



# WORLD HEALTH ORGANIZATION

EXECUTIVE BOARD  
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## Regional committees and regional conventions

### Report by the Secretariat

#### BACKGROUND

1. Under WHO's Constitution, the adoption by the Organization of international treaties is regulated by Article 19, which reads as follows:

*The Health Assembly shall have the authority to adopt conventions or agreements with respect to any matter within the competence of the Organization. A two-thirds vote of the Health Assembly shall be required for the adoption of such conventions or agreements, which shall come into force for each Member when accepted by it in accordance with its constitutional processes.*

2. The authority to adopt international conventions has not been granted to regional committees. The difference in language between Article 19 and Article 50 of the Constitution makes it clear that the founders of WHO considered that the Organization would conclude international conventions of a global nature through the Health Assembly. Regional committees would devote themselves to technical and policy considerations within the geographical ambit of their regions. The possibility had not generally been envisaged of the regional committees adopting binding legal instruments regulating subject matters within their purview.

#### ISSUES

3. Recent developments in international public health policies have increased interest in the question of whether certain areas of international cooperation affecting public health should be tackled, among other means, through the conclusion of binding international agreements. At global level, this trend is evidenced by the recent launching of the process to establish a framework convention on tobacco control. The need has also been perceived at regional level, particularly in the European Region, in which initiatives of this nature have been taken to address health-related problems in a way which meets the specific needs and characteristics of the region.

4. A recent example of the above-mentioned trend at regional level has been the adoption by the Third Ministerial Conference on Environment and Health (London, 16 to 18 June 1999) of the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. As a result of the way in which work on the Protocol evolved, the Regional Office for Europe played an important role in supporting and assisting, jointly with the

Secretariat of the United Nations Economic Commission for Europe (UN/ECE), the intergovernmental process which led to the adoption of the Protocol. Nevertheless, strictly speaking, the Protocol was not elaborated under the auspices of the Regional Committee, nor was the Conference convened by the Committee.

5. More importantly from the point of view of the present report, the Ministerial Conference adopted, on 18 June, a Declaration on Environment and Health dealing, *inter alia*, with "Transport, environment and health".<sup>1</sup> Paragraphs 18 and 19 of the Declaration envisage the possibility of negotiating a European convention on transport, environment and health.<sup>2</sup> A decision on this issue is expected to be taken by a conference of ministers of transport, environment and health or their representatives, to be convened by WHO and UN/ECE at the latest by the end of 2000. In so far as the reference to "WHO" is interpreted as designating the Regional Committee for Europe, the decision of the Ministerial Conference raises the question of the authority of the Regional Committee for Europe to adopt international conventions.

6. It is clear from the foregoing that the States of the European Region have started to consider addressing certain public health issues through the adoption of regional conventions. It cannot be excluded that other regions will follow suit.

7. In order to enable regional committees to take proper action as deemed desirable by their respective Member States to address public health issues through the adoption of legally binding instruments, it may be considered appropriate to grant regional committees the authority to adopt international conventions. Three alternative modalities can be envisaged: the first would be to amend Article 50 of the Constitution; the second would be for the regional committee concerned to seek an authorization from the Health Assembly on a case-by-case basis; the third would consist of a general delegation of authority from the Health Assembly to regional committees.

8. The first alternative would provide the regional committees with a clear constitutional basis for the adoption of regional conventions. However, recent experience has shown that amendments to the Constitution may take several years to enter into force. Moreover, at this time there are already three amendments pending entry into force and it may not be considered desirable to add a fourth one, particularly in light of the preference expressed by Member States at the Fifty-second World Health Assembly not to consider further amendments to the Constitution.

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<sup>1</sup> Document EUR/ICP/EHCO 02 02 05/18 Rev.5.

<sup>2</sup> Paragraphs 18 and 19 read as follows:

18. *We call on WHO and other international organizations to continue to support these efforts by fulfilling the roles identified for them in the Charter. We recognize that further efforts will be needed in the future, beyond implementation of the Charter, in order to achieve transport that is sustainable for the environment and health. We invite WHO and UN/ECE, jointly and in cooperation with other international organizations, to provide an overview of relevant existing agreements and legal instruments, with a view to improving and harmonizing their implementation and further developing them as needed. A report on this overview should be submitted at the latest by spring 2000, recommending which further steps are needed. That report should cover the possibility of new non-legally binding actions and the feasibility, necessity and content of a new legally binding instrument (e.g. a convention on transport, environment and health, focusing on bringing added value to, and avoiding overlaps with, existing agreements).*

19. *A decision on negotiation of such an instrument shall be taken as soon as possible after the submission of the report, at a meeting of ministers of transport, environment and health of Member States or their representatives, convened for that purpose by WHO and UN/ECE at the latest by the end of the year 2000.*

9. The second alternative has the disadvantage of being based on a completely ad hoc consideration by the Health Assembly of each individual request, without a general definition by the Health Assembly of the criteria for the exercise by regional committees of treaty-making authority. Moreover, the procedure which would have to be followed would inevitably delay the beginning of negotiations by one to two years.

