact which, if established, would

[10] Treaties, International Court of Justice, https://www.icj-cij.org/en/treaties
[11] Democratic Republic of the Congo v. Rwanda, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006
[12] ibid, para. 99
[13] Atul Alexander, Gauging the Advisory Opinion of the International Court of Justice in Face of COVID-19, (Apr. 6, 2020, 3:46 PM), https://www.jurist.org/commentary/2020/04/atul-alexander-icj-covid/

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constitute a breach of an international obligation (iv) and the nature or extent of the reparation to be made for the breach of an international obligation.

In order to prove the occurrence of a dispute, it must be shown that the claim of one party is positively opposed by the other, i.e., two sides must hold clearly opposite views concerning the question of performance or non-performance of certain international obligations.[14] Whether a dispute exists is a matter for objective determination by the Court which must turn on an examination of the facts.[15]

For this purpose, the Court takes into account in particular any statements or documents exchanged between the parties,[16] as well as any exchanges made in multilateral settings.[17] But in the absence of a diplomatic exchange between the parties, the conduct of the parties may also be relevant.[18] Such dispute need not necessarily be stated expressis verbis[19], and may even be inferred from the failure of a State to respond to a claim in circumstances where a response is called for.[20]

The ICJ for the first time, in Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (hereafter called "Marshall Islands case") declined the jurisdiction on the basis of the absence of a dispute between the parties.[21] In this case, the ICJ added the crucial condition for proving the existence of a dispute between the parties, that the respondent be 'aware' of the existence of the dispute.

In the case of the Marshall Islands, the position of the Marshall Islands was well known in the international fora, but they had no specific bilateral diplomatic exchanges with the respondent states in that regard, before seizing the Court. Consequently the Court concluded that the respondents could not have been aware of the Marshall Islands claims. In pursuance of the said stand of the ICJ, the Court merely turned a blind eye on the fact that the respondents declined

[14] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary objections, Judgement, I.C.J. Reports 2011 (I) (April 1), para. 30
[15] Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I) (March 17), p. 26, para. 50
[16] Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II) (July 20), p. 443-445, paras. 50-55
[17] Application of the International Convention on the Elimination of All Forms of Racial Discrimination(Georgia v. Russian Federation), Preliminary Objections, I.C.J. Reports 2011 (I) (April 1), p. 94, para. 51, p. 95, para. 53
[18] Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J Reports 2016 (I) (March 17), pp. 32-33, paras. 71 and 73
[19] Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998 (June 11), p. 315, para. 89
[20] Supra at note 15
[21] Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament (Marshall Islands v United Kingdom, Marshall Islands v India, Marshall Islands v Pakistan), Jurisdiction of the Court and admissibility of the application, Judgment, I.C.J Reports 2016 (October 5)

to co-operate with certain diplomatic initiatives and thereby ignored the fact that the claim was positively opposed by the respondent's conduct.

As per the aforementioned law established in the Marshall Islands case, if a state while making claims against China, make no attempt to bring such a claim to China's attention, the Court in the absence of such awareness can ignore the fact that the claim was positively opposed by China's conduct. Therefore it is important that China be made well aware of the claim advanced, its conduct that gave rise to such a claim and also the reaction sought in this regard.

The previous discussion in this article lays down the possible claims of violation of International Obligations that can be invoked against China. However, an opposed party State can attempt to go around such hindrances as the aforementioned, noting that Article 75 grants jurisdiction not only over any "dispute" but also over any "question" concerning the interpretation or application of the WHO Constitution.

The Court in the Armed Activities case (supra) further held that even when a country had demonstrated the existence of a question or dispute falling within the scope of Article 75 of the WHO Constitution it needed to satisfy the preconditions to evoke such jurisdiction of the Court. The preconditions are that the State(s) attempted, but failed, to settle the question or dispute by Negotiation with the other party involved or that the World Health Assembly had been unable to settle it.[22]

"Negotiation" in the application of Article 75

It may be inferred from the use of the word "or" in the Article that the two conditions are not cumulative, but alternative. The Court can interpret Article 75 the way it has interpreted Article 22 of the CERD in the case concerning Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination.[23] Here it is relevant to note that the wordings of Article 22 of the CERD are similar to that of Article 75 of the WHO constitution, the Article states that:

"Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the

[22] Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006 (February 3), para 100
[23] South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962 (December 21)

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dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

In the above mentioned case the Court held that the Article 22 of the CERD imposes alternative preconditions to the Court's jurisdiction. Therefore, if the ICJ interprets Article 75 the same way it interpreted Article 22 of the CERD, then a State would only need to satisfy the "negotiation condition" and not go through the World Health Assembly in order to sue China before the ICJ.[24]

Interpreting the clause "not settled by negotiations":

The ICJ in the case concerning Application of the International Convention on the Examination of All Forms of Racial Discrimination, while elucidating the notion of 'negotiations', also reversed the interpretation of the same that was followed by it, in its former judgments.

