



WORLD HEALTH ORGANIZATION

FIFTY-SECOND WORLD HEALTH ASSEMBLY
Provisional agenda item 16

A52/24
7 April 1999

Amendments to the Constitution

Report by the Secretariat

BACKGROUND

1. The Executive Board, by resolution EB101.R2 adopted at its 101st session, requested the Director-General to propose for the consideration of the Fifty-second World Health Assembly draft amendments to the preamble as well as to Articles 7, 11, 21, 25, 50 and 55 of the Constitution. Those amendments had been proposed by a special group for the review of the Constitution,¹ which had been established by the Executive Board in response to resolution WHA48.14, requesting the Board to examine whether all parts of the Constitution remain appropriate and relevant.

2. In accordance with Article 73 of the Constitution, the Director-General communicated to the governments of all Member States, by circular letter C.L.10.1998 dated 27 April 1998, the texts of the proposed amendments. These proposed amendments are set forth in Annex 1 to this document. In order to enter into force, these proposed amendments would need to be adopted by a two-thirds majority vote of the Health Assembly and accepted by two-thirds of the Members of WHO in accordance with their respective constitutional processes.²

ISSUES RELATING TO OVERLAP

3. The attention of the Health Assembly is drawn to an overlap between amendments already adopted by previous Health Assemblies and two of the newly proposed amendments, namely those to Article 7 and Article 25. Briefly stated, if the Health Assembly decides to adopt the proposed amendments to Article 7 and to Article 25, there will be two separately adopted amendments with respect to each of these articles, neither of which is yet in force.

4. The Eighteenth World Health Assembly adopted resolution WHA18.48 amending Article 7, as set forth in Annex 2. The Executive Board, at its 101st session in January 1998, requested the Director-General to remind Members of the Organization that, *inter alia*, this previous amendment to Article 7 still needed to be accepted by two-thirds of the Members of the Organization in order to enter into force, and to include the text of this amendment in his reminder.³ The Director-General complied with this request by communicating to

¹ Document EB101/1998/REC/1, Annex 3.

² Article 79(b) of the Constitution provides that acceptance shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

³ See document EB101/1998/REC/1, Annex 3, p. 58.

the governments of all Member States through the circular letter of 27 April 1998. As of 17 March 1999, 62 Member States had accepted this amendment. On the basis of 191 Members of the Organization, it will need 128 acceptances to enter into force.

5. The Fifty-first World Health Assembly adopted resolution WHA51.23 amending Article 25 - along with Article 24 - in order to increase the membership of the Executive Board from 32 to 34 members. The text of the amendments is set forth in Annex 2. As of 17 March 1999, 39 Member States had accepted this amendment and it will need 128 acceptances to enter into force on the basis of the current membership.

6. Without appropriate action by the Health Assembly at the time of adopting the second set of amendments to these two articles, the existence of two sets of outstanding amendments to the same article will cause uncertainty as to the applicable text for each article in the event that both enter into force. Indeed, the outcome could be considered to change depending on which version of the amendment enters into force first. In order to avoid this uncertainty, the Assembly may wish to take corrective action along the following lines if it decides to adopt an amendment to either of these articles.

7. In the case of Article 7, the Assembly may wish to include in any resolution adopting a new amendment to this Article a statement that the earlier amendment contained in resolution WHA18.48 (see Annex 2) should be considered “superseded” by the current amendment.¹ In following this approach, the Assembly would also have the option of incorporating the changes to Article 7 as set forth in resolution WHA18.48 into the text of the new amended version if it so wished.²

8. In the case of Article 25, the effect of the proposed amendment is to add an additional sentence to the end of the Article. However, the amendment to this Article adopted by the Assembly in resolution WHA51.23 is inseparably linked to an amendment to the text of Article 24. Thus, the options described above for Article 7 (which would involve inserting a statement in the resolution that the new version is intended to replace the text contained in resolution WHA51.23, and incorporating the change in membership reflected in that resolution into the text of the Article being considered for adoption at this Assembly), are not available in this case. This is because the new wording of Article 25 appearing in resolution WHA51.23 can only come into force concurrently with the entry into force of the amendment to Article 24 contained in that same resolution.

