

WORLD HEALTH ORGANIZATION

ORGANISATION MONDIALE DE LA SANTÉ

EIGHTH WORLD HEALTH ASSEMBLY

A8/L/Min/8
21 May 1955

ORIGINAL: ENGLISH



LEGAL SUB-COMMITTEE

PROVISIONAL MINUTES OF THE EIGHTH MEETING

University City, Mexico, D.F.
Saturday, 21 May 1955, at 10 a.m.

CHAIRMAN: Mr A.P. RENOUF (Australia)

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Note: Corrections to these provisional minutes should be submitted in writing to the Chief, Records Service, Room 302, within 48 hours of their distribution.

1. CONSIDERATION OF AMENDMENTS TO THE RULES OF PROCEDURE OF THE HEALTH ASSEMBLY:
Item 8.5 of the Agenda (Resolutions WHA7.30 and EB15.R72; Document A8/AFL/1)
(continued)

Rule (79) 83

The CHAIRMAN stated that the delegate of Israel (who was not present at the meeting) had informed him that he did not wish to pursue further the point regarding verbatim records of private meetings which he had raised at the previous meeting.

Rule (79) 83 was approved without further comment.

Rule (60) 63

The CHAIRMAN directed attention to the following new draft of Rule (60) 63, prepared by the Secretariat in the light of the discussion the previous day:

"If two or more proposals are moved, the Health Assembly shall, unless it decides otherwise, vote upon them in the order of their submission until all the proposals have been put to the vote, unless the result of a vote on a proposal makes unnecessary any other voting on a proposal or proposals still outstanding."

Mr MORENO SALCEDO (Philippines) proposed that the Sub-Committee should adopt instead the text of Rule 93 of the Rules of Procedure of the United Nations General Assembly, which dealt with the same matter. That rule had already been tested by experience and was more explicit than the new text before the Sub-Committee. Moreover, its adoption would rule out any possible uncertainty of whether or not the result of a vote on a proposal made unnecessary further voting on proposals still outstanding.

The CHAIRMAN, speaking as the delegate of Australia, said that his delegation

would be prepared to support the proposal of the delegate of the Philippines.

Mr CALDERWOOD (United States of America) preferred the text as recommended by the Executive Board at its thirteenth session. It was infinitely preferable that the order of voting should be fixed in advance.

Miss HESSLING (Netherlands) said her delegation was in favour of maintaining the existing practice, whereby a series of proposals were voted upon in order, beginning with that furthest removed from the original proposal. Up till now that procedure had worked admirably.

The CHAIRMAN, noting that the new text submitted by the Secretariat could now be left out of consideration, put to the vote the Philippines proposal.

Decision: The text proposed by the Philippine delegation was rejected by 6 votes to 5.

Rule (60) 63 was approved, as amended by the Executive Board at its fifteenth session.

Rules (80) 84 - (83) 87

Rules (80) 84, (81) 85, (82) 86, and (83) 87, as amended, were approved without comment.

Rule (84) 88

Mr ZARB (Chief Legal Adviser), Secretary, said that the Secretariat's proposed new text for this rule (document A8/L/WP.Paper 1, page 10) was self-explanatory. It was to delete sub-paragraph (e) of the existing text, which was open to misinterpretation, and to replace it by a new rule, based on Rule 24

of the Rules of Procedure of the General Assembly of the United Nations, and reading:

"No proposal for a review of the apportionment of the contributions among Members and Associate Members for the time being in force shall be placed on the agenda unless it has been communicated to Members and Associate Members at least ninety days before the opening of the session, or unless the Board has recommended such review."

This rule would be inserted in the section relating to the Health Assembly agenda, after Rule (10) 12. The existing rule was open to misunderstanding, while that proposed, which had been adapted to WHO needs, was quite unambiguous.

Dr VANNUGLI (Italy) considered it would be better to state the rule in positive terms rather than in the negative form of wording submitted.

The SECRETARY explained that the negative form in this instance signified a prohibition, the sense of which would be entirely lost by a change to the positive form.

Dr VANNUGLI (Italy) said he was satisfied with that explanation.

Dr LE-VAN-KHAI (Viet Nam) said his delegation felt that any changes needed should be made within the body of the rule. Hence, his delegation was opposed to the method of change proposed by the Secretariat.

The CHAIRMAN explained that it was merely a matter of arrangement and as the Secretariat had no strong feelings in the matter it would perhaps be better to insert the proposed new rule immediately after Rule (84) 88. As representative of Australia, he made a formal proposal to that effect, the new rule to be numbered (84) 88b.

