



INTERNATIONAL RESPONSIBILITY FOR COVID-19 (DISPUTE SETTLEMENT)

IHLCI RECOMMENDATIONS

Taking into account that the commission of an international wrongful act gives rise to the obligation to make reparation for the damage caused by the wrongdoer and the right to bring a claim by the injured party;

Recognizing that sovereignty confers rights and powers on the State (such as how to internally manage crisis situations like the present one), but also imposes obligations such as the duty to protect human rights;

Bearing in mind that the duty to protect human rights in the context of a pandemic implies acting diligently to prevent the spread of any kind of deadly virus, and that the State is not exempt from such responsibility, even objectively, except in the case of an obvious state of necessity, i.e., when everything possible was done to prevent once the State have known of the pandemic;

Recalling that both States and IOs may invoke various circumstances and grounds for exclusion of liability in respect of claims of various kinds that may arise from violations of international legal obligations as a result of the extraordinary situation generated by the COVID-19;

Recognizing that this deep crisis, which recognizes no borders and which demands global responses, opens up the possibility that States and other international subjects may violate international obligations of various kinds, including trade, investment, and cooperation agreements, thereby giving rise to internationally illicit acts. That such unlawful acts are capable of giving rise to claims before various international bodies, against which circumstances of exclusion of wrongfulness recognized by international law may be invoked. That, in particular, international subjects may invoke force majeure, to the extent that the pandemic caused by COVID-19 is presented as an unforeseeable, irresistible event, unrelated to the behavior of the person who has violated the obligation, justifying the failure to comply with its obligations. And that they may also invoke a state of necessity if the conditions required for this cause are cumulatively met, in which case the key issues will be to prove that the accused did not contribute to the production of the event and that their conduct was the only possible one given the circumstances that did not cover any other alternative;

Taking into account that according to Article 6 of the International Health Regulations (IHR), States Parties to the WHO are obliged to notify WHO within 24 hours of all events occurring in their territory that may constitute a public health emergency of international concern;

Taking into account the UN Secretary General's Declaration of 28 September 2020 in which he deplored the one million deaths caused by the COVID-19 pandemic as a "mind-numbing figure", which requires that every single life lost should never be forgotten.

Considering that the behaviour of some States in particular in notifying and managing the pandemic should be investigated, as there is a well-founded suspicion that their behaviour is not in accordance with the international obligation to protect the rights of other States within their territory and is not in compliance with international obligations to protect the human right to health, due to a lack of due diligence in limiting the spread of COVID-19;

Emphasizing that, like States, WHO has the obligation to act with due diligence to protect and fulfill the human right to health.

Given that acting with due diligence - like the existence of grounds for exclusion of wrongfulness - cannot be measured by an absolute standard, but rather appreciated in the context of the facts issue-by-issue.

Noting the difficulty or impossibility that the multiple and varied disputes linked to COVID-19 -many of them tinged with political interests- may be resolved by inter-party understandings, resorting to diplomatic means;

Considering that arbitration has had a privileged role in the resolution of disputes related to due diligence and the causes for exclusion of wrongfulness;

Emphasizing the close link between the maintenance of international peace and security and the peaceful settlement of disputes;

Stressing that the Security Council in its Res. 2532 (2020) has considered "that the unprecedented extent of the COVID-19 pandemic is likely to endanger the maintenance of international peace and security";

Recognizing the role, in accordance with the Charter of the United Nations, of the Security Council, the General Assembly, and the Secretary-General of the United Nations in the settlement of disputes and the maintenance of international peace and security;

Recalling that the appearance and consequences of the SARS-1 virus led to the adoption of the IHR 2005;

Believing that the International Health Regulations 2005 (IHR 2005) are intended to contribute to global public health security by providing an appropriate framework for coordinating the management of events that may constitute a public health emergency of universal concern, but that in relation to the COVID-19 have revealed shortcomings;

Emphasizing the crucial and urgent need for a coordinated and efficient international response to the outbreak and resurgence of COVID-19 ;

The IHLADI has adopted the following

RECOMMENDATIONS

- 1. To promote the establishment of an International Independent Investigation Commission, both from the scientific-health and legal point of view, of the events that led to the appearance of the pandemic and of the action taken by States, the World Health Organization and some international officials in this situation;*
- 2. To strictly weigh the relative nature of the requirement of not having contributed to the state of situation that allows for the invocation of force majeure or state of necessity and the requirement that their behaviour was the only way to avoid the danger in international disputes arising from the assumptions of international responsibility derived from the COVID-19;*
- 3. To urge the UN Security Council and General Assembly to strengthen actions corresponding to their role under Chapters VI, and VII of the UN Charter to the extent required by the devastating effect of the COVID-19 pandemic worldwide;*
- 4. To call upon the UN Secretary-General to initiate and promote actions to ensure that all relevant entities of the UN system, such as WHO and UN humanitarian programmes, in accordance with their respective mandates, accelerate their response to the COVID-19 pandemic and develop and implement operational plans for cooperation, restoration of international confidence and assistance*
- 5. To urge the Secretary-General and the United Nations General Assembly to appoint, as was already done in the ebola case, a Senior United Nations System Coordinator for COVID-19;*
- 6. To promote the reform of the 2005 IHR aimed at establishing stricter requirements that provide new ways and assurances for the containment of epidemics (such as COVID-19) and prevent cross-border damage with a pandemic scope;*
- 7. To advocate reform of the dispute resolution system provided for in Article 56 of IHR 2005 so that it incorporates a mandatory arbitration system at the request of any party to the dispute unless the parties agree otherwise.*