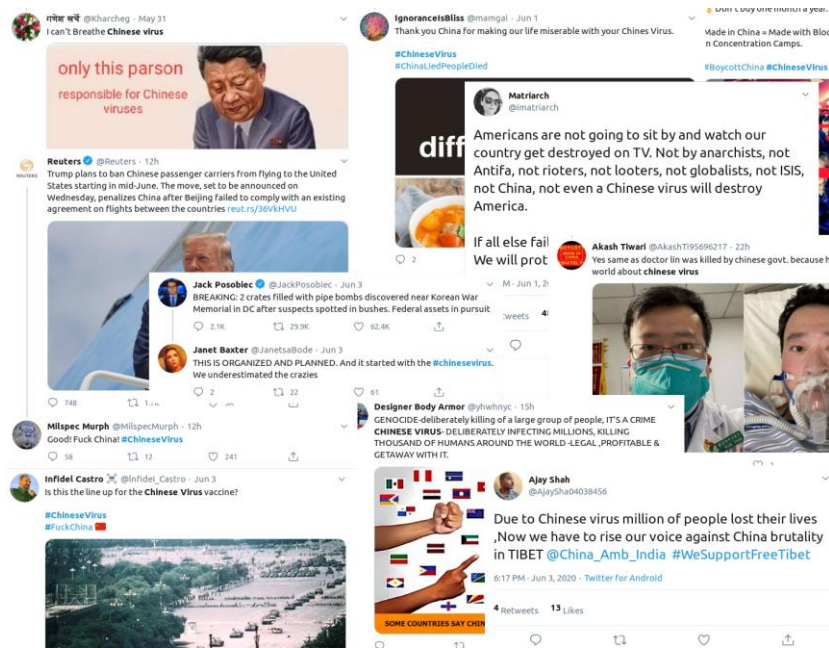


Defamation in International Law: The Legal Implications of Trump Calling COVID-19 “Chinese Virus”



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Introduction

On March 17th 2020, President Donald Trump [retweeted](#) a tweet referring to the [COVID-19](#) virus as “Chinese Virus.” This sparked a massive, worldwide response both for and against the term. It has led to the increased use of “[#Chinesevirus](#)“ on Twitter and sparked significant anti-China sentiments. It has not only affected [US-China trade relations](#) but also the [global stock market](#). And, the term has been [criticized](#) as racist and xenophobic. In response to the criticIn today’s world, information and misinformation spread like wildfire. When this is combined with the fact that powerful nations issue unverified statements influencing the attitudes of others, there will be devastating effects. Even though the UNGA resolution 31/91 foresees such a threat, there needs to be further action taken by members of the international community to protect States from destabilization due to defamation. Defining defamation, as done here, would go a long way in combating it. While countries continue to have access to

the global audience and freedom of expression through their media, a definition will restrict them from using this to harm the economic, social, and political stability of other countries.ism, President Trump pled [the defense of truth](#) by saying that “the virus came from China.”

With the advent of the internet and spread of global access to information, such unverified comments can significantly affect the domestic and international perception of a nation. This raises the question as to if injured parties have any remedy under international law. The focus of this article is to answer this question by first defining and analyzing the concept of defamation of a State and then discussing the remedies available to the defamed State.

I. Defamation of a State

The International Community is aware of the destabilization that defamation can bring. [The United Nations General Assembly \(UNGA\) Resolution 31/91 on the Non-Interference in the Internal Affairs of the State](#), condemns “defamation aimed at disrupting the political, social or economic order of other States” and has been signed by 146 countries. Despite the fact that so many States have agreed to denounce defamation of a State, the term itself remains shrouded in ambiguity as there is no internationally accepted definition of “defamation of a State.” However, with the help of both the generally accepted principles of law and the commonalities of municipal laws, one can define defamation of a State as “[a] statement made by one State which reduces the reputation of another, thereby destabilizing its political, social or economic order.” This paper shall now explain how one may arrive at this definition.

This definition raises three questions. The first question deals with the process by which this definition is derived from. The second question relates to the application of general principles of law by International Court of Justice (ICJ) and if this application is in tandem with the method used to derive the definition. The third question deals with the contemporary relevance of this definition.

To answer the first question, one must look towards municipal law, as [it has a much longer and richer history than international law and certain basic principles are easier to deduce from these laws](#). The commonality that can be culled out after looking at the municipal defamation laws is that defamation refers to reducing the reputation of a person. However, arriving at a definition of defaming a State is not as simple as replacing “person” with “State.” Such a definition cannot be used in the international context. It raises difficult issues as to whose perception of the State is material, and whether the economic damage can, in fact, be linked to the lost reputation. In such a situation, [the ICJ has held that these concepts should not be imported word for word, but must be tweaked to fit the international plane](#). This gives us leeway to alter certain elements of the definition of defamation of a person in order to fit the international context. For this purpose, we need to look at UNGA resolution 31/91, which says that defamation must result in political, social, and economic instability in a State. Incorporating this feature of

defamation, one arrives at the aforementioned definition.

To address the second question of previous application of such law, it should be noted that [the ICJ has employed a similar measure in past situations where there was a lacuna in international law](#). In the *Oil Transaction case*, for instance, Justice Simma referred to the domestic laws of numerous common law countries as well as the those in Germany, France and Switzerland to import the principle of joint and several liability to the international plane. The court derives its authority to do so from Article 38(1)(c), which directs it to refer to generally accepted principles of law among civilized nations as a source of international law.

