

## CHAPTER ONE

### INTRODUCTION

#### A. Background of Research

In late December 2019, the world faced another challenge by the emergence of an unknown pneumonia identified by fever, dry cough, and fatigue in Wuhan, Hubei, China.<sup>1</sup> Wuhan is well-known as the “Chicago of China” as the capital and largest city in Hubei Province in Central China. It has over 11 million population and is regarded as a major part of central China’s economy and industries.<sup>2</sup> On January 30th, 2020, World Health Organization (WHO) declared the outbreak of the novel coronavirus *2019-nCoV* (COVID-19) as a Public Health Emergency of International Concern (PHEIC)<sup>3</sup> and by March 11th, 2020, COVID-19 is characterized as a pandemic by WHO Director-General.<sup>4</sup> It occurred in such a blink of eyes since the numbers continue to grow and the severity of the outbreak is increasingly visible. On April 26th, 2020, the worldwide coronavirus death toll has

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<sup>1</sup> WHO, 2020, “Pneumonia of Unknown Cause – China”, retrieved from: <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/>, accessed on April 22nd, 2020 at 1:05 p.m.

<sup>2</sup> Nourah S. AlTakarli, 2020, China’s Response to the COVID-19 Outbreak: A Model for Epidemic Preparedness and Management, *Dubai Medical Journal*, Vol. 3, No. 2, p. 45.

<sup>3</sup> Annelies Wilder-Smith, Calvin J Chiew, and Vernon J Lee, 2020, “Can We Contain the COVID-19 Outbreak with the Same Measures as for SARS?”, *The Lancet Infectious Diseases*, Vol. 20, No.5, p. e102.

<sup>4</sup> WHO, 2020, “WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020”, retrieved from: <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, accessed on April 22nd, 2020 at 1:15 p.m.

elapsed to at least 200.000 and has infected more than 2,8 million people and 2.897.645 total cases worldwide.<sup>5</sup>

The emergence of COVID-19 is not the first a novel pandemic since there are already several series of pandemics that have occurred throughout history. In 1918, there was pandemic firstly appeared in the United States, influenza which is known as “Spanish Flu” engulfed closely every part of the world.<sup>6</sup> Spanish influenza had transmitted alongside the military forces in France to the rest of Europe and the United States.<sup>7</sup> The pandemic infected 50 million people and reached a death toll of 21 million estimated<sup>8</sup> in three waves.<sup>9</sup> Furthermore, on November 16th, 2002, *Severe Acute Respiratory Syndrome* (SARS) was first identified in Foshan City, Guangdong Province, China.<sup>10</sup> It broke out and spread rapidly throughout the world followed by several cases that occurred in Hong Kong SAR, Canada, and Singapore. It also infected huge numbers of patients and health care workers.<sup>11</sup> At least 28 countries were affected and the probable cases had reached 8,347

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<sup>5</sup> James Griffiths and Jenni Marsh, “Worldwide Coronavirus Death Toll Passes 200,000”, retrieved from: <https://edition.cnn.com/world/live-news/coronavirus-pandemic-04-26-20-intl/index.html>, accessed on April 26th, 2020 at 1:13 p.m.

<sup>6</sup> Gregory Tsoucalas, Antonios Kousoulis, and Markos Sgantzios, 2016, “The 1918 Spanish Flu Pandemic, the Origins of the H1N1-Virus Strain, a Glance in History”, *European Journal of Clinical and Biomedical Sciences*, Vol. 2, No. 4, p. 23.

<sup>7</sup> John Aberth, 2011, *Plagues in World History*, Lanham: Rowman & Littlefield Publishers, Inc., p. 121.

<sup>8</sup> John M. Barry, 2004, “The Site of Origin of the 1918 Influenza Pandemic and its Public Health Implications”, *Journal of Translational Medicine*, Vol. 2, No. 3, p. 1.

<sup>9</sup> Margaret Humphreys, 2018, “The Influenza of 1918 Evolutionary Perspectives in A Historical Context”, *Evolution, Medicine, and Public Health*, Vol. 2018, No. 1, p. 219.

<sup>10</sup> James D. Cherry and Paul Krogstad, 2004, “SARS: The First Pandemic of 21st Century”, *Pediatric Research*, Vol. 56, No. 1, p. 1.

