

## **HOLD CHINA ACCOUNTABLE FOR COVID-19**

As the United States continues to face the devastation caused by the novel coronavirus pandemic (COVID-19), Congress and the executive branch must act to hold China accountable for its failures and deceptions related to transmission of the disease.

### **BACKGROUND**

In late 2019, a novel coronavirus began significant human-to-human transmission in Wuhan, China.<sup>1</sup> Unfortunately, its origin theory has proven elusive.<sup>2</sup> Regardless, the Chinese government encountered viral clusters emerging in Wuhan before other governments, and possessed the best opportunity to respond, develop mitigation strategies, and coordinate with nations around the globe.

Rather than immediately alerting other nations to the gravity of the virus, Chinese officials were not forthcoming, ran narratives directly counter to medical evidence, and continued to allow travel outside of the country without necessary safeguards.<sup>3</sup> China further attempted to avoid accountability by spreading propaganda that COVID-19 originated from the U.S. military.<sup>4</sup>

While virtually every nation has been caught off-guard by this coronavirus, China's failure to communicate honestly and take appropriate measures has directly led to significant health and economic damages to the United States.

Chinese government-run press suggested that China might retaliate against adverse U.S. policies, such as travel bans, by cutting off medical products and prohibiting exports to the United States.<sup>5</sup> Unfortunately, the U.S. economy is so reliant on Chinese manufacturing that the threats carry significant weight. Of equal concern is the flood of lethal fentanyl that has entered the U.S. from China as trade relations have liberalized over the last few decades.<sup>6</sup> According to Customs and Border Patrol testimony, about 80 percent of fentanyl seized in FY2017 originated from China by international mail.<sup>7</sup>

China is one of the 196 countries legally-bound by the second edition of the World Health Organization's 2005 International Health Regulations.<sup>8</sup> As such, China has a duty to rapidly and clearly communicate with other nations about conditions that may constitute a potential public health emergency.<sup>9</sup> More importantly, China is also expected to work in a collaborative nature with other states in a very short time window.<sup>10</sup>

In 2001, the United Nations (UN) adopted a resolution noting the International Law Commission's (ILC) draft text on the responsibility of states for internationally wrongful acts.<sup>11</sup> While the UN has not formally considered a resolution regarding the ILC's recommendations, "they have been very widely approved and applied in practice, including by the International Court of Justice (ICJ)."<sup>12</sup>

### **Quick Take**

China's actions related to COVID-19 harmed the United States' health and economy.

Congress should consider available options to hold China's authoritarian regime accountable.

The UN Charter permits states to bring disputes before the ICJ or other international tribunals.<sup>13</sup> The U.S. is also a member of the Permanent Court of Arbitration at The Hague which was “established in 1899 to facilitate arbitration and other forms of dispute resolution between states.”<sup>14</sup>

Due to the principle of state sovereignty, China may not be forced to appear before these international bodies without their consent.

Domestically, the Foreign Sovereign Immunities Act<sup>15</sup> governs lawsuits against foreign states such as China related to the harms they cause. While there are a few exceptions ranging from economic activity to state sponsors of terrorism, there is currently no exception permitting lawsuits for negligent or intentional conduct of public officials related to a public health crisis.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution gives Congress authority to “regulate Commerce with Foreign Nations.”<sup>16</sup> Trade agreements and trade promotion authority laws are among the most common mechanisms for addressing major international issues. Congress also has the authority to set jurisdiction for United States federal courts.<sup>17</sup>

## **POLICY SOLUTIONS**

The United States has several options to hold China accountable for direct actions resulting in health and economic harms to the United States. Because China will not likely consent to a normal judicial or dispute resolution process, the U.S. must independently ensure that its policy responses are proportional to actual harm caused. Congress may:

