

CoViD-19 & the international health regulations: the fallout of a multinational framework

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1. Introduction

Time and again, airborne infections have illustrated how their silent spread can evade even the most sophisticated of security systems or the most fortified of blockades, with the swiftness that, quite literally, takes our breath away. After spreading to over 187 countries in a matter of weeks, CoViD-19 joins the ranks of infamous pandemics like the bubonic plague, yellow fever, cholera, influenza, and SARS that have left indelible marks on society. The World Health Organization (WHO) officially named CoViD-19, a respiratory illness resulting from a novel strain of coronaviruses (SARS-CoV-19), a pandemic on March 11, 2020¹. Claiming over 226,000 deaths

and counting, the World Health Organization (WHO) has urged leaders to turn to the International Health Regulations to fight the rapid spread of this illness.

The International Health Regulations (2005) (“IHR”) comprise an international agreement designed to stop contagion in its tracks and insulate states from a pathogen’s side-effects. Effective as of June 15, 2007, the IHR collectively form a binding legal instrument. The goal of these regulations is «to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade»². After initial calls for revision in 1995³, and encouraged by the modern challenges SARS presented⁴, the WHO finally revised the regulations in 2005⁵. The broadened scope of this revised agreement includes provisions requiring notification of and protocol for «public health emergenc[ies] of international concern», as well as national health surveillance criteria, guidance for disease containment at ports of entry, among other strategic directions and recommendations⁶. To

¹ World Health Organization, *Q&A on coronaviruses (COVID-19)* World Health Organization (2020), <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Mar 27, 2020) and WHO Director-General’s opening remarks at the media briefing on COVID-19, 11 March 2020 (2020), <https://bit.ly/3ggMa8Q> (last visited Mar 20, 2020). See also J. GROSS & M. PADILLA, *Coronavirus Glossary: Flattening the Curve, Pandemic, Covid-19 and More*, in *The New York Times*, March 18, 2020, <https://nyti.ms/2Ztb3rL> (last visited Mar 20, 2020).

² World Health Organization, *International Health Regulations (2005)*, <https://bit.ly/2zbVkcZ> and *Frequently Asked Questions about the International Health Regulations (2005)*, <https://bit.ly/3e318xx> L.O. GOSTIN, *Meeting Basic Survival Needs of the World’s Least Healthy People: Toward A Framework*

Convention on Global Health, in *Georgetown Law Journal*, 96, 2008, 331-379.

³ WHO, *Frequently Asked Questions about the International Health Regulations*, cit.

⁴ R. KATZ, *Use of Revised International Health Regulations During Influenza A (H1N1) Epidemic*, in *Emerging Infectious Diseases*, 15, 2009, 1165-1169.

⁵ L.O. GOSTIN, R. KATZ, *The International Health Regulations: The Governing Framework for Global Health Security*, in *Georgetown Law Faculty Publications and Other Works*, 2016, 1770, <https://bit.ly/3ebXC3A>.

⁶ L.O. GOSTIN, *Meeting Basic Survival Needs of the World’s Least Healthy People: Toward A Framework Convention on Global Health*, cit. Finally, and importantly, the IHR requires States Parties to develop, strengthen, and maintain core public health capacities to detect, assess, notify, and report events; and to respond promptly and effectively to public health



successfully implement the IHR, some nations must revise domestic public health laws and policies to accord with the IHR standards and give effect to the regulations⁷. Both State Parties and the WHO share responsibility for implementing respective obligations outlined in the IHR⁸. But in the reality of a pandemic, it becomes evident that a significant onus to act rests on states, as performance or not non-performance of those responsibilities can either stem or speed the spread of illness⁹.

Despite the existence of an established protocol, developed and signed by 196 nations, the coronavirus continues to infect the bodies and minds around the world. A framework that, in theory, should have been the first and strongest line of defense instead reveals cracks in the international armor. The infractions observed worldwide in response to the CoViD-19 pandemic reflect the fallout from the current International Health Regulations framework.