9. As a result of the above situation, if the Assembly wishes to adopt the proposed amendment to Article 25 as set forth in Annex 1, the most feasible approach appears to be to place the proposed new sentence (currently appearing at the end of the text) in a new sole article called “Article 25 bis”.

ACTION BY THE HEALTH ASSEMBLY

10. If the Health Assembly decides to approve one or more of the proposed amendments, it may wish to adopt one or more resolutions in the format set forth below. This format can be used either for a single resolution covering some or all of the amendments or for separate resolutions covering each amendment. If one resolution is used to cover multiple amendments to the Constitution, it would be advisable to avoid any uncertainty as to whether the amendments may only be accepted by Member States as a group or whether

¹ However, the amendment adopted by the Assembly in resolution WHA18.48 would continue to exist and could legally still enter into force if it receives sufficient acceptances.

² The acceptances of the previously adopted amendment to the Article could not be taken into account in determining the number of acceptances needed under Article 73 of the Constitution for the new amendment to enter into force.

Member States may accept individual amendments,¹ when depositing their formal instruments of acceptance in accordance with Articles 73 and 79(b) of the Constitution.

The Fifty-second World Health Assembly,²

1. ADOPTS the following amendment[s] to Article[s] ... [insert reference to one or more articles] of the Constitution, the texts in the Arabic, Chinese, English, French, Russian and Spanish languages being equally authentic:

Article .. [insert reference to the article concerned] - **Delete and replace by**³

[insert amended text, as approved by the Health Assembly]

...

2. DECIDES that two copies of this resolution shall be authenticated by the signatures of the President of the Fifty-second World Health Assembly and the Director-General of the World Health Organization, of which one copy shall be transmitted to the Secretary-General of the United Nations, depositary of the Constitution, and one copy retained in the archives of the World Health Organization;

3. DECIDES that the notification of acceptance of these amendments by Members in accordance with the provisions of Article 73 of the Constitution

[Option 1]⁴

[may be done either globally for all amendments or individually with respect to each amendment and]

[Option 2]

[may only be done globally for all amendments and]

shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations, as required for acceptance of the Constitution by Article 79(b) of the Constitution.

¹ This issue may arise since the amendments are unrelated to each other in terms of substance.

² In the event that the resolution includes an amendment to Article 7 (which could be combined with incorporation of the changes to Article 7, as set forth in resolution WHA18.48, in any newly adopted version of the Article), consideration could be given to inserting the following text in the preamble:

Recalling the adoption of resolution WHA18.48 amending Article 7 and noting that the amendment has not yet entered into force, and being of the view that the amendment of that article as set forth in resolution WHA18.48 should be considered superseded by the text adopted herein, and the following as an operative paragraph:

RECOMMENDS that Member States should no longer deposit with the Secretary-General of the United Nations instruments of acceptance of the amendment to Article 7 as contained in resolution WHA18.48.

³ In the case of the proposed amendment to Article 25, this title could read “**Insert as Article 25 bis**”. In the case of the proposed amendment to the preamble, this title could read “**Preamble - in the first indented provision under the first paragraph. Delete [insert text to be deleted]**”.

⁴ These options are only for use in the event that one resolution is adopted covering more than one amendment.

ANNEX 1

**PROPOSED AMENDMENTS TO THE PREAMBLE AND
ARTICLES 7, 11, 21, 25, 50 AND 55 OF THE CONSTITUTION
OF THE WORLD HEALTH ORGANIZATION
AS CONTAINED IN RESOLUTION EB101.R2 (adopted at the 101st session
of the Executive Board, eighth meeting, 22 January 1998)**

Preamble - in the first indented provision under the first paragraph

Delete:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Insert:

Health is a dynamic state of complete physical, mental, spiritual and social well-being and not merely the absence of disease or infirmity.