Miss HESSLING (Netherlands) felt that the proposed change involved a risk of the Health Assembly being deprived of one of its functions, namely to review the apportionment of the contributions among Members and Associate Members of the Organization. Her delegation would like at all costs to guard against any such possibility.

The CHAIRMAN believed the text of the existing rule fully safeguarded that point but the delegation of the Netherlands would have the right to raise the matter again, if it so desired, in the Committee on Administration, Finance and Legal Matters.

Rule (84) 88, with the amendment suggested by the Secretariat, was approved.

Rule (84) 88b, as suggested by the Secretariat, was approved.

Rules (85) 89 - (87) 91

Rules (85) 89, (86) 90, (87) 91, as proposed by the Executive Board, were approved without comment.

Rule (88) 92

The CHAIRMAN, speaking as delegate of Australia, explained that his Government was suggesting a change in the text - to delete the word "nine" from the first paragraph on the grounds that the Health Assembly had the right to make its selection from amongst all the candidates who might wish to present themselves for election to the Executive Board. On the other hand, his delegation had no objection to the provision whereby the General Committee recommended the six candidates which it considered would provide a balanced membership of the Board as a whole.

Dr JAFAR (Pakistan) found the Australian suggestion admirable in theory; in practice, however, it would undoubtedly lead to difficulties. The most important of the reasons underlying the earlier decision, empowering the General Committee to make a specific recommendation of six Members, had been to secure a balanced geographical distribution in the Board's membership. The Health Assembly was not by that provision presented with a closed list, since it had a choice of three further candidates before it and, in the past, had at times made its selection from the wider list. Should it be presented with a more extensive number of candidates, however, there was every danger of the resulting selection representing an inequitable geographical distribution.

There was no point, he felt, in entrusting this function to the General Committee if it was not to make a selection. Experience had shown the established procedure to be best and accordingly it should be maintained.

Mr GUNewardene (Ceylon) remarked that the existing practice had stood the test of time; he therefore saw no reason for changing it.

Mr BOTHA (Union of South Africa) said his delegation agreed with the Australian view in the matter. The present election procedure whereby the General Committee made a pre-selection of candidates was objectionable in principle.

His delegation was perfectly agreeable that the General Committee should recommend six candidates, representing a balanced geographical distribution, but to leave the matter entirely in that committee's hands seemed an unsound principle. For that reason he supported the suggestion of the delegate of Australia.

The SECRETARY asked to be enlightened on exactly how the full list of candidates, as envisaged in the Australian proposal, would be constituted.

Mr MORENO SALCEDO (Philippines) observed that, since the Australian delegation had no objection to the preliminary selection of six candidates based on equitable geographical distribution, he failed to see why it wished to cut out the selection of a further three candidates. The discretion exercised by the General Committee was the same in both cases.

The CHAIRMAN, speaking as the delegate of Australia, said his delegation's intention was that the list of candidates for membership of the Executive Board would be drawn up in the normal way by the General Committee, the only change being that all Members wishing to present themselves as candidates would appear in the list submitted to the Health Assembly, instead of only nine, as at present.

In his delegation's view, the General Committee was asked to select certain countries solely for the purpose of securing a balanced distribution of the Board as a whole. There might be many combinations of countries which would enable that object to be achieved; therefore, a list of nine, restricting the number of alternatives offered to the Health Assembly, appeared illogical. On the other hand, the General Committee's legitimate selective function would be to propose to the Health Assembly the short list of six names which, in its view, would represent the best of the possible alternatives.

Mr BOTHA (Union of South Africa) again pointed out that the suggestion of the delegate of Australia represented a step towards a more democratic procedure in the election of Members entitled to designate a person to serve on the Board by leaving the number of candidates unrestricted. To his mind, it was better to be guided by the General Committee's recommendations than to be bound by them.

Mr CALDERWOOD (United States of America) said his Government had much sympathy for the proposal to provide the Health Assembly with a wider choice than under the existing rules. Nevertheless, those rules had been established after lengthy consideration and had so far worked well. His delegation was, therefore, content to maintain the existing procedure.

However, the interpretation emitted in the discussion to the effect that equitable geographical distribution meant the allocation of a certain number of seats to each WHO region was not acceptable to his Government. Those regions had been defined solely for the purpose of creating regional organizations. At the Second World Health Assembly, when the Rules of Procedure had been adopted, certain principles had been endorsed, inter alia, that the Health Assembly would not recognize any agreement between a number of Members designed to offer an agreed candidate for election to the Executive Board. Slavish adherence to the regional principle as the basis of equitable geographical distribution would lead rather to inequity, in view of the different sizes of the regions, their population density, and the number of States they comprised, and so forth.