- **Redirect America’s Supply Chain Away from China** – The U.S. must strengthen its international alliances and diversify its global supply chain to reduce economic dependency on China. Congress should strengthen multilateral alliances with international partners, particularly with Pacific regional allies, as well as close geographical allies in Central and South America, by reducing and harmonizing trade barriers.<sup>18</sup>
- **Pursue Relief Before International Tribunals** – The U.S. should consider international remedies up to and including action at the ICJ. China is unlikely to consent to such resolutions and will be even less likely to transparently allow independent discovery or investigations into their handling of the COVID-19.
- **Apply Diplomatic Pressure for China to Take Responsibility** – As China fails to take accountability for the damage that its authoritarian regime has caused, the U.S. should consider efforts to remove China from leadership positions at the UN and examine China’s role at the World Health Organization.
- **Combat China’s Internet Firewall** – If China refuses to be transparent about public health issues through official government channels, Congress should evaluate measures to thwart China’s efforts to keep its information systems sealed from the rest of the world.<sup>19</sup>
- **Restrict Travel and Trade** – To avoid further health crises, Congress should consider appropriate travel restrictions, health screenings and trade limitations until China agrees to honor its international health obligations.

<sup>1</sup> Graham Readfearn, *How did coronavirus start and where did it come from? Was it really Wuhan's animal market?* The Guardian (Apr. 27, 2020) <https://www.theguardian.com/world/2020/apr/08/how-did-coronavirus-start-and-where-did-it-come-from-was-it-really-wuhans-animal-market>.

<sup>2</sup> Andersen, K.G., Rambaut, A., Lipkin, W.I. *et al.* The proximal origin of SARS-CoV-2. *Nat Med* 26, 450–452 (2020). <https://doi.org/10.1038/s41591-020-0820-9>.

<sup>3</sup> Jim Geraghty, *The Comprehensive Timeline of China's COVID-19 Lies*, National Review (Mar. 23, 2020) <https://www.nationalreview.com/the-morning-jolt/chinas-devastating-lies/>.

<sup>4</sup> Steven Lee Myers, *New York Times*, *China Spins Tale that the U.S. Army Started the Coronavirus Epidemic*, Mar. 13, 2020, <https://www.nytimes.com/2020/03/13/world/asia/coronavirus-china-conspiracy-theory.html>

<sup>5</sup> 理直气壮, 世界应该感谢中国, Xinhua (Mar. 4, 2020) [http://www.xinhuanet.com/2020-03/04/c\\_1125660473.htm](http://www.xinhuanet.com/2020-03/04/c_1125660473.htm).

<sup>6</sup> Adriana Belmonte, *How China flooded the U.S. with lethal fentanyl, fueling the opioid crisis*, Yahoo Finance (Feb. 15, 2020) <https://finance.yahoo.com/news/chinas-role-in-the-us-fentanyl-epidemic-152338423.html>.

<sup>7</sup> U.S. Senate, 2018; T. Owen, Executive Assistant Commissioner for Office of Field Operations, U.S. Customs and Border Protection, testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, January 25, 2018.

<sup>8</sup> World Health Organization. (2008). *International Health Regulations (2005) Second Edition*. Geneva: World Health Organization, <https://www.who.int/ihr/publications/9789241596664/en/>.

<sup>9</sup> *Id.* at art. 6.

<sup>10</sup> *Id.* at art. 10.

<sup>11</sup> G.A. Res. 56/83, U.N. Doc. A/RES/56/83 (Jan. 28, 2002) [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/res/56/83](https://www.un.org/ga/search/view_doc.asp?symbol=A/res/56/83).

<sup>12</sup> James Crawford, *Articles on Responsibility of States for Internationally Wrongful Acts*, Office of Legal Affairs, United Nations, (2001) <https://legal.un.org/avl/ha/rsiwa/rsiwa.html>.

<sup>13</sup> U.N. Charter ch. XIV, art. 92-96. <https://www.un.org/en/sections/un-charter/chapter-xiv/index.html>

<sup>14</sup> About us, Permanent Court of Arbitration (2020) <https://pca-cpa.org/en/about/>.

<sup>15</sup> 28 U.S.C. 1602-1611 (2020).

<sup>16</sup> U.S. Const. art. I, § 8, cl. 3.

<sup>17</sup> U.S. Const. art. III, § 1, cl. 2.

<sup>18</sup> Collectively, the U.S., Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam represent about 40 percent of the world's GDP, as a start. The Republican Policy Committee has issued previous policy guides on trade with China: See guides entitled *Reroute China Supply Chain Dependency* and, *Respond to Chinese Trade Practices*.

<sup>19</sup> See, *Reject Authoritarian Internet Control*, House Republican Policy Committee (Mar. 2020), <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/28%20-%20Reject%20Authoritarian%20Internet%20Control.pdf>.