WORLD HEALTH ORGANIZATION
ORGANISATION MONDIALE DE LA SANTÉ

EB67/SR/24

28 January 1981

EXECUTIVE BOARD

Sixty-seventh Session

PROVISIONAL SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

WHO Headquarters, Geneva
Wednesday, 28 January 1981, at 9h30

CHAIRMAN: Dr D. BARAKAMFITIYE

CONTENTS

TWENTY-FOURTH MEETING

Wednesday, 28 January 1981, at 9h30

Chairman: Dr D. BARAKAMFITIYE

1. INFANT AND YOUNG CHILD FEEDING (continued)

Draft International Code of Marketing of Breastmilk Substitutes: Item 20.2 of the Agenda (Document WHA33/1980/REC/1, resolution WHA33.32, para. 6(5), document EB67/20 and EB67/Conf.Paper No. 7 (continued)

Dr REZAI supported the remarks of Dr Mork and the draft resolution he had proposed. Because of artificial baby-foods millions of infants died from diarrhoeal diseases every year in the developing countries. Health for all by the year 2000 would not be attained if the problem was not tackled immediately. The proposed code should be adopted in the form of a regulation rather than a recommendation. He urged all Member States to support the code without reservation as a minimum requirement.

Mr AL-SAKAAF said that breastfeeding was one of the principal factors ensuring that future generations grew up healthy. Excessive use of breastmilk substitutes was brought about by uncontrolled advertising and it constituted a danger to the health of infants and young children. The draft code would be a first step to protect children; he supported the draft resolution proposed by Dr Mork.

Dr CORNAZ (Switzerland) said that resolution WHA33.32 not only constituted the legal basis for the draft code, but in paragraph 6, subparagraph (4) (b), defined its aim; namely "to contribute to the provision of safe and adequate nutrition for infants and young children, and in particular to promote breastfeeding . . .". The draft code transmitted to the Health Assembly by the Board, while its subject was marketing practices, should be in conformity with that aim to ensure that one of the elements essential for children's health was both protected and improved. The principal consideration to be taken into account when evaluating the code must be the health of the child.

Secondly, in its first operative paragraph, resolution WHA33.32 endorsed "in their entirety the statement and recommendations made by the joint WHO/UNICEF Meeting . . .". The Health Assembly had thus not only endorsed the recommendations but had placed them at the beginning of the operative part of the resolution; the draft code should correspond to the conclusions of that Meeting. Representatives of governments, agencies of the United Nations system, nongovernmental organizations, the infant food industry and experts in related disciplines had participated fully in the Meeting, and its conclusions had been reached by consensus. At the further consultations held in September 1980, representatives of a number of countries, including Switzerland, had insisted on the importance of consistency of the code with the conclusions of the Meeting. Although the draft code reflected many of the conclusions reached in October 1979, in certain respects it differed from them and from the letter and spirit of resolution WHA33.32. For example, the French of Article 2 - Scope of the Code - limited its application to milk products, thus excluding infant formulas based on cereals, the English text could be interpreted less restrictively. The conclusions of the Joint WHO/UNICEF Meeting had not provided for such a limitation, and as breastmilk or breastmilk substitutes had to be supplemented for children of about 4-6 months of age, the draft code should include cereal and other supplements. Other articles, like Article 9 on labelling standards, were limited to infant formula, which was defined in the draft code as a breastmilk substitute for infants up to between 4 and 6 months of age, thus excluding breastmilk substitutes for infants over 6 months of age, although the recommendations of the Joint Meeting had been on labelling for all breastmilk substitutes. There were further divergencies.

Conditions favouring breastfeeding included - besides social legislation or arrangements, which had been discussed the day before - adequate nutrition during lactation and above all during pregnancy. That point, stressed by the joint Meeting, should not be forgotten.

In view of the importance of excluding from the market any product not suitable for infants, she had been surprised to note that the draft code did not mention that aspect. Neither did it refer to quality control, mentioned in paragraph 5(1) of resolution WHA33.32, although at the consultations held in September 1980 that question had been discussed at length and a proposal to include an article on quality control had been adopted, recognizing that both importing and exporting countries were responsible for ensuring such control. A certain number of other points agreed upon at the consultations had not been reflected in the draft code.

