

Herrn Bundesminister
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Sehr geehrter Herr Bundesminister Rauch,

hiermit übersende ich Ihnen meinen Brief an den WHO-Generaldirektor Tedros Adhanom Ghebreyesus zu Ihrer Kenntnisnahme. Die WHO hätte bis zum 27. Januar 2024 die Änderungen der IHR (International Health Regulations) an die Mitgliedstaaten nach Art. 55 IHR zusenden müssen, falls diese Änderungen vor die 77. WHA ((World Health Assambly) zur Abstimmung vorgelegt werden sollten. Trotz der unmissverständlichen rechtlichen Verpflichtung der WHO, Art. 55 Abs. 2 IHR zu respektieren, haben das Sekretariat und die WGIHR (Working Group on Amendments to the International Health Regulations) öffentlich ihre Absicht verkündet, die ihnen obliegenden völkerrechtlichen Verpflichtungen zu verletzen, indem sie das Paket der Änderungen für die mögliche Annahme auf der 77. WHA verabschieden lassen wollen, wie während der 7. Sitzung der WGIHR vom 5. bis 9. Februar 2024 und durch den Zeitplan der abschließenden 8. Sitzung vom 22. bis 26. April 2024 deutlich wurde. Die WHO plant offenkundig, internationales Recht zu brechen

Da eine Verabschiedung der IHR-Änderungen auf der 77. WHA 2024 ein eklatanter Völkerrechtsbruch wäre, fordere ich Sie auf, zu diesen völkerrechtswidrigen Absichten unverzüglich öffentlich Stellung zu nehmen und zu erklären, dass Österreich unter diesen völkerrechtsverletzenden Voraussetzungen und auch nach der Bundesverfassung die Änderungen der IHR auf der 77. WHA im Mai 2024 nicht zustimmen wird, denn Österreich bekennt sich zum Völkerrecht und unterstützt keine völkerrechtswidrigen Handlungen.

Mit freundlichen Grüßen

Mein Brief an den WHO-Generaldirektor Tedros Adhanom Ghebreyesus

Dear Dr. Tedros,

I am highly concerned about the intention of the 'Working Group on Amendments to the International Health Regulations' (WGIHR) to submit a draft resolution on the final package of the amendments to the International Health Regulations 2005 (IHR) only at the very start of the 77th World Health Assembly (WHA).

To be lawful, any procedures to amend the IHR have to be carried out in accordance with legal requirements set out in the IHR itself as the applicable *lex specialis* regime. The relevant Art. 55 para.

2 IHR reads as follows: **“The text of any proposed amendment shall be communicated to all States Parties by the Director-General at least four months before the Health Assembly at which it is proposed for consideration.”**

The wording “shall” of Article 55 paragraph 2 of the International Health Regulations (2005) clearly indicates that it is your binding legal obligation under the IHR to communicate “any” IHR amendments to all States Parties four months in advance of the Assembly. This includes the final version of the amendments proposed by the WGIHR.

The applicable general rules of treaty interpretation set out in Article 31 of the Vienna Convention on the Law of Treaties require that Art. 55 para. 2 IHR must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of Art. 55 para. 2 IHR in their context and in the light of the IHR’s object and purpose. This confirms that no exception is available for the current situation. Art. 55 para. 2 is the *lex specialis* to the general rule enshrined in Art. 40 para. 2 of the Vienna Convention on the Law of Treaties. According to the express will and intent of the drafters of Art. 55 para. 2 IHR, States Parties must be given at least 4 months to consider any amendment prior to the Assembly. This allows the State Parties to thoroughly reflect on the amendments, including their domestic legal and institutional implications, and prevents the State Parties from rushing out of negotiations into a hasty adoption of a resolution. This is all the more important given the unique status of the IHR. As a legal instrument, it automatically binds the WHO’s administration by its status as a resolution. Adopted amendments will also automatically enter into force for all State Parties which do not opt out within the required time frame in accordance with Arts. 59, 61 and 62 IHR as well as Art. 22 of the WHO’s Constitution.

In this instance, the unique legal nature of the IHR has to be recalled. This binding legal instrument has been registered with the U.N. Secretariat in accordance with Art. 102 of the Charter of the United Nations under the category as a multilateral treaty in the U.N.T.S. Volume Number 2509 (p. 79) via the Certificate of Registration No. 56548. Consequently, there is no doubt of its nature as a treaty under public international law binding its States Parties. Consequently, both the State Parties as well as the Secretariat of WHO, composed of the Director-General and the WGIHR, as a subdivision of the Health Assembly, are under a legal obligation to follow Art. 55 para. 2 IHR.

