



観光旅客船内における感染症の拡大の  
予防及び感染症が拡大した際の国際的な  
対応の在り方に関する調査・研究業務

# 報告書

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一般社団法人 The International Academic Forum

***Toward Safe and Healthy Trans-border Cruises:  
International Challenges for Building Resilient and Trusted Ships and Ports  
Report (Concise Version)***

The International Academic Forum  
March 29, 2021

**Executive Summary**

**1. Notes about the Project**

The International Academic Forum (IAFOR) was commissioned by the Japanese Ministry of Foreign Affairs (MOFA) to conduct this international study on the prevention and responses to the outbreak of infectious diseases on international cruise ships, and how the system of international cooperation and coordination (including areas of international law) could be improved, in the wake of the COVID-19 outbreak incidents affecting cruise ships, such as the Diamond Princess, the Westerdam and the Costa Atlantica.

To this end, IAFOR's research arm, the IAFOR Research Centre at the Osaka School of International Public Policy, Osaka University established a Japanese Experts Committee and a network of collaborating overseas think tanks, namely the East-West Center – Washington D.C., the Netherlands Institute of International Relations – Clingendael, and The Bartlett Real Estate Institute at University College London. The core group also consulted other experts from the EU Healthy Gateways and the Centre of International Law at the National University of Singapore.

Over the course the duration of the project (late October 2020-March 2021), the Japanese and overseas experts on international and maritime law, infectious disease control, public health, international law, and maritime transport and tourism engaged in intensive discussions and exchanges of views, and shared the understanding that this study should contribute to the ongoing global discussions and endeavours to review and enhance the existing sets of international legal frameworks, guidelines and protocols and the range of formal and informal mechanisms for international cooperation. The list of recommendations is by no means exhaustive.

This study was not carried out as a public inquiry but was propelled by a strong sense of moving forward toward healthier and safer international cruises. It is hoped that the contents and recommendations in this report would be shared for further international discussion.

**2. Objective and Methodology**

The cruise ship sector is uniquely complex and crisis management challenges multifaceted because it has multiple stakeholders and parties (flag states, port states, operating companies, the operating/owner company states, and international organisations to list the main ones). There is a need to improve on the existing international institutional mechanisms and practices, particularly in legal and medical areas, to better prevent and prepare for potential outbreak incidents of infectious diseases on international cruise ship operations in the future.

To chart through this myriad of interactive elements triggered the genesis of this study, with the aim to recommend more structured, predictable, and effective responses to future emergencies with international cruise ships. Its approach is inter-disciplinary and cross-sectoral to identify key areas and issues where: (a) greater cross-sectoral as well as international cooperation and coordination are desirable; and, (b) existing international laws and regulations could be articulated further to be effectively implemented.

To identify the “grey zones” in implementing international rules and regulations, it examined three case studies, the Diamond Princess, the Westerdam, and the Holland America Line (attached as appendices) that each highlight different challenges and issues, in reference to existing international laws, regulations and operational environment of international cruises.

Each case has been examined in phases of the cruise ship’s journey, in accordance with the jurisdictions of international laws and regulations (in particular The United Nations Convention on the Law of the Sea (UNCLOS) and The International Health Regulations (IHR)): before boarding, onboard, entry, and at the port.

We have identified three important elements that are needed to prevent (and prepare for) future cases of outbreaks on cruise ships.

- More ships and ports that are resilient and trusted, namely, **“ships of confidence”** and **“ports of confidence”**.
- More structured and predictable international institutional mechanisms that govern practical cooperation, coordination and sharing of responsibilities among the multiple stakeholders and parties.
- The enhanced capacity and institutional support (guidelines, protocols, and clear demarcation of authority and jurisdiction) for those highly professional personnel involved in crisis management to be able to exercise their responsibilities and duties effectively and appropriately.

### **3. The Nature of the Challenge**

While international cruises themselves operate in a unique multinational environment with an extremely diverse range of actors (flag state, operating state/company, port state, passengers and their countries of nationality, port authorities, etc.), the problem has been that which of the flag state, operating company, or the port state is primarily responsible for measures to prevent the spread of infectious diseases on board has not been clearly established. There were “grey zone” issues concerning:

- The chain of command, the responsibilities and duties of the parties concerned and the burden-sharing of costs (including medical expenses, smooth repatriation, necessary consular cooperation between the home and port states, and cooperation of operators, the structure of the ship, and issues related to reporting and communication).
- The relationship between the United Nations Convention on the Law of the Sea (UNCLOS) as a general international law and the special laws, such as the International Health Regulations (IHR) and the Safety of Life at Sea (SOLAS) Convention, and the related issue of cooperation between international organisations, such as the World Health Organization (WHO), the International Maritime Organization (IMO), and the International Labor Organization (ILO)
- The coordination and harmonization between these international laws and regulations with domestic law and regulations in order to enhance predictability in the future.

#### **4. Findings and Recommendations (Major Findings and Recommendations)**

The group of experts believe that:

- 1) The jurisdiction of the port state (including decisions on whether or not to allow or deny port entry, command and location of authority, and clarification of the scope of responsibility and division of costs) should be exercised to prevent the spread of infectious diseases, as a matter of serving the common global interest (as is the case of international cooperation in the preservation of marine resources), and that Japan should develop laws to enable it to take port state measures more effectively;
- 2) The flag states are expected to become more a “flag of confidence” states with a higher level of trustworthiness to take measures to prevent the spread of infectious diseases.
- 3) IHR should be prepared for pandemics, and the jurisdiction of the port states and mechanism international cooperation should be included in the “pandemic treaty”, if it materializes.
- 4) A network of “ports of confidence” and cooperative relationships should be established by designating hub ports among the countries in Asia;
- 5) Information regarding the structure of the ship, crew training, and passenger preparedness are important for onboard and onsite response;
- 6) Information sharing, discussion and mutual cooperation among relevant international organisations such as WHO, IMO, and ILO should be enhanced.

