

78th WHA Urgent Legal Notice



Invalid Procedure, Invalid Resolution:

**Resolution WHA77.17 on targeted amendments
to the International Health Regulations (2005)**

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Layout: GHRA

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Evidence of Invalidity of Resolution WHA77.17

This dossier presents a condensed version of the key legal arguments regarding the procedural invalidity of Resolution WHA77.17 submitted by the [Swiss Dialogue on Global Health](#), an expert group of which Dr. Silvia Behrendt is a member and co-drafter. All references cited herein are traceable to the full English version of the legal memorandum submitted by the group. For precise elaborations, detailed citations, and complete documentary references, the original document should be consulted, which is available [here](#).

This contribution is provided in light of the upcoming vote on the Pandemic Agreement, which demands equal procedural transparency and legal precision. In the lead-up to this vote, it became publicly known that the WHO Secretariat intended to adopt the agreement through consensus rather than formal voting procedures. This prompted strong responses from several Member States. Among them, President Robert Fico of the Slovak Republic explicitly called on the WHO to adhere to legal procedure and ensure a formal vote. In light of these developments, it is necessary to re-examine the legal irregularities surrounding WHA77.17 and their implications for the legal validity of the IHR amendments and the inapplicability of the revised provisions adopted under WHA77.17, and the broader need for transparency and [accountability of the Director-General](#) in light of documented patterns of maladministration.

Violation of WHO Procedural Rules

The WHO Director-General, in his [Circular Letter C.L.40.2024 dated 19 September 2024](#), notified States Parties of the adoption of amendments to the IHR through resolution [WHA77.17](#) and informed them of the deadline for submitting a formal notice of rejection in accordance with Article 59(1bis) IHR, namely 19 July 2025.

This notification presupposes the legal validity of that resolution. However, multiple significant breaches of both the International Health Regulations (IHR) amendment procedures and the procedural rules of the World Health Assembly (WHA) cast serious doubt on the legal standing of WHA77.17.

1. Violations of Procedure of the International Health Regulations: Article 55(2) IHR

Rational of Art. 55(2) IHR

Deadlines in legal procedures safeguard legal certainty. Article 55(2) IHR requires that any proposed amendment be communicated to all States Parties at least four months

before the WHA where it is to be considered. This ensures fair deliberation and the ability to reject the proposal before automatic legal entry into force.

The rationale behind this procedural requirement stems from Article 22 of the WHO Constitution, which stipulates that regulations adopted by the World Health Assembly (WHA) automatically become binding for all member states upon their formal announcement. The sole exception pertains to member states that formally notify the Director-General within the designated timeframe of either their rejection or their intention to enter reservations. Consequently, Article 55(2) of the International Health Regulations (IHR) serves as a safeguard against the presumption of automatic legal implementation, ensuring that each state is afforded a fair opportunity to review and reject amendments prior to their enactment.

Like all multilateral treaties, the International Health Regulations must be interpreted in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties (SR 0.111). This provision requires that treaties be interpreted in good faith in light of their object and purpose. In the case of Article 55(2) IHR, its purpose is to ensure that all States Parties are granted sufficient time to thoroughly assess the domestic legal, institutional, political, and financial implications of any proposed amendment, to evaluate its compatibility with other international obligations—particularly human rights frameworks—and to prevent a situation in which hundreds of fragmented or uncoordinated proposals are submitted without clear structure or deliberative intent. The procedural safeguard enshrined in Article 55(2) IHR therefore serves a foundational role in upholding the integrity, coherence, and legitimacy of the IHR amendment process.

Procedural Violation by the WHO Secretariat and its Director-General

This requirement was clearly violated. A consolidated draft should have been shared by January 27, 2024. Instead, a new official version was first published on April 17, 2024, containing numerous previously unknown provisions. Further changes followed in a May 20th, 2024 version and finally in the adopted June 1st version—none of which were properly notified within the required time.

The WHO's justification—that the November 16, 2022, release of 308 proposals fulfilled Article 55(2)—is misleading. That version was not a negotiated text, and many adopted elements were absent from it. Even the WHO Secretariat previously acknowledged that without a final draft by end of January, only a status report—not a vote—should occur.

Nevertheless, the WHA adopted the amendments on June 1, 2024. This breach of the mandatory four-month notification requirement renders the decision procedurally invalid and undermines the credibility of the IHR process itself.

2. Violations of Procedure of the World Health Assembly

Rule 51 – Requirement for Prior Distribution of Committee Reports

Rule 51 states that the reports of all committees shall be submitted by these committees to a plenary meeting. Such reports, including draft resolutions, shall be distributed, in so far as practicable, at least 24 hours in advance of the plenary meeting at which they are to be considered. Such reports, including draft resolutions annexed thereto, shall not be read aloud in the plenary meetings unless the President decides otherwise. This rule is particularly important for complex legal acts that introduce far-reaching and new regulations affecting relations between the WHO, member states, and civil society.

This requirement was blatantly disregarded: The final vote on the IHR amendments took place at 21:07 on June 1, 2024, without a prior committee report detailing the voting results. No official report from Committee A regarding the IHR amendments was ever submitted. As a result, Rule 51 of the WHO Rules of Procedure was clearly violated.