With regard to the 77th WHA, the deadline to lawfully circulate the proposed amendments to the IHR States Parties by the Director-General in accordance with Art. 55 para. 2 IHR has passed on the 27th January of 2024. This deadline elapsed without any communication from the Director-General to the State Parties of the package of amendments compiled by the WGIHR. As of yet, no final draft version of the amendments has been communicated to the States Parties by the Secretariat.

This leads to a situation that does not allow for a lawful presentation of a draft resolution on IHR amendments to the 77th WHA by the WGIHR.

Despite the unequivocal legal obligation of WHO to respect Art. 55 para. 2 IHR, the Secretariat and the WGIHR publicly proclaimed their intention to violate international legal obligations incumbent upon them by finalizing the package of the amendments for the possible adoption at the 77th WHA, as evidenced during the 7th meeting of the WGIHR on 5th - 9th of February 2024 and as well as through the schedule of the final 8th meeting on 22nd - 26th of April 2024.

If the WGIHR and the Secretariat do not abide by the legal rules of the IHR amendment procedure, WHO commits an internationally wrongful act under the U.N. Draft Articles on the Responsibility of International Organizations. Although these Articles have not yet been officially adopted by States, there is sufficient doctrinal consensus, including state practice, international jurisprudence and scholarly opinion, that would qualify this unlawful administration of the IHR amendment process as a

wrongful act of WHO in accordance with the Draft Articles, which attracts institutional responsibility, including cessation, non-repetition (draft Art. 30) and reparation (draft Art. 31) of the WHO. This malfeasance can be held to account by any of the 194 State Parties.

Next to invoking WHO's institutional responsibility for committing an intentionally wrongful act by proceeding to propose a resolution on the IHR amendments at the 77th WHA, a claim for individual responsibility under international law of any person acting on behalf of the organization could to be established (draft Art. 66).

In this regard, the co-chairs of the WGIHR, Dr Abdullah Asiri of Saudi Arabia and Dr Ashley Bloomfield of New Zealand as well as the Vice-Chairs Dr Sultani Matendechero of Kenya, Mr Colin McIff of the United States of America, Ambassador François Rivasseau of France, and Ambassador Grata Endah Werdaningtyas of Indonesia could and should be held accountable for violating Art. 55 para. 2 IHR by intending to submit the final version of the IHR amendments to the WHA without meeting the deadline for the 4-months notification requirement.

The public webcast of 2nd of October 2023 (available here) provides evidence that the WGIHR is aware of violating Art. 55 para. 2 IHR, as WHO's Principal Legal Officer, Dr. Steven Solomon, expressly pointed out. His legal opinion that Art. 55 para. 2 IHR can be derogated by the WGIHR's status as a sub-committee of the WHA is legally invalid, because the IHR are part of WHO's *corpus iuris* that cannot be changed at the discretion and convenience of a newly created Sub-Committee of the Assembly unless violating the rule of law. It is evident from the discussions at the 7th meeting of the WGIHR, that they consciously and purposefully progress in violation of Art. 55 para. 2 IHR and negotiate until the approximate start of the Assembly.

Dr. Tedros, in your honorable function as Director-General, you undisputedly represent WHO and any conduct of a wrongful act is directly establishing WHO's international responsibility without precluding any potential claims of your individual responsibility. As indicated, doing this in a lawful way in accordance with Art. 55 para. 2 IHR is no longer possible and publicly proclaiming that the IHR can be revised at the 77th WHA is a conduct entailing responsibility on your side. Thereby, you also infringe your general duties as the Director-General of the WHO to ensure that the Organization and its Secretariat act in accordance with the rule of international law.

I call on you as the Director-General of the WHO and the Head of the WHO Secretariat to NOT present a draft resolution on the amendments of the IHR to the 77th WHA. Doing so would constitute an intentional violation of Art. 55, para. 2 IHR and can attract institutional and individual responsibility under the Draft Articles on the Responsibility of International Organizations and any other available mechanisms. Therefore, we urge you to immediately issue a clear command to the WGIHR and advise the public that the IHR amendments cannot be adopted at the 77th WHA.

REFERENCES:

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Video evidence:

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