#### **5. Cruise Forward (Conclusion - Moving Forward for Future Voyages)**

The COVID-19 pandemic has threatened the vital cores of all human lives and constitutes a major crisis in human security. The world should unite to overcome the challenges and move forward. Yet, this pandemic has shown that international cooperation and coordination cannot be taken for granted, and that it is easier said than done even in this globally connected world.

Healthy and safe international cruises can only be achieved if the actors involved are united in operating reliable ships and ports, with a better compass, the "international law of pandemics" in mind. Japan has had a difficult experience, and cruise ships have been perceived as dangerous, but in fact, they actually safe in that they have the capacity to be used as hospital ships in times of disaster. Japan, as a maritime nation, should take leadership in improving hardware, software, and operations so that the future of international cruising can develop as healthy, safe, wise, and resilient.

***Toward Safe and Healthy Trans-border Cruises:  
International Challenges for Building Resilient and Trusted Ships and Ports***

The International Academic Forum  
March 29, 2021

**Notes about the Project**

This report is the result of an intensive four months cross-disciplinary research collaboration, deliberation and exchange of views between Japanese and international experts on the subject of enhancing international cooperation to prevent and prepare for the outbreak of infectious diseases on international cruise ships. The project was initiated by the Ministry of Foreign Affairs of Japan (MOFA), as the responsibility to the international community of the country that had first-hand experiences of responding to major cases of COVID-19 outbreak on international cruise ships, namely the Diamond Princess that docked in Yokohama and the Costa Atlantica that was handled by Nagasaki. It was commissioned by the MOFA to The International Academic Forum (IAFOR). The duration of the project was from late October 2020 to March 2021, with a wrap up international conference held on March 10-11, 2021, where the outline of this report was discussed.

IAFOR, with its research arm, the IAFOR Research Centre (IRC) at the Osaka School of International Public Policy (OSIPP), Osaka University, set up the Japan Experts Committee comprised of experts from international and the law of the sea; epidemiology and public health; cruise ship and tourism; and international politics. It worked closely with the following overseas and Japanese institutions and organisations that carried out the research: the East-West Center, Washington, D.C. (United States); the Netherlands Institute of International Relations – Clingendael (the Netherlands); the Bartlett Real Estate Institute, University College London (United Kingdom); and, the Academic Society for Cruise and Ferry, Japan. It also consulted the experts from several other overseas institutions, including the EU Healthy Gateways initiative and the Centre of International Law, National University of Singapore.

The project members established a shared understanding and were driven by the resolve (among the Japanese and the international experts) that:

- What happened on the Diamond Princess could have happened to any cruise ship at any port;
- Japanese experiences, best practices and lessons learned from them should be shared internationally, together with those of others;
- It is important for Japan to make a positive contribution to the ongoing global discussions and endeavours to review and enhance the existing sets of international legal frameworks, guidelines and protocols and the range of formal and informal mechanisms for international cooperation.

Thus, we must stress that the project was not run as a public inquiry into what went wrong and identifying accountable parties and actors. It was propelled by a strong sense of moving forward toward healthier and safer international cruises, by building on the experiences and the challenges that were faced by all the actors involved, including the passengers.

During the course of this study, the Japan Experts Committee had the privilege of engaging in a series of lively exchange of views and an international conference with experts from around the world. It is hoped that the contents and recommendations in this report would be shared further through our international friends and colleagues and stimulate further discussion in future international conferences and exchanges of views by the researchers and organisations involved.

Finally, a note of gratitude and appreciation is due to the members of the Japan Experts Committee whose expertise and strong sense of duty and dedication were indispensable. A special thanks is also due to the collaborating overseas institutions for their understanding and strong support toward this Japanese undertaking.

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***Disclaimer:*** *The views and opinions expressed in this report are those of experts and researchers who took part in the project, and do not reflect or represent the positions or views of specific organisations.*

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***Toward Safe and Healthy Trans-border Cruises:  
International Challenges for Building Resilient and Trusted Ships and Ports***

**Objective and Methodology**

- How do we ensure healthy and safe international cruises in the aftermath of the COVID-19 pandemic? This is the main concern that this international collaboration project has sought to address and to offer insights and recommendations to the relevant and interested parties for the resumption of international cruises, as part of the international community's efforts to overcome and move beyond the COVID-19 pandemic.

More specifically, the main purpose of this project has been to look at the areas of international cooperation and coordination, with the following objectives in mind:

- How do we improve on the existing international institutional mechanisms and practices, particularly in legal and medical areas, to better prevent and prepare for potential outbreak incidents of infectious diseases on international cruise ship operations in the future?; and,
- What are the lessons learned from the incidents that occurred on or affected international cruise ships that could contribute to this endeavour?

The project has been conscious of the facts that the cruise ship sector has multiple stakeholders and parties (flag states, port states, operating companies, the operating/owner company states, and international organisations to list the main ones), and the crisis management challenges are also multi-faceted. Furthermore, the political and socio-economic realities that surround the cruise ship sector is uniquely global and complex.

The difficulties in charting through this myriad of interactive elements triggered the genesis of this study, with the aim to recommend more structured, predictable, and effective responses to future emergencies with international cruise ships. To this end, the project adopted an interdisciplinary and cross-sectoral approach, working with Japanese and international experts and practitioners in the fields of global health governance, international law and the law of the sea, and the cruise and ferry industry, to identify key areas and issues where: (a) greater cross-sectoral as well as international cooperation and coordination are desirable; and, (b) existing international laws and regulations could be articulated further to be effectively implemented.

In order to navigate the intertwined issues and challenges, identify the “grey zones” in implementing international rules and regulations, and to effectively present our findings and recommendations, we chose an inductive approach and organised the research around three case studies, the Diamond Princess, the Westerdam, and the Holland America Line (attached as appendices) undertaken by the collaborating researchers and institutions. Each of the cases highlights different challenges and issues, in reference to existing international laws, regulations and operational environment of international cruises.