2. Mounting evidence of IHR Framework Fallout during the CoViD-19 Pandemic

The fallout of the IHR framework is reflected in the increasing evidence of national non-adherence to the IHR, particularly regarding notification, implementation of preventative measures, and reporting.

risks and emergencies of international concern. See also WHO, *Frequently Asked Questions about the International Health Regulations*, cit.; L.O. GOSTIN, R. KATZ, *The International Health Regulations: The Governing Framework for Global Health Security*, cit.

⁷ WHO, *Ten things you need to do to implement the IHR*, <http://www.who.int/ihr/about/10things/en/>.

⁸ L.O. GOSTIN, R. KATZ, *The International Health Regulations: The Governing Framework for Global Health Security*, cit.

⁹ J. BELLUZ, *China hid the severity of its coronavirus outbreak and muzzled whistleblowers — because it can*, in *Vox*, 2020, <https://bit.ly/2Tz6o42> (last visited Mar 20, 2020).

2.1. Flawed Notification of Outbreak

Evidence suggests that China may have violated its obligation to quickly and accurately report on the Coronavirus outbreak. Article 6 of the IHR requires that State Parties notify the WHO «of all events which may constitute a public health emergency of international concern within its territory» as efficiently as possible and within 24 hours of assessing available public health information. It also requires the State «to communicate to WHO timely, accurate and sufficiently detailed public health information available to it on the notified event»¹⁰. Article 7 also provides for information sharing during unexpected health events, reinforcing required actions in Article 6¹¹. While information may be imperfect given the volatile and unknown nature of a novel disease, the type of information the IHR requests is critical and determinative of the WHO's ability to declare a public health emergency of international concern (PHEIC), as well as to effectively global coordinate responses to an outbreak¹². Evidence suggests that China, an IHR signatory, committed IHR violations by withholding information from the public, encouraging travel to endemic regions, and underreporting of cases¹³. While learning from its experiences during the SARS pandemic, China built the infrastructure to

¹⁰ Article 6, World Health Assembly, *Revision of the International Health Regulations*, WHA58.3, May 23, 2005, <https://www.who.int/csr/ihr/WHA58-en.pdf>.

¹¹ Article 7, World Health Assembly, *Revision of the International Health Regulations*, cit.

¹² Article 12, *International Health Regulations*, 3rd edn. World Health Organization, Geneva 2005, <https://bit.ly/2LOyPGM>.

¹³ L.O. GOSTIN, *What Questions Should Global Health Policy Makers Be Asking About The Novel Coronavirus?*, in *Health Affairs Blog*, February 3, 2020, <https://bit.ly/3d1Zfkg> (last visited Mar 20, 2020); C. BUCKLEY, S.L. MYERS, *As New Coronavirus Spread, China's Old Habits Delayed Fight*, in *New York Times*,

facilitate disease reporting, but such infrastructure failed in the face of a novel virus¹⁴. In its current form, the requirement of early notification provides a disincentive, as nations fear negative repercussions like trade and travel restrictions as a result of publicizing outbreak information. In weighing reporting decisions, economic motivations provide powerful incentives to not comply with a requirement that in effect is a mere suggestion¹⁵.

2.2. Rapid Enactment of Travel Bans & Border Closures Violating IHR Article 43

In nations' attempts to curb the Coronavirus with precipitate travel bans and border closures, countless State Parties violated Article 43 of the IHR¹⁶. IHR Article 43.1 allows countries to enact the health measures according to their prerogatives, so long as such measures are not «more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection»¹⁷. The IHR

identify events as «significantly interfer[ing] with international traffic» as «refusal of entry or departure of international travelers, baggage, cargo, containers, conveyances, goods, and the like, or their delay, for more than 24 hours»¹⁸. The Coronavirus travel bans and border closures currently in place certainly qualify¹⁹.

