

## **PART II**

### **SUMMARY RECORD**

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<sup>1</sup> Participating by virtue of Rule 3 of the Rules of Procedure of the Executive Board.



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Mrs D.S. MWEWA, Chief Policy Analyst (Nursing), Ministry of Health, Lusaka  
Ms F. KONDOLO, Human Resources and Development Officer, Ministry of Health, Lusaka  
Mr A.K. ZULU, First Secretary, Permanent Mission, Geneva

**ZIMBABWE**

Dr P.D. PARIRENYATWA, Minister of Health and Child Welfare, Harare  
Dr E.T. MABIZA, Secretary for Health and Child Welfare, Harare  
Mr R. CHIBUWE, Counsellor, Permanent Mission, Geneva

**OBSERVER FOR A NON-MEMBER STATE****HOLY SEE**

Dr G. RIZZARDINI, Expert

**REPRESENTATIVES OF THE UNITED NATIONS  
AND RELATED ORGANIZATIONS****United Nations Population Fund**

Ms S. TELLIER, Director, UNFPA Office in  
Geneva  
Ms S. HAMID, External Relations Officer,  
UNFPA Office in Geneva



**REPRESENTATIVES OF OTHER INTERGOVERNMENTAL ORGANIZATIONS****League of Arab States**

M. S. ALFARARGI, Ambassadeur,  
Observateur permanent, Genève  
M. Y. TILIOUANT, Premier Attaché,  
Délégation permanente, Genève  
Dr O. EL HAJJE, Délégation permanente,  
Genève  
M. S. AEID, Délégation permanente, Genève

**European Commission**

Mr N. FAHY, Deputy Head of Unit,  
Directorate-General for Health and  
Consumer Protection, Brussels

**REPRESENTATIVES OF NONGOVERNMENTAL  
ORGANIZATIONS IN OFFICIAL RELATIONS WITH WHO****Global Forum for Health Research**

Professor S.A. MATLIN  
Dr A. DE FRANCISCO

**International Agency for the Prevention of  
Blindness**

Dr N. ALAMUDDIN

**International Council of Nurses**

Dr J.A. OULTON

**International Federation of Business and  
Professional Women**

Ms M. GERBER  
Ms G. GONZENBACH

**International Pharmaceutical Federation**

Mr T. HOEK  
Mr CHAN XUAN HAO

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## **SUMMARY RECORD**

### **SPECIAL SESSION**

**Tuesday, 23 May 2006, at 18:15**

**Chairman:** Mr M.N. KHAN (Pakistan)

#### **1. TRIBUTE TO THE MEMORY OF THE LATE DIRECTOR-GENERAL, DR LEE JONG-WOOK**

The CHAIRMAN, evoking the memory of the late Director-General, said that Dr Lee Jong-wook had made a great and dynamic contribution not just to WHO but to the poor in Africa, Latin America, Asia and South-East Asia. Dr Lee had had a tremendous personality and been a humane person, with much feeling for the unfortunate sections of society, a simple man of character and dignity, ever seeking to uphold what was right. On behalf of the Executive Board, he extended the condolences of all members to those who had been closest to Dr Lee, in the hope that God would afford them the strength to bear their irreparable loss.

He invited members and everyone else present to honour the memory of Dr Lee by observing a minute's silence.

**All those present in the Board Room stood in silence for one minute.**

#### **2. OPENING OF THE SESSION AND ADOPTION OF THE AGENDA:** Item 1 of the Provisional Agenda (Document EBSS/1)

The CHAIRMAN said that the only order of business was the situation arising out of the tragic death of Dr Lee: the designation of an Acting Director-General and confirmation by the Board, which bore responsibility for ensuring a smooth transition and continuity in a transparent, just, legal and constitutional manner. As Chairman, he would be impartial and guided by the Board's wisdom and the constitutional and legal requirements.

**The agenda was adopted.<sup>1</sup>**

#### **3. DIRECTOR-GENERAL OF WHO:** Item 2 of the Agenda (Document EBSS/2)

Drawing attention to Rule 113 of the Rules of Procedure of the World Health Assembly, which provided that in the present circumstances "the senior officer of the Secretariat shall serve as Acting Director-General, subject to any decision by the Board", the CHAIRMAN asked the Secretariat for a full account of recent communications and procedures adopted in that respect.

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<sup>1</sup> See page 7.

Mr BURCI (Legal Counsel) said that on 14 November 2003 the late Director-General had, in consultation with the former Legal Counsel, signed a memorandum addressed to the Managing Director of Human Resources. In so doing Dr Lee had followed the practice of his predecessor. The memorandum appointed Dr Nordström as Deputy Director-General with immediate effect, while specifying that he would not perform the functions involved unless Dr Lee was unable to perform the functions of his office or his office otherwise became vacant before the expiry of his term; at such time, Dr Nordström would perform the functions of Deputy Director-General. In accordance with Rule 113 of the Rules of Procedure of the World Health Assembly, he would also serve as Acting Director-General until Dr Lee became able again to perform the functions of Director-General, or the Executive Board decided on another person to be Acting Director-General, or his successor took office following appointment by the Health Assembly, whichever occurred first.

