

Implications of decision EB152(29) (2023)

Report by the Director-General

BACKGROUND

1. In February 2023, the Executive Board at its 152nd session considered a report on WHO reform: involvement of non-State actors in WHO's governing bodies.¹ The Board also adopted decision EB152(29), in which it decided, inter alia, that constituency statements by non-State actors in official relations with WHO – that is, statements on behalf of several non-State actors delivered by one of their number – “will continue to be implemented in all WHO governing body meetings”. Through the same decision, the Board also decided to request the Director-General “to explore the implications for statements delivered by observers and report to the 153rd session of the Executive Board, through the Programme, Budget and Administrative Committee of the Executive Board.” On May 11, the Secretariat held an information session for Member States and Observers previewing the implications discussed herein.

2. Several types of entities attend sessions of the governing bodies in an observer capacity, including Observers, the United Nations and other intergovernmental organizations in effective relations with WHO and non-State actors in official relations with WHO. The term “Observer” is not defined in the WHO Constitution but has traditionally been used to refer to a limited number of entities that have been invited to attend open meetings of the Health Assembly, or any of its main committees, and the Executive Board. Currently, the Observers are: the Holy See; Palestine; Gavi, the Vaccine Alliance; the Order of Malta; the International Committee of the Red Cross; the International Federation of Red Cross and Red Crescent Societies; the Inter-Parliamentary Union; and the Global Fund to Fight AIDS, Tuberculosis and Malaria.² Consistent with the discussion at the Executive Board session, this report focuses primarily on the implications of decision EB152(29) for the statements of Observers.

¹ Document EB152/38; see also the summary record of the Executive Board at its 152nd session, fifteenth meeting, section 2, and seventeenth meeting, section 2.

² See document EB146/43 (listing entities considered “Observers”, as well as other entities attending the Health Assembly and the Executive Board in an observer capacity). With respect to Palestine and the Holy See, the Health Assembly has passed resolutions according them certain rights and privileges in their observer capacity at the Health Assembly and other governing body meetings. See resolutions WHA27.37 (1974) and WHA53.13 (2000), regarding Palestine and resolution WHA74.12 (2021), regarding the Holy See; see also Lists of members and other participants for the Executive Board and the Health Assembly, for example document EB152/DIV./1 Rev.1 (listing Palestine and the Holy See as Observers with reference to the relevant resolution and the other six entities as “Other Observers”); document A/75/DIV./1 Rev.1 (same classification and listing for the Health Assembly). Since 2020, pursuant to decision EB146(5), the Observers have also been invited to attend meetings of the Programme, Budget and Administration Committee, with limited speaking rights.

3. Non-State actors in official relations participate in WHO's governing bodies without the right to vote. At the invitation of the Chair, they are permitted to make statements for consideration of the Member States after all Member States have spoken. As part of efforts to improve the involvement of non-State actors in official relations in WHO's governance processes, and the efficiency and effectiveness of those processes, a new approach was introduced at the Seventy-fourth World Health Assembly in 2021, on a trial basis, following a decision of the Executive Board: non-State actor constituency statements, on a limited number of items, were interspersed with Member State statements; that is, they were delivered during the time in the debates that previously had been reserved for Member State statements only. This meant that some non-State actor inputs were received earlier in the debate than they had been previously, and before statements by Observers.

4. The delivery of constituency statements was again tested with respect to three items at the Seventy-fifth World Health Assembly and the 150th session of the Executive Board. At the 152nd session of the Executive Board, it was agreed at the outset, as part of the methods of work, that constituency statements relating to three items would once again be permitted.

5. As decided by the Executive Board at its 152nd session, moving forward, the Secretariat will select agenda items on which constituency statements will be permitted, based on an assessment of the items at governing body meetings likely to attract the most interest for statements by non-State actors. Up to five constituency statements may be made on such agenda items and, at the invitation of the Chair of the meeting, statements may be made earlier in the debate. Only non-State actors in official relations may join constituency statements.

IMPLICATIONS

6. The decision to continue the option of constituency statements will mean that, at both the Executive Board and the Health Assembly, on a limited number of agenda items selected for constituency statements, there will be a change in the order of interventions. The established order of speakers at the Health Assembly, in Plenary and the main committees, is: Member States and Associate Members, Observers, representatives of the United Nations and other intergovernmental organizations in effective relations with WHO under Article 70 of the Constitution, and non-State actors in official relations. The Executive Board follows the same speaking order, with Members of the Board speaking before other Member States.

7. As a result, on the items selected for constituency statements, in accordance with the terms of the decision of the 152nd Executive Board, up to five non-State actor constituency statements may be delivered, at the invitation of the Chair, before Observers have spoken. (At the Executive Board, such statements will be made after those by Board Members and between those of Member States that are not Board Members.) It is worth noting that because the constituency statements are interwoven with those of Member States, the interventions of some Member States will also be delayed. This has been accepted by Member States as a compromise in order to meet the need for more meaningful non-State actor involvement in WHO's governing bodies. The constituency statements will also precede those of representatives of the United Nations, intergovernmental organizations in effective relations with WHO, and individual non-State actors in official relations with WHO.