The Diamond Princess case is treated as a comprehensive case of crisis management, as it had 3,711 passengers and crew combined with 712 infections (199 confirmed on board), with a stress on the challenges from the perspective of the port state (Japan); the Westerdam case with 2,257 passengers and crew with one passenger who tested positive after disembarking at Cambodia examines issues raised by the ship being refused entry by 5 ports (for fear of potential infection on board) before being accepted by Cambodia; and, the Holland America Line case highlights issues related to the duties and responsibilities of the flag state and operating

company. (The Costa Atlantica is not treated as a case study in this project, mainly because the outbreak occurred on 20 April and that because its port call to Nagasaki was for maintenance and, therefore, it had no passengers but around 620 crew members. However, we would like to note that references to the report compiled by Nagasaki Prefecture and Nagasaki City on their response and recommendations, “Investigation report on the outbreak of the novel coronavirus cluster aboard the cruise ship ‘Costa Atlantica’” were made throughout the research and in writing this report. Available on the Nagasaki Prefecture website:  
<https://www.pref.nagasaki.jp/shared/uploads/2021/02/1613627203.pdf>)

Each case has been examined in phases of the cruise ship’s journey, in accordance with the jurisdictions of international laws and regulations (in particular The United Nations Convention on the Law of the Sea (UNCLOS) and The International Health Regulations (IHR)): before boarding, onboard, entry, and at the port.

In order to prepare for relaunching international cruises that are healthy and safe, and to enhance international cooperation and coordination to this end, attention must go to the various aspects and factors that inform and regulate the operation of international cruises *in toto*. The consensus among the Japanese and international experts that took part in this project is that none of the problems and challenges that emerged in responding to pandemic affected cruise ships could be overcome without doing so.

As such, we have identified three important elements that are needed to prevent (and prepare for) future cases of outbreaks on cruise ships.

- More ships and ports that are resilient and trusted, namely, “ships of confidence” and “ports of confidence”.
- More structured and predictable international institutional mechanisms that govern practical cooperation, coordination and sharing of responsibilities among the multiple stakeholders and parties.
- The enhanced capacity and institutional support (guidelines, protocols, and clear demarcation of authority and jurisdiction) for those highly professional personnel involved in crisis management to be able to exercise their responsibilities and duties effectively and appropriately.

We have distinguished two elements in our analyses of the situations that constitute international cruises, namely, hard (hardware) and soft (software). The two elements are not mutually exclusive. However, their interactions (and outcomes of interaction) are contingent upon how they are effectively utilised (or not), modified (or not), or implemented (or not) by the stakeholders and parties involved in the actual operation of international cruise ships, both in normal times and in times of contingencies.

- Hardware refer to those fundamental infrastructural elements that enable cruise ship operations, including ships themselves (their structure, design, and equipment, medical included) and port facilities.
- Software refer to all aspects of international and domestic rules and practices that govern cruise ship operation, such as international institutional frameworks, including the body of international laws, regulations and guidelines, domestic laws, rules, regulations and guidelines, as well as the quality of medical services and expertise available, diplomacy.

## Background

### The Nature of the Global Challenge

The COVID-19 pandemic has been a major crisis in “human security” beyond global health governance. It has impacted the survival, livelihood and dignity of a countless number of people around the world. The need for cooperation between states as well as between states and international organisations to secure the global common good and to protect and empower people in vulnerable situations has never been greater. Yet the pandemic unleashed the reverse phenomenon, where states became primarily self-interested. Governments closed borders as one of the first measures to control the spread of the invisible and virulent threat that the new coronavirus posed to the health and lives of their peoples.

However, while borders were closed to protect those inside them, many were left behind without recourse to proper medical attention. The cruise ship passengers and crew were one such group of people who found themselves in haphazard situations, where decisions affecting them were dependent on multiple variable factors involving those who operate and regulate cruise ships. The case studies examined in this project illustrate these situations.

As a general observation, however, it must be pointed out at the outset that responding to situations of international cruise ships affected by the COVID-19 pandemic was a uniquely complex international task for all concerned parties. Two characteristics of international cruises and cruise ships stand as contributing factors to this.

First, the cruise ship sector is decentralised and has multiple stakeholders and concerned (and affected) parties (flag states, port states, the cruise ship operating companies as well as labour supplying states), who are bound by international and regional treaties and regulations, such as UNCLOS, IHR, the International Convention for the Safety of Life at Sea (SOLAS) that set health *and* safety provisions and guidelines for operating ships, including passenger ships. There are three international organisations, the World Health Organization (WHO), the International Maritime Organization (IMO), and the International Labour Organization (ILO) that work with member states to implement the treaties and regulations in their relevant areas.

Second, with respect to the two following aspects, it is important to note the predominantly multinational nature of international cruises and cruise ships: The cruise ship is itself a multinational environment because the passengers and crew come from different parts of the world; and, international cruises are cross-boundary and trans-national as they enter and exit jurisdictional sea areas of multiple sovereign states in the course of their journey. In this regard, the challenges of responding to the COVID-19 outbreaks on international cruise ships that cross international borders from a global public health perspective alone were exceptional and unprecedented. IHR’s main objective 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” (IHR), and as the Clingendael report notes, it is in the broad sense “the main framework for state cooperation in responding to and preparing for public health threats”.

The Response subgroup is also considering how to address the unique challenges associated with outbreaks on international cruise ships. The growing global cruise ship industry has created conditions that may involve thousands of diverse international passengers and crews residing in close quarters and potentially exposed to a pathogen such as the coronavirus responsible for COVID-19 that may necessitate the implementation of isolation of patients and quarantine of those exposed (contacts). This represents novel challenges to States Parties and conveyance operators on a scale not envisioned in the International Health Regulations (2005). Consideration should be given to clearly defining the limits of States Parties' responsibilities under the Regulations for implementing isolation and quarantine measures on international cruise ships. Another issue is how to classify cases in relation to national surveillance systems (WHO Interim progress report of the Review Committee on the Functioning of the IHR during the COVID-19 Response).

