

## What did WHO, EC and each country have in terms of a legal framework already in place to combat the virus?

*Field: Legal*

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### **Abstract:**

When pandemics hit globally, naturally one would expect there to be specific epicenters of disruption. Typically it is expected that these epicenters might be centrally located to where the pandemic started, have a largely susceptible population, or not have the resources available to fight the oncoming damage. One would not generally suspect that the laws in place long before the pandemic occurred would have any impact on the ultimate outcome within any specific country. In this document, we seek to demonstrate that the laws and tools available in any given country do, in fact, impact the outcomes within its borders. Herein you will find a comparison of the legal frameworks available to the United States, South Korea, and Italy along with the most recent damage to each state's population.

### **Introduction**

Countries around the world have been struggling with the fallout from the COVID-19 pandemic ever since the virus was identified in December 2019. The government of each country has had similar mitigation actions issued to ensure the wellbeing of their respective populace, however, each with their subtleties linked to the legal framework the country provides. The primary actions directed by each government are linked to the guidance's issued by the World Health Organization (WHO) which includes: regularly washing or sanitizing ones hands, maintaining a 1 meter distance from others, avoiding touching ones face, covering ones mouth during a cough or sneezing, staying home if unwell, and practicing social distancing. As the WHO itself does not have any legal authority to enforce its guidance within individual member states, each separate state is left to work within the framework of their laws and regulations[1]. Below we will address the legal backing and ultimate outcomes of some modern case studies.

### **South Korea**

Some countries had a legal structure in place that made them particularly well suited to address the pandemic occurring worldwide. For example, **South Korea** provided their citizens with the likes of emergency texts when an infected person may be in their near vicinity, government-mandated GPS tracking to monitor and punish those breaking quarantine, and government reports detailing the whereabouts of each coronavirus patient – even down to the seats that they sat in[2]. The country of South Korea is renowned these days for the legal framework that it has in place to prevent pandemics and address ongoing crises such as this. All of this was erected in response to the fumbled MERS (Middle East Respiratory Syndrome) outbreak that the country faced in 2015. In the ashes of those

painful lessons, South Korea created a unique legal regime that is designed to quickly meet and counter the demands of a modern-day disease outbreak. An example, South Korea's Infectious Disease Control and Prevention Act was amended to allow the government full legal authority to collect private information without a warrant from not only confirmed patients but also potentially infected people. All of this allowed the South Korean government the capability to quickly and definitively contact-trace its citizens to quickly stop paths of infection. Similarly, the same law allows the Korean government to shut down any location deemed contaminated.

## USA

In the United States of America, actions such as accessing personal information without a warrant and shutting down any individual's business would be seen as government overreach and would not, generally speaking, be tolerated by the population. As such, there are no analogous legal footholds in US law that could potentially be utilized to combat a pandemic like COVID-19 [3]. Some rather expansive laws do exist in the US that could be used, but they are remarkably unspecific. For example, the Public Health Service Act could allow the Secretary of Health and Human Services to "take such action as may be appropriate to respond" or allow the Surgeon General to combat the spread with any measures that "in his judgment may be necessary." [4] Whatever these laws may potentially provide, they do not explicitly state that the government may shut down buildings, services, or gatherings or that the government may use geolocation data of anyone for contract-tracing infected persons [5]. Not only are these things not explicitly allowed, but could potentially lead to a political suicide. Forced closure of any non-state-owned property could be interpreted as breaking Americans First Amendment rights to assemble, practice religions, and separation of church and state. Additionally, the collection of personal information without a warrant would break the populace's Fourth Amendment rights against unreasonable search and seizure. Finally, healthcare in the United States is under the jurisdiction of individual states [6]. In other words, addressing the health crisis in America requires a bottom-up approach with each state monitoring how testing, reporting, and controlling is completed. [7]

## Italy

Similarly to the United States, **Italy** has made some mistakes leading to the country's biggest crisis since World War II. The first major drawback pitted against Italy was the public and policymakers' skepticism in the initial state of emergency declarations. This ultimately led to the country implementing a partial solution to the pandemic at first. This started with partial lockdowns of "red zones" until ultimately the entire country was in lockdown which essentially prohibited all movement of the population aside from essential businesses. Additionally, the 1948 Constitution of Italy establishes Italy as a regional state which further complicated governing during the pandemic. This means that legislative authority is not only controlled by the national parliament, but also by the regional councils. All of this resulted in a legal framework with new, sometimes contradictory and overlapping rules which only partially helped Italy's population at the beginning of the pandemic. [8]

In Italy, the latest government pandemic plan, drafted after SARS in 2003, has been updated in 2016. It seems to be a detailed dossier, drawn up following the indications of the WHO, which in case of emergence of a new virus, gives clear indications on how to move.

In a first phase, crucial steps of the plan such as the pre-alert and the alert have been completely

missed. Only four days later the state of emergency was eventually declared, which prompted government and regions to start working together to contain the virus and successfully slow down the infection rates after the peak of the beginning of April.[5]

As described in the paragraphs above, the legal framework available to each of the three countries provided lawmakers very different tools to fight the pandemic raging across the globe. South Korea had these tools available due to similar occurrences in history while the United States and Italy arguably have laws that worked against their respective populations in this fight. As shown in Figure 1 below, these bedrocks resulted in very different outcomes for each of these global world leaders.