Article 7 - Delete and replace by

Article 7

- (a) (1) If a Member fails to meet its financial obligations to the Organization, the Health Assembly may, on such conditions as it thinks proper:
- (i) suspend the voting privileges to which the Member is entitled;
 - (ii) exclude such Members from eligibility for election to be entitled to designate a person to serve on the Executive Board; and
 - (iii) exclude the representatives of such Members from eligibility for election as an officer of the Health Assembly.
- (2) The Health Assembly may also prohibit the Organization from entering into or renewing any arrangement involving payment for services provided by any Member State which persistently fails to meet its financial obligations without due cause.
- (3) The Health Assembly shall have the authority to restore such rights and privileges.
- (b) In other exceptional circumstances, the Health Assembly may suspend the voting privileges and nonessential services to which a Member is entitled. The Health Assembly shall have the authority to restore such voting privileges and services.

Article 11 - Delete and replace by

Article 11

Each Member shall be represented by not more than three delegates, one of whom shall be designated by the Member as chief delegate. These delegates should preferably represent the national health administration of the Member.

Article 21 - Delete and replace by

Article 21

- (a) The Health Assembly shall have the authority to adopt regulations concerning particularly:
- (i) sanitary and quarantine requirements and other procedures designed to prevent the international spread of diseases;
 - (ii) nomenclatures with respect to diseases, causes of death and public health practices;
 - (iii) standards with respect to diagnostic procedures for international use;
 - (iv) standards with respect to safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce;
 - (v) advertising and labelling of biological, pharmaceutical and similar products moving in international commerce;
 - (vi) standards with respect to transplantation of tissues and genetic engineering, including cloning.
- (b) The Health Assembly shall have authority to adopt regulations concerning any other health-related matter falling within the functions of the Organization as set forth in Article 2.

Article 25 - Delete and replace by

Article 25

These Members shall be elected for three years and may be re-elected, provided that of the Members elected at the first session of the Health Assembly held after the coming into force of the amendment to this Constitution increasing the membership of the Board from thirty-one to thirty-two the term of office of the additional Member elected shall, insofar as may be necessary, be of such lesser duration as shall facilitate the election of at least one Member from each regional organization in each year. No Member should have a greater right, explicit or implied, than any other Member to designate a person to serve on the Board.

Article 50

Delete

- (g) such other functions as may be delegated to the regional committee by the Health Assembly, the Board or the Director-General.

and replace by

- (g) to foster and promote activities of the Organization at country level;
- (h) such other functions as may be delegated to the regional committee by the Health Assembly, the Board or the Director-General.

Article 55 - Delete and replace by

Article 55

The Director-General shall prepare and submit to the Board the budget estimates of the Organization. The Board shall consider and review those budget estimates and submit them to the Health Assembly, together with any recommendations the Board may deem advisable.

ANNEX 2

EXTRACTS FROM RESOLUTIONS WHA18.48 AND WHA51.23

Article 7 - Delete and replace by

Article 7

(a) If a Member fails to meet its financial obligations to the Organization or in any other exceptional circumstances, the Health Assembly may, on such conditions as it thinks proper, suspend the voting privileges and services to which a Member is entitled. The Health Assembly shall have the authority to restore such voting privileges and services.

(b) If a Member ignores the humanitarian principles and the objectives laid down in the Constitution, by deliberately practising a policy of racial discrimination, the Health Assembly may suspend it or exclude it from the World Health Organization.

Nevertheless, its rights and privileges, as well as its membership, may be restored by the Health Assembly on the proposal of the Executive Board following a detailed report proving that the State in question has renounced the policy of discrimination which gave rise to its suspension or exclusion.

Article 24 - Delete and replace by

The Board shall consist of thirty-four persons designated by as many Members. The Health Assembly, taking into account an equitable geographical distribution, shall elect the Members entitled to designate a person to serve on the Board, provided that, of such Members, not less than three shall be elected from each of the regional organizations established pursuant to Article 44. Each of these Members should appoint to the Board a person technically qualified in the field of health, who may be accompanied by alternates and advisers.

Article 25 - Delete and replace by

These Members shall be elected for three years and may be re-elected, provided that of the Members elected at the first session of the Health Assembly held after the coming into force of the amendment to this Constitution increasing the membership of the Board from thirty-two to thirty-four the term of office of the additional Members elected shall, insofar as may be necessary, be of such lesser duration as shall facilitate the election of at least one Member from each regional organization in each year.

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