Instead of a formal report, two representatives from the working groups (INB for the Pandemic Agreement and WGIHR for the IHR amendments) gave a brief, informal oral update to the plenary. These two short, non-substantive reports served as the sole basis for the WHA plenary vote on the IHR amendments.

Rule 69 of the WHO Rules of Procedure

Rule 69 states that each Member shall have one vote in the Health Assembly. For the purposes of these Rules, "Members present and voting" means Members casting a valid affirmative or negative vote. Members abstaining from voting are considered as not voting.

This implies the requirement to determine the quorum of present and eligible voting countries before a vote. This was clearly not done.

Rule 73 of the WHO Rules of Procedure

Rule 73 requires that the Health Assembly shall normally vote by show of hands, except that any delegate may request a roll-call. There was no prior quorum verification, nor was it determined whether the required simple majority had actually been reached.

Irregular "Ad-Hoc" Voting without Prior Agenda Placement

Committee

A

The last properly conducted vote on the IHR amendments took place on May 30, 2024, at approximately 22:15 CET in Committee A, at the request of Croatia. Committee A was the competent body for finalizing substantive matters regarding the IHR amendments. It was also responsible for formally adopting or rejecting the amendments before forwarding them to the WHA plenary.

The May 30 vote resulted in a clear rejection: 26 votes in favor; 67 votes against; 9 abstentions. 177 registered voting members, 75 members absent. This should have resulted in the rejection of the IHR amendments.

Instead of postponing the IHR amendment process – as was done with the failed Pandemic Agreement – the WGIHR resumed closed-door negotiations. Even by June 1, 2024, no clear consensus had been reached.

On June 1, 2024, at approximately 19:30 CET, Committee A was unexpectedly reconvened during an unscheduled break in the WHA plenary session. The video footage confirms the abrupt nature of this session.

Significant gaps in the assembly hall are evident in the video. Many Committee A delegates either did not receive the invitation in time or had already left Geneva. The room was less than half full.

Instead of announcing a formal correct vote on the IHR amendments, the Committee A Chair declared: “In light of time constraints, I propose transferring the two remaining agenda items directly to the plenary. Is this acceptable to the Committee? I hear a ‘YES’ and no objections. As there are no objections, it is so decided.”

The IHR amendments were transferred directly to the WHA plenary without a formal Committee A vote. The meeting was adjourned within minutes.

It is also to be criticized that during this unexpected vote of Committee A in a half-empty hall, the quorum was not determined, but instead a "vote by consensus" was conducted.

Given the circumstances and the Chair's announcement, it can be assumed that this procedure had not been previously agreed upon within Committee A. Committee A was thus stripped of its authority to vote on the IHR decision.

As a result, the delegates of the WHA plenary were also caught off guard. The plenary vote was announced on June 1, 2024, at approximately 9:05 PM, but without any indication that Committee A had previously rejected the IHR revision.

Thus, the vote in the WHA plenary also took place without prior scheduling, again without establishing quorum, and merely through a "vote by consensus."

Plenary of the World Health Assembly (WHA)

After Committee A unexpectedly transferred the controversial "IHR Revision" to the WHA plenary on June 1, 2024, the plenary session also proceeded with an informal vote using the same method. The IHR revision was adopted with the following words:

“Is the assembly now ready to adopt the resolution as read out? I see no objection; the resolution, including the amendments contained in document A77/A/CONF./14, is adopted.”

Once again, the officials failed to determine whether the required quorum was reached.

The described non-transparent procedure and the “vote by consensus” are not provided for in the WHO Rules of Procedure. Simply assuming consensus without counting votes is incompatible with democratic legal principles and WHO own procedural rules.

Such a “consensus vote” exerts pressure on delegates—many would be hesitant to vote “NO” in a public setting after exhausting negotiations. The method exerts undue influence on the decision-making process and may have significantly shaped the outcome, especially under time pressure and without procedural safeguards.

Due to the violation of clear voting rules and the manipulative nature of the vote on June 1, 2024, the result must be considered invalid.

Summary of serious Procedural Deficiencies

All procedural provisions described above serve to protect unmanipulated decision-making and democratic process. Disregarding these rules—especially if it impacts the outcome—must lead to the invalidation of the WHA resolution.

The final vote of the WHA on June 1, 2024, suffers from such severe procedural defects that it must be formally rejected by States through a notification to the Director-General under Article 22 of the WHO Constitution and Article 59(1bis) of the IHR.

Given the documented procedural violations, States are obligated to submit formal notice of rejection to the WHO Director-General no later than July 19, 2025.

A resolution adopted in violation of binding procedural requirements cannot attain legal validity. Attaching substantial legal effects to such a process—especially one that demonstrably lacked transparency, quorum verification, and compliance with essential rules—raises serious concerns regarding the legitimacy and enforceability of the outcome.

In view of the pending deadline for formal rejection, this notification should serve as a call for institutional transparency and procedural consistency. It is incumbent upon the WHO and its Member States to ensure that any future adoption of binding instruments—particularly at the 79th World Health Assembly regarding the Pandemic Agreement — occurs in full conformity with international law and established rules of procedure, thereby restoring legal certainty and institutional legitimacy.