Dr LE-VAN-KHAI (Viet Nam) said his delegation considered the Australian proposal too complicated and was in favour of maintaining the text proposed by the Executive Board. The procedure enabled a balanced geographical distribution to be maintained and provided a preliminary choice for the Health Assembly to vote upon. His delegation considered such a preliminary selection essential, whether it be based on a list of nine or of twelve candidates, in order to avoid an excessively lengthy voting procedure.

Dr MELLBYE (Norway), while agreeing that the proposed Australian procedure would be more democratic, nevertheless preferred the maintenance of the existing procedure as more practical.

Dr VANNUGLI (Italy) said the Italian delegation agreed with the provision that the General Committee should recommend six Members which it considered would provide a balanced distribution. As regards the additional three candidates to be placed on its list, he considered that the number no longer corresponded to the wishes of Member States and that it would be preferable either to delete the provision entirely as proposed by the delegate of Australia or to increase the number as suggested by the delegate of Viet Nam.

Miss HESSLING (Netherlands) said that in view of the work done at the Second World Health Assembly in the matter and experience since that date, the Netherlands delegation was in favour of retaining the existing text.

The CHAIRMAN put to the vote, first the Australian proposal, and, secondly, the suggestion of the delegation of Viet Nam to increase the list to 12 Members.

Decision: (1) The Australian proposal was rejected by 12 votes to 3, with 1 abstention.

(2) The Vietnamese proposal was rejected by 8 votes to 3, with 3 abstentions.

Rule (88) 92 was therefore approved, as proposed by the Executive Board.

The CHAIRMAN, speaking as the delegate of Australia, stated that his delegation would be obliged to take the matter up again when the question came before the Committee on Administration, Finance and Legal Matters.

Rule (89) 93

Miss HESSLING (Netherlands) said that her delegation was satisfied by the Board's assurance that, if more than six Members received a majority, the six members with

the largest number of votes would be elected. It therefore withdrew its suggestion for a clause to make the point clear.

Rule (89) 93 was approved as amended by the Executive Board.

Rule (90) 94

Mr MORENO SALCEDO (Philippines) understood the rule to mean that if a delegation voted for no more than five candidates when there were six seats to be filled, its ballot would be considered invalid.

Rule (90) 94 as proposed by the Executive Board was approved.

Rules (91) 95 to 100 (104)

Rules (91) 95 to 100 (104) as proposed by the Executive Board were approved.

Rule (101) 105

In replying to a query from Dr LE-VAN-KHAI (Viet Nam), the SECRETARY, referring to Article 30 of the Constitution, said that the "senior officer" referred to in the rule was the Director-General.

The officer next in seniority was the Deputy Director-General, followed by three Assistant Directors-General. In practice, when the Director-General was absent from Headquarters, the Deputy Director-General replaced him; if he also was absent, one of the Assistant Directors-General acted for the Director-General. The Director-General had thus delegated his authority on many occasions and no difficulty had been encountered.

Mr JOLL (United Kingdom of Great Britain and Northern Ireland), supported by Mr GUNewardENE (Ceylon), suggested the insertion after the words "senior officer of the Secretariat", the phrase "available for the time being".

Mr LE CANNELIER (France), considered that, in the French text at any rate, the addition of the word "disponible" would impart greater clarity.

Dr MELLBYE (Norway), supported by Dr JAFAR (Pakistan), proposed the insertion after "Acting Director-General" of "if so qualified".

The SECRETARY again emphasized that the present practice, applied on many occasions, had caused no difficulty.

Mr JOLL (United Kingdom of Great Britain and Northern Ireland) withdrew his proposal.

Mr SUTER (Switzerland), having expressed the opinion that the French text was sufficiently clear, Mr LE CANNELIER (France) also withdrew his proposal.

Mr GUNewardENE (Ceylon) considered that the addition of the words "if so qualified" would cause difficulties of interpretation and possibly lay the Director-General open to criticism. This view was shared by Mr JOLL (United Kingdom of Great Britain and Northern Ireland) and the CHAIRMAN.

Dr MELLBYE (Norway) did not press his point.

Rule (101) 105 was approved without change.

Rules (102) 106 to (107) 110

Rules (102) 106 to (107) 110 were approved as proposed by the Executive Board.