The ferocious nature of the new coronavirus exceeded past experiences that informed the making of existing treaties and regulations. For example, the previous SARS (severe and acute respiratory syndrome) outbreak in 2002-04 hastened the process of revising the IHR—the only binding international convention on global public health—that was underway since 1998, as it “underscored the need for a new international legal framework for infectious diseases control”. The current, revised IHR that was adopted by the World Health Assembly in May 2005 with the objective of preventing the spread of international diseases without disrupting international traffic to the maximum degree possible, however, was evidently not enough to cope with the COVID-19 pandemic that required global cooperation.

In relation to IHR 2005 but not limited to it, it has been noted in our overseas report (Clingendael) and international discussions that there is a need for better cooperation and coordination mechanisms between states, states and the WHO, and between the WHO and other international organisations, such as IMO and ILO in the case of safe and healthy international cruises. This also points to the issue of implementation and compliance; an IHR review from 2014 indicated that only a third of all 194 member states of the WHO had the essential capacity to respond to an outbreak. The Clingendael report notes, “member states have neglected its principles and implementation, including on limiting travel restrictions and the need for cooperation (art.44) to support the capacity and financing for states as to be adequately prepared for an epidemic.”

## **Emergence of Issues**

The outbreak of the COVID-19 on the Diamond Princess cruise ship that entered the port of Yokohama, Japan, in February 2020 was a high-profile incident that grabbed the world's attention for its timing, scale and gravity of the situation. The incident occurred in the early days of the new coronavirus' spread. It was after WHO declared it a Public Health Emergency of International Concern (PHEIC) on 30 January but before it made the assessment that COVID-19 can be characterised as a pandemic on 11 March.

Other cases followed in the early months of the outbreak of COVID-19, such as the Ruby Princess that had a similar outbreak as the Diamond Princess while docked in Sydney, Australia. Around 50 ships were either stranded for similar reasons.

## *The Diamond Princess and its challenges*

The Diamond Princess began its journey in Yokohama on 20 January for a 16-day cruise. It posed challenges to Japan as a port state from the point when a passenger who disembarked in Hong Kong on 25 January tested positive for COVID-19 on 1 February. By the time Japan's Ministry of Health, Labour and Welfare (MHLW) received the notification from the Hong Kong government in the early hours of 2 February the ship had already left the port of Naha, Okinawa (Japan), after having gone through initial quarantine. The Diamond Princess arrived in Yokohama on 3 February around 20:00, 10 hours earlier than the scheduled arrival time. Quarantine in Okinawa was cancelled, and the passengers and crew were re-quarantined in Yokohama.

Two issues need to be noted at this initial phase:

- The role of the captain: Upon learning about a passenger testing positive, the captain of the Diamond Princess waited 48 hours (until being quarantined in Yokohama) before informing the crew or instituting any drastic measures to prevent the further spread of COVID-19. As we now know, COVID-19's rate of communicability is very high, and that a delay in response could have a significant impact. Had this been known better at the time, a swifter communication and response may have prevented the spread. But at the time responses based on this information were still not widely established.
- The choice to refuse entry as a foreign (UK) ship: Some questioned later if Japan had the option of refusing the entry to Diamond Princess as a foreign ship. But there was no choice for Japan because the passengers had already gone through Okinawa and entered Japan by the time the information regarding a passenger who disembarked in Hong Kong testing positive was received. Protecting the health of its own nationals was also probably an important factor, as the majority of passengers were Japanese nationals (1,281 out of 2,666 passengers). The response, at the end, was the right one from a humanitarian perspective. As will be mentioned later, the case of denying entry to the Westerdam was made on different grounds from the Diamond Princess, as the request was made to enter the Port of Ishigaki and the Port of Naha, Okinawa. This request was denied on 6 February on the grounds that it posed a high risk because, unlike Yokohama, Naha was deemed inadequate to handle emergencies.

Once the Diamond Princess docked in Yokohama, there were many more challenges. The Diamond Princess case was the first major cluster outbreak of the new coronavirus that Japanese authorities had to handle. Nevertheless, the Japanese government, as a manifestation of their goodwill and duties of sovereign states, executed its full responsibilities as the port state. Together with relevant stakeholders, parties and supporters (flag state, cruise operating company, captain and crew, passengers, local governments and port authorities, medical and all the other experts on the ground), Japan responded to the best of the country's ability, utilising all the available assets, resources and opportunities, to protect the passengers and crew, regardless of their nationalities, and to help the foreign nationals repatriate safely while containing the virus from spreading further into Japan and outside of the border.

After examining the experience of the Diamond Princess outbreak, the Japan Oceangoing Passenger Ship Association and the Ports and Harbours Association of Japan issued guidelines for the operators of cruise ships and for the operators of cruise terminals on 18 September, 2020, under which domestic operators are required to comply with them. Domestic cruises in Japan have resumed gradually since November, 2020, in accordance with these guidelines.

## *The Westerdam and the Holland America Line*

Before all cruises came to a halt around 50 cruise ships' trips turned into destination unknowns as many ports started to refuse even entry to cruise ships, regardless of the state of infection, in fear of their national populations' safety.

The Westerdam, operated by the Holland America Line, hit the international headlines for this reason, as it was rejected by five countries and regions (the Philippines, Thailand, Taiwan, Guam, and Japan) until Cambodia welcomed it to its port of Sihanoukville (see Clingendael and EWC reports). There were over 40 international cruises with infections onboard, but the Westerdam was not one of them. The WHO later commended Cambodia for following its IHR by accepting the port call of a ship in a humanitarian emergency. On the other hand, Cambodia was also criticised for possibly contributing to the spread by not taking prevention measures, such as mask wearing, toward the disembarked passengers.