On March 11, 2020, the United States barred foreign nationals from China, Iran, and select European countries from entry into the country²⁰, seemingly emphasizing travelers' country of origin rather than exposure risk. Other nations have followed suit in closing their borders to non-citizens²¹. The European Union, a bastion of the freedom of movement, has sealed 26 countries for thirty days as many of its member states enacted border controls²². Imposing travel bans and border closures are not always the least restrictive or most successful containment measures available, as evidenced by the actions of other nations to contain the virus' spread. In early responses to the coronavirus threat, Singapore, Taiwan, and Hong Kong quickly scaled up extensive contact tracing and screening efforts,

February 1, 2020, <https://nyti.ms/36mEggy> (last visited Mar 20, 2020); *He Warned of Coronavirus. Here's What He Told Us Before He Died*, in *New York Times*, February 7, 2020, <https://nyti.ms/3eednHt> (last visited Mar 20, 2020); Y. YANG & N. LIU, *China accused of under-reporting coronavirus outbreak*, in *Financial Times* (2020), <https://on.ft.com/2XpeAog> (last visited Mar 20, 2020).

¹⁴ J. BELLUZ, *Coronavirus: China's draconian response to the new outbreak, explained by a China expert* - in *Vox*, 2020, <https://bit.ly/3ggKcFB> (last visited Mar 20, 2020); E.C. ECONOMY, *Yanzhong Huang on the Novel Coronavirus and China's Disease Control System, Council on Foreign Relations Podcast* (2020), <https://on.cfr.org/2yvSb0q> (last visited Mar 20, 2020).

¹⁵ L.O. GOSTIN, R. KATZ, *The International Health Regulations: The Governing Framework for Global Health Security*, cit.

¹⁶ R. HABIBI ET AL., *Do not violate the International Health Regulations during the COVID-19 outbreak*, in *The Lancet*, 2020, 664–666.

¹⁷ Article 43.1, World Health Assembly, *Revision of the International Health Regulations*, cit.

¹⁸ Article 43.3, World Health Assembly, *Revision of the International Health Regulations*, cit.

¹⁹ R. HABIBI ET AL., *Do not violate the International Health Regulations during the COVID-19 outbreak*, cit.

²⁰ A. SALCEDO, G. CHERELUS, *Coronavirus Travel Restrictions and Bans Globally: Updating List*, in *New York Times* (2020), <https://nyti.ms/2WSxJAe> (last visited Mar 20, 2020); U.S. Department of Homeland security, *Fact Sheet: DHS Notice of Arrival Restrictions on China, Iran and Certain Countries of Europe* (2020), <https://bit.ly/2yoLEV4> (last visited Mar 20, 2020).

²¹ A. SALCEDO, G. CHERELUS, *Coronavirus Travel Restrictions and Bans Globally: Updating List*, cit.

²² *Coronavirus: European Union seals borders to most outsiders*, in *BBC* (March 17, 2020), <https://bbc.in/36qy800> (last visited Mar 20, 2020).

enacted targeted travel restrictions, and launched public health information campaigns, in combination with strong incentives to practice social distancing²³. Having learned from their experience dealing with the SARS outbreak of 2003, these nations now have seen some of the lowest CoViD-19 infection rates across the globe (e.g. Singapore cited only 313 CoViD-19 cases, and Taiwan experienced 108 cases, as of March 19, 2020. These numbers are far lower than China's 81,115 cases and Italy's 35,713 cases)²⁴. While the IHR do not expressly prohibit measures like travel bans or border closures, when determining to implement protective measures of nations' choosing, State Parties are obliged to base these decisions on scientific principles, scientific evidence available contemporarily, and guidance from the WHO²⁵. In invoking travel restrictions and closing borders, nations acted against both scientific evidence of efficacy and WHO advice. Often, travel bans and border closures are most effective at the outset of a

disease's spread; beyond that time frame, returns diminish, as infected individuals already inside the enclosed area can spread the infection²⁶. Restriction of movement and goods are time-buying measures that are meant to happen early and briefly²⁷. Restrictions like these can have counterproductive effects, inciting negative consequences including preventing aid delivery, disrupting business, and triggering grave economic effects, evidence of which we've begun to see as global markets plummeted²⁸. Employing evidence-based public health prevention strategies, like proper hygiene instruction, social distancing encouragement, and community engagement around the infection, are among effective measures in controlling the spread of airborne pathogens²⁹.