It states that negotiations entail more than the plain opposition of legal views or interests between two parties, or the existence of a series of accusations and rebuttals, or even the exchange of claims and directly opposed counter-claims.[25] Negotiations at the very least require a genuine attempt with a view to resolving the dispute between the parties, but at the same time does not require the reaching of an actual agreement between the disputing parties.[26] Therefore jurisdiction under Article 75 of the WHO constitution can only be invoked where parties have engaged in negotiations with China in good faith until they reach an impasse, which is essentially a question of fact for consideration in each case. [27]

In the South West Africa case,[28] although Ethiopia and Liberia had not formally negotiated with South Africa in accordance with their duties under the mandate, the ICJ held that diplomacy conducted multilaterally through the United Nations was sufficient to sustain jurisdiction. Therefore a party, taking up a claim against China can follow a less formal approach such as "diplomacy by conference or parliamentary diplomacy", as long as such there is a good-faith effort to reach a diplomatic solution[29] and China is made well aware of the subject matter of such claim. The ICJ also provides procedures for conducting proceedings

[24] Peter Tzeng, Taking China to the International Court of Justice over COVID-19, https://www.ejiltalk.org/taking-china-to-the-international-court-of-justice-over-covid-19/
[25] Georgia v. Russian Federation, Preliminary objections, Judgement, I.C.J. Reports 2011 (I)
[26] Ibid, P.132, Para. 157
[27] Mavromattes Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 13
[28] Ethiopia v. South Africa; Liberia v. South Africa (The South West Africa Cases), 1962 I.C.J., (December21), Preliminary Objections
[29] id. At 28

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designed to establish facts and to clarify law at the World Court, without having to make orders for restitution.

VII. ADVISORY OPINION

An advisory opinion is legal advice provided to the United Nations or a specialised agency by the International Court of Justice, in accordance with Article 96 of the UN Charter.[30] As of 2017, there have been 28 requests for advisory proceedings. Except in rare cases where it is expressly provided by the World Court that such opinion shall have binding force, normally the implementation is left at the discretion of the organisation that sought such opinion. Despite having no binding force, the Court's advisory opinions carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and help to keep the peace. Advisory opinions also contribute to the clarification and development of international law and thereby strengthen the peaceful transactions between States.

Since States alone are entitled to appear before the Court, public international organisations cannot normally be parties to a case before it. However through the special proceedings of advisory procedure, it is available to five United Nations organs, fifteen specialised agencies and one related organisation to be part of such proceedings.

Advisory Opinion under the WHO Constitution

Article 76 of the WHO Constitution says: "Upon authorisation by the General Assembly of the United Nations or upon authorisation in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal question arising within the competence of the Organization."

As held by Article 76 of the WHO Constitution, it is only upon authorisation by the UNGA or the same through an agreement with the UN can the WHO request for an Advisory Opinion from the ICJ. Such authorisation can be seen from Article X, paragraphs 2-3 of the Agreement between the United Nations and the World Health Organisation, herein the United Nations authorises the World Health Organization to request the advisory opinion of the International Court of Justice. Such requests may be addressed to the Court by the Health Assembly or by the Executive Board acting in pursuance of an authorisation by the Health Assembly.

[30] What is an Advisory Opinion of the International Court of Justice (ICJ)?, Sep 20, 2019, https://ask.un.org/faq/208207

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The provisos to the "opinion" as mentioned in the Article 76 of the WHO constitution are that the opinion should be a legal one and also one rising within the competence of the Organization. Article 2 of the WHO constitution clearly mentions that the organisation's competence extends to all questions of public health. It can be held that a question pertaining to China's responsibility and responsiveness in dealing with COVID-19 Pandemic primarily falls under the ambit of public health, therefore the WHO is competent to request for an advisory opinion.

Advisory Opinion under the UN charter

As held by Article 65 of the ICJ statute, the ICJ may give an advisory opinion on any legal question at the request of whatever body may be authorised by or in accordance with the Charter of the United Nations to make such a request.

Article 96 of the UN charter sanctions the General Assembly or the Security Council or other organs of the United Nations and specialised agencies, as authorised by the General Assembly, to request advisory opinions of the ICJ on legal questions arising within the scope of their activities.

From a plain reading of the aforementioned articles, it can be seen that both the UNSC and the UNGA can raise a legal question to the ICJ,[31] which would pave the way for the subsequent course of action as mentioned above. All members of the United Nations by virtue of Chapter XIV of the UN Charter, are members of the International court of Justice. Though China has veto powers with respect to the proceedings of the UN Security Council, it does not possess the power to block UN General Assembly resolutions.

In case of a request for an advisory opinion by the UNGA, the question has to be one arising within its scope of activities. Article 10 of the UN Charter confers upon the UNGA competence relating to "any question or any matters" within the scope of the Charter. That is, a question relevant to international matters.[32] Hence it's beyond doubt that a question related to a global pandemic falls within the competence of UNGA.