Japan was one of the parties that refused entry to the Westerdam at a time when its capacity to respond was over-stretched by the handling of the Diamond Princess case. With a report of a suspected case of COVID-19-related pneumonia, the government made a decision to refuse entry under the Immigration Control Law (Article 5.1-14) that defines, "Persons with a reason to be deemed likely to harm Japan's interests and public interests".

The Westerdam case highlighted one of the critical problems of international law (software) faced by the cruise ships, which is the relationship between policy choices and considerations, such as border and immigration policy and national health policy of countries (sovereignty) and international agreements and/or humanitarian considerations that are set by or expressed in international treaties. But we must not forget that the port facilities (hardware) also determine whether a ship is allowed to enter ports.

### **Lessons Learned from the Cases**

The examination of the Diamond Princess and the Westerdam cases showed that there are at least three crucial response phases in the course of cruise ships affected by the COVID-19 pandemic.

**The first phase** is the point of entry, where the fate of a foreign ship is primarily decided by the port state. The Westerdam's journey to Cambodia began when it was ordered to leave Taiwan, when a case was reported on another ship entering Taiwan. After the Diamond Princess was alerted about an infected passenger who disembarked in Hong Kong, Japan allowed the ship to enter the port of Yokohama in consideration of the relevant factors as mentioned above. Here, the important point to note that there needs a sort of coordinated applications of the relevant international rules, such as UNCLOS and IHR in terms of the prevailing effect of these two in the body of international law (which law takes precedence) and the different areas and concerns that they each cover. From the public health perspective, IHR should prevail, but this was not necessarily realised in the cases of the Westerdam and other ships in 2020.

According to the international law principle, a special law has prevalence over a general law. As a general law, UNCLOS, which is a treaty, does not contain any provision on this matter, and under customary international law, port states have the sovereign right and discretion to refuse entry to foreign ships to their ports.

As a special law, IHR's Article 28 clearly places a limit on this discretion, and it provides that a ship or an aircraft shall not be prevented for public health reasons from call at any point of entry. 28.2. further states, "If, however, the port of entry is not equipped for applying health measures, the ship may be ordered to sail to the nearest available port, unless it is incapable of doing so due to operational issues". If these special IHR rules had been recognized as the prevailing rules over the rules of the port state's discretion under customary international law, the refusal of entry would not have occurred as frequently as it did during the pandemic.

To be precise, both IHR and UNCLOS have provisions that regulate the relationship between them and other international rules. Thus, according to the general principle and the relevant provisions, there is a need to find an appropriate application of the relevant rules in order to securely realise the required situation from the public health perspective. Particularly, in order to appropriately restrict the discretionary power of port states to refuse entry of foreign ships to their port, first, the legally binding force of IHR needs to be secured, and second, the prevalence of IHR over other contradicting international rules should be firmly maintained.

While UNCLOS may recognise the port state's sovereign right to refuse entry to foreign ships (theoretically, this could also be its own ships) to its territorial waters if they are deemed "security" risks, the exercise of this right (by states) over cases like the *Westerdam* and other ships to refuse entry in a pandemic can be seen as questionable from a humanitarian perspective. At the very least, this situation warrants closer scrutiny by the experts to define the grounds on which "non-traditional security" or "human security" issues, such as infectious diseases, that require global cooperation and where the discretions of the port state could be appropriately restricted.

**The second phase** begins once the ship is allowed to enter into the port area and dock, where the ship essentially comes under the jurisdiction of the port state. Here the medical side of the responses tended to attract all the attention, especially in the case of the *Diamond Princess*.

• Some of the major lessons from the *Diamond Princess* are as follows:

1) **Command and leadership:** Once the ship was in the port of Yokohama to be quarantined, it was not clear who was and should be in charge (and responsible) for crisis management, and there is a need to unify command and create guidelines. How far should the port state exercise its jurisdiction, especially over the measures to be taken aboard in cases where actions defy orders from the flag state or the operating company. Appropriate coordination of jurisdictions of the flag state and port state and the clarification of the applicability of international and domestic legal rules are required.

2) **Preparation:** The difficult decision for the Japanese authorities was to decide to quarantine the passengers and crew on board, as there were not enough facilities at the time to take on nearly 4,000 people for quarantine, isolation and treatment safely. As mentioned at the outset, the *Diamond Princess* incident occurred before the COVID-19 was declared a pandemic, and at the time there were not enough testing kits nor an established method or protocols while the details of the coronavirus were still being discovered. The choice to keep the passengers and crew on board for quarantine may not have appeared the best to outsiders, including the press and the general public, but this was also the explicit instruction of the United States' Center for Disease Control and Prevention (CDC) for the US passengers onboard the *Princess Diamond* awaiting repatriation.

3) The role of the captain was crucial in the Japanese authorities operating onboard the Diamond Princess. However, there were suggestions made that personnel (such as a safety control officer) of the operating company who are trained in “irregular” situations may be needed to take over command of the ship, with a higher authority than the captain in case of an emergency. In case of infectious disease outbreaks, these personnel would work closely with the onboard medical doctor, and also seek advice from epidemiologists and other specialists on land to assist in responding. (The suggestion was made also in reference to the fact that for both the Diamond Princess and the Costa Atlantica their respective operating companies only had sales representative offices in Japan. For the Diamond Princess, company headquarters sent a response team, but in the case of Costa Atlantica the travel restrictions that were in place by then prevented this and caused delays in on-the-ground decision making.)