8. The change in speaking order also means a slightly longer waiting time to speak for some Member States and for all Observers and representatives of the United Nations and other intergovernmental organizations in effective relations with WHO under Article 70 of the Constitution. How much later in the meeting an Observer will be given the floor depends both on the number of constituency statements and the time accorded to each statement. Speaking times are proposed by the Chair and accepted by

Member States in the context of a given governing body meeting. At the 152nd session of the Executive Board, constituency statements were accorded three minutes. If in governing body meetings the same time limit were imposed in the future and five constituency statements were made, it would be expected that the opportunity for Observers (and the United Nations, intergovernmental organizations in effective relations with WHO and individual non-State actors in official relations with WHO) to speak would be delayed by approximately 15 minutes.

OPTIONS

9. The decision to continue constituency statements by non-State actors in official relations – a step to support efficiency and effectiveness in governing body meetings – results in Observers (and other participants, including Member States) being given the floor after non-State actors speaking on behalf of constituencies and also speaking later in meetings where constituency statements are permitted. The Executive Board may wish to consider whether any steps should be taken with respect to Observers, with a view to similarly enhancing the effectiveness of their participation in governing body meetings.

Options, if the status quo is not maintained, include:

(a) Maintain the current arrangement pending a broader discussion: the current arrangements could be maintained with no change until such time as the governing bodies can conduct a thorough review of the effective participation and engagement of not only Observers but also the United Nations and other intergovernmental organizations in effective relations with WHO.

(b) Increase Observer speaking time: consideration could be given as to whether a longer speaking time for Observers would foster more meaningful and effective engagement. Speaking times are proposed by the Chair and accepted by Members in the context of specific governing body meetings. For example, at the previous session of the Executive Board meeting in February 2023, in line with past practice, Board Members were accorded three minutes; other Member States, two minutes; and Observers, the United Nations and other intergovernmental organizations in effective relations with WHO and individual non-State actors in official relations, one minute. Observers could, for example, be permitted the same speaking time as Member States that are not Board members on items where constituency statements are delivered.

A similar change in speaking time could be considered for the Health Assembly relating to items on which constituency statements are delivered. In that regard, given that individual Member States are accorded the same speaking time limit, increasing the speaking time for Observers could entail either establishing the same speaking time as for Member States or creating a new category of speaking times expressly for them.

By seeking the agreement of Member States at each meeting of WHO's governing bodies, Observer speaking time could be modified without amending already adopted Health Assembly decisions.

(c) Amend speaking order: Consideration could be given to amending the speaking order at governing bodies meetings, such that Observers spoke in an interspersed manner among Member States' statements. In the Executive Board context, this would mean that they spoke between the statements of Member States that are not members of the Board. Some might question whether other entities attending in an observer capacity – such as the United Nations or other intergovernmental organizations in effective relations with WHO – should be offered a similar opportunity. This option could also undermine the efficiency gains of the recent decision on

constituency statements by non-State actors, as there may be less incentive to prepare such statements, to ensure speaking earlier in a debate, if another category of participants is also accorded the same priority. In addition, constituency statements, by definition, are made by a group of speakers who would otherwise deliver individual statements. The same efficiency gains would not be made by Observers delivering individual statements earlier in the debate. It should be noted that amending the speaking order would also require Health Assembly action with respect to the Holy See and Palestine.¹

SUMMARY

10. While the Executive Board decision on constituency statements allows a small number of non-State actors, each speaking on behalf of several others, to deliver statements between those of Member States, it is not meant to change the status or quality of the participation enjoyed by Observers or, indeed, other entities participating in an observer capacity. Nonetheless, consideration could be given as to whether any steps should be taken with respect to the effective engagement of Observers.

ACTION BY THE EXECUTIVE BOARD

11. In the light of the considerations set out above, the Executive Board is invited to note the report and provide guidance concerning the following:

- (a) Should the status quo be maintained?
- (b) Should the speaking times accorded to the Observers² at the Executive Board and/or the Health Assembly be extended with respect to the agenda items where constituency statements are delivered by non-State actors?
- (c) Should further steps to improve the effectiveness of participation by Observers, as appropriate, be considered?
- (d) Should the Executive Board give consideration in a future session to a broader discussion on the effective engagement of all entities attending sessions of the Executive Board and/or the Health Assembly in an observer capacity?

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¹ Health Assembly resolutions address the rights and privileges extended to Palestine and the Holy See in their observer capacities. In the case of the Holy See, the right to make interventions – at the Health Assembly, the Executive Board and the Programme, Budget and Administration Committee – is “after the last Member State inscribed.” See resolution WHA74.12, Annex. With respect to Palestine, the Health Assembly conferred the rights and privileges in United Nations General Assembly resolution 52/250, including “the right of inscription on the list of speakers under agenda items other than Palestinian and Middle East issues at any plenary meeting of the General Assembly, after the last Member State inscribed on the list of that meeting.” See resolution WHA.53.13. As a result, the Health Assembly would have to act to permit interventions by the Holy See before those of Member States and, in the case of Palestine, act to address speaking order with respect to “items other than Palestinian and Middle East issues.”

² As noted in paragraph 2 and set out in document EB146/43, at present, the Observers are: the Holy See, Palestine, the Vaccine Alliance, the Order of Malta, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, the Inter-Parliamentary Union, and the Global Fund to Fight AIDS, Tuberculosis and Malaria.