At the request of Dr Lee, the memorandum had remained confidential, with instructions to open it only if one of the situations provided for in Rule 113 occurred. Dr Lee had become ill on Saturday, 20 May and, early on Monday, 22 May, the Director of WHO's Medical Service had sent a memorandum to Dr Kean, Executive Director, Office of the Director-General, informing him that Dr Lee remained in hospital in a serious condition and that, according to the Director's assessment, he was unable to carry out his functions for an undetermined period. That memorandum had been read out by Dr Kean at a meeting of WHO's senior management at 08:00 on Monday, 22 May. At that point he, the Legal Counsel, had offered his view that the situation contemplated in Rule 113 had unfortunately materialized. He then explained that the Director-General had made arrangements addressing that possibility, and proceeded to read the memorandum of 14 November 2003. The news of Dr Lee's death had followed and been announced at the opening of the Health Assembly.

With respect to the legal framework, Rule 113 was the starting point since it established an automatic mechanism allowing the senior officer of the Secretariat to step in immediately as Acting Director-General in the event of the Director-General's death or incapacity, and so avoiding any vacuum and uncertainty. It left unprejudiced the authority of the Executive Board to decide otherwise. Under the Constitution, particularly Articles 31 and 35, the Director-General was the chief technical and administrative officer of WHO. In addition, Staff Regulation 4.1 gave the Director-General broad authority to appoint staff members as required in the interests of the Organization.

In his view, the authority of the Director-General to appoint staff, including a Deputy Director-General, was grounded on that combination of the Constitution and Staff Regulation 4.1. Although, since the tenure of Dr Nakajima, no post of Deputy Director-General had been present in the staffing table, that constituted no impediment to the authority of the Director-General, who was therefore empowered to appoint a Deputy not subject to approval or confirmation by governing bodies.

The term "senior officer of the Secretariat" was intentionally generic, designating the person with the highest seniority, as determined by grade and length of tenure. The Deputy Director-General had always been listed first after the Director-General in any enumeration of senior staff in the Staff Regulations and Staff Rules, which also foresaw only one Deputy Director-General as opposed to a plurality of Assistant Directors-General and Regional Directors. In addition, under Dr Nakajima and previous Directors-General, the Deputy Director-General had been graded on a par with an Under-Secretary-General of the United Nations. The foregoing led to the conclusion that the Deputy Director-General was the most senior officer of the Secretariat.

With respect to a possible process for appointing the future Director-General, he observed that Rule 109 of the Rules of Procedure of the World Health Assembly was relevant and should be read in conjunction with Rule 52 of the Rules of Procedure of the Executive Board. However, the two rules did not fit together well in exceptional circumstances. Rule 109 had been drafted long before Rule 52 and contemplated no deadline for the presentation of candidatures, whereas Rule 52 set a number of deadlines before the Board met to nominate the Director-General. It might be possible to read the two rules together, with a degree of flexibility. Alternatively, the Board could agree to suspend Rule 52 and take an ad hoc decision to cover the present situation and accelerate the process of nomination and appointment of a Director-General. The Board might have to make appropriate recommendations thereon to the Health Assembly.

Dr NORDSTRÖM (Assistant Director-General) confirmed that he had been asked by Dr Lee in November 2003 whether he would be prepared to take on the function in question. He had never seen the memorandum, being simply informed of its content. He had been honoured by and accepted the request. Such had been Dr Lee's wish and he could only respect it. Naturally, it was for the Board to consider the matter and take a decision pursuant to Rule 113. He was prepared to manage the transitional period, which should be short and smooth, but had no intention whatsoever of running for the post of Director-General.

Dr WINT (Jamaica) expressed the view that, in a spirit of smooth transition and continuity, it would be preferable to accelerate the process and not wait a further year before putting the new Director-General in place.

Dr ANTEZANA ARANÍBAR (Bolivia) said that his major concern was how to fill the gap left by the untimely passing of the much regretted Dr Lee in the medium and long term. Although he had misgivings about certain defects in the reference texts and was unclear about whether there had been any "immediate effect" as stipulated by Dr Lee in his memorandum of November 2003, he felt that it was necessary to move ahead and make the interim period as brief as possible. Welcoming Dr Nordström's announcement that he would not be a candidate himself, he invited the Board to give thought to the fundamental issue of appointing the future Director-General. The question of the interim period should be resolved on the basis of Rule 113, which would be central to the Board's discussion of the issue at its 118th session the next week.

Mr GUNNARSSON (Iceland) said that WHO had to show a strong and united front, and to do so in an appropriate manner. It must, in particular, strictly follow the necessary legal procedures. The Legal Counsel and other speakers had referred to the possibility of shortening the interim period to the extent possible. What action could be taken immediately, at the special session, to do that, bearing in mind that under normal circumstances the election procedures took about one year?

Dr GWENIGALE (Liberia) asked whether the Regional Directors were considered to be part of the Secretariat, and, if so, whether Dr Lee's choice of senior officer was in conformity with the spirit of Rule 113 of the Rules of Procedure of the World Health Assembly. It had not been evident from the Secretariat's explanations whether the envelope had been opened before or after Dr Lee's death, and he requested clarification on that point.

Dr RASHED (Libyan Arab Jamahiriya) said that he had reservations about the memorandum, and wished to know why, when it concerned the post of Deputy Director-General, the Board had remained unaware of its existence for so long. The interim period had started from the time of Dr Lee's death, and, in view of the contents of the memorandum, the Board had to assume its responsibility and take an appropriate decision. There was no need for further delay.

Dr HAFFADH (Bahrain) said that she was surprised and mystified by the degree of confidentiality surrounding the appointment of the Deputy Director-General. Although the Legal Counsel had explained that the Director-General had the right to appoint staff members, she felt that there must have been some reason for the decision and for keeping it secret. Moreover, the Board should have met the previous day to discuss the matter, as all its members were in Geneva. The difference between officers and staff members was not clear from a reading of the various rules and regulations; indeed, the situation had revealed defects in some of the basic texts, rules and regulations and procedures, which must be reviewed and rectified.

