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1. Brookings : Don’t count on suing China for coronavirus compensation. ([Robert D. Williams](https://www.brookings.edu/experts/robert-d-williams/) and [David Dollar](https://www.brookings.edu/experts/david-dollar/) / May 18, 2020)

<https://www.brookings.edu/podcast-episode/dont-count-on-suing-china-for-coronavirus-compensation/>

**DOLLAR:**I’m David Dollar, host of the Brookings trade podcast. [Dollar & Sense](https://www.brookings.edu/series/dollar-and-sense-podcast/). Today we’re going to talk about the attempt to get China to pay compensation for the spread of the coronavirus, particularly through the use of U.S. courts. My guest is Robert Williams, executive director of the Paul Tsai China Center at Yale Law School and a nonresident senior fellow in our China Center here at Brookings. So welcome to the show, Robert.

**WILLIAMS:**Good to be with you, David. Thanks for having me.

**DOLLAR:**So there’s a lot of talk from the administration and Congress about making China pay for the human and economic costs of the coronavirus. As I see it, the most popular idea is to let Americans sue China for compensation. President Trump has mentioned the figure of 10 million dollars per death, and since we’re heading toward 100,000 deaths that’s one trillion dollars in damages. So that’s pretty serious money. So let’s start with the basics. What are the obstacles right now to victims suing China in U.S. courts?

**WILLIAMS:**The main obstacle is a legal principle called sovereign immunity which basically says a national government or its agencies and instrumentalities cannot be sued in the courts of another nation. It’s a pretty fundamental principle of international law and U.S. law based on the idea that equal sovereigns shouldn’t use their courts to sit in judgment of each other.

In 1976, Congress passed a statute called the Foreign Sovereign Immunities Act, which says you can only sue a foreign government in American courts under exceptional circumstances. These include rare situations where the claim is based on commercial activity carried out by a foreign government that has a direct effect in the United States, or where there’s a noncommercial tort that takes place in the U.S.

(중략)**DOLLAR:**Right. So let’s turn to that issue. So even if it’s potentially legal, is it a good idea to pursue China through our legal system? What would have to be established to create a credible case? And how do you think China is likely to respond? I know you have had a long experience in China and you know the Chinese legal system. How might the Chinese respond if the U.S. goes down this road?

**WILLIAMS:**Under existing law, as I mentioned, for these cases to proceed it would require that court embrace some novel interpretations of the commercial activity or noncommercial tort exceptions to the Foreign Sovereign Immunity Act. Just briefly, on the commercial activity theory, a plaintiff would have to show the Chinese government was acting not as a regulator but as a market player, and that it basically defrauded a U.S. counterpart. But it’s one thing to say there are false or misleading statements by Chinese officials. That happens all the time in diplomacy. It’s a far cry from the legal standard of fraudulent misrepresentation in a business deal. And I should add that misrepresentation and deceit are specifically excluded from the territorial tort exception to foreign sovereign immunity. So everything we’re talking about here is either regulatory activity or diplomatic activity or failure thereof. Federal courts tend to be skeptical of artful attempts to plead into these exceptions, which is basically what we’re seeing in the lawsuits filed today.

Now if a new law is passed it would depend on how it’s framed. So one of the bills, for example, lifts immunity of any foreign state deemed to have intentionally or unintentionally discharged a biological agent. So there, it would depend on how the court interprets the concept of discharging a biological agent. Similar challenges arise if the relevant legal standard is deliberate concealment or reckless act or omission. On any standard you’re going to have to present evidence of the wrongful act, which presents its own set of challenges, and you’re going to have to prove proximate causation, which can be difficult when you have intervening factors contributing to the spread of the virus in the U.S., including most notably failures by the U.S. government to take appropriate measures to protect public health after it had information about the virus.

Even assuming you can get a favorable judgment after years of litigation, presumably, you know working its way through the courts, then you might well be confronted with an even more daunting challenge in enforcing that judgment by recovering compensation from Chinese state-owned assets in the U.S. The reason for that is not only that China would refuse to pay, but also because the immunity of sovereign property is actually broader than the jurisdictional immunity afforded to the sovereign. So, for example, if you can win your case under commercial activity exception, generally speaking you can only recover compensation from assets that are both located in the U.S. and connected with the commercial activity the defendant was engaged in.

So as I alluded to, China might very well not show up to defend itself in these cases. That’s how they proceeded with the South China Sea arbitration brought by the Philippines, and they continue to reject that decision with impunity. But if they did show up, their lawyers would fight all these issues tooth and nail. So the net result you could conceivably wind up with is that Congress creates a new law giving U.S. citizens a right without a remedy.

