

Director-General and Deputy Director-General of the World Health Organization: report in accordance with resolution EB120.R19

Report by the Secretariat

1. At its 120th session in January 2007, the Executive Board considered a report of the Secretariat dealing with a number of issues discussed by the Board at its special and 118th sessions as a consequence of the sudden death of the late Director-General, Dr Jong-wook Lee.¹ The Board adopted resolution EB120.R19 which, inter alia, requested the Director-General to report to its 121st session on the geographical rotation of the post of Director-General, and on the requirement to appoint a Deputy Director-General, taking into account the views expressed by members of the Board.

GEOGRAPHICAL ROTATION OF THE POST OF DIRECTOR-GENERAL

Background

2. The issue of geographical rotation of the post of Director-General was first discussed by the Executive Board at its 118th session in May 2006. In response to its request for more information, including about the practice of other organizations of the United Nations system, the Board was informed at its 120th session that the seven Directors-General who had served since the establishment of WHO came from three out of the six geographical regions of the Organization, and that neither the constitutions nor the relevant rules or established practices of other organizations of the United Nations system required or otherwise envisaged the geographical rotation of the post of executive head.²

3. During the debate at the 120th session, some members of the Board reiterated their interest in amending the Rules of Procedure so as to ensure in future the regular rotation of the post of Director-General among the six WHO. The main reason mentioned for this request was the need to “level the playing field” among the regions in order to ensure fairness and to give a chance of success to qualified candidates from all regions. Other members, however, supported the current system for the appointment of the Director-General, noting that choosing the most qualified candidate should remain the paramount consideration and highlighting some of the problems inherent in the concept of rotation.

¹ See document EB119/2006–EB120/2007/REC/2, summary record of the twelfth meeting of the 120th session, section 4, and summary record of the thirteenth meeting, section 1.

² See document EB120/30.

Constitutional considerations

4. Article 31 of the Constitution provides that “The Director-General shall be appointed by the Health Assembly on the nomination of the Board on such terms as the Health Assembly may determine.”. This Article is thus very general as to the conditions of, and procedure for, appointment, it is left to the Health Assembly to determine the terms that will regulate the appointment and conditions of office of the Director-General. This provision, however, should be interpreted in the light of Article 35 of the Constitution, which states that the paramount consideration in the employment of the staff of the Organization shall be “ ... to assure that the efficiency, integrity and internationally representative character of the Secretariat shall be maintained at the highest level. Due regard shall be paid also to the importance of recruiting the staff on as wide a geographical basis as possible.”. The process and conditions for the appointment are spelled out in Rules 108 to 114 of the Rules of Procedure of the World Health Assembly, whereas the process for nomination is governed by Rule 52 of the Rules of Procedure of the Executive Board. The latter Rule states in its second paragraph that “Any Member State may propose for the post of Director-General one or more persons, ...”.

5. From a constitutional point of view, therefore, it could be argued that a process of regional rotation of the post of Director-General is not incompatible with the general terms of Article 31 of the Constitution. At the same time, however, a legal requirement that the post of Director-General should rotate regularly among regions in accordance with a predetermined pattern may raise two concerns. First, is to limit nomination solely to candidates from a particular region compatible with the clear hierarchy of criteria expressed in Article 35, where geographical representation is secondary to the paramount principle of the highest standard of efficiency and integrity?

6. Second, is to limit the right to propose a candidate for the post of Director-General solely to Member States from a particular region, or to propose candidates only from a particular region compatible with the principle of sovereign equality of Member States? This fundamental principle underpins the United Nations system, its main practical implication being equality among Members of an international organization in the exercise of the rights and obligations of membership, unless otherwise provided in the constitution of the organization concerned. In this regard, it could be argued that proposing a candidate for the post of Director-General is a fundamental right of membership, and that neither the Health Assembly nor the Board could curtail or limit it without an express provision in the Constitution. On the other hand, a more precise assessment of the impact of any system of regional rotation on the rights of Member States would depend on the specific features of the system. It could be argued, in this respect, that regional rotation would not deprive Member States of the right to propose a candidate, but would rather regulate when that right would be exercised.

Main legal and procedural issues

7. An analysis of possible modalities for implementing a system of regional rotation raises a number of questions that should be considered by the Board before more concrete proposals could be developed. The first is **the right to propose a candidate**. Two alternatives could be envisaged. One is to allow only Member States from a particular region to propose a candidate, who should also be a national of a Member State from that region. The other is to allow any Member State to propose one or more candidates who, however, would have to be nationals of a Member State of the region being considered under the rotation system. Both alternatives could raise the issue of sovereign equality referred to in the preceding paragraph.

8. The second question is the **pattern of rotation among regions**. This could be left entirely to negotiations among Member States in view of its political significance, or it could be based on the alphabetical order of the names of the regions, or it could be drawn by lot. It could also be considered whether the pattern of rotation should take account of the different size of the various regions.

9. The third, and particularly complex question, is the implication of a rotation system for the **number of terms of office** of the Director-General. Rule 108 of the Rules of Procedure of the Health Assembly provides that the term of office of the Director-General shall be five years, and that he or she shall be eligible for reappointment once only. If Member States do not intend to change those provisions, several possibilities could be envisaged for adapting them to a system of regional rotation. A fundamental decision in this regard is whether the turn of a particular region would apply to one or two terms of office. Two extreme alternatives would be either to limit the entitlement of each region to a single term, so that there would be a new Director-General from successive regions every five years; or conversely, to provide that only the Director-General in office could be a candidate for a second term. The former alternative could be seen as jeopardizing the possibility of continuity in the post of Director-General; the latter would essentially void the role of the governing bodies in the appointment of the Director-General and could be seen as conflicting with both Articles 31 and 35 of the Constitution. Moreover, it would mean the pattern of regional rotation would work with a 10-year interval, so that the turn of each region would come every 60 years.