Dr BOTROS SHOKAI (Sudan) said that the Board had a duty to keep emotions and duties apart in discharging its responsibility to WHO in order to ensure a smooth transition. Failure by the Board to remain united and move swiftly would have an adverse effect on the Organization's work. However, any action taken by the Board must be in accordance with the Constitution.

She requested a definition of senior officer and asked where the memorandum had been kept since November 2003, who had known about it, and whether there had been any indication of the persons to be present at its opening.

Dr BRUNET (France) said that he was confident that the late Director-General had acted for the best and in line with the Organization's rules and regulations, which he had had a duty to respect, as had the Board. Members should therefore respect the decision he had taken to ensure that there was no power vacuum in the Organization and, hence, its stability. The Board's primary duty was to ensure continuity within the Organization by moving quickly and effectively to elect a new Director-General in the best possible conditions. It also had a duty to amend the rules so that it was better prepared in the future. He fully endorsed the suggestion by the member for Iceland that the Board should use the present meeting to make as much progress as possible in examining the procedure for an early election. As the Board would have a further opportunity at its 118th session the following week to work together to find the best solution, an early decision should be possible.

Dr TANGI (Tonga) said that the Legal Counsel's explanations had revealed shortcomings in the rules, regulations and procedures, and in the memorandum itself. The term "Deputy Director-General" was mentioned only three times in the staff regulations: in connection with the oath, salaries and related allowances, and length of appointment, but there was no mention of the method or manner of appointment, a situation that should have been remedied sooner. The memorandum before the Board had undoubtedly been signed in the belief that it was in the interests of the Organization to do so. It might therefore be regarded as the last wish of a much-respected individual. Despite the inconsistencies and shortcomings, he would be comfortable and happy to respect that wish as a parting tribute, if the Board desired to endorse the document.

He saw no reason why Rule 109 of the Rules of Procedure of the World Health Assembly and Rule 52 of the Rules of Procedure of the Executive Board could not both be accommodated, as the former gave the Board a mandate to nominate the Director-General and the latter stated how that mandate should be fulfilled. The Board, at its 118th session, could set the procedure in motion and see it completed within six months, by convening a special session of the Health Assembly in January 2007 to elect a new Director-General, which it was empowered to do under Article 13 of the Constitution.

Mr AL-SHIBIB (Iraq) said that united the Board could undoubtedly find a quick and transparent solution. He had been surprised by the memorandum, which he did not consider constituted an appointment, and was uncomfortable with the secrecy that had surrounded it since November 2003.

Dr JEAN LOUIS (Madagascar) said that he favoured accepting the memorandum according to the last Director-General's wishes. Dr Nordström's statement had not been biased. After the present special session, therefore, there should be an interim period for the election of a new Director-General.

Dr GWENIGALE (Liberia) said that nobody should interpret any questioning of Dr Lee's choice of Deputy Director-General as a sign of disrespect. The intention was exclusively to ensure that the procedure was handled in a transparent manner and with due process. Bearing in mind that Rule 113 of the Rules of Procedure of the World Health Assembly explicitly stated that it should be the senior officer of the Secretariat who would serve as Acting Director-General, it needed to be clearly established that, at the time of Dr Nordström's nomination, nobody else fulfilled that criterion. In future, it would be advisable to appoint a Deputy Director-General in order to avoid a similar situation arising again.

Professor PEREIRA MIGUEL (Portugal) agreed on the need for a smooth transition so as not to damage the Organization's image, stability or unity. Hence, he was in favour of accepting Dr Lee's decision regarding the appointment of Dr Nordström, particularly since to do so would also demonstrate the Board's respect for the memory and authority of the late Director-General. In order to

speed up the process of appointing a new Director-General, the Board could decide to launch the process at its 118th session. It would, however, be unwise to be too precipitate.

Mr SHIRALIYEV (Azerbaijan) said that, in nominating Dr Nordström as Deputy Director-General, Dr Lee had evidently considered him to be the senior officer, in accordance with Rule 113. However, he agreed with previous speakers that in future it would be advisable for the appointment of the senior officer of the Secretariat to be openly announced, so that, should an unforeseen event arise, that person could immediately fulfil the relevant functions. In his view, it would be disrespectful to the memory of the late Director-General to carry out the election of his successor with undue haste. The process should naturally be conducted in accordance with the appropriate rules.

Dr SINGAY (Bhutan) agreed on the need for a smooth and speedy transition, and the acceptability of Dr Nordström as Acting Director-General. However, it was important not to lose sight of the fact that WHO was going through a period of intense organizational change, which included the Eleventh General Programme of Work, the medium-term strategic plan and the proposed programme budget. Dr Lee would have been disappointed if the various reform processes he had initiated were not carried through. Therefore, the Board and the Acting Director-General had a responsibility to work together to ensure that the numerous projects were successfully concluded.

Dr HANSEN-KOENIG (Luxembourg) also endorsed the need for a harmonious transition period in order to avoid disrupting the smooth running of the Organization. She had no reservations about accepting Dr Lee's choice of successor, a decision which he would certainly have regarded as being in WHO's best interests. She agreed with the member for Iceland that the election process should be handled in a manner that was both speedy and in full compliance with the necessary procedures. However, if the relevant rules were found not to be sufficiently clear, consideration should be given to revising them.