The last thing we have to acknowledge is that all of this could be very self-defeating with potentially huge costs to U.S. interests given that the United States has unrivaled diplomatic, military, economic and scientific research activities around the world. So we stand to lose more from the weakening of the sovereign immunity principle than any other country. Again, sovereign immunity is about reciprocity. It’s not a privilege we grant as a favor to other countries.

(중략)**DOLLAR:**Another possible way of making China pay for the coronavirus that’s been discussed in the U.S. is not paying interest on the U.S. Treasury bonds that China holds – approximately one trillion dollars worth of reserves that Chinese has built up over time – either not paying interest, or in a more extreme case, defaulting on the principal. I would say not paying interest, by the way, is a kind of default and so from an economic point of view this is very questionable. It would essentially be a default on the part of the U.S. intent to raise interest rate that we pay in perpetuity out there into the future. But I wanted from a legal point of view, could Congress decide that we’re not going to pay interest on bonds held by the Chinese or we’re not going to redeem these bonds?

(중략)**DOLLAR:**I guess the last question I’d like to ask you is about whether you have a sense of how some of our allies are responding, or are looking at how the U.S. is responding, not just to controlling the coronavirus but dealing with China. This talk about suing China, about reneging on our interest obligations, on our treasury bonds – do you have a sense of how some of our allies are responding and how could we work with our allies to do things more effectively?

**WILLIAMS:**David, I think this really gets to the heart of the matter. It’s pretty safe to say our allies aren’t crazy about the idea that this should be resolved by a bunch of lawsuits filed by U.S. plaintiffs in U.S. courts. I thought our colleague Ryan Hass put it well in [a recent article](https://www.brookings.edu/blog/order-from-chaos/2020/05/04/clouded-thinking-in-washington-and-beijing-on-covid-19-crisis/) where he said I understand and I share the Trump administration’s anger about China’s deception and mismanagement of the crisis, but focusing that energy entirely on retribution is counterproductive. I basically agree with that.

This is a global crisis requiring global solutions and the reality is we need to be working closely with allies and through multilateral institutions like the WHO to improve that institution instead of defunding it and ceding further influence to China. It’s certainly, I think, in everyone’s interest for there to be an independent investigation into the origins and spread of the virus. That’s something our allies are on board with. We can join together to push China to be more transparent and cooperative, to stop spreading disinformation, and drop this whole wolf-warrior diplomacy routine. But more broadly, we need to be focused the way we were with Ebola on building coalitions, on transnational efforts toward vaccine development and distribution, testing, treatment, regulatory harmonization can be part of that, information sharing and coordinating on economic stimulus, providing assistance to the developing world in particular. Frankly, many of these are areas where the U.S. government can and should be working with China too despite our differences.

The last thing I’ll say on that, if there is a happy subplot here it’s that a lot of that sort of cooperation is happening. It’s primarily at the subnational level being driven largely by NGOs, companies, universities, and local governments. And my hope is that we’ll start to see more of that leadership narrative emerge at the level of national governments. The upcoming WHO health ministers meeting is a possible forum for that. I’ve seen firsthand the people-to-people goodwill and cooperation – particularly between medical professionals and volunteers in the U.S. and China, but other countries, too. This really is an important part of the story that I think deserves much more attention than it’s been getting.

**DOLLAR:**I think that’s a really important distinction, Robert. We need to be working with other countries and international institutions. There’s probably going to be a spread of the virus into the developing world. At the very least, the economic impact is going to be very devastating. That was the topic of [our last podcast](https://www.brookings.edu/podcast-episode/how-to-ensure-africa-has-the-financial-resources-to-address-covid-19/): looking at what’s going to happen in Africa. So we need to be working internationally including with China as difficult as that is. I think you’re right that this focus on trying to penalize China, particularly through the U.S. court system, it is a kind of isolationism on the part of the U.S. It’s basically trying to use our institutions in an extraterritorial way to penalize China. It’s more or less the opposite of working internationally.

1. The Heritage Foundation : Chinese Leadership Corrupts Another U.N. Organization ([Brett D. Schaefer](https://www.heritage.org/staff/brett-d-schaefer), [Dean Cheng](https://www.heritage.org/staff/dean-cheng), [Klon Kitchen](https://www.heritage.org/staff/klon-kitchen) / May 11, 2020)

<https://www.heritage.org/global-politics/commentary/chinese-leadership-corrupts-another-un-organization>

Chinese influence in the United Nations and its affiliated international organizations has been [expanding significantly](https://www.heritage.org/sites/default/files/2019-08/BG3431_0.pdf) over the past decade.

China watchers long have hoped that the communist nation’s integration into the international system would “normalize” China. They hoped China would come to appreciate the value of observing international rules and norms and become freer economically and politically.