10. The third alternative would avoid the delays inherent in the ad hoc approach of the second alternative. However, it raises the issue of what sort of limits should be placed on the delegation of authority in order to ensure that regional initiatives do not unintentionally complicate the elaboration of conventions on the same subjects at global level.

### **ACTION BY THE EXECUTIVE BOARD**

11. In view of the foregoing, the Executive Board may wish to recommend to the Health Assembly adoption of a resolution authorizing regional committees to adopt international conventions on matters of a strictly regional nature. The decision of the Health Assembly should empower regional committees to take all actions necessary and appropriate to negotiate and adopt regional conventions in the form and along the modalities which are deemed most suitable for the needs and characteristics of their respective regions. At the same time, in order to avoid the above-mentioned risk of unintentionally complicating efforts at the global level to adopt conventions on the same or related issues, it is essential that the exercise of this delegated authority should be consistent with the general policy of the Organization and limited to strictly regional matters. It is thus advisable that some mechanism should exist for the Health Assembly to review the actions envisaged or taken by the regional committees.<sup>1</sup> A possible draft resolution is set forth below.

The Executive Board,

Having considered the report of the Director-General on regional committees and regional conventions,<sup>2</sup>

RECOMMENDS to the Fifty-third World Health Assembly adoption of the following resolution:

The Fifty-third World Health Assembly,

Having considered the report of the Director-General on regional committees and regional conventions;

Noting that, under Article 19 of the Constitution, the Health Assembly has the authority to adopt conventions or agreements with respect to any matter within the

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<sup>1</sup> It should be borne in mind that any action taken by the Health Assembly on this issue would not apply to the governing bodies of PAHO as such, since PAHO is a separate international organization endowed by its Statute with the competence to conclude treaties. In this connection, the proposed resolution is not intended to modify or abrogate Article 3 of the 1949 Agreement between WHO and PAHO which provides:

*The Pan American Sanitary Conference may adopt and promote health and sanitary conventions and programmes in the Western Hemisphere, provided that such conventions and programmes are compatible with the policy and programmes of the World Health Organization and are separately financed.*

<sup>2</sup> Document EB105/29.

competence of the Organization and that, under Article 50 of the Constitution, regional committees do not have that authority with respect to matters of regional interest;

Noting at the same time recent developments which show an increased interest on the part of Member States for binding regulation of certain subject matters at regional level;

Acknowledging, in this respect, the adoption by the Third Ministerial Conference on Environment and Health of the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and expressing appreciation for the role played by the Regional Office for Europe in elaboration and adoption of the Protocol;

Considering it appropriate to enable regional committees to adopt international conventions on matters of regional interest, in order to pursue public health goals more effectively through international regulation;

Mindful of the need to ensure that the exercise of treaty-making authority by regional committees should be in conformity with, and contribute to, the global policy of the Organization,

1. DECIDES that regional committees shall be authorized to adopt international conventions and agreements with respect to any exclusively regional matter within the competence of the Organization; notwithstanding, in order to ensure that adoption of such international conventions and agreements is in conformity with the global policy of the Organization, such authority shall be subject to the following conditions:

(1) decisions on the negotiation and adoption of regional conventions and agreements taken by the respective regional committees shall be subject to a determination by the Director-General, in consultation with the Regional Directors, that the proposed regional convention or agreement is in conformity with the global policy of the Organization; and

(2) regional committees shall report to the Health Assembly, through the Executive Board, decisions to negotiate regional conventions and agreements, and the text of those conventions and agreements once adopted;

2. FURTHER DECIDES that:

(1) the authority to adopt international conventions and agreements shall include joint initiatives with other international organizations, the establishment of drafting, negotiating and other ad hoc bodies, and the convening of plenipotentiary conferences for the purpose of adopting the text of the conventions;

(2) regional committees shall adopt such conventions and agreements by a two-thirds majority vote;

(3) conventions and agreements adopted by regional committees shall be open to the participation only of Member States of the regions concerned, and of regional and other intergovernmental organizations, if applicable;

(4) requests in regional conventions for the Regional Directors to provide secretariat services for the meetings of the parties or other activities under the conventions shall be subject to approval by the respective regional committees on a case-by-case basis, taking into account available resources and programme priorities of the regional offices;

3. RESERVES the authority to take decisions on any matter provided for in the present resolution in the event that circumstances arise warranting implementation of a global policy for the Organization.

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