

Japan's Global Health Strategy in the Post-Covid-19 Era

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Global Health Administration and Maritime Transport: The Significance and Limitations of the World Health Organization System

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The COVID-19 pandemic, which began to spread rapidly in January 2020, caused chaos and interruptions in ship operations. There were many cases in which the port states denied foreign cruise ships entry, and passengers could not disembark. Refusal to allow port calls of cargo ships was rare. Yet, some countries did delay permission to enter the port or did not allow seafarers to board or disembark, including for crew changes. There were cases where there was a mandatory quarantine or interference in the transportation of cargo.

Maritime transport is the foundation of the global supply chain. The global health administration system led by the World Health Organization (WHO) is a part of a liberal international order centered on economic openness. When infectious diseases occur, the established principle under international agreements since the 19th century is that the states shall work to prevent the disease from spreading while at the same time minimizing international traffic restrictions, as recognized in the WHO's 2005 International Health Regulations (IHR).¹

Nonetheless, during the pandemic, almost all port states have imposed restrictions on the entry of foreign vessels and the disembarkation of their passengers and crews. The highly infectious and lethal COVID-19 was seen as a threat to national security. While regulations to date have been aimed at maintaining smooth and efficient maritime transportation, it is possible that in the future, public health measures in the port state, including preventive measures, may take precedence to address infectious diseases.²

In this policy brief, I will examine the significance and limitations of the WHO system in the regulation of maritime transportation and will indicate challenges for the future. For more on the authority of port states over ships in port, the reinforcement of onboard infectious disease measures by flag states and other parties, and crew change issues, see the policy brief in this series by Kentaro Nishimoto.³

Restrictions on international traffic in the International Health Regulations

The system of international cooperation to prevent the spread of epidemics across borders was established through international sanitary treaties adopted by successive International Sanitary Conferences from the mid-19th century to the early 20th century.⁴ These treaties stipulated that unnecessary restrictions on international traffic, including strict quarantines and the closure of borders, should be avoided. However, the main aim of these conventions was to prevent certain infectious diseases in Asian and African regions from being introduced into Europe. The WHO was established in 1948 to strengthen solidarity in international health administration to overcome such a limit. The WHO's governing forum, the World Health Assembly, adopted the International Sanitary Regulations in 1951 as a set of rules binding upon member states; this was revised and renamed as the IHR in 1969 and subsequently revised as the present IHR in 2005.

One of the objectives of the IHR 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” (Article 2; hereafter, article numbers indicated refer to the IHR). The IHR also prohibits additional health measures on ships in transit not coming from affected areas. For example, port states cannot refuse to grant permission for port calls or free pratique for public health reasons (Articles 28 (1) and (2)).

As an exception, IHR Article 43 prescribes that, in response to public health emergencies, state parties may implement health measures that (1) “achieve the same or greater level of health protection than WHO recommendations” or (2) that implement certain regulatory measures for ships and aircraft in transit. It further notes that such measures must not be “more restrictive of international traffic or more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection” (Article 43(1)). When implementing these measures or other additional measures, state parties must base their determination on” (a) scientific principles, (b) available scientific evidence of a risk to human health, or where such evidence is insufficient, the available information, including information from WHO and other relevant intergovernmental organizations and international bodies, and (c) any available specific guidance or advice from WHO” (Article 43(2)). When additional measures are taken, state parties must provide the WHO with the public health rationale and scientific data (Article 43(3)).

The WHO is thus cautious in recommending any restrictions on international traffic. With regard to COVID-19, as of January 2020, it stated that no limits be imposed on the international movement of people and goods. Subsequently, as the characteristics of this infectious disease became known, the WHO acknowledged the necessity of controlling the movement of people. However, in its strategy update of April 2020 and report of July 2020, it stated that travel for repatriations and cargo transport of essential supplies must be recognized as international movements for critical purposes. It thus should not be impeded by border closures or suspension.⁵

Preventative measures by port states

The IHR does not prohibit port states from taking preventive traffic restriction measures. In the initial stages of the pandemic, the characteristics of COVID-19 and what measures would be effective to address it were not known in the beginning. The question arose as to whether port states could refuse entry to ships or impose strict procedures for disembarkation while guidance based on scientific evidence was not yet available. There is no explicit provision regarding the precautionary principle in the IHR.⁶ There is also no provision for what to do in cases where scientific evidence is insufficient. IHR Article 43(2)(b) only specifies that member states should determine additional measures based on the available information.

The first point to be noted here is that *Report of the Review Committee on the Functioning of the International Health Regulations (2005) during the COVID-19 Response* recommended taking measures based on the precautionary principle. More specifically, new evidence will emerge when dealing with new pathogens as the situation evolves. It is important to consider the precautionary principle when balancing public health risks and the impact of public health measures on international travel and trade. The key factors to be considered include the certainty of the scientific evidence, the severity of the risk, the magnitude of the stakes, and the potential costs of action or inaction. The precautionary measures should be proportional to the perceived threat, non-discriminatory, and continuously reviewed in light of new knowledge.⁷ Similarly, a report by the Independent Panel for Pandemic Preparedness and Response (IPPPR) points out that the WHO could have told member states that they should take the precaution of assuming that human-to-human transmission was occurring even at the stage when it was not yet clear.⁸ These perspectives do not recognize exceptions to IHR Article 43 but rather only allow precautionary measures within the bounds of that article.