If the draft code were adopted in the form of a regulation, Switzerland would have to make reservations necessitated by the Constitution and federal law. The draft code should enable both developing and developed countries to protect childrens' health although it was certain that the socioeconomic and hygiene conditions prevailing in developing countries made the use of breastmilk substitutes particularly dangerous, while in normal conditions the use of the bottle in developed countries was less dangerous for the infant than in developing countries. Breastfeeding was the only natural method of feeding in any country, industrialized or not.

She concluded by underlining the importance for WHO, UNICEF and Member States of helping to improve infant feeding and thereby promoting health.

Dr LISBOA RAMOS said that the draft code, which was of paramount importance for childrens' health both in developing and developed countries, should be thoroughly analysed in the light of the remarks of Dr Mork, paying close attention to the need for amendments such as those that would be necessary to make good the omissions mentioned by Dr Cornaz, whom he supported.

He was in favour of adopting the draft code as regulations, which would be more binding on Member States, even though some might not accept it or might make reservations.

Article 12.2 allowed 18 months for rejection or reservation with respect to overseas or other outlying territories for whose international relations a State might be responsible, while Article 12.1 allowed nine months for Member States. With modern communications there was no need to double the time allowed for the former.

Dr KRUISINGA said that the remarks of Professor Aujaleu and Dr Mork had decided him to withhold his amendments provided that none were introduced by other members.

He shared the preference of some representatives of the infant food industry in the Netherlands for regulations to ensure that the industry as a whole respected the code. Nevertheless, in a spirit of harmony, he would accept the opinion of the majority in the Board and the Health Assembly.

Article 2 (u) of WHO's Constitution stated that one of the Organization's functions should be "to develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products" whereas Article 21 (e) stated that the Health Assembly had authority to adopt regulations concerning "advertising and labelling of biological, pharmaceutical and similar products moving in international commerce" without specifically mentioning food. He would therefore like to have a legal opinion as to whether the code could be adopted.

He asked whether the Secretariat considered that there should be flexibility to take account of circumstances in different areas. The situation in developing countries was undoubtedly very serious, but there were also problems in developed countries. He wondered what would be done to assist children without mothers or whose mothers were undernourished or suffering from disease.

Articles 4.1, 5.1 and 2, 6.3, 7.2, 11.2 and 12.1 were the most important in the draft code. Article 9 did not differentiate between newborn infants and those somewhat older, and he requested further information on labelling of food for the two ages.

The quality control aspect needed further elaboration in the code.

He was particularly interested in the modalities of control and how a report on the code's functioning would be made available to the Executive Board and the Health Assembly.

He requested information on the costs of educational material and of the programme on control of diarrhoeal diseases and who would bear them, and on the opinions yielded by the consultation with other organizations in the field listed at the end of document EB67/19.

Dr CARDORELLE said that, in addition to the reports submitted by the Director-General, members of the Board had received unofficial papers representing other points of view and conflicting interests. The draft code was the outcome of extremely lengthy process; it was the minimum acceptable to the various parties concerned, and was essential for the protection of the lives of infants throughout the world, but particularly in the developing countries. Practices in the breastmilk substitute industry justified preparation of an international code to protect infants as a moral obligation.

He associated himself with earlier statements, particularly those of Dr Yacoub, Dr Alvarez Gutiérrez and Dr Mork, and supported the draft resolution, favouring adoption of the code as regulations.

Dr PATTERSON said that a number of problems could arise by virtue of the definitions contained in Article 3 of the draft code. The "health care system" was defined extremely broadly, and, although the definition doubtless an ideal system, the reality was often far different, and it was hard to see how health authorities could be required to accept that far-reaching responsibilities outlined in Article 6.1 when "health worker" was also so broadly defined. In Jamaica day care nurseries were often "backyard nurseries" where the helpers were neither trained nor registered and did not come within the official competence of the health authorities, which made monitoring and control virtually impossible.

The apparent restriction of application of the code to formula for infants up to six months of age would cause problems, as feeding difficulties often arose at the time of weaning. The information referred to under Article 4.2(e) should be made available to all pregnant women and mothers of infants and young children rather than only, as stated in the document, where needed. Article 5.4 prohibited the distribution of gifts to pregnant women or mothers of infants and young children of articles or utensils promoting the use of breastmilk substitutes, but did not prohibit the distribution of such articles in primary schools; mothers could be reached there. The provision in Article 7.1 that health workers concerned in particular with maternal and infant nutrition should make themselves familiar with their obligations under the code seemed totally unrealistic when applied to the health workers on whom developing countries had largely to rely. It would appear that the code would transfer responsibility regarding breastmilk substitutes from the distributing trade to poor and illiterate health workers.