Mr SHUGART (Canada) said that Dr Lee had avoided sentimentality in his view of the world and the needs of the Organization. Hence, he had focused on fulfilling the obligations associated with being Director-General and tackling the risks and challenges facing WHO. The continuing toll of diseases that could be defeated but were still rife, and the inherent risks in newly emerging infectious diseases, particularly avian influenza, had captured his attention and had almost certainly drained his energy. In the memorandum under discussion, there could be no question that he respected the unfettered authority of the Executive Board and the Rules of Procedure of the World Health Assembly. The Board should try to emulate Dr Lee's unsentimental approach and recognize that its first task was to appoint a successor in a timely and appropriate manner, while ensuring that stability and unity were maintained during the interim period.

Dr SÁ NOGUEIRA (Guinea-Bissau) said that the Acting Director-General should be designated in accordance with Rule 113 and taking into account the seniority of the members of the Secretariat. Rule 109 clearly described the procedure and time-scale for the election of the next Director-General.

Dr NYIKAL (Kenya) expressed doubt about the precise meaning of Dr Lee's memorandum. It appeared that, in appointing Dr Nordström as Deputy Director-General, Dr Lee had also elevated him to the position of senior officer with a duty to perform the functions of Acting Director-General should the need arise, while implicitly acknowledging that the ultimate decision lay with the Executive Board.

Several speakers had drawn attention to the desirability of respecting Dr Lee's final wish, but it was by no means certain that that was what Dr Lee had intended the memorandum to be. It seemed more likely that the document contained what amounted to a purely practical arrangement to cover a period when he might not be able to fulfil his functions at a time when the Board was not scheduled to meet. It exemplified his judgement and leadership and was almost certainly intended to permit a smooth transition period. However, if the Board were to be guided by Dr Lee and were to appoint Dr Nordström as Acting Director-General, it was not clear whether he would also become Deputy

Director-General and, bearing in mind that Dr Nordström had stated that he would not be standing for the post of Director-General, whether he would continue in that role after the appointment of the next Director-General. The rules for appointing the Deputy Director-General were far from clear and should be reviewed. He joined other speakers in calling for a smooth and speedy transition process.

Mr MIHAI (Romania) said that he accepted the explanation provided by the Legal Counsel and was prepared to endorse the course of action contained in the memorandum. There could be no doubt that Dr Lee had always acted in the best interests of the Organization. In order to maintain continuity within WHO, the process of appointing a new Director-General should be conducted as speedily as possible provided the legal requirements were strictly adhered to.

Dr BUSS (Brazil) said that he also favoured the smoothest possible transition that would cause the least disruption to the work of the Organization in view of the numerous health problems it was having to deal with. He therefore supported the appointment of an Acting Director-General to fulfil the functions of Director-General for a short transition period during which nominations for the post would be sought and evaluated. In his view there were two clear strategies for appointing the next Director-General. The Board, at its 118th session, might wish to launch the nomination and election process, so that by its 119th session in January 2007 it would be in a position to nominate the new Director-General, who would then be appointed by the Sixtieth World Health Assembly. Alternatively, the Board, at its 118th session, might prefer to call for the submission of candidates and decide to convene a one-day special session of the Health Assembly.

Dr SUWIT WIBULPOLPRASERT (Thailand) expressed his appreciation to Dr Nordström for having agreed to assume the role of Acting Director-General, for having convened the special session of the Executive Board and for having decided not to stand as a candidate for the post of Director-General. There appeared to be consensus on the need for an expeditious and smooth transition process and he hoped the Secretariat would be able to provide guidance on the time it might be expected to take. In the interests of preserving unity within WHO, he urged Board members to refrain from commenting further on the contents of Dr Lee's memorandum and decide instead to revise the Rules of Procedure in order to pre-empt the occurrence of similar problems in the future.

Dr VÍT (Czech Republic) joined other speakers in calling for a smooth transition in the management of the Organization. Nominations for a new Director-General should be sought in the shortest period possible but the process should nevertheless comply with the Rules of Procedure of the World Health Assembly, in particular Rules 16, 109 and 113.

Mr MSELEKU (South Africa)<sup>1</sup> said that it was important to ensure that due process and principle were respected and that his comments on the matter before the Board did not affect the high regard in which he had held the late Director-General. Legal advice could vary, but it was clear that, in signing the memorandum in 2003, Dr Lee had not simply been performing his executive function in making a staff appointment, as the person concerned would then have been aware of the conditions of the appointment, and the other members of staff in the Director-General's Office would have known of the seniority that was being established for the purposes of managing the executive functions, which did not appear to have been the case. Moreover, the functions of the person designated had apparently not become operational at any time in the period since 2003 even though the late Director-General might not always have been able to perform his official functions, for example, when he was on vacation or had been ill. It might therefore be concluded that the memorandum had been drawn up on legal advice solely for the purpose of determining seniority, on grounds other than length of service, in order to deal with a contingency such as was currently being faced. The late Director-General had thereby been attempting to provide a mechanism for implementing Rule 113 of the Rules of Procedure

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<sup>1</sup> Participating by virtue of Rule 3 of the Rules of Procedure of the Executive Board.

of the World Health Assembly by designating a successor, even though he was respecting the right of the Executive Board to make the final decision. However, Rule 113 was an automatic procedure designed to come into force in certain conditions rather than a mechanism for use by an incumbent Director-General; it would have applied even if there had been no memorandum. In moving forward in the spirit of harmony, the Board must apply the principles of Rule 113 and decide carefully on the question of seniority and whether it was appropriate to endorse the arrangements that had been put in place. Such an approach should not impede a smooth transition in the management of the Organization.

