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CHINA: Coronavirus: CCP beware, the lawyers are coming

By Massimo Introvigne

Bitter Winter (25.03.2020) – <https://bit.ly/330QKW2> – Under international law, China and/or the Chinese Communist Party can and should be sued for the enormous damages they caused to the world.

When all this will be over, and perhaps even before, the CCP may find itself attacked by an enemy its mighty military power will not be able to stop, aggressive Western lawyers. It is slowly becoming obvious that there is ground in international law to sue the Chinese government and/or the CCP for the

damages their irresponsible conduct caused to the whole world. A study by American legal scholar James Kraska discussed this point. I do not agree with all his statements, but am summarizing and developing here some of his ideas, adding others of my own.

What would be the legal basis for the lawsuits? It is, indeed, a basis the world created with China in mind. In 2002, SARS spread from China's Guangdong province. By 2003, it had spread to 28 countries, with a total death toll of 774. The figure may now look small, compared to the victims of COVID-19, but the world realized that many casualties could have been avoided, had China not tried to shroud in secrecy the epidemic for several weeks after it occurred. SARS led to the new International Health Regulations of the World Health Organization (WHO), adopted in 2005 and legally binding on all WHO member states, including China. The Regulations refer inter alia to SARS as well as to similar diseases "caused by a new subtype" (such is the virus responsible for COVID-19), and establish an obligation by member states to share relevant information within the WHO "within 24 hours."

No matter how much China uses its political leverage to control statements by WHO leaders, it is crystal clear that China has violated its obligation to report under the 2005 Regulations. The story of Doctor Li Wenliang (1986-2020), to whose family the CCP apologized when he had already died from the disease, shows clearly that China did not want information on the virus to go public internationally, and those who dared to speak about it were threatened or put in jail. The CCP withheld crucial information for weeks, both at home and internationally, and there is a general consensus that, had China released them on time, thousands of lives would have been saved.

A crucial problem in international law is sanctions. Proclaiming that UN member states are responsible for their actions is easy. Sanctioning them is difficult. To help with

the notoriously intractable problem of enforcing international law, the United Nations established in 1947 the International Law Commission (ILC). In 2001, this Commission published the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. Many have noted the limits of the ILC: its documents are authoritative but not legally binding on member states. However, the case law of the International Court of Justice tells a partially different story. The Court has used ILC documents, including the Draft Articles, as guidelines to interpret international law. Art. 34 of the Draft Articles states that a state that intentionally breached an international obligation is liable to "full reparation for the injury caused by the internationally wrongful act," in "the form of restitution, compensation and satisfaction." Of interest is also Art. 39, according to which, "In the determination of reparation, account shall be taken of the contribution to the injury by willful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought." This means that, in addition to China as a state, entities (such as the CCP) or persons (such as President Xi Jinping and others) who, to say the least, "contributed" to the Chinese breach of its obligation to share immediately information with the rest of the world through the WHO, are also liable.

The damages are obviously enormous. China may find several ways to reject the jurisdiction of the International Court of Justice, whose president, by the way, is a Chinese, Ms. Xue Hanqin. However, states have found alternative way to punish the wrongdoers. Since 2016, the Global Magnitsky Act authorizes the United States to take action against human rights offenders. Courts throughout the world have also accepted civil lawsuits seeking damages from foreign officials. The Western lawyers' fantasy is almost without limits. There should be many ways to hold China, the CCP, Mr. Xi Jinping and all those who cooperated in the cover-up liable

for the enormous amount of deaths, tragedy, and economic damages they caused. CCP beware: the lawyers are coming, and this may be good news for the world.

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