The code was thus marred by certain shortcomings and unclear definitions; due attention must be paid to the real situation in the developing countries. She agreed with the substantial comments made by Dr Kruisinga and by the representative of Switzerland.

Whether the code should be adopted as regulations or a recommendation was a political issue to be decided by the Health Assembly; a form acceptable to all countries should be found, and in view of their differing situations regulations might not best serve the intended purpose. In the developing world moral would be more effective than legal pressure. She accordingly favoured a universal recommendation, although she was in no way opposed to the introduction of regulations in countries where that was acceptable. Mention had been made by Dr Hiddlestone of a three-year trial period of monitoring; she was inclined to support such a proposal, if procedures ensuring cooperation could be evolved.

The draft resolution submitted by Dr Mork was worthy of consideration, and she would be willing to participate in any working group set up for that purpose. The code had prompted a positive reaction, but its existence must not be allowed to obscure the main objective of adequate feeding and an end to malnutrition in children. The preamble was therefore of immense importance in that it related to a whole range of wider issues, which deserved quite as much attention as marketing.

Professor XUE Gongchuo would not reiterate the importance of the question of breastfeeding, which had been recognized by all. He expressed approval of the progress report submitted by the Director-General (document EB67/19).

On the draft international code, he broadly agreed with the comments made at the previous meeting; it represented the minimum requirements regarding breastmilk substitutes. It was the responsibility of national health ministries to protect the health of infants and, from that viewpoint, the implementation of the code as regulations was desirable. Such implementation might, at the present stage, give rise to difficulties in various countries, but national authorities, and particularly health authorities, had a clear duty in that regard.

A number of useful suggestions had been made regarding the contents of the draft international code, and he hoped they would be taken into consideration.

Dr ADANDÉ MENEST commended the Director-General and his staff on the preparation of the draft international code in response to resolution WHA33.32. The encouragement expressed in favour of breastfeeding would naturally be supported by all.

On the aspect of marketing of breastmilk substitutes, he asked whether WHO had ever been requested in the past to prepare regulations in the sense of Articles 21 and 22 of its Constitution, and what had been the reaction of Member States. Information on that point would be useful when considering the content and assessing the role which WHO could play in that regard within a global framework. On the issue of whether the draft international code should be submitted to the Health Assembly in regulation or recommendation form, there were wide-ranging implications of a financial, legal, administrative and political nature. Little consideration had been given to the political repercussions; that would be the prerogative of the Health Assembly.

The basic purpose of the draft international code was to be an instrument for the protection of infants and young children, and as such it warranted unanimous support. Regulation form would make that support more forceful, and would ensure a greater degree of protection against undesirable trade practices.

Dr ABBAS said that, according to his own experience, refusal by mothers to breastfeed their babies did not constitute any real problem in the developing world. The fundamental problem there was malnutrition - of both lactating mothers and young children - and the only truly effective solution was general economic and social development. Every effort should be made to help countries deal with the priority problem of malnutrition.

He fully supported the draft international code which he felt should take the form of a recommendation. He commended the Secretariat on its work, which should prove a useful contribution to the cause of family health as a whole.

Dr AL-SAIF associated himself with previous speakers in expressing approval of the excellent draft international code, which should serve not only to promote breastfeeding but also to provide protection regarding the use of breastmilk substitutes. It was an indication of WHO's interest in the cause of child health, and should be given regulation form.

Dr LAW had no wish to repeat what had already been said as to the importance of infant feeding and the promotion of breastfeeding, and the role of the code in that respect. The question to which she would address herself was whether the code should be a regulation or a recommendation. It seemed that many members of the Board were still very concerned at some of the content of the code, and a number of speakers, including Dr Patterson, had alluded to practical difficulties.

Given those difficulties, and bearing in mind remarks concerning a possible revision, she thought that it would be better to adopt a recommendation; a recommendation was easier to monitor and revise. A regulation, on the other hand, would be more difficult to revise once it has been adopted. A third possibility would be to defer a decision until the wording was so perfect that everyone could accept it; she felt, however, that it was important to take immediate action, and would support the adoption of the code in the form of a recommendation.

Dr OLDFIELD said that, although he had little to add, he regarded the subject as being of such importance that the degree of support for the code in the Board should be recorded fully.