A legal opinion does not necessarily lend itself to the resolution of a dispute with respect to an issue as complex as China's response to COVID-19, but some potentially constructive options exist. A referral premised upon accepted facts to the ICJ, for example could be made to ascertain whether a breach of international law has occurred. [33]

[31] U.N. Charter Art. 96(a)
[32] U.N Charter, Art. 11
[33] Matthew Henderson, Dr Alan Mendoza, Dr Andrew Foxall, James Rogers, and Sam Armstrong , Coronavirus compensation? Assessing China's potential culpability and avenues of legal response (Apr. 9, 2020), https://www.demdigest.org/coronavirus-compensation-exposing-chinas-culpability/

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In the instant case, the advisory opinion of the ICJ paves way for resolutions condemning the passivity of China towards sharing information which could have mitigated circumstances which led up to a pandemic. Another advantage of this route is that it circumvents the requirement of consent to jurisdiction of the ICJ by the States involved. This is important because China has not declared the jurisdiction of the court as Compulsory, hence by invoking the principle of state sovereignty China could reject the jurisdiction of the ICJ while a State takes recourse under the procedure enumerated in Chapter XIV of the UN Charter.

VIII. Reparation Claims via Advisory Opinion

Following the assassination of Count Bernadotte in September 1948, in Jerusalem, the ICJ delivered an Advisory opinion. Therein it recognised the United Nations Organisation as a distinctive legal personality which could enforce its international claim of reparations against Israel. The victim or persons suffering damages was also entitled through this Organisation to claim reparation for the damage suffered.[34] Today, other international organisations such as the specialised agencies of the UNO also enjoy judicial character of their own. Hence, the WHO could claim reparations in pursuance of an advisory opinion in front of the World Court. Article 34 of International Law Commission's Articles on State Responsibility lays down three forms of reparation: (i) restitution (ii) compensation (iii) satisfaction - which can be claimed either singly or in combination. Even though such claims may seem intuitive and compelling, they are rife with practical and legal challenges.

Restitution seeks to re-establish status quo ante which is clearly an unviable and absurd claim to make given the colossal scale of the pandemic. However, Article 36(1) provides that compensation for damages be made insofar as such damage is not made good by restitution. Article 36(2) also states that such compensation shall cover financially assessable damage such as loss in profits. It is important to note that the damages may be both material and non-material ,i.e.,moral - in the current global pandemic there has been damage in the form of incredible human and social loss. Usually the ICJ refrains from awarding compensation on account of the challenging valuation process of damages. In the present scenario the compensation claims against China for the financial and moral damages face several complications. These complications are rooted in the causation of these damages. Even if the breach of obligations (as previously discussed in the article) is established - such a breach may not account for the

[34] Reparation for Injuries Suffered in the Service of the United Nations, ICJ Reports, 1949, p. 174; 16 AD, p. 318

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entirety of the loss caused. At this stage of calculation we must consider the role of policy adopted by governments to tackle the spread of virus within their borders. Following the WHO guidelines as released earlier in March, travel bans and trade restrictions were imposed as almost every country imposed total lockdown. The economic recession caused due to these measures could be argued to be a necessary sacrifice to mitigate the global pandemic. Hence, in that event the question becomes as to how to break up the damages caused into pieces, and apportion the responsibility of one piece to the Chinese Government and the other on the State's own policy.

Satisfaction constitutes a third form of reparation. In the case of the Rainbow Warrior[35] the international court concluded that the condemnation of France's breach of treaty obligations to New Zealand by the Tribunal constituted "appropriate" satisfaction. It may also include acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality - essentially non-monetary methods. This form of reparation is most likely to be utilised in the event of establishment of breach.

IX. CONCLUSION

In the current Globalised order of the world, a global pandemic was only a matter of when. Despite the innate appeal of seeking accountability for the grave economic, social, human loss holds - this is a time to band together as a global community in a unified response to this virus. Pursuant to these efforts, the United Nations Security Council unanimously adopted the first COVID-19-related resolution, demanding a general and immediate cessation of hostilities around the world.[36] Moreover, the ambiguity in fact and in law present obstacles at every step of the way to establishing and invoking state responsibility against the Chinese Government. These obstacles are also prefaced with the fact that the normative nature of international law is heavily influenced, if not weakened by the political authority of States in the International plane. Hence, it would be an incredibly onerous task for any "aggrieved" state or organisation such as the WHO to strongarm a political leader like China to the International Court. The resources required for litigation could instead be more fruitfully diverted to the funding of the WHO to strengthen its capacity to lead a unified response and help bolster the Core-Capacity of each Government to tackle public health emergencies. The fight against the virus must not

[35] Rainbow Warrior (New Zealand v. France), France-New Zealand Arbitration Tribunal, 82 I.L.R. 500 (1990)
[36] PTI, UNSC adopts first Covid19-related resolution demanding immediate cessation of hostilities, United Nations (July 1, 2020 10:46:20 pm), https://indianexpress.com/article/world/unsc-adopts-first-covid-related-resolution-demanding-immediate-cessation-of-hostilities6485676/

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end with the development of a vaccine, it must continue for years to come as a Global Community standing strongly against division and inequality.

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