<sup>11</sup> Tjandra Yoga Aditama, 2005, “SARS-Infectious Disease of 21<sup>st</sup> Century”, *Medical Journal of Indonesia*, Vol. 14, No. 1, p. 59.

worldwide.<sup>12</sup> Last but not least the case of the *Middle East Respiratory Syndrome Corona Virus* (MERS-CoV) occurred first in Jeddah, Saudi Arabia on June 13th, 2012, and continued to spread overseas and all over the world. As similar to its name, it occurred mostly in Middle Eastern countries such as in the Gulf Region (Saudi Arabia, Qatar, United Arab Emirates, Oman, Bahrain, Kuwait, and Iraq), along with Jordan, Syria, Lebanon, Palestine, and Egypt.<sup>13</sup>

Governments worldwide undertake extraordinary emergency measures by administering partial even full lockdowns, travel limitations, and other forms of restrictions in response to the spread of the pandemic. It leads to immeasurable damages to international communities in many sectors of human life as consequences to the tentacles of COVID-19 extending farther afield to dozens of other states. The finger-pointing seems expected to be at China to its fault upon the origins of the epidemic which has evolved and reached into pandemic<sup>14</sup> due to its silence and tardiness related to the information disclosure to the world especially to the WHO and preventive measures in response to the outbreak. On January 20th, 2020, President Xi Jinping warned the public but by then, more than 3,000 people had been

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<sup>12</sup> Jong-Wha Lee and Warwick J. McKibbin, 2004, "Globalization and Disease: The Case of SARS", *Asian Economic Papers*, Vol. 3, No. 1, p. 114.

<sup>13</sup> Aisha M. Al-Osail and Marwan J. Al-Wazzah, 2017, "The History and Epidemiology of Middle East Respiratory Syndrome Corona Virus", *Multidisciplinary Respiratory Medicine*, Vol. 12, No. 20, p. 1.

<sup>14</sup> WHO, 2020, "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19, 11 March 2020", retrieved from: <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, accessed on October 1st, 2020, at 10:20 p.m.

infected.<sup>15</sup> Regrettably to say, China could have reduced the number of cases and saved lives by undertaking appropriate measures in the earliest days such as public warnings, cut back on travels, social distancing, and declaring face-masks as compulsory wear which are carried out by states all over the world at this time.

Severely affects all nations, the obligation of human rights in China has remained undeniable as somehow overlooked, putting the rights of millions of people across the world at stake, first and foremost the right to health. States are required to respect, protect, and fulfill the right to health by taking steps for the prevention, treatment, and control of an epidemic and other diseases<sup>16</sup> that are non-discriminatory.<sup>17</sup> The International Covenant on Economic, Social, and Cultural Rights (ICESCR) obliges the state parties to ensure the fulfillment of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>18</sup> It is inextricably linked to the Universal Declaration of Human Rights (UDHR) which provides everyone the right to standard of adequate living for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other reasons.<sup>19</sup>

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<sup>15</sup> Aljazeera, 2020, “China Failed to Warn Public of Coronavirus Threat for Days: AP”, retrieved from <https://www.aljazeera.com/news/2020/4/15/china-failed-to-warn-public-of-coronavirus-threat-for-days-ap>, accessed on October 1st, 2020 at 10:25 p.m.

<sup>16</sup> Article 12, International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>17</sup> The International Commission of Jurists, 2020, *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses*, Geneva: International Commission of Jurists, p. 9.

<sup>18</sup> Article 12, *Op. cit.*

<sup>19</sup> Article 25, Universal Declaration of Human Rights (UDHR).

By doing nothing in the early stages and taking inappropriate measures in accordance with International Health Regulation 2005 to cope with the outbreaks that has caused the loss of thousands of lives, people had no adequate chance to buy food, medicine, or other essentials<sup>20</sup>. This was, moreover, exacerbated by the medical system that is now at the same time overwhelmed. Many patients are being rejected and turned away from hospitals and it is even nearly implausible to obtain the health care that is needed to treat or diagnose the virus on their bodies as experienced by the people in Wuhan<sup>21</sup>, Italy<sup>22</sup>, Indonesia<sup>23</sup>, the United States<sup>24</sup>, and other states all over the world. Amid all these, the transmission of plague beyond Chinese borders arises transboundary harm. The obligations under UDHR, ICESCR, IHR 2005, and destructions afflict the states constitute the demand from the international communities towards China for its responsibility upon the issues.