4) Medical expenses and cost-sharing: The Japanese government paid 2.7 million USD for the 342 known expenses out of a total of 423 foreign passengers, which was 98% of the total cost of treatments covered by medical insurance. 95% of the other medical treatments that are not covered by insurance (90,000 USD) were billed to the company. The medical facilities made the decision to ask the Japanese government to pay, instead of billing various private medical insurance companies. The median insurance payout was around 6,000 USD and the highest around 120,000 USD. It is a testimony that Japan exercised a responsible role as a “port of confidence”, while certain appropriate cost-sharing mechanism needs to be discussed in a relevant international forum. The same cost-sharing considerations should be given also for repatriation and other operational stages. Also, there is a need to work out a way to bill private insurers or make sure that everyone needs to be insured to come to Japan. It has been pointed out that medical treatment on board tends to be expensive on cruise ships, and people may not seek treatment if symptoms are light (like mild fevers). But in view of effective prevention of infectious diseases like COVID-19, whose initial symptoms were like the flu, there is a need for better medical service and capacity onboard.

5) International specs for the ship’s structure and specifications: As an area that requires greater cooperation among the stakeholders to better prepare for outbreak of infectious diseases on board, some experts pointed out the need for designing ships that are capable of handling outbreaks. This would be a matter of articulating specifications of the ships, commonly known as CDEM (Construction, Design, Equipment, and Manning) in building ships that are more resilient to infectious disease outbreaks. In the case of the Diamond Princess, the issue was more to do and less to do with the issue of air circulation, which initially was thought to be a factor in spreading the infection onboard. In the Diamond Princess’s air system 70% of the air was circulated between several cabins and corridors, while 30% was fresh air. However, once the isolations began, it stopped air circulation and brought in 100% fresh air (more recent models have systems where the air does not circulate among cabins). A more general concern was toward the “flag of convenience” states that may not have the capacity to follow rules or guidelines.

6) Media coverage, public relations and communication: The media’s painting the Japanese government’s handling as disastrous was neither accurate nor fair. Proper review and recognition are due, and there were many valuable lessons learned, but had it not been for the often poorly informed and sensational media coverage, the Diamond Princess case may have been lauded as a success. That public relations (including handling the media) and fact-based communication with concerned parties outside of the ship’s operational zone were found wanting by the officials involved, as was pointed out in an earlier study by another Japanese think tank. The Nagasaki Prefecture’s report on the Costa Atlantica also notes the need for an



information coordination offer to handle the traffic of communication as well as the dissemination of information to a wide group of interested and concerned parties, including the local residents.

**The third phase** is the process of repatriation. What has been less reported as a major humanitarian concern and a diplomatic challenge is this process of the repatriation of passenger and crew as well as the change of crew while the borders were closed. Varying phases of the outbreak in respective countries of the passengers and crew complicated this task. Nagasaki Prefecture that handled the Costa Atlantica also faced challenges related to repatriation, its report notes that, “embassies of various countries in Japan requested to provide personal information of crew members, and we were swamped in responding to their inquiries”, and that “such information be centrally dealt with single-handedly by the national government based on international information provision rules”.

In this phase of responses, the flag state and the operating company (and the operating company state) and the relationship between them and the port state, as well as the home states of the passengers and crew, are found to be critical. The case studies of the Westerdam by the East-West Center and the Holland America Line (HAL) that operates the Westerdam by Clingendael illustrate the challenges for states of the passenger and crew, the operating company and the Dutch government as the flag state that worked across different situations and jurisdictions for all their ships. Important to note about HAL, but also the Princess Cruises that operates the Diamond Princess, is that they are owned by the US company, Carnival, with different flag states: for HAL it is the Netherlands, and for the Diamond Princess it is the United Kingdom.

—**Responsibilities of the flag state:** As the flag state, the key Dutch ministries and institutions involved were the Ministry of Foreign Affairs (MFA) for consular affairs (to get people home safely); Ministry of Infrastructure and Water Management (MIWM) that executed the responsibility of the flag states toward passengers and crew (the key ministry to communicate with the cruise ships); Ministry of Health, Welfare and Sport (MHWS) for public health guidelines (measures taken in the Netherlands to ensure the safe transfer of passengers and crew; Ministry of Justice (MJS) for legal documentation, i.e., providing visas on arrival for cruise changes; and, the National Institute of Public Health and Environment (RIVM in Dutch) for public health risk assessment (providing expertise to the Ministry of Health).

1) In addition, we may add the US CDC, whose No Sail Order affected all ships under its jurisdiction, including HAL ships, until 31 October. Subsequently, the CDC replaced this with the Framework for Conditional Sailing Order that outlines safe and responsible resumption of passenger cruises. As the East-West Center study that covers the Westerdam and the Diamond Princess demonstrates, the CDC plays a significant role in regulating the public health and safety standards of cruise ships that are owned by US companies. The regulations are the toughest, with the scope of application defined as the following: “This framework applies to operate a cruise ship in U.S. waters and to any person operating a cruise ship outside of U.S. waters if the cruise ship operator intends for the ship to return to operating in U.S. waters while this Order remains in effect”. Thus, the European flag state ships also come under their jurisdiction, and must follow their rules and regulations.

2) The communication and coordination between the HAL and the relevant Dutch ministries proved to be crucial in repatriating Dutch and foreign passengers and crew. The HAL used its cruise ships as transfer ferries to bring passengers as close to home as possible; this

included some of their Asian operations. The MFA and the MIWM worked together with the HAL on three main goals: retaining good health status on board; getting cruise ships to dock; and, getting the passengers home safely. In this regard, good travel insurance has been identified as key for passenger repatriation, as the passengers “bear the risk and responsibility for their safe return home”.