Since the code was of equal importance to developing and developed countries alike, it was particularly important that it should be universally acceptable. Ideally he would have liked to see the code as a regulation, but realism required him to accept it as a recommendation, bearing in mind that - as several speakers had pointed out - the requirements laid down were the minimum. Every country was free to improve on the code in the light of its own situation; the code was not an end in itself, but a step towards the protection of infants and young children.

It seemed to him that the idea of monitoring within a fixed period, as had been suggested, was very sound. Each country would be expected to state what had been achieved by a set date when the review was to take place. He congratulated the Director-General, the Executive Director of UNICEF, and all who had worked so hard to produce such a good document. He supported the draft resolution prepared by Dr Mork.

Dr RIDINGS thanked the Director-General, the Secretariat and UNICEF for all the work which they had put into the three revisions of the code, and also those who had sent him an impressive amount of documentation. Like Dr Mork, however, he took exception to some of what he had seen, and in particular to scurrilous remarks contained in an article written by the President of Ethics and Public Policy Center in Washington, which had appeared in the Wall Street Journal on 14 January 1981. One passage in particular, referring to pressures on western governments, read in the following terms: "Third World Delegations and their Soviet bloc friends may well adopt the code with little critical examination... This will be an unprecedented attempt at international legislation by ideological intimidation." He felt strongly that it was impertinent to suggest that he was embracing Soviet ideology, and he would be surprised if the Director-General and his staff did not share his resentment at the type of comment being made.

The Director-General and the Secretariat, together with UNICEF, had taken a tolerant and reasoned approach. He shared Dr Patterson's belief that the code was far too loose from the point of view of the developing countries, and open to abuse by an unscrupulous manufacturer. At the same time he accepted that there might be a world of difference between what was desirable and what was possible, and he was inclined to believe that the most important factor was not so much the content of the code but how it was implemented and monitored. If WHO could be responsible with Member States for monitoring, and if WHO was prepared to help with legislative regulation in the various countries, then in his view the code stood a fair chance of being made to work. Although not perfect, it would be generally acceptable to most people.

Dr AL-GHASSANI (alternate to Dr Al-Khadouri) thanked the Director-General, the Secretariat and UNICEF for all the efforts they had put into producing such an excellent document so speedily.

He agreed with those speakers who had expressed approval of the draft international code, and supported the draft resolution proposed by Dr Mork. He considered that the code should be adopted in the form of regulations in accordance with Articles 21 and 22 of the Constitution.

It seemed that it was assumed that the products referred to in the international code would be identical in all countries. In fact, certain products were exported by manufacturers but not marketed in their own countries. Perhaps the Secretariat could comment on that point.

Dr LITVINOV (adviser to Dr Venediktov) said that the subject had been dealt with so exhaustively that there was no need to go into further detail. He would just state his view that it would be preferable for the code to be adopted as a regulation. Some speakers had maintained that its adoption as a recommendation would be more effective and would avoid the risk of adverse reflections on the Organization's authority; he considered that, on the contrary, the adoption of the code as a regulation would be a way of demonstrating WHO's authority. The debate had shown that opinion was divided as to whether the code should be adopted as a recommendation or a regulation. If he had understood Professor Aujaleu correctly, he had proposed that the two alternatives be put before the Health Assembly, which should be given the opportunity of deciding between them. He supported that proposal.

Dr BRYANT (United States of America) said that, although he had not intended to speak, the morning's debate had prompted him to do so. He appreciated the opportunity of participating in the discussion on such an important subject even though he was not a member of the Board.

The central matter under consideration was the nutritional needs and threats to the health of infants, and WHO's efforts to deal with those problems were praiseworthy. He particularly welcomed the progress report discussed the previous day, including the many specific steps WHO was pursuing to promote infant and maternal nutrition. There was no doubt that breastfeeding was the ideal form of infant nutrition and that it needed to be encouraged and protected. There was no disagreement in the Board or in the Organization that the marketing of infant formula should be pursued only in ways that did not discourage women from breastfeeding while at the same time meeting the needs of those women who could not or chose not to breastfeed. It was because of those issues that WHO was now dealing with the code.