Ms HALTON (Australia) added her thanks to the Chairman for requesting the Board's special session. The late Director-General had attempted to put arrangements in place to ensure that WHO would continue his efforts to improve world health. The memorandum showed that he had understood the constitutional role of the Executive Board, which was to take responsibility for deciding how best to proceed. A smooth transition was essential. The Board had two immediate tasks. The first was to find a new Director-General. Although it was important to do so as quickly as possible, it was vital to find the best person for the job and to take the necessary time to do that. The Legal Counsel might provide guidance as to how best that might be achieved. Rather than make a hasty decision on procedure at the current session, it might be preferable for the Board to agree immediately that everything necessary should be done to expedite the matter, and to request that documentation detailing the options available should be prepared for careful consideration by the Board at its forthcoming regular session.

The Board's second task was to decide on the interim arrangements. She welcomed the indication by Dr Nordström that he would not consider being put forward as a candidate for the post of Director-General as it was important to focus on the medium and long term and not on short-term political considerations. She was confident that the Board would arrive at appropriate solutions by considering what was best for WHO, for the transition and therefore for health across the world in accordance with the Rules of Procedure of the World Health Assembly. Although they may have come as a surprise, she endorsed the arrangements made by the late Director-General who, while not a sentimental man, had certainly been a careful one and had clearly given the matter some thought.

Events had shown that, in due course, a review of the Rules of Procedure of the World Health Assembly and the Executive Board would also be appropriate.

Mr R.M. SINGH (Nepal) emphasized the importance of wisdom and prudence on the part of the Board; it must make a just, rational and acceptable decision that ensured a smooth transition and continuity in WHO's activities. He agreed that, in due course, the Rules of Procedure should be revised to prevent problems in facing such a contingency in the future.

The CHAIRMAN said that several speakers had referred to the memorandum signed by the late Director-General as being his last wish. However, it should not be so regarded since the conditions set out envisaged the possibility that he might have been in a position to return to his duties. The Board's responsibility was to make a rational decision in accordance with Rule 113 of the Rules of Procedure of the World Health Assembly and taking the memorandum into account.

After he had learnt of the death of the Director-General, he had sought a meeting with the outgoing President of the World Health Assembly to consider Rule 113 and to request the immediate convening of a special session of the Executive Board. There had been some reluctance to convene a special session given logistic considerations, the proximity of the 118th session of the Board (commencing on 29 May 2006), at which the Board's composition would change, and also a view that the Board should simply note the arrangements put in place by the memorandum. He had insisted that it was the Board's responsibility to make the decision and to do so as quickly as possible and that, since all the current Board members were available, a session should be convened immediately.

Dr SHANGULA (Namibia) said that it would be useful to hear the responses to the various questions posed by Board members in order to clarify the current position and help the Board to fulfil



the sole purpose of its special session, namely to find solutions regarding the post of Director-General. The Board must take all the relevant facts into account and its first task was to consider the interim arrangements put in place by the late Director-General which, according to the Legal Counsel, had been within his authority. Time was limited and the Board must therefore proceed systematically to determine whether those arrangements were acceptable, whether the process in establishing them had been flawed and whether the person designated was suitable. Should it be found that the process had been flawed, the Board must decide whether that invalidated the arrangements. If so, or if the candidate was considered unsuitable, alternative arrangements would have to be made. It was not sufficient to criticize the proposed arrangements – the Board must either endorse or rectify them.

The Board must then consider how to proceed in selecting a new Director-General, drawing on its relatively recent experience in the appointments of Dr Brundtland and Dr Lee. It was important to find suitable candidates and it was therefore not advisable to expedite the process; however, it should be possible to complete it by the Sixtieth World Health Assembly.

The CHAIRMAN cautioned the Board about getting ahead of itself; the immediate matter was the appointment of the Acting Director-General. Then attention could be turned to election of a new Director-General. He invited the Legal Counsel to clarify some of the questions that had been raised.

Mr BURCI (Legal Counsel) said that the questions focused generally on three main issues: the circumstances of Dr Lee's memorandum appointing the Deputy Director-General; the terms "officer" and "the senior officer of the Secretariat"; and how the normal process of appointing a new Director-General could, without haste, be accelerated.

He would not speculate on the Director-General's reasons for writing the memorandum. He could relate only what he had been told and what he knew himself, and give his professional assessment of the process. On taking up office, he had been informed by the previous Legal Counsel that discussions had been held, at the request of Dr Lee, about contingencies in case the situations provided for in Rule 113 occurred; arrangements had been made and were contained in a memorandum that the Director-General had asked should be kept confidential. He had received the envelope and kept it under lock and key, as instructed by the Director-General.

Dr Nordström had stated that he had been asked by the Director-General and had accepted his appointment and the terms set out in the memorandum. The offer by Dr Lee and the acceptance by Dr Nordström constituted a legal contract in the sense of a valid appointment. The Director-General's decision comprised two steps: the appointment of Dr Nordström as Deputy Director-General would have immediate effect, but the performance of the functions of the Acting Director-General as well as of Deputy Director-General would be delayed and subject to certain conditions. Until those conditions materialized, as had unfortunately happened the previous day, Dr Nordström continued to perform the functions of an Assistant Director-General.

Rule 113 referred to "the senior officer of the Secretariat". Comparison of the text in different official languages led to the conclusion that the term "officer" was used generically to indicate whoever was serving in the Secretariat. He inferred that the intention of the drafters of the Rule was to use a term that would not discriminate but would encompass all categories of persons serving in the Secretariat, whether elected officials or officials appointed by the Director-General. According to that interpretation, the Director-General did have the prerogative to appoint somebody to be the most senior officer in order to fulfil the purpose of Rule 113. In practice, in WHO and other organizations of the United Nations system, the primary criterion for determining seniority was grade of appointment, followed by length of tenure within that grade. That principle was also reflected in the pay scale: a Deputy Director-General was paid at the level of an Under-Secretary-General of the United Nations. Thus, the Director-General was able to determine who "the senior officer" would be. He, the Legal Counsel, did not view seniority as a biological process; it was also determined by executive decisions, and those decisions were grounded in the authority granted to the Director-General by the Constitution.

