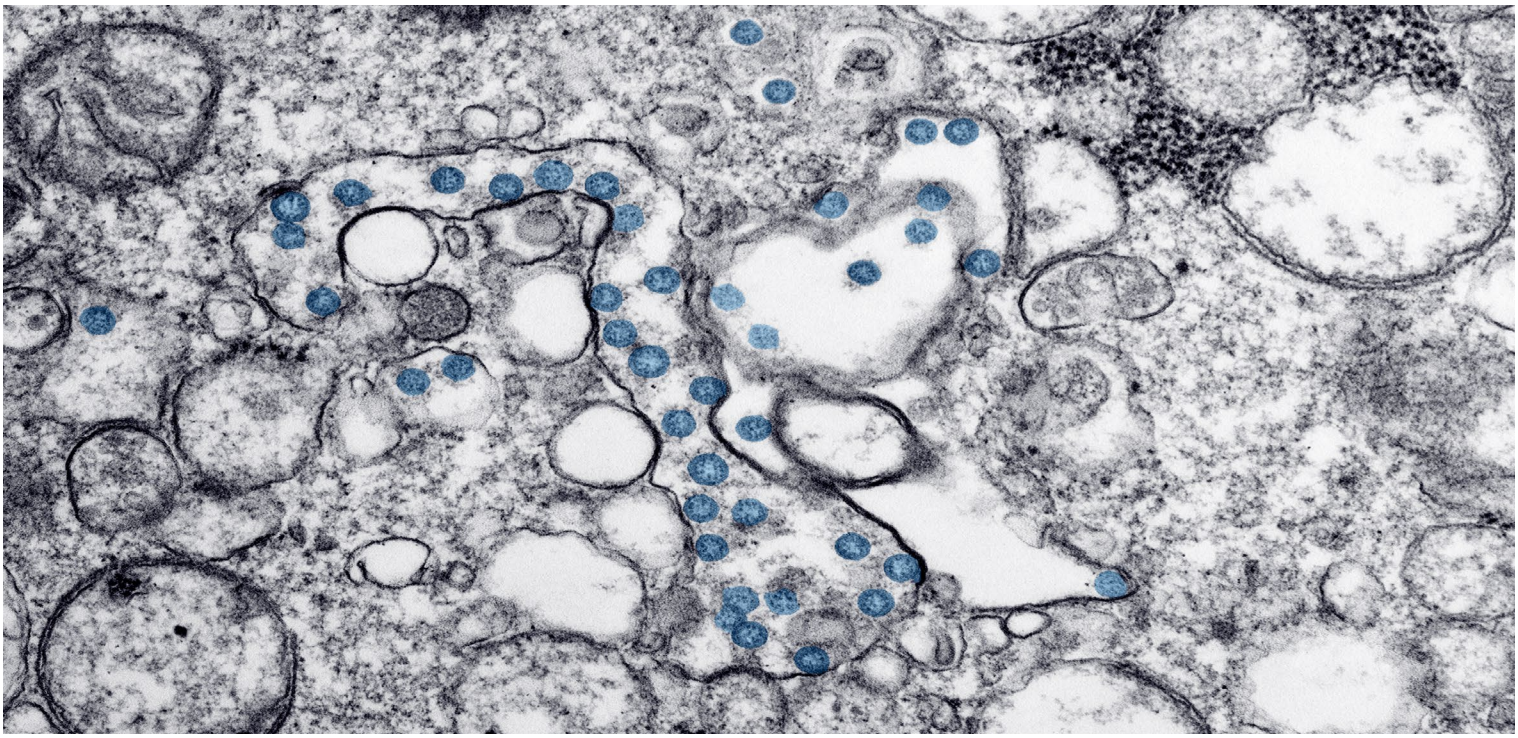
Addendum to Fact Sheet 15 on National Implementation Measures for the International Health Regulations 2005 (IHR)

COVID-19 as a Public Health Emergency of International Concern (PHEIC) under the IHR

The World Health Organization's (WHO) International Health Regulations 2005 (IHR) aim to prevent, protect against, control and provide a public health response to the international spread of disease, such as COVID-19.



Transmission electron microscopic image of an isolate from the first US case of COVID-19. The spherical viral particles, colourised blue, contain cross-sections through the viral genome, seen as black dots. *Photo credit: Hannah A Bullock and Azaibi Tamin/ Public Health Image library (PHIL), Centers of Disease Control and Prevention (CDC)*

NOTIFICATION OF COVID-19 AS AN "EVENT"

One way the IHR tries to control the international spread of disease is by requiring states to report any "event" to the WHO that may constitute a "public health emergency of international concern", also known as a PHEIC (Article 6(1)).

An "event" is defined as a manifestation of disease or an occurrence that creates a potential for disease (Article 1). On 31 December 2019, China was the first state to report to the WHO that a pneumonia of unknown cause was detected in Wuhan City, Hubei Province of China.

Following that report, other countries started notifying the WHO. On 13 January 2020, Thailand reported a similar case. On 16 January 2020, Japan informed the WHO of a confirmed case of the novel coronavirus, referred to as 2019-nCoV. On 20 January 2020, the Republic of Korea reported its first case of the novel coronavirus.

The novel coronavirus 2019-nCov was later officially named "severe acute respiratory syndrome coronavirus 2" (SARS-CoV-2019) by the WHO, because the virus is genetically related to the coronavirus that caused the SARS outbreak in 2003. The disease this novel coronavirus causes was named COVID-19, which stands simply for "coronavirus disease 2019".

DETERMINATION OF COVID-19 AS A "PHEIC"

Having received the reports of these events, the WHO Director-General has the authority to determine whether these constitute a PHEIC (Article 12(1)).