It was clear from the discussion both in the Board and elsewhere that there were differences of opinion regarding the form the code should take - whether regulations under Article 21 or recommendations under Article 23. The United States felt strongly that it should not take the form of regulations, and his understanding was that many governments would feel the need to oppose the code if it were presented to the Health Assembly as regulations. In view of all the agreement existing within WHO and its membership regarding infant nutrition questions, it would be very unfortunate if the Health Assembly's conclusion on the matter was arrived at through divisive action.

It was also clear that there were differences of opinion regarding the specific contents of the code. Some would like its provisions to be stronger, while others thought they were too strong or went too far. Some would like to see new subjects addressed by the code, while others would like to see some of the current subjects deleted. Some thought the language could be improved. His Government had opinions on almost all of those aspects and undoubtedly would need to express reservations on some of them at the Health Assembly in May.

He would give an example, as a partial indication of the nature of his concerns. One provision said there should be no advertising of infant formula to the general public. While fully understanding the reasons for some provision relating to advertising, the complete ban in the current text gave rise to serious concern in a society in which there was a constitutional preference for freedom of speech - including commercial speech. An absolute ban on advertising was considered to be unnecessarily broad.

There were other provisions with which the United States had problems, but which he would not detail for the moment. If an effort were undertaken to pursue the changes that some members wanted the United States Government would certainly wish to participate and would also feel obliged to introduce proposals for change.

In sum, it was his impression that there was a basic consensus on the health questions before the Board and on the desirability of a code that could, first, provide guidance to those involved in infant feeding and, second, form the basis for legislation that might be adopted in individual Member countries as appropriate in the national circumstances. It would be unfortunate if WHO lost the ability to maintain a consensus on the vital issue of infant nutrition.

The discussions on the proposed code had been followed with great interest and he was sure that the new United States administration would carefully study the context of the discussions and the Board's recommendation to the Health Assembly in formulating its own future position regarding the proposed code.

The CHAIRMAN noted that the Board was unanimously agreed on the importance of breast-feeding - which was traditionally the accepted form of infant feeding in the African Region. That tradition had been threatened by all the advertising efforts in recent years aimed at promoting the use of breastmilk substitutes in the developing countries. Some action had been urgently called for, and the efforts of WHO and UNICEF in that connexion deserved support. The real problem concerned the form the code should take, to find the best way of halting the decline of breastfeeding in developing countries. It was news to none that some of the most resounding resolutions of the Security Council and the United Nations General Assembly had not been implemented; it was important to try to ensure that WHO's resolutions did not meet a similar fate.

He understood Dr Hiddlestone to have referred to the possibility of the code being adopted as recommendations, with a rider to the effect that, at the expiry of a certain number of years, the Health Assembly should assess the situation in the light of reports from Member

States and the Director-General, and decide on the advisability of changing the form of the code. Dr Hiddlestone's idea appealed to him, but he would like to hear the Legal Adviser's comments in that respect.

He fully understood those who would like to see radical steps taken, but it was the final outcome that was important. He also understood those who favoured an initial flexible approach with the possibility of taking a more rigid stance later if necessary.

Dr TEJADA-DE-RIVERO (Assistant Director-General), replying to some of the questions raised, said that a number of the most difficult problems encountered in the preparation of the draft code had been due to the need for full and close cooperation with Member States and other parties concerned in the matter. In October 1979 the joint WHO/UNICEF meeting on infant and young child feeding had been held. In February 1980 a first preliminary version of the draft code had been sent to all Member States, which had been requested to submit comments and suggestions. That first draft had been reviewed in February and March 1980 in a series of five consultations held with Member States, with the United Nations specialized agencies, with nongovernmental organizations, with the infant food industry, and with experts in related disciplines.

In May 1980, using the inputs from those five consultations and the material received from Member States, the Director-General had prepared the second draft, which had been submitted as information to the Thirty-third World Health Assembly. In June 1980, in response to the request made in Committee A of the Health Assembly and by resolution WHA33.32, the second draft had been transmitted to all Member States and to all participants in the five consultations. In July and August 1980, on the basis of the comments made by Member States and the other parties involved, a third draft had been prepared; that document had then served as the basis for two consultations specifically requested at the Health Assembly - one held in August 1980 with the participation of the United Nations specialized agencies, non-governmental organizations, the infant food industry and experts in related disciplines, the other held in September 1980 with selected Member States.