This leads us to the third and most important question, regarding the relevance of defining defamation. One might wonder why such a definition is necessary as the international community has done fine without a definition so far. The answer is twofold. First, as evidenced by the UNGA resolution 31/91, it is undisputed that 146 countries want to combat defamation of a State. However, they cannot do this without first defining what they wish to fight for. Second, the dissemination of information today is faster than ever before. With the advent of online media and social networking platforms, which enable the viral dissemination of both information and disinformation, [a State's reputation is no longer in its own hands](#). The global perception of a State may affect it economically, socially and politically, as will be further discussed in this article. An example of this is that the association of COVID-19 with the Chinese government has sparked a "[Boycott Chinese Products](#)" movement across countries and this movement could severely affect China's economy.

The question that now arises, in light of our definition, is whether the statement by President Trump could be considered defamatory towards China.

II. The Defamatory Effect of the term 'Chinese Virus'

The act of defaming a State gives rise to three requisites. First, the statement should be attributable to the accused State. Second, it should reduce the reputation of the affected State. Third, it should destabilize the affected State's political, social, or economic order.

The question of attributability arises from the use of the words "by the accused State." Attributability to a State is governed by [the Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), which states that actions of a person vested with legislative, executive, or judicial authority could be attributable to the State. As the executive head of the State, actions of President Trump are attributable to the United States of America.

The next essential question that must be answered is if the reputation of China was affected. For a State, its reputation is [the perception held by domestic and international publics based on personal experience and information received](#). [The reaction that persons, both real and artificial, have towards any action of a government has always been dependent on this reputation](#). Thus, it is the cornerstone for [a State's economic, social, and political stability](#). However, this reputation is easily malleable by such public

statements as they have the power [not only to change existing attitudes](#), but also [to polarize the views of the people](#). Thus, such public statements by someone like the President of the United States, often regarded as one of the most powerful people in the world, are likely to affect the reputation of China.

The third requisite is that this act should have actually destabilized China. [China is involved in global trade with hundreds of millions of dollars](#). Its economic stability depends on its international relationships. Accusing the nation of spreading a devastatingly destructive virus could seriously affect these relationships. Over the past few months, China has been subject to immense global backlash from nations which want to [investigate the possibility of China orchestrating the spread of COVID-19](#). It is thus arguable that Trump's accusation of China's involvement in the spread of COVID-19 has seriously affected its reputation in a way that could economically destabilize it.

Defamation of a State contravenes international law because it violates the principle of non-intervention. [Defamation that destabilizes the political, social, and economic aspects of State has been considered intervention](#). [The principle of non-intervention proscribes States from, directly or indirectly, coercively interfering in the internal affairs of other States](#). This implies that all sovereign States are naturally protected from being defamed under the customary principle of non-intervention.

China, a sovereign State, is protected by the principle of non-intervention. However, the unverified statement by President Trump has led to global media has publishing articles connecting China to the spread of the virus, many of which have been spread on social media. As mentioned earlier, this has the potential to economically destabilize China, and is therefore violative of the customary principle of non-intervention. Acts by a State which violates principles of international law are internationally wrongful acts. The [ARSIWA](#) entitles victim States of internationally wrongful acts, in this case China, to certain remedies.

III. Remedies for Defamation

Many countries have exercised Article 49 of the ARSIWA, which confers on States the right to countermeasures in case of defamation. The European Union, for instance, has exercised this right and has started an elite task force called the East StratCom Task force to challenge disinformation. Similarly, [China has taken stringent measures to curb the spread of disinformation campaigns accusing it of the spread of the virus](#). [Chinese diplomacy has taken a heavy stand against these accusations on social media](#). The Minister Counsellor of the Chinese Embassy in Hague tweeted a video which stated that [information related to China's spreading of the virus was, in fact, "disinformation."](#) [The Chinese Embassy in France criticized the French media for blindly following American media in their posts about the epidemic](#). Furthermore, [Beijing's consul general in Kolkata, India, promoted a social media post that blamed the United States for the pandemic](#). Such measures are effective in the sense that they tend to calm the people by segregating the defamatory material from non-defamatory material, thereby

bringing in stability and restoring the social, political, and economic order.

In addition to potential countermeasures, the ARSIWA also offers the right to reparation to States affected by an Internationally Wrongful Act. Considering that defamation has never been brought up before the ICJ, this article would recommend that merely stopping further defamation cannot restore lost reputation. So there is a need to combine cessation and reparation. [Public apologies have been a generally accepted remedy to defamation](#). In the international context, a formal apology would be a satisfying way to acknowledge the wrongful act. In cases where the injured State has suffered material damage, compensation can be appropriate.

Conclusion

In today's world, information and misinformation spread like wildfire. When this is combined with the fact that powerful nations issue unverified statements influencing the attitudes of others, there will be devastating effects. Even though the UNGA resolution 31/91 foresees such a threat, there needs to be further action taken by members of the international community to protect States from destabilization due to defamation. Defining defamation, as done here, would go a long way in combating it. While countries continue to have access to the global audience and freedom of expression through their media, a definition will restrict them from using this to harm the economic, social, and political stability of other countries.