



*executive committee of
the directing council*

PAN AMERICAN
HEALTH
ORGANIZATION

*working party of
the regional committee*

WORLD
HEALTH
ORGANIZATION



72nd Meeting
Washington, D.C.
July 1974

Provisional Agenda Item 22

CE72/18 (Eng.)
CORRIGENDUM
27 June 1974

STUDY ON THE AUTHORITY OF THE EXECUTIVE COMMITTEE TO ADDRESS ITSELF
DIRECTLY TO GOVERNMENTS

Corrigendum to English Text Only

Page 3, paragraph 3, line 2: "CE60.R17" should read "CE70.R17"



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CE72/18 (Eng.)
15 June 1974
ORIGINAL: ENGLISH

STUDY ON THE AUTHORITY OF THE EXECUTIVE COMMITTEE TO ADDRESS ITSELF
DIRECTLY TO GOVERNMENTS

The question on the capacity of the Executive Committee to address itself directly to Governments arose from the discussion in the Executive Committee at its 70th Meeting on a draft resolution dealing with the Aedes aegypti eradication program (adopted as Resolution XVII).

This resolution inter alia urges the Governments of those countries and territories in the Hemisphere still infested with Aedes aegypti to make all efforts to eradicate the vector, to accord priority to measures for preventing its exportation to countries free from it and, having completed eradication, to intensify surveillance activities.

In the course of the discussion the authority of the Executive Committee to make recommendations directly to Governments was questioned. It was suggested that the list of functions of the Executive Committee contained no authorization for the Committee to make recommendations directly to Governments, and that the powers of the Executive Committee were limited to the provisions of advice to the Conference or the Council. It was, however, pointed out that the Executive Committee had addressed itself directly to Governments as well as to UNDP on many occasions.

In view of the foregoing the Director submits to the Executive Committee a review which he has undertaken on the subject since the 70th Meeting of the Executive Committee. The review is based on the legal advice received from WHO Headquarters.

Inference from the Constitution of the Pan American Health Organization

The functions of the Conference, the Directing Council and the Executive Committee, respectively, are indicated in Chapter II, Article 4; Chapter III, Article 9; and Chapter IV, Article 14, of the Constitution of the Pan American Health Organization. It will be noted that there is

no express provision in any of these Articles, nor in any other Articles of the Constitution, regarding recommendations by the Executive Committee to the Members of the Organization.

In the absence of express legislative or recommendatory authority for the Governing Bodies of the Organization, such authority has to be sought by inference from the Constitutional Articles referred to above and from the practice of the Organization over the period since reorganization, that is from 1947 to the present.

As regards the Pan American Sanitary Conference and the Directing Council, no particular difficulty arises. The authority of the Conference to address Governments directly is inherent in paragraphs A and B of Article 4 and the same principles apply to the Directing Council in that this latter body acts on behalf of the Conference between meetings of the Conference.

In the case of the Executive Committee, it is to be noted that despite its title the Constitution does not confer upon it general executive functions. Article 14 of the Constitution reads as follows:

The functions of the Executive Committee shall be:

- A. To authorize the Director of the Bureau to convoke meetings of the Council.
- B. To approve the provisional agenda of meetings of the Conference and of the Council.
- C. To consider and submit to the Conference or to the Council the proposed program and budget prepared by the Director of the Bureau with such recommendations as it deems advisable.
- D. To advise the Conference or the Council regarding matters referred to the Executive Committee by those bodies or, on its own initiative, regarding other matters relating to the activities of the Conference, the Council, or the Bureau.
- E. To discharge any other function assigned to it by the Conference or the Council.

In view of the particular wording of Article 14 of the Constitution, any general exercise of executive functions by the Committee could only take place under paragraph E of the Article, through express or implied authority granted by the Conference or Council.

Inference from the Practice of the Pan American Health Organization

In the practice of the Organization, the Executive Committee has addressed itself directly to Governments on numerous occasions over the whole period of its existence. Apart from the exercise of its specific functions under paragraphs C and D relating to budgetary and financial matters, under which the Committee has called upon Governments to pay quota contributions or arrears, the Committee has addressed itself directly to Governments on a variety of technical and organizational matters.

An analysis of the general scope of the resolutions adopted by the Committee reveals that these relate to the implementation of the Organization's technical program, within the policies and priorities laid down by the Conference and the Council. No objection appears to have been raised against this practice until the 70th Meeting of the Executive Committee and even at that meeting no objection was raised with regard to the other resolution adopted which contained recommendations to Governments (Resolution VII, Report on the III Special Meeting of Ministers of Health and Steps Necessary to Implement the Decisions Adopted).

Moreover, due account should be taken of the fact that Resolution CE60.R17, the subject of the objections raised, dealt with Aedes aegypti eradication, a matter covered by earlier resolutions of the Committee which similarly included recommendations and advice to Governments (CE56.R14 and CE61.R9).

Conclusion

This long and consistent practice in the Executive Committee in the field of program implementation suggests that it has been considered that such action fell within the executive competence of the Committee and that the Conference and the Council had accepted that the Committee could directly approach Governments in such matters. This would amount to the implicit assignment of a particular function to the Committee under Article 14, paragraph E of the Constitution.

Such a conclusion would be permissible as a legal conclusion under Section 3, Article 31, of the Convention on the Law of Treaties adopted at Vienna on 23 May 1969. This Article, dealing with the general rule of interpretation, provides in paragraph 3 (b) that in the interpretation of a treaty there shall be taken into account, together with the context, any subsequent practice in the application of the treaty which established the agreement of the parties regarding its interpretation. This provision of the Convention is declaratory of existing principles of international law and it would therefore seem not unreasonable to claim that the consistent practice of the Executive Committee over 25 years has probative value as to the intention of the Governing Bodies of the Organization.

The recognition of such a function of the Executive Committee in the field of program implementation does not imply a wider competence to the Committee in other matters such as, for example, the formulation of general directives or major policy matters, without reference to the Conference or Council.

After reviewing this report, the Executive Committee may wish to approve a resolution along the following lines:

Proposed Resolution

THE EXECUTIVE COMMITTEE,

Having considered the report of the Director on the authority of the Executive Committee to address itself directly to Governments (Document CE72/18);

Noting the long and consistent practice in the Executive Committee in the field of program implementation;
and

Bearing in mind the provisions of Article 14, paragraph E, of the Constitution of the Pan American Health Organization,

RESOLVES:

To take note of the report on the authority of the Executive Committee to address itself directly to Governments, submitted by the Director (Document CE72/18).