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<sup>20</sup> Frances Eve, 2020, "China's Reaction to the Coronavirus Outbreak Violates Human Rights", retrieved from: <https://www.theguardian.com/world/2020/feb/02/chinas-reaction-to-the-coronavirus-outbreak-violates-human-rights>, accessed on May 5th, 2020, at 1:20 p.m.

<sup>21</sup> Amy Qin, 2020, "Coronavirus Pummels Wuhan, a City Short of Supplies and Overwhelmed", retrieved from: <https://www.nytimes.com/2020/02/02/world/asia/china-coronavirus-wuhan.html?auth=login-google>, accessed on May 5th, 2020 at 1:15 a.m.

<sup>22</sup> Jason Horowitz, 2020, "Italy's Health Care System Groans under Coronavirus – A Warning to the World", retrieved from: <https://www.nytimes.com/2020/03/12/world/europe/12italy-coronavirus-health-care.html>, accessed on September 25th, 2020 at 2:22 p.m.

<sup>23</sup> Yuliasri Perdani, 2020, "COVID-19 Patient Rejected, Waited for Days for Testing in Jakarta", retrieved from: <https://www.thejakartapost.com/news/2020/03/13/covid-19-patient-rejected-waited-for-days-for-testing-in-jakarta.html>, accessed on October 2nd, 2020 at 9:15 a.m.

<sup>24</sup> Shawn Boburg, Emma Brown, Derek Hawskin, and Amy Goldstein, "After Trump Promised 'Anybody' Can Get Coronavirus Testing, Patients, and Doctors still Complaint of Roadblocks", retrieved from: [https://www.washingtonpost.com/investigations/coronavirus-testing-denials/2020/03/12/a70eca1e-63df-11ea-912d-d98032ec8e25\\_story.html](https://www.washingtonpost.com/investigations/coronavirus-testing-denials/2020/03/12/a70eca1e-63df-11ea-912d-d98032ec8e25_story.html), accessed on October 2nd, 2020 at 9:17 a.m.

## **B. Problem Formulation**

Based on the addressed issue on the background above, the author formulates one discussion to be answered, namely whether China possesses state responsibility under International Law in respect to the COVID-19 outbreak.

## **C. Objective of Research**

The objective of the research is to understand the concept of state responsibility under International Law and how the state responsibility works for the pandemic of COVID-19 which originates from Wuhan, People's Republic of China.

## **D. Benefits of Research**

### 1. Theoretical Aspect

The research will give a contribution to the development of science regarding the International Law perspective on the issue of state responsibilities on the international spread of infectious diseases.

### 2. Practical Aspect

The research would give a contribution to a better understanding of state responsibilities under International Law on the issue of international spread of infectious disease for people who engage with state responsibilities under International Law such as the government, lecturers, students, and parties who are involved in the issue.

## CHAPTER TWO

### LITERATURE REVIEW

#### A. State Responsibility

State responsibility provides the frame of reference that aims to consider other forms of international responsibility. The unity of its theory under International Law was strongly established at the end of the nineteenth century due to the large effects of the positivist doctrine. International Law acknowledges the responsibility as the obligation imposed by it on a person to redress the harm in the interest of a victim of conduct, omission, or punishment for the offense. The French jurist, Charles Rousseau defined international responsibility as stemming from an act that violated a rule of law. Share de Fasher also stated international responsibility as a realistic idea based on the State's obligation to redress the consequences of an unlawful act attributable to it.

In 1928, The Permanent Court for International Justice (PCIJ) in the *Chorzów Factory (Germany v. Poland)* case pointed out “as a principle of the International Law that, the breach of each legal obligation means responsibility for the repairment of the damage”<sup>25</sup> which is considered as the inception of the concept and it has gradually developed throughout previous decades.<sup>26</sup> The codifications of the law of state responsibility were firstly proposed with the modest scope under The 1929 Harvard Draft Research for

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<sup>25</sup> Permanent Court of International Justice, 1928, *The Factory at Chorzow (Claim for Indemnity) (The Merits)*, *Germany v. Poland* Judgment No. 13.

<sup>26</sup> Vladimir Ortakovski and Marija Milenkovska, 2014, *International Public Law*, Skopje: Faculty of Security – Skopje, p. 120.