Secondly, regardless of the previous point, the IHR does not cover all aspects of the regulation of international traffic. Its provisions do not affect the rights and obligations of any state party deriving from other international agreements (Article 57). Also, the IHR does not prescribe restrictive measures based on reasons other than public health and does not prohibit taking such measures without WHO recommendations.

Therefore, port states can restrict the entry, unloading, disembarkation, etc., of foreign vessels, whether as preventative measures within Article 43 or as measures implemented outside of the IHR for national security or other reasons.

Regulation of international maritime transportation

Unlike land and air routes, marine transportation has unique challenges because it requires that people spend an extended period—many days or months—in a confined space.

Because ships constitute single units, infectious disease countermeasures on ships require special protocols. The IHR make no specific provisions regarding this point.⁹ In particular, when an infectious disease outbreak occurs on an international cruise ship, isolation and quarantine measures must be implemented in a single ship where thousands of passengers and crew members are staying. The Review Committee noted that, because they are “novel challenges to States Parties and conveyance operators on a scale not envisioned in the IHR,” consideration should be given to defining the limits of the responsibilities of state parties under regulations for implementing isolation and quarantine measures on international cruise ships.¹⁰

The IHR does not institute regulations about protecting the rights and interests of the main actors in maritime transportation, namely the operating companies, crews, and passengers. However, for example, the decision on whether to allow a port call by a ship carrying infected persons and whether to allow the crew and passengers of such a ship to disembark must be made based not only on the various factors prescribed in IHR Article 43 but also on whether the ships are implementing appropriate safety management, including isolation measures and other measures to prevent the spread of infection. It is also critical to provide such information before the ship entering the port.

Furthermore, as noted above, to correct the confusion that has arisen for maritime transportation, in the short term, the procedures required for port calls, transport of goods, etc., must be simplified to improve distribution efficiency. In the medium to long term, the division of authority between port states and flag states should be clarified, and cooperation among the concerned states and related actors should be strengthened. Also, there are certain standard rules among guidelines to respond to infectious diseases. A system should be constructed to suppress infectious diseases inside ships and provide patients with access to medical treatment when necessary while also referring to non-binding norms.¹¹ These points have already been incorporated into regulations and guidelines established by the International Maritime Organization (IMO), so these mechanisms are being revised and utilized in practice.¹²

Performance of the information provision and capacity building duties of member states

The provision of information by member states and the capacity building of ports are essential for implementing health administration under the WHO regime, and the IHR prescribes these obligations.

However, WHO member states often do not provide the information on the infectious diseases necessary for the WHO to make recommendations in practice. Countries fear that by providing information on contagious diseases, they may incur reputational damage that leads to economic losses. There is no incentive mechanism to encourage them to file reports or

effective sanctions for failing to do so. The WHO obtains information from non-state actors such as international organizations, nongovernmental organizations (NGOs), and individuals. However, it still requires the consent of the local government to conduct investigations on the sources of infectious diseases and obtain specific information on the extent of their prevalence. In locations where freedom of expression is restricted, it may take time to get information.

In the case of COVID-19, the slow reporting and provision of information by member states delayed the initial response of the WHO. For example, the IPPPR report found that information sharing was lacking, especially during the early stages of the pandemic.¹³ The objective of the WHO system is not to make decisions on whether or not to take action while the quality and quantity of data received remains low. Consequently, it is necessary to formulate a mechanism that will encourage WHO member states to share data on infectious diseases and provide scientific evidence for measures concerning international transportation.

The IHR mandates that state parties build up their surveillance and control capacities to respond to infectious diseases (Article 5, Article 13) and prescribes their obligation to provide aid and cooperation to enhance the capacity of developing countries (Article 13, Article 44). However, those obligations are only required to be carried out “to the extent possible.” To maintain maritime transportation, port states must have the capacity to respond to infectious diseases, including the isolation and medical treatment of infected persons. To that end, there is a need to appropriately provide assistance to and build the effective capacity of developing countries.

Conclusion

The limits of the IHR presented above did not newly emerge from COVID-19. Experts and practitioners were aware of these issues well before that, but they became more evident after 2020. In light of the limitations of the IHR and the WHO regime that have been outlined in this paper, it would be appropriate for the IMO and the International Labour Organization to respond since they already have schemes to regulate maritime transportation. And indeed, deliberations are underway on the drafting of such standards and the revision of the Maritime Labour Convention.

