

Do not violate the International Health Regulations during the COVID-19 outbreak



The International Health Regulations (2005) (IHR)¹ govern how 196 countries and WHO collectively address the global spread of disease and avoid unnecessary interference with international traffic and trade. Article 43 of this legally binding instrument restricts the measures countries can implement when addressing public health risks to those measures that are supported by science, commensurate with the risks involved, and anchored in human rights.¹ The intention of the IHR is that countries should not take needless measures that harm people or that disincentivise countries from reporting new risks to international public health authorities.²

In imposing travel restrictions against China during the current outbreak of 2019 novel coronavirus disease (COVID-19), many countries are violating the IHR. We—16 global health law scholars—came to this conclusion after applying the interpretive framework of the Vienna

Convention on the Law of Treaties³ and reaching a jurisprudential consensus on the legal meaning of IHR Article 43 (panel).

We explain our conclusion here. First, under Article 43.2, countries cannot implement additional health measures exclusively as a precaution but must rather ground their decision making in “scientific principles”, “scientific evidence”, and “advice from WHO”.¹ Many of the travel restrictions being implemented during the COVID-19 outbreak are not supported by science or WHO. Travel restrictions for these kinds of viruses have been challenged by public health researchers,^{4–6} and WHO has advised against travel restrictions, arguing they cause more harm than good.^{7,8}

Second, under Article 43.1 any additional health measures implemented by countries “shall not be more restrictive of international traffic and not more invasive

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Panel: International Health Regulations (2005) Article 43.1 to 43.5 on Additional Health Measures

- 1 These Regulations shall not preclude States Parties from implementing health measures, in accordance with their relevant national law and obligations under international law, in response to specific public health risks or public health emergencies of international concern, which:
 - (a) achieve the same or greater level of health protection than WHO recommendations; or
 - (b) are otherwise prohibited under Article 25, Article 26, paragraphs 1 and 2 of Article 28, Article 30, paragraph 1(c) of Article 31 and Article 33, provided such measures are otherwise consistent with these Regulations.

Such measures shall not be 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.
- 2 In determining whether to implement the health measures referred to in paragraph 1 of this Article or additional health measures under paragraph 2 of Article 23, paragraph 1 of Article 27, paragraph 2 of Article 28 and paragraph 2(c) of Article 31, States Parties shall base their determinations upon:
 - (a) scientific principles;
 - (b) available scientific evidence of a risk to human health, or where such evidence is insufficient, the available information including from WHO and other relevant intergovernmental organizations and international bodies; and
 - (c) any available specific guidance or advice from WHO.

- 3 A State Party implementing additional health measures referred to in paragraph 1 of this Article which significantly interfere with international traffic shall provide to WHO the public health rationale and relevant scientific information for it. WHO shall share this information with other States Parties and shall share information regarding the health measures implemented. For the purpose of this Article, significant interference generally means refusal of entry or departure of international travellers, baggage, cargo, containers, conveyances, goods, and the like, or their delay, for more than 24 hours.
- 4 After assessing information provided pursuant to paragraph 3 and 5 of this Article and other relevant information, WHO may request that the State Party concerned reconsider the application of the measures.
- 5 A State Party implementing additional health measures referred to in paragraphs 1 and 2 of this Article that significantly interfere with international traffic shall inform WHO, within 48 hours of implementation, of such measures and their health rationale unless these are covered by a temporary or standing recommendation.

Text is taken from International Health Regulations (2005).¹

or intrusive to persons than reasonably available alternatives".¹ In this case, even if travel restrictions did work, there are so many other more effective measures that countries can take to protect their citizens. WHO has issued COVID-19 technical guidance on several such measures, including risk communication, surveillance, patient management, and screening at ports of entry and exit.⁹

Third, and most importantly, Article 3.1 strictly requires all additional health measures to be implemented "with full respect for the dignity, human rights and fundamental freedoms of persons",¹ which in turn must reflect the international law principles of necessity, legitimacy, and proportionality that govern limitations to and derogations from rights and freedoms.¹⁰ Under no circumstances should public health or foreign policy decisions be based on the racism and xenophobia that are now being directed at Chinese people and those of Asian descent.¹¹

Many of the travel restrictions implemented by dozens of countries during the COVID-19 outbreak are therefore violations of the IHR.¹² Yet, perhaps even more troubling, is that at least two-thirds of these countries have not reported their additional health measures to WHO,¹² which is a further violation of IHR Articles 43.3 and 43.5. Flagrant disregard for the legal requirement to promptly report any additional health measures frustrates WHO's ability to coordinate the world's response to public health emergencies and prevents countries from holding each other accountable for their obligations under the IHR.

Some countries argue that they would rather be safe than sorry. But evidence belies the claim that illegal travel restrictions make countries safer.⁴⁻⁶ In the short term, travel restrictions prevent supplies from getting into affected areas, slow down the international public health response, stigmatise entire populations, and disproportionately harm the most vulnerable among us. In the longer term, countries selecting which international laws to follow encourages other countries to do the same, which in turn undermines the broader rules-based world order. Effective global governance is not possible when countries cannot depend on each other to comply with international agreements.¹³

Of course, the IHR is far from perfect. For example, the IHR only governs countries, not corporations and other non-governmental actors. Thus, some countries

are finding themselves with de-facto travel restrictions when airlines stop flying to places affected by COVID-19. Additionally, the IHR does not have robust accountability mechanisms for compliance, enforcement, oversight, and transparency.¹⁴

But the IHR is the legally binding system for protecting people worldwide from the global spread of disease. With more than 2.5 billion people travelling between about 4000 airports every year,¹⁵ future outbreaks are inevitable. Responses that are anchored in fear, misinformation, racism, and xenophobia will not save us from outbreaks like COVID-19. Upholding the rule of international law is needed now more than ever. Countries can start by rolling back illegal travel restrictions that have already been implemented and by supporting WHO and each other in implementing the IHR.

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