Replying to the question from the member for Kenya about whether the appointment of Dr Nordström as Deputy Director-General would continue indefinitely, he said that the memorandum

made it clear that the appointment was linked to the stated specific circumstances, namely, that he would be the senior officer of the Secretariat and serve as Acting Director-General if something were to happen to Dr Lee. The appointment was thus conditional and would last as long as the condition pertained; it would come to an end if the Board, for example, decided to appoint somebody else as Acting Director-General or when the Health Assembly appointed a new Director-General.

Shortening the process of appointing a new Director-General entailed several steps. The Board needed to take a clear decision to suspend the normal process set out in the Rules of Procedure of the Executive Board, in particular Rule 52. Further, the Board should adopt a decision about the process applicable to the current circumstances. Several members had proposed that the Secretariat should submit various options for consideration by the Board at its 118th session. Members at the current special session would have to take a decision of principle that that was the wish of the Board and request the Secretariat to present detailed plans. Even if the Board decided to suspend Rule 52, it would have to decide on the timetable and sequence of the process. It was difficult to envisage an alternative to convening special sessions of, first, the Board later in the year in order to consider the candidatures and nominate a person, and then the Health Assembly before May 2007 to consider that nomination.

The CHAIRMAN commented on the expense of such an exercise.

Dr NORDSTRÖM (Assistant Director-General) confirmed that he knew of both the appointment and the conditions delaying performance of the functions of Deputy Director-General unless, or until, the circumstances specified in the memorandum obtained. He had not seen the memorandum until the previous morning, but was fully aware of its contents. He had been asked by the Director-General, and had accepted his offer. He would not defend or comment on Dr Lee's decision to keep the matter secret, but, in the interests of transparency, he wished to share what Dr Lee had told him. Dr Lee empowered his senior managers, giving them his full support and making them strongly accountable for delivering. For that reason he chose not to appoint a Deputy Director-General; he wished the Regional Directors to take the lead in the regions and the Assistant Directors-General to take the lead on relevant substantive issues. Dr Lee had discussed with him whether to make public his appointment as Deputy Director-General but had decided not to for those reasons.

The CHAIRMAN recalled that the position of Deputy Director-General, which had existed within the Secretariat, had been abolished because one of the incumbents had stood for election against the then Director-General. That was the reason why Rule 113 of the Rules of Procedure of the World Health Assembly was being invoked.

Mr AITKEN (Adviser to the Director-General) elaborated on the events under the Director-Generalship of Dr Nakajima. During the nomination process at the end of his first term of office, the Deputy Director-General did indeed stand against him. His re-election was followed by a hiatus when he did not appoint a Deputy Director-General, which lasted until late in his second term. Dr Brundtland decided not to have a Deputy Director-General throughout her full term.

Mrs LE THI THU HA (Viet Nam) supported the call for ensuring a smooth transition and continuity. She endorsed the appointment of Dr Nordström as Deputy Director-General. Regarding the nomination of the new Director-General she agreed with previous speakers that guidance on process was needed from the Secretariat.

Dr PHOOKO (Lesotho) also called for a smooth transition through what was indeed a crisis and for due process to be followed. Several areas of misunderstanding still needed clarification; the Board faced an emergency with legal implications, hence the many legal questions from members who were not lawyers. It appeared that Rule 113 had been designed to cope with a vacuum: if a vacancy occurred, Rule 113 would apply immediately, enabling the senior officer to fill the gap until the Executive Board took the necessary decision. If that interpretation were correct and since the tragic

death occurred when most members of the Board were present in Geneva, the Board was meeting to respond to the emergency, an action that, in itself, would override Dr Lee's memorandum. The Constitution (Article 35) and the Staff Regulations (paragraph 4.1) both authorized the Director-General to appoint staff; further, paragraph 4.5 of those Regulations specified the range of appointments, which included the Deputy Director-General. Thus, those instruments provided for appointments to assure the functioning of WHO, and the exercise undertaken by Dr Lee had probably been intended to deal with that aspect. He was unclear, however, about the sequence of the process. Dr Lee may have stopped short of going further with the process of informing the Executive Board so that it could complete the exercise of appointing an Acting Director-General. The Board had to resolve the issue, without concerning itself about the possible motives of the late Director-General at the time he signed the memorandum, which seemed, from the current perspective, to have been part of a process for implementing the provisions of the Constitution and Staff Regulations.

Dr ZAMBRANO CEDEÑO (Ecuador) noted that any decision should be taken on a sound legal and objective basis. The relevant rules provided the Board with such a basis to resolve the current difficulties. He emphasized that the Board had to remain united on the issues in hand. Swift action was required, but it had to be taken advisedly, prudently and calmly.

The provisions of Rules 109 and 113 of the Rules of Procedure of the World Health Assembly made it possible to reach a conclusion on the question of an interim solution. The Board had been given guidance, which needed to be examined in order to formulate the decisions that it was authorized to take.