A PHEIC is an extraordinary event that poses a risk to the public health of more than one state because of the international spread of the disease, thereby potentially requiring a coordinated international response (Article 1(1)).

To come to this determination, the WHO Director-General has to establish an Emergency Committee of experts that provides advice on the matter (Article 48(1)).

The WHO Director-General first convened this Emergency Committee for COVID-19 on 22 January and again on 23 January 2020. During these meetings, the four states (China, Thailand, Japan and the Republic of Korea) briefed the Emergency Committee in line with Article 49 of the IHR. There were divergent views on the Emergency Committee as to whether the events reported by the four states constituted a PHEIC. The Emergency Committee considered it too early to declare a PHEIC due to its restrictive and binary nature. It was recognised, however, that the situation was urgent and that the Emergency Committee should reconvene within 10 days' time.

Photo credit: Heidi Soeters/PHIL/CDC

The Emergency Committee reconvened within a week, on 30 January 2020. By then 18 states had reported COVID-19 cases to the WHO. The Emergency Committee agreed that the outbreak now met the criteria for a PHEIC and proposed advice that could be issued as "temporary recommendations". The WHO Director-General proceeded to declare the outbreak of the novel coronavirus as a PHEIC and issued the Emergency Committee's advice as temporary recommendations under the IHR.

WHO'S TEMPORARY RECOMMENDATIONS FOR COVID-19

Under Article 15 of the IHR, a "**temporary recommendation**" refers to non-binding advice issued by the WHO in response to a PHEIC on the basis of a risk assessment and for a limited amount of time. Their aim is to prevent or reduce the international spread of disease and minimise interference with international traffic.

The temporary recommendations for COVID-19, issued on 30 January 2020, included the following:

- States were advised to prepare for containment, including active surveillance, early detection, isolation, case management, contact tracing and prevention of onward spread;
- No travel or trade restrictions were recommended. According to the WHO, evidence shows that such bans are ineffective in most situations and may divert resources from other interventions;
- States were cautioned against actions that promote stigma or discrimination, in line with the principles of Article 3 of the IHR which include full respect for the dignity, human rights and fundamental freedoms of persons;
- States were advised to support low- and middle-income states to enable their response to COVID-19 and facilitate access to diagnostics, potential vaccines and therapeutics.

In line with Article 15(3), these recommendations were reviewed three months later, on 30 April 2020. Reflecting the reality of community transmissions and trade and travel bans in many states, these recommendations now advised states to, amongst others:

- monitor overall trends in settings where testing a large proportion of suspected cases is not possible and undertake early detection through laboratory confirmation, primarily of suspected cases among health workers;
- continue to review travel and trade measures based on risk assessments.

STATES' IMPLEMENTATION OF THE TEMPORARY RECOMMENDATIONS FOR COVID-19 AND THEIR ADDITIONAL MEASURES

By definition, the temporary recommendations issued by the WHO are recommended courses of action for states and not requirements. However, they constitute authoritative advice from international experts. In practice, some states have followed these recommendations and others have not.

Under Article 43 of the IHR, states are allowed to take their own measures, so-called **additional measures**. However, these have to achieve the same or greater level of health protection than the WHO recommendations. States may even take measures that are otherwise prohibited by the IHR (such as requiring invasive medical examinations of travellers as a condition of entry into the state), provided they can show how these are otherwise consistent with the IHR.

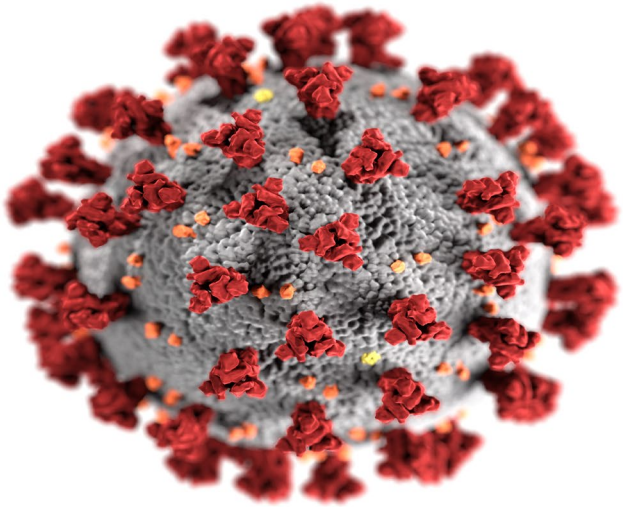
Some of these additional measures may also significantly interfere with **international traffic** (i.e. refusals or delays of entry or departure of international travellers, baggage, cargo, containers, conveyances and goods for more than 24 hours). In that case, states are obliged to give the public health rationale and justification for these measures to the WHO within 48 hours of these measures' implementation. The WHO will review the justification and may request states to reconsider their measures. As at 29 February 2020, 38 states had reported additional measures to the WHO that significantly interfered with international traffic, ranging from denial of entry of passengers, visa restrictions and suspension of flights.

Whether to implement the WHO's temporary recommendations or their own additional measures, states' response to COVID-19 has included the adoption of legislative and regulatory measures.

PHEIC OR PANDEMIC?

Besides declaring COVID-19 a PHEIC on 30 January 2020, the WHO made the assessment on 11 March 2020 that COVID-19 can be characterised as a pandemic, defined as the "worldwide spread of a new disease."

Qualifying COVID-19 as a pandemic has no legal consequences under the IHR. In fact, the IHR do not even mention the term. However, commercial contracts may include clauses referring to pandemics and this characterisation by the WHO may therefore have consequences for individuals and businesses in their national jurisdictions.



Ultrastructural morphology exhibited by coronaviruses. The red spikes look like a corona surrounding the virion when viewed electron microscopically. *Photo credit: Alissa Eckert and Dan Higgins/PHIL/CDC*

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