However, it is now clear that the reverse actually has happened and that China is influencing those organizations far more than they are moderating China.

The most glaring example is the obsequious treatment China received from the World Health Organization despite its lack of transparency and cooperation on COVID-19, the disease caused by the new coronavirus. However, that is hardly the only example.

Another is the International Telecommunication Union, which has been led by China’s Houlin Zhao as secretary-general since 2015 following his election at the organization’s plenipotentiary conference. Founded in 1865 as the International Telegraph Union, the global entity is responsible for issues related to information and communication technologies.

Even before he became secretary-general of the union, Zhao had sought to insulate China from agreed practices on internet governance. He actively attempted to [undermine](https://www.sans.org/reading-room/whitepapers/protocols/security-features-ipv6-380) the role of ICANN (the Internet Corporation for the Assignment of Names and Numbers), the private, nonprofit entity responsible for coordinating key processes and procedures necessary for the internet to operate smoothly and doing so through a governance structure with multiple stakeholders.

Zhao, who was born in China, [pressed Chinese companies and internet service providers](http://access.opennet.net/wp-content/uploads/2011/12/accesscontested-chapter-09.pdf) to go solely through Beijing’s National Internet Registry rather than the Asia-Pacific Network Information Center, which ICANN processes entail.

When Zhao was head of the Telecommunication Standardization Bureau of the International Telecommunication Union, he fought for Chinese national authorities to be allowed to grant new addresses directly.

Since becoming secretary-general of the International Telecommunication Union, Zhao has championed Beijing’s priorities in violation of his obligation to be a neutral international civil servant. For example, under his leadership:

—Earlier this year, the Financial Times [noted](https://www.ft.com/content/c78be2cf-a1a1-40b1-8ab7-904d7095e0f2) how the International Telecommunication Union has provided a forum for Chinese proposals for a “radical change to the way the internet works … which critics say will also bake authoritarianism into the architecture underpinning the web.”

—In 2019, Zhao [vowed to join hands with China](http://www.chinadaily.com.cn/a/201904/24/WS5cbfbb1aa3104842260b7f2f.html) on its Belt and Road Initiative, saying: “It’s the grand guide and platform for China’s foreign aid plans. It’s an express train that once you get on, you can join forces with China and develop along with the country.”

—In 2017, Zhao again [championed China’s key investment effort](https://news.itu.int/chinas-one-belt-one-road-can-improve-lives-at-scale-through-ict-investment/), saying: “China’s One Belt, One Road can improve lives at scale through ICT [information and communications technology] investment.”

Most recently, Zhao has [dismissed U.S. security concerns](https://www.reuters.com/article/us-usa-china-huawei-tech-un/huawei-allegations-driven-by-politics-not-evidence-u-n-telecoms-chief-idUSKCN1RH1KN) about the involvement of the Chinese telecom company Huawei in developing 5G mobile networks as a “loser’s attitude.”

“Those preoccupations with Huawei’s equipment, up to now there is no proof so far,” Zhao said. “I would encourage Huawei to be given equal opportunities to bid for business, and during the operational process, if you find anything wrong, then you can charge them and accuse them. But if we don’t have anything then to put them on the blacklist–I think this is not fair.”

Zhao’s attitude ignores [legitimate security concerns](https://www.heritage.org/technology/report/the-us-must-treat-china-national-security-threat-5g-networks) about Huawei.

As a Chinese company, Huawei is subject to China’s national security and cybersecurity laws, which mandate government access to all information that transits, is stored on, or in any other way touches that nation’s networks–even if the information is collected outside China.

Moreover, because of China’s focus on integrating civilian and military industrial sectors, its products are more likely to be exploited by the People’s Liberation Army. This only exacerbates a proven history of low cybersecurity standards, stealing intellectual property and data, and deliberately circumventing international sanctions on rogue nations such as Iran.

Upon appointment, International Telecommunication Union officials, including the secretary-general, take an oath of office. Zhao was [sworn in](https://www.itu.int/en/plenipotentiary/2014/newsroom/highlights/Pages/issue8.aspx) with the following pledge:

I solemnly swear to exercise in all loyalty, discretion and conscience the functions entrusted to me as a staff member of the International Telecommunication Union; to discharge these functions and to regulate my conduct with the interest of the Union only in view, without seeking or accepting instructions or assistance from any Government or other authority external to the Union in regard to the accomplishment of my duties.

It is extraordinary for an international civil servant to shill blatantly for a company from his home country the way Zhao is doing for Huawei, or to so boldly endorse initiatives of his home country the way Zhao has championed China’s Belt and Road Initiative. It is even rarer when those statements involve official responsibilities.

The member states of the International Telecommunication Union should remind Zhao that he reports to them, not to Beijing.