Dr TOGUCHI (Japan), welcoming the clear explanation by Legal Counsel of the issue of the Acting Director-General, requested that Dr Lee's last wish should be respected. Members of the Board carried the responsibility for a smooth transition and continuity. He also supported the calls to shorten the interim period, although accelerating the process of electing a new Director-General would not be easy – especially if a decision were expected within the next few hours without access to time-frames or cost data. The matter should be postponed for consideration by the Board at its 118th session the following week.

The CHAIRMAN concurred with that proposal; the matter under consideration at the current special session was the question of the Acting Director-General.

Dr FRENK (Mexico) noted that the Board agreed on certain basic principles. First, the Organization faced an extraordinary situation; the normal processes set out in the various regulations had to be interpreted in the light of the exceptional nature of present circumstances. Secondly, the overriding consideration in reaching a decision was the best collective interest of the Organization. It was therefore essential that a climate of trust should prevail among members of the Board. Discussion of procedural details, on which the Legal Counsel had provided clear indications, should be set aside. Thirdly, the Organization was facing a crisis at a time when the question of health had never been so important on the global security and development agenda. The current situation could not therefore be prolonged.

Several decisions had to be taken to avoid a prolonged crisis. A formal decision needed to be taken on whether the Board wished to ratify the position of Dr Nordström as Acting Director-General. The specific process to shorten the interim period needed to be further examined. Rule 53 of the Rules of Procedure of the Executive Board, together with Rule 43, made it possible for the Board to modify some of the procedures in that regard. The Secretariat could be requested to submit for consideration by the Executive Board at its 118th session a set of options to reduce the interim period. It would be preferable for that subject to be the first item on the agenda.

Mr GUNNARSSON (Iceland) noted that the memorandum of the late Director-General took account of the different eventualities that could occur. In line with his managerial structure, he had not wished to insert a hierarchical level between himself, the Regional Directors and the Assistant

Directors-General. Although it might not appear coherent with the concept of transparency, he had prepared the memorandum to assure the future in a rational way, choosing a younger, more vigorous person to assure the interim.

He proposed two draft decisions for the Board's consideration:

1. The Executive Board requests the Secretariat to start immediately the process to elect the new Director-General and to present before the next Board a plan for approval so that the election of the new Director-General can be done in as short a period as possible.
2. The Executive Board agrees with the proposal put forward by the late Director-General in a memorandum dated 14 November 2003 to approve Anders Nordström as Acting Director-General for the period until a new Director-General is elected.

Clearly, others could carry out that function equally well, and the matter could be debated at length. Notwithstanding, he requested the Board to put his proposals to a vote as soon as possible.

The CHAIRMAN, agreeing that the draft decisions would be put before the Board, remarked that, in his view, the late Director-General's memorandum could not be taken as his last wish as the first condition read "until ... I become able again to perform the functions of Director-General". Had that memorandum been intended as a testament, it would not have contained that clause.

Dr TANGI (Tonga) expressed his support for a vote in the Board.

Explaining his earlier use of the term "last wish", he noted that the Director-General passed away at 07:43 on 22 May and the envelope was opened at 08:00. It contained the last statement that the Director-General wished to be read after his death. At the time it was opened, it was not Rule 113 of the Rules of Procedure of the World Health Assembly that applied, but Rule 109.

Dr RASHED (Libyan Arab Jamahiriya) disagreed with the statement of the Legal Counsel that seniority was not a biological process. The biological process was a component of seniority; otherwise no particular respect would be due to senior citizens. Nor could seniority involve "jumping the queue"; it was a multifactoral process whereby a person reached their goal through experience and hard work.

Referring to the terms "nomination" and "appointment", he noted, for example, that the Board members were nominated by regional groups and approved by the Health Assembly, so nomination resembled election. Appointment was different; a person could be appointed to any post; approval was not required. Nor did he accept the explanation regarding "staff" and "officer", which did not correspond to the above definitions. Therefore, the memorandum should not be considered as legally binding because it constituted an appointment. The question of the Acting Director-General should be put to a vote to decide on the incumbent.

Dr NYIKAL (Kenya) seconded the first draft decision proposed by the member from Iceland. He did not endorse the second. The Board could not take any action that was legally questionable. The memorandum was not beyond legal question; the spirit of Rule 113 could not be implemented by a Director-General in office, because that Rule implied that there was no Director-General. Rule 109 probably applied. He proposed that the memorandum should be set aside. The Board, with the Secretariat's guidance, should identify the most senior among the Assistant Directors-General, who could indeed be Dr Nordström. The Board had to act on its own authority, not according to a memorandum that could later be questioned and that set a precedent.

Mr SHUGART (Canada) pointed out that in his memorandum the late Director-General provided for several eventualities. The first was that an unfortunate occurrence might not happen, which was why the memorandum indicated that the Deputy Director-General would not take up functions unless it did. The second was that that occurrence might only be temporary, which accounted for clause (i). The third was that that occurrence might be permanent, which explained the

reference to his office becoming vacant before expiration of his term. Further, it could be assumed that he was identifying the status of the most senior office by appointing Dr Nordström as the Deputy Director-General should it be necessary to exercise those functions. Thus, the late Director-General was in fact anticipating Rule 113, so that the identity of the most senior officer would be known at the appropriate time.

The late Director-General was not dictating a course of action to the Board; in fact, both the memorandum and Rule 113 agreed on the ultimate authority of the Board. He therefore supported the proposal from the member for Iceland that the Board should decide whether Dr Nordström was Acting Director-General, which was the only specific proposal on the table.

Dr PARIRENYATWA (Zimbabwe)<sup>1</sup> urged the Board to take a decision based on principles, and to avoid setting a precedent of the process used by the late Director-General. That process should not be used in the future; it led to considerable confusion. Disregarding the memorandum, the present Board should determine who was the most senior among the senior officials, or the most competent, or the best suited to the circumstances. Member States would be comfortable with a person thus identified, who could be Dr Nordström or someone else, but would be uncomfortable with a decision based on the memorandum alone.