Responsibility of States for Damage Done in Their Territory to the Persons on Property of Foreigners.<sup>27</sup>

International Law Commission (ILC) was created in 1949 with a mandate to draft articles. However, the Commission did not fulfill its task until August 9th, 2001. The Commission adopted 59 articles on state responsibility after taking 45 years of work on that issue<sup>28</sup> as the crowning achievement of the Commission. State responsibility was one of the 14 topics chosen by the Commission for the codification and progressive development. The work began in 1956 under Mr. F.V. Garcia-Amador as the first Special Rapporteur. In 1957, any detail of Garcia-Amador's proposal was postponed by the Commission.

The legal system requires more than merely primary rules to perform effectively in order to determine the consequences against breach of the primary rules to facilitate the remedial actions by the violating party and to vindicate the injured party towards its interests.<sup>29</sup> In short, International Law recognizes the secondary rules pertaining to liability which is known as the law of state responsibility. In regard to states as the primary subjects of International Law and principal bearers of international obligations, the existence of state responsibility is concerned with the rights and responsibilities of states that arise in consequence of the breach of

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<sup>27</sup> James Crawford, 2013, *State Responsibility: The General Part*, Cambridge and New York: Cambridge University Press, p. 32.

<sup>28</sup> International Law Commission, 2001, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*.

<sup>29</sup> Andrew Mitchell and Jennifer Beard, 2009, *International Law: In Principle*, Sydney: Thomson Reuters, p. 143.



International Law. It also deals with the attribution to a state or states, and circumstances precluding state responsibility for the otherwise wrongful act. A state is considered of committing an “internationally wrongful act” when its action or omission: (1) is attributable to the state under International Law; and (2) constitutes a breach of an international obligation of the state.

## **B. Plague**

The term “plague” indeed does not refer to a specific disease. It derives from the Latin word *plaga* which means a “blow” or “wound”. The history of the disease, is ancient. It goes right back to the starting point of humanity when the rise of awareness towards the pain and suffering when bodies of people were being invaded by other organisms incited abnormal conditions<sup>30</sup> afflicted human populations at least sixth century ago.<sup>31</sup> The plague was first defined as an acute infectious disease originated from the bacillus *Yersinia pestis* and remains endemic in indigenous rodents of South and North America, Africa, and Central Asia populations. In epidemics, plague is transmitted by the Oriental or Indian rat’s bite flea and human flea to humans, black urban rat, and brown sewer rat as the primary hosts of the fleas. The plague is transmissible person to person when in its pneumonic form. The causative organism was not discovered until the 1894 pandemic. It

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<sup>30</sup> John Aberth, 2011, *Plagues in World History*, Maryland: Rowman & Littlefield Publishers, Inc., p. 2.

<sup>31</sup> David M. Wagner, Jennifer Klunk, Michaela Harbeck, Alison Devault, Nicholas Waglecher, Jason W. Sahl, Jacob Enk, Dawn N. Birdsell, Melanie Kuch, Candice Lumibao, Debi Poinar, Talima Pearson, Mathieu Fourment, Brian Golding, Julia M. Riehm, David J.D. Earn, Sharon DeWitte, Jean-Marie Rouillard, Gisela Grupe, Ingrid Wiechmann, James B. Bliska, Paul S. Kiem, Holger C. Scholz, Edward C. Holmes, Hendrik Poinar, 2014, “*Yersinia Pestis* and the Plague of Justinian 541-543 AD: A Genomic Analysis, Vol. 14, No. 4, p. 314.

was revealed by Alexandre Yersin in Hong Kong SAR. In the following 4 years, his successor, Paul-Louis Simond Pastorien and a French naval doctor confirmed that the Oriental rat flea was the vector for the bacillus and it was originated from sewer rats.<sup>32</sup>

There have been three great world pandemics of the plague recorded in history, in 541, 1347, and 1894 CE which brought devastating mortality and irrevocably changed the social and economic fabric of society of people and animals across nations and continents each time. The three great plague pandemics possess different geographic origins and paths of spread. The Justinian Plague in 541 embarked in central Africa and spread to Egypt and the Mediterranean. The Black Death of 1347 derived from Asia and escalated into Crimea then Europe and Russia as the second pandemic. The third pandemic arose in 1894, originated in Yunnan, China, and was transmitted to Hong Kong and India, then spread to the rest of the world.<sup>33</sup>

### **C. Coronavirus Disease 2019 (COVID-19)**

A series of pneumonia of unknown etiology emerged at the end of 2019 in Wuhan, Hubei, China.<sup>34</sup> On January 7th, 2020, the China Center for Disease Control (CDC) identified the virus was colloquially noted as the “Wuhan Coronavirus” which is known as the novel coronavirus 2019 (2019-nCov). The WHO newly named it SARS-CoV-2 in order to destigmatize the

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<sup>32</sup> John Frith, 2012, “The History of Plague – Part 1. The Three Great Pandemics”, *Journal of Military and Veteran’s Health*, Vol. 20, No. 2, p. 11.