Not only does science point out the ineffectiveness of travel restrictions, but the WHO also repeatedly advised State Parties against such measures during the coronavirus outbreak³⁰. Commenting on the delinquency, a WHO

²³B.J. COWLING, W.W. LIM, *They've Contained the Coronavirus. Here's How*, in *The New York Times*, March 13, 2020, <https://nyti.ms/36nPU3F> (last visited Mar 20, 2020); C.J. WANG, C.Y. NG, R.H. BROOK, *Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing*, in *JAMA*. Published online March 03, 2020.

²⁴ E. DONG, H. DU, L. GARDNER, *An interactive web-based dashboard to track COVID-19 in real time.*, in *Lancet Infectious Diseases*; published online Feb 19, <https://coronavirus.jhu.edu/map.html> (last visited Mar 19, 2020).

²⁵ Article 43.2, World Health Assembly, *Revision of the International Health Regulations*, cit.

²⁶ M. SINGH, *Will Trump's coronavirus travel ban work? Scientists express skepticism*, in *The Guardian*, (March 14, 2020), <https://bit.ly/2WZ6GmD> (last visited Mar 20, 2020); N.A. ERRETT, ET AL., *An integrative review of the limited evidence on international travel bans as an emerging infectious disease disaster control measure*, in *Journal of emergency management*, 18, 1, 2020, 7-14, <https://bit.ly/36sQWeV>; WHO, *Updated WHO recommendations for international traffic in relation*

to COVID-19 outbreak, (February 29, 2020), <https://bit.ly/3bU4OA4> (last visited Mar 20, 2020); W. PARMETT, M. SINHA, *Covid-19 — The Law and Limits of Quarantine*, in *New England Journal of Medicine* (March 18 2020), <https://bit.ly/3bWXsvA>.

²⁷ WHO, *Updated WHO recommendations for international traffic in relation to COVID-19 outbreak*, cit.

²⁸ R. SCHARMA, *This Is How the Coronavirus Will Destroy the Economy*, in *The New York Times* (March 16, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-economy-debt.html> (last visited Mar 20, 2020); M. THIELKING, L. FACHER, *Health experts warn China travel ban will hinder coronavirus response*, in *STAT news* (January 31, 2020), <https://bit.ly/2AVlgmL>.

²⁹ N. KANDEL ET AL., *Health security capacities in the context of COVID-19 outbreak: an analysis of International Health Regulations annual report data from 182 countries*, in *The Lancet*, 2020, <https://bit.ly/3e5OV16>.

³⁰ S. NEBEHAY, *WHO chief says widespread travel bans not needed to beat China virus*, *Reuters* (February 3, 2020), <https://reut.rs/3bSVoot>.

spokesperson told the *New York Times* that «in [the] four advisories it has issued since early January, the W.H.O. has consistently advised against them, cautioning that limits on international movement during public health emergencies are unlikely to stop the pathogen's spread»³¹.

Unfortunately, this pattern of nationalistic response is not new. The global community witnessed countries' implementation of the same types of travel bans, trade restrictions, and quarantining during the Ebola and H1N1 outbreaks, each time defying guidance of the WHO, demonstrating "disregard" for Article 43³². A virus doesn't recognize a national border- why should we? The most indiscriminate vector causes a great deal of discrimination among us.

2.3. State Parties' Failure to Report National Responses

Article 43 of the IHR does allow states latitude in their public health emergency responses; it does not conscript nations to take orders from WHO. But it does oblige states to report responses states have enacted shortly after implementing them, an obligation countless states have derogated³³. To date, «only 45 of the more than 70 countries that have adopted international travel restrictions have fulfilled the requirement to report their actions to the agency [WHO]»³⁴.

3. International health regulations or suggestions?

No State Party to the IHR is in complete compliance with the regulations³⁵, as revealed by WHO's State Parties Self-Assessment Annual Reporting Tool (SPAR). Europe wins the highest capacity score with 72% compliance. Legal and public health scholars highlight that «national self-assessments are unacceptable and cannot ensure uniformly high-quality national preparedness. States Parties have not collected sufficient or the right kinds of data to produce quantitative assessments of what are predominantly qualitative questions. Governments, moreover, do not use a consistent set of evidence-based metrics to measure their compliance. Most importantly, self-assessments are inherently self-interested and unreliable, absent rigorous independent validation»³⁶.