Professor PEREIRA MIGUEL (Portugal) expressed his support for the proposals of the members for Iceland and Canada.

Dr ANTEZANA ARANÍBAR (Bolivia) suggested that the Chairman could define two initial steps on the basis of aforementioned general principles. First, and disregarding the memorandum of the late Director-General, the Board could exercise its prerogative to select the Acting Director-General. Secondly it could determine the method and time frame for selecting the future Director-General – essentially whether, in certain conditions, to speed up the process or to follow the normal procedure. In that way the matter could be followed up more expeditiously at the 118th session.

The CHAIRMAN, observing that after all opinions had been expressed a common view would emerge, affirmed that the Board would not divide itself with a vote; there had to be consensus.

Dr BRUNET (France) said that all participants in the discussion so far agreed that two decisions were needed: one on who would take responsibility immediately for ensuring continuity and managing the Organization during the interim period; and another on how the next Director-General would be elected – something that most members wanted to take place in the best conditions and as quickly as possible.

The proposal from the member for Iceland had been supported by several countries; it should be submitted for consideration. Everyone understood that they had to assume their responsibilities for finding a solution; even if a consensus were not possible, a written proposal would at least give something specific on which to work rather than continuing to discuss details.

Dr NYIKAL (Kenya) acknowledged that the debate was moving forward; he could not, however, second the proposal of the member for Iceland if the word “endorsed” was used. He could accept a proposal that read “we propose Dr Nordström”, which would allow competing names to be put forward. Using the word “endorsed”, on the other hand, would oblige the Board to endorse the ambiguity surrounding the position of Deputy Director-General, which was a step backwards towards a lack of transparency that had existed in the past.

Mr GUNNARSSON (Iceland) suggested a new wording. The text read:

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<sup>1</sup> Participating by virtue of Rule 3 of the Rules of Procedure of the Executive Board.

After debating the late Director-General's memorandum dated 14 November 2003, the Executive Board decided to approve Dr Anders Nordström as Acting Director-General for the period until a new Director-General is elected.

Dr HAFFADH (Bahrain) proposed the name of Dr Gezairy, Regional Director for the Eastern Mediterranean, for Acting Director-General, citing the latter's seniority.

The CHAIRMAN reminded the Board of the options open to it. The first involved Rule 113, which provided a clear explanation of the actions to take in such circumstances. The other option was represented by the memorandum from Dr Lee.

Ms HALTON (Australia) asked for advice on the order in which the proposals would be considered. In view of the fact that a proposal had already been made by the member for Iceland, she said that she would appreciate being able to consider that first.

**The meeting was suspended at 21:50 and resumed at 22:40.**

The CHAIRMAN announced that Dr Gezairy, in keeping with his long-standing commitment to the unity and betterment of the Organization, had advised him that he would not be a candidate. Dr Gezairy was to be thanked for that valuable and courageous gesture.

It appeared that consensus existed for a draft decision that would read:

The Executive Board decides, in accordance with Rule 113 of the Rules of Procedure of the World Health Assembly, to appoint Dr Anders Nordström to serve as Acting Director-General until the appointment of, and assumption of office by, the new Director-General of the World Health Organization.

Mr GUNNARSSON (Iceland) fully supported the amendment made to his earlier proposal.

Dr NYIKAL (Kenya), noting that the whole debate had been provoked by the lack of clarity surrounding the position of Deputy Director-General, said that he could support the proposal if it was agreed that a further decision would be adopted, indicating that the issue of that position would be resolved, and that a report on the matter would be submitted to the Executive Board before the end of its 118th session.

Dr ANTEZANA ARANÍBAR (Bolivia) stressed that, in considering alternatives to resolve the matter, the Secretariat must act in consultation with the Executive Board.

Mr AITKEN (Adviser to the Director-General) confirmed that the Secretariat would submit a report to the Executive Board on that subject.

The CHAIRMAN took it that the Board agreed to request the Secretariat to examine the issue of the position of Deputy Director-General. He also invited the Board to consider a draft decision that read:

The Executive Board requests the Secretariat to submit to the next session of the Executive Board options for its consideration concerning the acceleration of the procedures to elect the next Director-General of the World Health Organization.

In response to a question from Dr NYIKAL (Kenya), the CHAIRMAN suggested adding the words "The Executive Board at its 118th session will also set the time frame" so that the Secretariat could be held accountable for any delays.

**The decisions, as amended, were adopted.<sup>1</sup>**

The ACTING DIRECTOR-GENERAL thanked the Chairman for his prompt action and said that, in reacting to the situation, the Secretariat had never questioned the importance of the Board's discussion of the matter. He also expressed his thanks to Dr Gezairy, with whom he would work closely. He was committed to ensuring continuity in the functioning of the Organization during the interim period; an efficient process for the election of the Director-General; and, as had been mentioned by the member for Bhutan, taking forward, in close consultation with the Board, the vision of the late Director-General, which particularly concerned working as one Organization, and which Dr Lee had summarized as "doing the right things, in the right place and in the right way".

The current situation, although unique in the Organization's history, had revealed shortcomings in rules and procedures and it was important to learn from that experience. He said that he was looking forward to working closely with the Board at its 118th session so as to examine how improvements could be made for the future.

**The meeting rose at 22:50.**

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<sup>1</sup> Decisions EBSS(1), EBSS(2) and EBSS(3).