In the light of the suggestions made in the two consultations and the comments received from Member States, the Director-General had been able to prepare the fourth draft of the code. Throughout the formal process of preparation the Organization had worked in cooperation with UNICEF, and it had always been ready to provide full additional information and to consider suggestions from governments and other interested parties. The Secretariat had been ready to go to any place at the request of governments or other parties involved. Thus every conceivable effort had been made to secure full participation, and that in itself might have given rise to some of the problems now being faced. In fact opinions had differed so greatly that certain aspects considered of importance by some might have been overlooked in the complex process of preparing an international instrument general enough to cover the whole range of situations involved. Indeed, both in the consultations and at the Health Assembly one of the basic points made by Member States had been that the draft code should be designed for both developing countries and industrialized countries and that it should be flexible enough to enable Member States to apply its principles and objectives to their different social, political and economic circumstances and legislative frameworks. It had thus been difficult to arrive at a content suitable for the particular circumstances of every country. The Secretariat had endeavoured to retain the minimum content agreed upon at the October 1979 meeting, bearing in mind the Organization's responsibility for infant and child health in the context of the goal of health for all by the year 2000.

Certain translation and editing problems had arisen. The Secretariat had taken very careful note of the comments made in that connexion, particularly those made by Dr Cornaz from Switzerland. Definitions had also been a source of difficulty. They had to be global, flexible, and adaptable to national legislation in circumstances in which the meaning of individual words varied from country to country. On the other hand the definitions had to be "ad hoc" for the purpose of the code.

With regard to the flexibility of the content of the code, it should be borne in mind that the ninth preambular paragraph of the draft code contained a very clear statement of the importance of social and economic factors and of the concomitant responsibilities of governments, and the problem of flexibility was also clearly covered in article 11.1.

The Secretariat's approach to the question of quality had been elaborated in the light of the concrete term of reference set up on this aspect in resolution WHA33.32 and of the work being done by the Codex Alimentarius Commission, and the content of the relevant article had been discussed with the parties engaged in that work. Once again the problem had been to produce a minimum, general and flexible instrument.

With regard to the cost of educational materials for the promotion and protection of breastfeeding and the proper use of breastmilk substitutes, the Secretariat considered that the draft code was only one element in the many measures which Member States had to take. The educational aspect, being so extremely important for the development of capacities to implement national legislative measures, would obviously involve considerable costs. At the moment the Secretariat had no estimate of what those costs would be at the country level. It was, however, clear that the educational aspect could not be dealt with in isolation but had to be integrated in family health programmes and therefore as part of the primary health care activities. To facilitate the elaboration of sound educational programmes the support of WHO, UNICEF and other bodies would be needed. Dr Merson would be able to provide Dr Kruisinga with some information on the costs of educational materials for the diarrhoeal disease programme.

Dr BÉHAR (Nutrition), referring to the questions raised in connexion with article 9 of the draft code, said that, since the basic aim of the document was to protect breastfeeding, it was important to bear in mind what happened if, during the period in which breastfeeding alone could satsify the nutritional requirements of the infant - i.e. during the first 4-6 months of life - the infant could not, for any reason, be breastfed. In those circumstances the milk of another mammal would have to be used, but it would have to be specifically modified so as to ensure its suitability for infants in the early months of life. Later on other foods could, of course, be used, which was why the English version of the draft code made a distinction between infant formula and other preparations.

Article 9.1 endeavoured to define the general purpose - namely, that labelling should be such as to ensure that the product, when it really had to be used, was used correctly and that breastfeeding, which the draft code sought to promote, was not discouraged. Article 9.2 covered specific preparations for infants in the first months of life and stated the conditions which the labelling of infant formula must satisfy. Article 9.3 dealt with other foods which, when appropriately modified, could be used for infant feeding. The draft code in itself could not cover the standards for weaning and other foods used for older children because, in the Secretariat's opinion and in that of all the specialists consulted, such foods could be common foods whose hygienic purity and labelling requirements when industrially prepared were subject to other regulations.

He agreed that the French and Spanish translations of the original English text were inadequate. They were now being checked, and a number of corrections would have to be made. A few editorial adjustments would also be needed. The general purpose was to ensure that any information given did not induce mothers to abandon breastfeeding.

Dr Patterson might be interested to know that the Secretariat was actively engaged in work on the development of a programme for the appropriate use of weaning foods in various ecological, economic and cultural conditions.