10. A number of combinations between those two extremes are, however, possible. For example, the Director-General appointed under a system of regional rotation could be eligible for a second term, and other candidates for that term could be proposed only from the same region. In this case, however, if a candidate other than the Director-General in office were to be appointed, would that appointment be for only one term or would he or she be eligible for a second term, and if so, under what conditions with respect to other possible candidates? The pattern of rotation would need to be adapted depending on the course to be followed. If a Director-General appointed under a system of regional rotation could be proposed for a second term, another alternative would be to allow any Member State to propose candidates regardless of regional provenance. If one of the latter candidates were to be appointed, he or she could in turn be proposed for a second term, but other candidates for that term could be proposed only from the region coming next under the system of regional rotation. If instead the Director-General in office were to be reappointed for a second term, candidates for the following election could be proposed only from the region next in turn under the system of regional rotation. Other alternatives or combinations thereof could be envisaged, but the Board's guidance would first be needed as to whether the system of rotation would apply to one or two terms of office.

Other considerations

11. Regional rotation was discussed in the context of ensuring a "level playing field" in terms of the perceived varying capacity of individual governments to support their candidate during the election campaign. However, the capacity of countries within a particular region to provide such support may be as varied as the capacity of countries from different regions to provide support.

12. Establishment of a system of regional rotation may require amendments to the Rules of Procedure of both the Health Assembly and the Executive Board, depending on the model chosen. However, in view of the significant constitutional and political implications of introducing a system that requires the regular rotation of the post of Director-General among regions, the Health Assembly would be the organ competent to establish such a system and to decide on its main features. The Executive Board could submit a proposal in this respect to the Health Assembly.

MANDATORY APPOINTMENT OF A DEPUTY DIRECTOR-GENERAL

Process of appointment

13. At present, there is no requirement in the WHO Constitution or in the Staff Regulations that a Deputy Director-General should be appointed. To date, Deputy Directors-General have been appointed by Directors-General in the exercise of their authority under WHO's Constitution and the Staff Regulations, on the basis of their judgement as to how the Organization should be managed.

Relevant provisions of WHO's Constitution and Staff Regulations and background

14. **Article 31** of WHO's Constitution states that the Director-General "... shall be the chief technical and administrative officer of the Organization.". **Article 35** states that "The Director-General shall appoint the staff of the Secretariat in accordance with staff regulations established by the Health Assembly.". **Staff Regulation 4.1** states that "The Director-General shall appoint staff members as required."

15. The position of Deputy Director-General of the World Health Organization has been filled for approximately 42 of the 59 years of the Organization's existence and, on an *ad interim* basis, for approximately two years.¹ Although there is no mandatory requirement to appoint a Deputy Director-General, the Director-General appointed Dr A. Asamoah-Baah to this position soon after taking office. She considered that it was in the interest of the Organization and took account of the wish of the Board that the position should be filled. The appointment of Dr Asamoah-Baah was announced without delay, as requested by the Board at its special session (23 May 2006),² and he assumed his functions on 9 January 2007.

16. Among other duties, the Deputy-Director General would perform the functions of the Director-General should the latter be unable to perform her functions or in case of a vacancy in the office, subject to any relevant decision by the Executive Board.

Possible modalities

17. At its 120th session, the Board raised the matter of a possible mandatory appointment to the position of Deputy Director-General and how it could be effected.³

18. **Staff Regulation 12.1** states that "These regulations may be supplemented or amended by the Health Assembly, without prejudice to the acquired rights of staff members."; **Staff Regulation 4.1** states that: "The Director-General shall appoint staff members as required.". In accordance with Staff Regulation 12.1, Staff Regulation 4.1 could thus either be supplemented or amended to provide for the mandatory appointment of a Deputy Director-General.

Option 1: Supplement to Staff Regulation 4.1

¹ See documents EB118/19 and EB120/30 for further details.

² See document EBSS-EB118/2006/REC/1, summary record of the special session.

³ See document EB119/2006-EB120/2007/REC/2, summary record of the twelfth meeting of the 120th session.

Referring to the words “as required” in Staff Regulation 4.1, the Health Assembly could decide to supplement the Regulation by way of a resolution that would require the appointment of a Deputy Director-General.

Option 2: Amendment of Staff Regulation 4.1

In order to make the appointment of a Deputy Director-General mandatory, Staff Regulation 4.1 could be amended by the Health Assembly as follows:

“The Director-General shall appoint a Deputy Director-General and shall appoint such other staff members as required.”

19. In order to ensure that the prerogatives of the Director-General as set out in Article 31 of the Constitution, namely, those of chief technical and administrative officer of the Organization, are fully respected, any such decision by the Health Assembly would be taken without prejudice to that provision and in accordance with the responsibility of the Director-General to determine and to delegate the functions of Deputy Director-General.

20. The Board may wish to consider whether (a) it should remain at the discretion of a Director-General to decide if the senior management structure at any given time should include a Deputy Director-General, or (b) the mandatory and continuous occupancy of the post of Deputy Director-General should be assured.

ACTION BY THE EXECUTIVE BOARD

21. The Executive Board is invited to note the report and to provide further guidance.

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