The IHR also contains no enforcement mechanism, should parties fail to comply with terms of the agreement³⁷. The IHR are not immune to the classic critique of other international treaties, that is, the difficulty to impose compliance or enforcement measures. The IHR rely on peer pressure and public shaming to accomplish pandemic containment, enforcement which has proven in the time of CoViD-19 woefully insufficient. For all the noncompliance named above, offenders will likely not suffer sanctions, beyond denigration

³¹ S. GEBREKIDAN, *The World Has a Plan to Fight Coronavirus. Most Countries Are Not Using It*, in *The New York Times* (2020), <https://nyti.ms/36rNNw2> WHO, *Updated WHO recommendations for international traffic in relation to COVID-19 outbreak*, cit.

³² L.O. GOSTIN, R. KATZ, *The International Health Regulations: The Governing Framework for Global Health Security*, cit.

³³ R. HABIBI ET AL., *Do not violate the International Health Regulations during the COVID-19 outbreak*, cit.

³⁴ S. GEBREKIDAN, *The World Has a Plan to Fight Coronavirus. Most Countries Are Not Using It*, cit.

³⁵ WHO, *Global Health Observatory: Health Emergencies*, <https://bit.ly/2zqe69w> (last visited 20 March 2020).

³⁶ L.O. GOSTIN, KATZ, *The International Health Regulations: The Governing Framework for Global Health Security*, cit.

³⁷ D.P. FIDLER, L.O. GOSTIN, *The New International Health Regulations: An Historic Development for International Law & Public Health*, in *Law, Medicine & Ethics*, 34, 2006, 85-91. <https://bit.ly/3cW02mF> WHO, *Frequently Asked Questions about the International Health Regulations*, cit.

and defamation in the media and academic communities, perhaps.

Undoubtedly, coordinating the task of pandemic prevention and response among numerous global actors is not an insignificant challenge. But the challenge becomes nearly insurmountable without the cooperation of independent states. Critics also consistently point out that politics impede the functioning of the IHR, maintaining that political interests might prevent earlier declarations of PHEICs³⁸. Though the CoViD-19 outbreak was known to WHO in December 2019, and IHR criteria for PHEIC could arguably have been met on January 23, 2020, the WHO did not declare CoViD-19 a PHEIC until January 30, 2020³⁹. Evidence suggests that this is not the first time politics impeded PHEIC declarations. In 2014, four months passed between the time the WHO declared an Ebola outbreak to the date when Ebola was declared a PHEIC. In the wake of the Ebola crisis, leaked information implicated that politics delayed a non-transparent decision⁴⁰.

4. Conclusion

The acts mentioned point to only a few ways in which the IHR framework has failed in recent history to achieve their aim. Even before the corona pandemic hit, scholars called for revisions⁴¹. Now more than ever it is clear that a virus is the only one who wins when communities fail to use the legal and evidence-based tools available. Just as the current formulation of IHR evolved after a series of edits, each inspired by the outbreaks and epidemics that came before, member states will likely encourage another round of revision. Yet the question remains: how many pandemics will it take to learn the power of international cooperation? Will revisions be sufficient to combat impending pandemic influenza? Can nations regain trust lost during CoViD-19 that they will remain open to one another in times of calamity? Or do the actions taken during the coronavirus pandemic reflect increasingly nationalistic modern trends? Will the coronavirus claim global health governance as another of its victims? Time, and the imminent fallout from this pandemic, will tell.

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³⁸ M. COLLINS, *The WHO and China: Dereliction of Duty* (Council on Foreign Relations, 27 February 2020), <https://on.cfr.org/2WVYzYj>.

³⁹ L.O. GOSTIN, *What Questions Should Global Health Policy Makers Be Asking About The Novel*

Coronavirus?, *Health Affairs Blog* (February 3, 2020), <https://bit.ly/3d1Zfkg> (last visited Mar 20, 2020).

⁴⁰ L.O. GOSTIN, R. KATZ, *The International Health Regulations: The Governing Framework for Global Health Security*, cit.

⁴¹ *Ibid.*