Rule (108) 111

The CHAIRMAN asked the members to consider possible amendment of the rule in the light of the Executive Board's comments (A8/AFL/1, Annex I, page 34), and drew

attention to the texts of the relevant article of the WHO Constitution and corresponding articles of the constitutions of other specialized agencies (A8/AFL/1, Annex II) together with comparative texts of the pertinent Rules of Procedure. He further drew attention to the Director-General's suggestion for a new rule (A8/AFL/1, page 3) which would make the procedure for submitting drafting changes more flexible but would not affect amendments of substance. As the delegate of Australia, he supported the text proposed by the Director-General.

Miss HESSLING (Netherlands) also favoured the Director-General's text. It met her delegation's desire for a formula based on that applied by UNESCO.

Mr CALDERWOOD (United States of America) did not see any necessity for a new rule regarding drafting changes. It could be taken for granted that drafting amendments were always receivable; indeed, they were sometimes essential to bring an amended article of the Constitution into harmony with existing articles in respect of uniform terminology, and consequential changes.

The SECRETARY recalled, for the information of the members, a case where three texts identical in substance, but differing slightly in form, had been submitted to the Fifth World Health Assembly by the Scandinavian Governments. The Health Assembly had requested that they should be merged into a single text. However, when that text came before it, and although there had been no alteration of the substance of the proposal, the Health Assembly had declared the new presentation unreceivable. To prevent a recurrence of that situation, it might not be ill-advised, despite the United States delegate's assertion that drafting changes were legally receivable in all circumstances, to include some safeguard

as suggested by the Director-General.

Mr CALDERWOOD (United States of America) suggested what he believed might be a solution applicable to both drafting and substantive amendments. As the purpose of Article 73 of the Constitution was to ensure that States should have adequate notice of amendments and full time to consider all their implications before deciding whether or not they were warranted, the relevant Rule of Procedure should state that once such notice had been given, other delegations could introduce any amendments which did not deviate from the underlying purpose of the original text already distributed.

Mr BOTHA (Union of South Africa) felt that, in view of the example cited by the Secretary, the new rule suggested by the Director-General appeared necessary. On the other hand, the United States delegate had made a valid point. Accordingly, he would support the adoption of the Director-General's suggested rule, amended to cover the principle implicit in the United States proposal.

Mr GUNewardENE (Ceylon) and Dr MELLBYE (Norway) endorsed that position.

Mr CALDERWOOD (United States of America) proposed, if his suggestion was acceptable in principle, that he should work out with the Secretary a text which might prove satisfactory.

The CHAIRMAN agreed that that would be the best procedure and accordingly suspended the meeting.

The meeting was suspended at 11.30 a.m. and
resumed at 12 noon

The CHAIRMAN read the new text as follows:

"The Health Assembly may, without prior communication to Members, adopt any changes in the texts referred to in Rule (108) 111 which do not deviate from the underlying purpose thereof, or which are purely matters of drafting, and any changes designed to embody in a single text similar substantive proposals communicated to Members in accordance with the provisions of Rule (108) 111.

"In case of doubt, such proposed changes shall be deemed not to be admissible, unless the Health Assembly, by a two-thirds majority, decides otherwise."

The corresponding French text would be brought into harmony with the new text after consultation between the Secretary and the French-speaking delegations.

The new text would constitute a new Rule.

Mr MORENO SALCEDO (Philippines) and Mr SØRENSEN (Denmark) fully supported the text of the new Rule. Mr Sørensen pointed out that it was wholly compatible with the provision in the Constitution and provided the necessary safeguards in its second paragraph.

Mr PILLAI (India) proposed amendment of the new text by deletion of the clause "which do not deviate from the underlying purpose thereof, or ..." Interpretation of that clause might lead to endless discussion and unnecessary confusion. His delegation supported the Director-General's text, which dealt solely with drafting changes.

Miss HESSLING (Netherlands) supported the Indian amendment.

Decision: The amendment proposed by the delegate of India was rejected by 6 votes to 5, with 4 abstentions.

The new text was approved as a new Rule to constitute Rule (108) 110 bis.

Rules (109) 112 - (111) 114

Rules (109) 112, (110) 113 and (111) 114 were approved as proposed by the Executive Board.

Mr CALDERWOOD (United States of America) reserved the right of his delegation to make a statement in the Committee on Administration, Finance and Legal Matters affirming that the secret ballot should be used only in cases where personalities were involved, as, for example, in elections. His delegation did not, however, intend to submit an amendment to the Rules of Procedure on that subject.

Dr MELLEBYE (Norway) said that his delegation would request an explanation to justify the inclusion in the Rules of Procedure of Rule (67) 70 before the vote on that Rule in the Committee on Administration, Finance and Legal Matters.

The meeting rose at 12.20 p.m.