3) For the crew the situation is different, as it is the operating company that carries a large portion of the responsibility for their fate. In fact, by December 2020, there were over 400,000 crew members (on all ships including cargos) worldwide who could not be repatriated to their home countries (see Clingendael and EWC reports). The Dutch government is determined to assist the crew members still stuck on ships worldwide, where it can, for example by keeping Rotterdam harbor open for future crew changes. Japan has also responded to the change of crew. It should be noted, however, that while the repatriation of crew and crew change are inter-related, the issues related to crew change and abandoned seafarers (and the protocol) need to be understood in a larger context of the global shipping sector as a whole (and not just the cruise ship sector). The UN General Assembly has adopted a resolution (A/RES/75/17; 1 December, 2020) on the treatment of the crew in a major public health crisis such as this pandemic, and it remains a major issue for the IMO and the ILO that is responsible for the safety of seafarers.

4) The Netherlands is conscious of keeping its reputation as both a good flag state and a good port state. It has the biggest port in Europe, Rotterdam, with a major international hub airport, Schiphol nearby, a unique and favourable situation for crew changes. The port authorities were pushing the MFA and MIWM to help as many ships and crews as possible, and to show their commitment to reliability as a port state even in harder times. This has resulted in more cruise ships sailing to Rotterdam for crew changes and repatriation.

—**The role of the states of passengers and crew:** The East-West Center study that examined the Westerdam illustrates how the policies and guidelines of the home countries of the passengers and crew also impacted the process of repatriation, not only because the borders were closed, but the health and safety measures and policies regarding evacuating nationals citizens fall under different jurisdictions of different domestic agencies. The concluding observation is that, “both cases resulted in significant confusion for both the passengers and decision-makers involved.”

In the case of the Diamond Princess, the East-West Center report notes the “initial lack of clear and unified guidance”, as both the US Department of State (DOS) and the CDC were issuing guidance at different points that resulted confusion and mixed messaging about quarantine: At the outset, the CDC instructed the US passengers to remain onboard for quarantine, but a week later DOS announced that “they would begin the process of repatriation and quarantine within the United States.”

With the case of the Westerdam, there was apparently better on-the-ground coordination between the US agencies that were present in Cambodia, but new challenges arose with a positive case reported by Malaysia of a passenger who returned from Cambodia: “U.S. officials, Holland America Line, and the Cambodian government all faced new challenges to disseminating information, tracking passengers, and organising alternative transportation for those passengers who had not yet reached their final destination”.

## Findings and Recommendations

There is no denying that the COVID-19 pandemic has threatened the vital cores of all human lives. Our survival, livelihood, and dignity as humans were and still are at stake, and this constitutes a major crisis in human security. The world should unite to overcome the challenges and move forward. Yet, this pandemic has shown that international cooperation and coordination cannot be taken for granted, and that it is easier said than done even in this globally connected world. The fate suffered by the international cruise ships in 2020 demonstrated both the weaknesses and strengths of international cooperation. The challenges faced by the ships and the many stakeholders were a microcosm of what was unfolding globally. But these challenges were also overcome by the goodwill, sense of duty and humanitarian compassion of all those who involved in responding to the crises.

The full, healthy and safe resumption of international cruises could be considered a clear manifestation of the world's successful commitment to building resilient and trusted passenger ships and ports. In order to aid in moving forward in this direction, the following are the list of the main findings and recommendations that this project has compiled for further discussion and consideration by the wider international specialists and the relevant organisations and sectors.

1) **International cooperation in legal aspects (hardware and software):** There is a need for a mechanism for international cooperation that is based on unambiguous and uniform understanding (and implementation) of the international law and the law of the sea and regulations (IHR, UNCLOS, and IMO Treaties, etc.) and domestic regulators, related to the operation of international cruises that define the roles and responsibilities of the parties in handling infectious disease emergencies as well as enhancing the infrastructural quality of ships and ports they operate. In the case of COVID-19, the “unknown” quality and the strength of the coronavirus led countries to shut their borders, which in turn narrowed the scope and speed for international cooperation. Consular issues to handle visas for passengers and crew and port capacity (including facilities and space) to meet quarantine requirements stand out as important issues to be addressed.

2) **International cooperation for building a network of “ports of confidence” (hardware):** There is a need to enhance greater cooperation between coastal states (along the itinerary of a given cruise). There is no regional framework for cooperation that is similar to the EU Healthy Gateways in the Asia Pacific region, and view of the projected growth in international cruises in the region, a specific mechanism to respond to public health emergencies may be a regional cooperation item to consider. This does not preclude efforts to enhance global coordination. While building each cruise ship operating port safe, healthy, and resilient “port of confidence”, there could also be greater cooperation among the regional states to share designated ports that could handle infections and outbreaks in a network of those “ports of confidence”. In this regard, capacity building of ports and medical facilities in tourist destination ports, especially in developing countries (such as the Philippines and Cambodia) but not limited to them should be promoted. In the case of developing countries, they may need international assistance.

3) **A new framework of cooperation under “an international law on pandemics” (software):** There is a greater need for the international organisations to coordinate and cooperate in order to ensure that the cruise ship sector is robust in responding to infectious

disease outbreaks. Drawing from the case of the maritime resource management where the rules and regulations concerning the conservation and management of fish stocks and the protection and preservation of the marine environment have overlaps, measures to prevent and respond to outbreaks of infectious diseases also have overlaps of rules and regulations set by different regulatory bodies. Where international cruises are concerned, a more holistic and humanitarian approach toward responding to infected ships, such as universal and fair access to healthcare, including mental health care of both passengers and crew, and measures to prevent excessive “rejections” of entry of ships in a humanitarian emergency are needed. It is also necessary to note the importance of international cooperation among all states concerned to facilitate the repatriation of passengers and crew. A new framework with new principles to prepare for pandemics may be necessary. This may include consideration for what can be called “an international law on pandemics”.

4) **Harmonise international and domestic rules, regulations and guidelines (software):** What appears to have been problematic to countries that handled infected ships was the on-the-ground local coordination and establishing a clear chain of command. This has been noted in the Nagasaki case, as well as the Australian case where it was reported that the division of responsibilities (including handling information about the coronavirus) was not initially clear between the federal and state governments, as well as the local and port authorities handling the Ruby Princess that was anchored in Sydney.