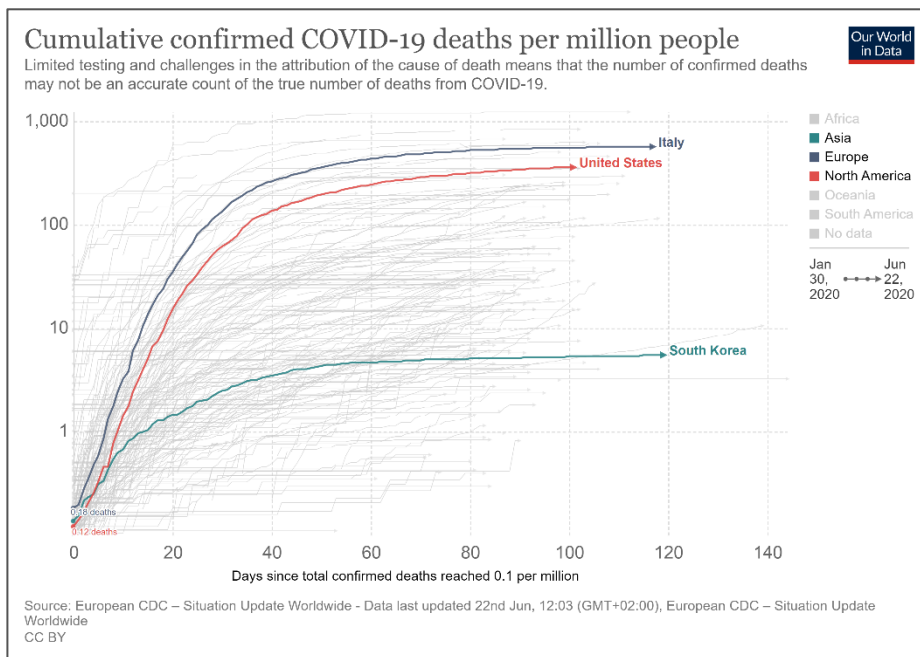
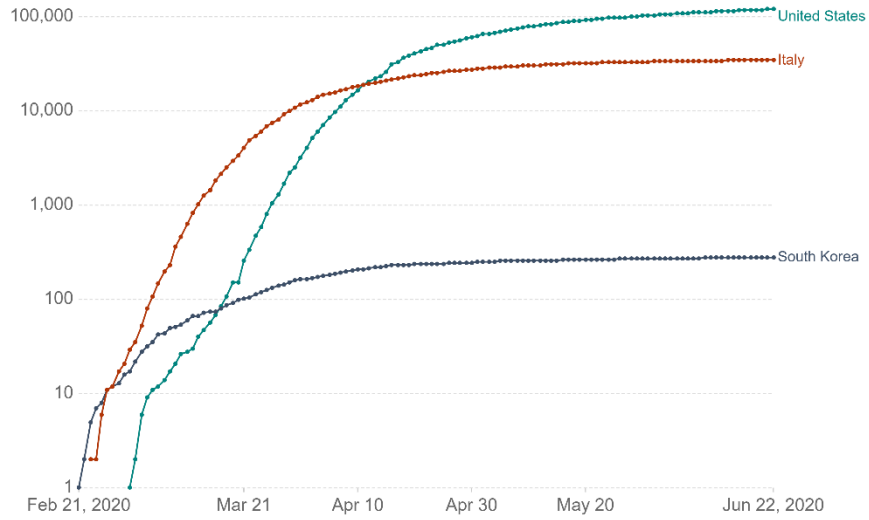


Figure 1: **Number of deaths per million people: USA 362.46; Korea 5.46; Italy 572.82. Last Update 21/06/2020[9]**



### Total confirmed COVID-19 deaths

Limited testing and challenges in the attribution of the cause of death means that the number of confirmed deaths may not be an accurate count of the true number of deaths from COVID-19.



Source: European CDC – Situation Update Worldwide – Last updated 22nd June, 11:00 (London time) OurWorldInData.org/coronavirus • CC BY

Figure 2: **Number of deaths:** USA 119975, Italy 34634, Korea 280. Last update 21/06/2020[9]

## Conclusions

In conclusion, considering different approaches in three countries, the Korean strategy shows that governments need to be prepared to mobilize all sectors and communities to ensure that every sector of government and society participates in the response and the prevention of the virus spread. The timing of the response is strategic to control new clusters and prevent community transmission by rapidly finding and isolating all cases, providing them with an appropriate care, tracing, quarantining, and supporting all contacts.

Abbreviations, Acronyms and Terms	Definition
COVID-19	Novel Coronavirus Disease 2019
WHO	World Health Organization
GPS	Global Positioning System
MERS	Middle East Respiratory System
SARS	Severe Acute Respiratory Syndrome
USA	United States of America

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