Dr STERKY (Maternal and Child Health) said that some of the answers to the questions raised by Dr Kruisinga and Dr Cornaz regarding maternal nutrition were to be found in document EB67/19. The programme on birthweight as an indicator of socioeconomic development and health would also answer some questions relating to maternal nutrition. The scientific basis for the most appropriate implementation of nutritional supplementation programmes for the benefit of pregnant women was not absolutely clear at the moment, and the Secretariat was seeking further information on the subject. The relevant work was being done in cooperation with a number of international organizations.

Dr Kruisinga and Dr Oradean might be glad to learn that a survey of relevant national legislative provisions in the field under consideration, prepared by a consultant, would be made available to them later in the day. The work on legislation for working women in support of breastfeeding was being done in cooperation with ILO, and it was hoped that further information on it would be available at the next Health Assembly.

Mr SHUBBER (Legal Division) explained that the provisions of article 12.2 of the draft code had been included by analogy with Article 94, paragraph 2, of the International Health Regulations. The period could be reduced, or the provison could be deleted completely.

Mr VIGNES (Legal Adviser) took the questions in the order in which they had been raised. Dr Adandé Menest had asked whether the Health Assembly had already adopted regulations in the sense of Article 21 of the Constitution. The answer was affirmative. In 1948 the Health Assembly had adopted a regulation relative to the nomenclature of diseases and causes of death, a regulation which had been revised in 1967; the legal basis was Article 21(b) of the Constitution. Subsequently, in 1951, the Health Assembly had adopted the International Health Regulations on the basis of Article 21(a) of the Constitution, a regulation which had been replaced in 1969 by the text in force at present. It might be said, generally speaking, that almost all the Members of the Organization were bound by those two regulations.

Dr Kruisinga had observed that there were differences in drafting between Article 2(u) of the Constitution and Article 21(d) and (e), and he had asked for some explanation of that difference. In Article 2(u) the Constitution provided that the Organization could develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products. In Article 21(d) and (e) the Constitution provided that the Health Assembly could adopt regulations concerning standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products, or concerning advertising and labelling of those products. There was thus a difference in the drafting of those two Articles. In conformity with principles of interpretation generally followed in international law, it might be supposed that the scope of Article 21 was not as broad as that of Article 2(u), and that the legal technique of a regulation could not be applied beyond the scope of the biological, pharmaceutical and similar products mentioned in Article 21. Breastmilk substitutes fell precisely under that article, and consequently might be included under a regulation in the sense of Article 21(d) and (e). The Health Assembly itself had taken that position since, in its resolution WHA33.32, operative paragraph 6(5), it had requested that a text be drafted either as a regulation in the sense of Articles 21 and 22 of the Constitution or as a recommendation.

The Chairman had asked if it would be possible to insert a clause in the recommendation so as to provide for the possibility, after a certain length of time, of adopting a regulation if the recommendation was not satisfactorily implemented in the various member countries of the Organization. The answer to that was entirely affirmative. It was quite possible to insert such a clause in the recommendation providing that, after a certain amount of experience and time, the Health Assembly could adopt a regulation on the same subject; indeed he had understood the draft resolution proposed by Dr Mork in that sense, since the last paragraph of the draft resolution provided that, based on the conclusions of the status report, proposals could be made, if necessary, for revision of the text of the code and, according to Articles 21 and 22 of the Constitution, the adoption of the code as a regulation could be recommended. That disposition precisely covered the point which the Chairman had raised, and seemed to him constitutionally quite valid.

The DIRECTOR-GENERAL expressed some disappointment over the debate on one small point. Throughout what was called the free press the Secretariat had been labelled as secretive United Nations bureaucrats marching under the banner of WHO. He realized that freedom of expression involved the right to be as far from the truth as possible; that included doing harm to children's health and consequently to WHO. He had hoped, however, that the Board would defend the Secretariat and see the proposals not as the Secretariat's policy but as the high degree of participatory democracy for which the Organization had been able to provide a platform in developing protection for children throughout the world. He was a little disappointed that the Board had not felt it necessary to give the Secretariat that support.

Turning to the draft resolution, he felt, first, that the Board had indicated that the draft international code was a highly respectable democratic product, though not entirely perfect in content; and, second, that what the Board cared about was the impact it would have on child health. The conclusion he drew was that the intensity of the moral tour de force of the initiative would depend not on a weak consensus, but on a unanimous backing, making it clear that WHO and UNICEF were giving a mandate to support all Member States in the implemen-

tation of the draft international code, and that Member States were expected to report back to the governing bodies of WHO on the impact of the code and on the measures they had taken to implement it. From the many comments expressed on details in the code, he drew the logical conclusion that the resolution should have unanimous support as a recommendation in the sense of Article 23 of the Constitution. In operative paragraph 5(4), he proposed, with Dr Mork's agreement, to add after the words "text of the code" the phrase "and for the measures needed for its effective application", without prejudging what those measures might be.