5) **Building “ships of confidence” (hardware):** While the structure of the ship (the built environment) was not regarded scientifically a factor in spreading the disease onboard the Diamond Princess, air quality control have been identified as important factors to secure the health and safety of those onboard cruise ships (although this may not apply to all ships). In view of the magnitude of the threat that the pandemic poses, some experts suggested that issues regarding “CDEM,” which have traditionally been understood to be within the prerogative of flag states as UNCLOS reflecting, may be considered for review. It would not hurt to start a conversation about developing ships that are resilient to public health risk situations such as pandemics through constructive dialogues among the cruise ship sector stakeholders.

6) **Awareness raising of crew and passengers (software):** The need of crew (seafarers as defined in the Maritime Labour Convention, art 2.1 (f)) to be more trained and prepared with regard to how to handle infectious disease outbreaks cases on board in international cruises in the post-COVID era would prove to be important (see UCL report). On the part of passengers, it is also necessary for them to understand the potential risks they may face, which now include infectious disease emergencies, and to make conscious efforts to take necessary precautionary measures to defend the lives and welfare of their own and the loved ones.

7) **Issues regarding the flag state and port state relations (hardware and software):** There are three main parties that are responsible for the safe and healthy operation of international cruise ships, the flag state, the operating company (state) and the port state.

a. **Towards “flag of confidence”:** There are areas where greater cooperation and coordination among the stakeholders are needed in order to prepare for an outbreak of infectious diseases. In order to build and operate “ships of confidence”, international rules and regulations need to be followed and properly implemented by the flag state and the operating company state. COVID-19 affected cruise ships were operated by companies in wealthier, developed countries, such as the US, and many of the flag states also were likewise richer countries, such as the UK and the Netherlands, although there were also countries that are associated more as flag of convenience states in the cargo

sector, such as the Bahamas and Panama, for the cruises around the Caribbean. In implementing the provisions in IHR as well as relevant rules and regulations, particularly where repatriation of passengers and crew are concerned but also in terms of the anti-infection measures in ships, the dialogue and cooperation between the flag states and operating companies are found to be critical. Moreover, there are economic and legal incentives that allow the practice of “flags of convenience” (FOC) that lead to cutting corners in terms of health, safety and environmental regulations; there should be a move toward responsible flag states of “confidence”. From the cruise and tourist industry’s perspective in ensuring the safety and health of the customers, future passengers are likely to choose cruises that can be trusted in this regard, too.

b. **Towards the effective exercise of port state jurisdiction:** The traditional law of the sea, in general, appears to favour the flag state, which can set its own rules about operation according to the regulations set by the state, including the nationalities of the crew and choice of the flag state. Having said these, as a remarkable tendency, there has been a growing consensus that the port state jurisdiction should take precedence over those of flag state, mainly in the field of the conservation and management of fishery resources and the protection of the marine environment. This is because port states are expected to discharge international responsibility to perform a role as “port of confidence” in the pursuit of global common interests, such as the conservation and management of fishery resources and the protection of the marine environment. The same could be said of the newly arisen and defined global common interest to prevent the outbreak of infectious diseases and pandemics. Considering this emerging international consensus on the expected use of port state jurisdiction for the realization of global common interests, from the perspective of Japan as a port state that handled international cruise ships affected by COVID-19, certain legal consideration should be given for the effective exercise of its port state control. It goes without saying that the operating companies, together with their flag states, are also reminded of faithfully fulfilling their primary responsibilities to operate on the spot under the host port jurisdiction, including the early sharing of health-related information aboard the ship, for example, both in normal time and in times of emergencies.

c. **Toward a clear system to share costs:** There are various costs involved, from the medical expenses to costs involving the repatriation of passengers via chartered flights, but the cost-sharing is not clear. As mentioned earlier in the case of Japan’s response to the Diamond Princess, most of the medical expenses were borne by the Japanese government. The Clingendael study indicated that the quality of travel insurance is important but more needs to be done specifically to cruises in terms of clarifying the costs involved, which party is responsible for which portion of the costs, (onboard as well as at the port) which may also include travel insurance that is specific to medical costs associated with infectious diseases.

Many other issues were raised and discussed by the Japanese and international experts that are not included in this portion of the report. These include an in-depth examination of issues related to the port state’s domestic situation, such as the port facilities, tourism industry, and roles and responsibilities of local authorities of the port and their relations with the central government, and also a fuller examination of the European multilateral cooperation frameworks, such as the EU Healthy Gateways. The full scope of the issues and challenges that arose in the course of this project’s investigation are in separate reports compiled by the overseas think tanks.

## **Cruise Forward**

The COVID-19 pandemic was a wake-up call for the world not to underestimate public health emergencies. International cruises characterised by their uniquely global, multinational and complex operating environment required all the relevant stakeholders to work together, while navigating the myriad of international and domestic rules and regulations and their “grey zones”. We cannot stress enough that while all those concerned in responding to the Diamond Princess, the Costa Atlantica, and the Westerdam did what was required to the best of their ability, judgment and availability of resources. But the extreme conditions were testing for the international rules and regulations, actual operations by relevant actors under these and they are being reviewed to improve the compass and stewardship with which to navigate future incidents.

Contrary to the general image after the unfortunate outbreak cases of COVID-19 on board, cruise ships are essentially built to operate with safety first. They are well-equipped to be used even as a hospital ship in time of disaster. But more needs to be done. Japan, as a maritime nation that experienced the simultaneous emergencies that involved large-scale passenger cruise ships, the Diamond Princess, the Costa Atlantica, and the Westerdam, as depicted in this report, is ready to commit, together with fellow members of the international community, to take the lead in building an environment for cruises that is safer, healthier, smarter and more resilient in preventing and responding to the threats of infectious disease outbreak on board. It is hoped that the present report can be informative and inspirational as we cruise forward toward a better future.