<sup>33</sup> Barbara Bramanti, Katharine R. Dean, Lars Walløe, and Nils Chr. Stenseth, 2019, “The Third Plague Pandemic in Europe”, *Proc. R. Soc. B*, Vol. 286, No. 20182429, p. 1.

<sup>34</sup> Hongzhou Lu, Charles W. Stratton, and Yi-Wei Tang, 2020, “Outbreak of Pneumonia of Unknown Etiology in Wuhan, China: The Mystery and the Miracle”, *Journal of Medical Virology*, Vol. 92, No. 4, p. 401.

association of the virus with any geographic location or nationality and linked it to the disease symptomatology.<sup>35</sup> The virus is very contagious and infected people seem to be able to infect others prior them noticing that they are sick. The ongoing COVID-19 outbreak is the third CoV outbreak as recorded by human history. Previously the world has encountered highly pathogenic human CoV twice in this century, *i.e.*, SARS-CoV and MERS-CoV outbreaks that originated in China in 2003 and Saudi Arabia in 2012. These viruses spread with horrible morbidity and mortality to other states.<sup>36</sup> The infected person seems to start with a fever, followed by a dry cough, and leads to shortness of respiration with breathing difficulties after a week. The symptom of the patients with COVID-19 shows that most of the patients had 98.6% fever, 69,6% fatigue, and 59,4 % dry cough.<sup>37</sup>

On February 11th, 2020, the WHO Director-General, Dr. Tedros Adhanom Ghebreyesus entitled the virus as “COVID-19” and by the following month the WHO declared the pandemic status after the virus engulfed 4,000 deaths with more than 118,000 cases by involving 114 countries over the world.<sup>38</sup> In the outside of China, the first confirmed case

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<sup>35</sup> Pramath Kakodkar, Nagham Kaka, and MN Baig, 2020, “A Comprehensive Literature Review on the Clinical Presentation, and Management of the Pandemic Coronavirus Disease 2019 (COVID-19)”, *Cureus Journal of Medical Science*, Vol. 12, No. 4, p. 2.

<sup>36</sup> Catharine I. Paules, Hilary D. Marston, Anthony S. Fauci, 2020, “Coronavirus Infections-More than Just the Common Cold”, *JAMA*, Vol. 323, No. 8, p. 707.

<sup>37</sup> Dawei Wang, Bo Hu, Chang Hu, Fangfang Zhu, Xing Liu, Jing Zhang, Binbing Wang, Hui Xiang, Zhenshun Cheng, Yong Xiong, Yan Zhao, Yirong Li, Xinghuan Wang, Zhiyong Peng, 2020, “Clinical Characteristic of 139 Hospitalized Patients with 2019 Novel Coronavirus-Infected Pneumonia in Wuhan, China”, *JAMA*, Vol. 323, No. 11, p. 1.063.

<sup>38</sup> WHO, “World Health Organization Director-General’s Opening Remarks at the Media Briefing on COVID-19–11 March 2020”, <https://www.who.int/dg/speeches/detail/who-director-general-openingremarks-at-the-media-briefing-on-covid-19---11-march-2020> accessed on March 22nd, 2020 at 1:21 p.m.

was diagnosed in Bangkok, Thailand on January 13th, 2020.<sup>39</sup> In early March 2020, there were 8,565 confirmed COVID-19 cases reported outside mainland China by infecting 67 territories along with significant community transmission in several countries worldwide, including Iran and Italy. The WHO declared the COVID-19 outbreak as the global pandemic on March 11th, 2020.<sup>40</sup>

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<sup>39</sup> WHO, 2020, “World Health Organization Novel Coronavirus (2019-nCoV), Situation Report – 1, 21 January 2020”, <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf> accessed on March 22nd 2020 at 1:35 p.m.

<sup>40</sup> Li Yang Hsu, Po Ying Chia, and Jeremy Fy Lim, 2020, “The Novel Coronavirus (SARS-CoV-2) Pandemic”, *Annals of the Academy of Medicine*, Vol. 3, No. 49, p. 105.