He concluded by saying that the experience had not been pleasant for the Secretariat; it had been a difficult climate in which to manoeuvre and keep its vision straight. But WHO had been solely and totally concerned about the profit motive that lay in promoting health. He quoted the United States jurist, Oliver Wendell Holmes: "The best test of truth is the power of thought to get itself accepted in the competition of the market." That power of thought, with regard to child health, had indeed come to be accepted by the cold forces acting in the market. He hoped that WHO would keep its profit motive clear in favour of the right to health for all, and not least for children.

Dr KRUISINGA assured the Director-General that the kind of sentiments he had quoted were beneath the contempt of members of the Board, that the Secretariat had the Board's fullest support, and that the Board had the greatest admiration for the work of the Director-General and the Secretariat in the face of all the accusations they had had to endure.

Dr MORK associated himself with Dr Kruisinga's remarks and hoped that the Director-General and the Secretariat had gathered from the spirit of the discussion that they had the Board's full confidence and support. He fully accepted the Director-General's slight amendment to the draft resolution; having heard the different points of view among the developing countries on the legal instruments to be chosen, he favoured adoption of the resolution as amended, with a view to a unanimous recommendation.

Professor DOGRAMACI associated himself with the words of Dr Kruisinga and stressed the Board's appreciation and backing of the Director-General in his difficult job. Recognizing the shortcoming of the code as described by Dr Patterson, he agreed that the situation was different in the developed and developing worlds. In the developed countries the continuation of breastfeeding up to the sixth month was applauded, but the death rate for the second half of the first year of life, when breastmilk alone was not enough, was known. The rule of Islam was 14 months of breastfeeding. He felt that if the breastfeeding period covered by the code were restricted to six months and formulas for older infants were referred to as weaning foods, there would be nothing to stop a manufacturer from advertising an infant formula as being excellent for six-month-old infants. If at all feasible the code should rather be extended. Nine-month-old infants in some hot climates would do better on breastmilk than on substitutes, which could become contaminated. In the developing world the continuance of breastfeeding for one year sometimes saved lives, although anaemia might be increased a little.

He wholeheartedly supported the code in its other points and urged its adoption.

Professor AUJALEU said that the best defence of the Secretariat and the Director-General was the unanimity with which the Board was preparing to adopt the text with only minor drafting changes. There had not been a dissenting voice. With regard to the resolution, he favoured the form of a recommendation, because a certain number of members had desired minor changes in the text to adapt it to the situations in their countries. If the Health Assembly adopted the code as regulations there would be no way of making further changes in the text, but if it were a recommendation the countries could include minor changes in their national regulations. He warned against re-drafting the resolution, which would serve the purposes of those who wished to delay its application.

The CHAIRMAN said that he was persuaded that all the members of the Board were prepared to take turns in showing the Director-General and the Secretariat their wholehearted support. He invited Mr Vignes to give some futher explanations with regard to the draft resolution.

Mr VIGNES (Legal Adviser) reminded the Board that if it adopted the draft resolution it must specify the sense in which the text was to be adopted. If it was to be adopted as a

recommendation, then in operative paragraph 1 the words in brackets after the word "ADOPTS" had to be deleted; the brackets which followed also had to be removed, as had the brackets in the last two lines of operative paragraph 5(4).

Dr ADANDE MENEST said that before adopting the text in the form of a recommendation, since that was practically the consensus, it should nevertheless be made clear that those most closely concerned should in the years to come give the text the character of regulations as the eventual consummation of the Board's success.

The CHAIRMAN said that such a follow-up was provided for in operative paragraph 5(3) and (4) of the resolution.

Dr PATTERSON asked whether any time limit was indicated for revision of the code.

The CHAIRMAN pointed out that operative paragraph 5(3) provided for a report to the Thirty-sixth World Health Assembly. He invited the Board to adopt the draft resolution proposed by Dr Mork, as amended.

The draft resolution, as amended, was adopted unanimously.[1]

The meeting rose at 12h30.

== == ==

[1] Resolution EB67.R12.