The final report of a survey commissioned by the Japanese Ministry of Foreign Affairs, “Survey and Research on Preventing the Spread of Infectious Diseases on Cruise Ships and International Response When Infectious Diseases Have Spread,” which was submitted to the ministry in March 2021, noted that in the post-COVID era it will be necessary to increase “ships of confidence” and “ports of confidence” and to prepare “structured and predictable international institutional mechanisms.”¹⁴ To accomplish that, we must work to foster a common understanding of the ideal state of international health administration and advance the formation of norms to ensure the smooth operation of maritime transportation.

※This is the English translation of the original Japanese version published on February 14, 2022, at: <https://www.jcie.or.jp/japan/report/activity-report-14841/>.

¹ World Health Organization, International Health Regulations (2005), <https://www.who.int/publications/i/item/9789241580496>.

² Kazuto Suzuki, “International Politics and Japan During the COVID Pandemic and Beyond—Redefining Solidarity,” *Policy Brief: Japan’s Global Health Strategy in the Post-COVID-19 Era* (JCIE Global Health Governance Study Group), vol. 1.

³ Kentaro Nishimoto, “Global Health Administration and Maritime Transport: Port State Authority and the Issue of Crew Change for Vessels in Port,” *Policy Brief: Japan’s Global Health Strategy in the Post-COVID-19 Era*, vol. 8.

⁴ Taira Nishi, *Gurobaru herusu ho: Rinen to rekishi* [Global Health Law: Principles and History] (University of Nagoya Press, 2022); and Osamu Arakaki, *Toki wo tadayou kansensho: Kokusaiho to gurobaru ishu no keifu* [Infectious Disease that Drifts over Time: Lineage of International Law and Global Issues] (Keio University Press, 2021). For the significance of global health administration, see Hideaki Shiroyama, “*Gurobaru hoken gabanansu towa nanika?*” [What is global health governance?], in *Gurobaru hoken gabanansu* [Global Health Governance], ed. Hideaki Shiroyama (Toshindo, 2020), 4.

⁵ WHO, “COVID-19 Strategy Update” (14 April 2020), <https://www.who.int/publications/m/item/covid-19-strategy-update>; and WHO, “Policy Considerations for Implementing a Risk-Based Approach to International Travel in the Context of COVID-19,” <https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-Brief-Risk-based-international-travel-2021.1>.

⁶ The precautionary principle requires actors to take preventative action in cases where there is scientific uncertainty regarding the impact on human activities.

⁷ Review Committee, *Report of the Review Committee on the Functioning of the International Health Regulations (2005) during the COVID-19 Response* (30 April 2021), para. 96, <https://www.who.int/publications/m/item/a74-9-who-s-work-in-health-emergencies>.

⁸ IPPPR (The Independent Panel for Pandemic Preparedness & Response), *COVID-19: Make It the Last Pandemic*, https://theindependentpanel.org/wp-content/uploads/2021/05/COVID-19-Make-it-the-Last-Pandemic_final.pdf, 25.

⁹ However, the WHO has published guidance and handbooks. WHO, “Interim WHO Technical Advice for Case Management of Pandemic H1N1 2009 on Ships” (13 November 2009), https://www.who.int/csr/resources/publications/swineflu/cp011_2009_1029_who_guidance_H1N1_ships.pdf; and WHO, *Handbook for Management of Public Health Events on Board Ships, 2016*, <https://www.who.int/publications-detail-redirect/handbook-for-managementof-public-health-events-on-board-ships>.

¹⁰ Review Committee, *supra* note 7, para. 97; and Review Committee, *Interim Progress Report of the Review Committee on the Functioning of the International Health Regulations (2005) during the COVID-19 Response*, EB148/19, 12 January 2021, para. 39, https://apps.who.int/gb/ebwha/pdf_files/EB148/B148_19-en.pdf.

¹¹ Mariko Kawano, “Kaiyoho ni okeru ‘hito’ no kenri to rieki no hogo oyobi kiritsu: Koronaka ni okeru senin no hogo wo chushin ni” [Protection and regulation of the rights and interests of “people” under maritime law: Centered on protection of crew during the COVID-19 disaster], *Kokusaiho Gaiko Zasshi* [The Journal of International Law and Diplomacy] 120, nos. 1–2 (2021): 212–23.

¹² Regarding this point, see Yurika Ishii, “*Posuto korona ni okeru kaiun to infomaru na hokeisei*” [Maritime transportation in the post-COVID era and informal law formation], *Kokusaiho Kenkyu* [Tokyo Review of International Law], no. 10 (due to be published by Shinzansha Publisher in March 2022).

¹³ IPPPR, *supra* note 8, p. 26.

¹⁴ *Toward Safe and Healthy Trans-border Cruises: International Challenges for Building Resilient and Trusted Ships and Ports Report* (Final report to the Ministry of Foreign Affairs), https://www.mofa.go.jp/mofaj/press/release/press4_009030.html.

This policy brief series is the product of [a joint research project](#) conducted by the Japan Center for International Exchange (JCIE) and the Tokyo University Institute for Future Initiatives (IFI) to provide analyses on global and regional health governance systems and structures and to offer concrete recommendations about the role Japan should play in the field of global health.

