

"DISPUTES" CLAUSE TO BE USED ONLY IN CONTRACTS WITH WORLD  
HEALTH ORGANIZATION (WHO)

Any difference that may arise in the interpretation or application of this contract shall be submitted to the Assistant Secretary of Health, Department of Health and Human Services, of the United States of America and to the Assistant Director-General responsible for Administration and Finance of the World Health Organization, who will settle the question personally and jointly or through their duly authorized representatives.

D&F dated 9/28/79 - Assistant Secretary for Health  
and Surgeon General  
NIH(RC)-9  
4/1/84

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DETERMINATION AND FINDINGS

Authority to Waive the Requirement for Application of the Contract Disputes Act of 1978 to Contracts with the World Health Organization - Public Law 95-563, 10 U.S.C. 602.

I hereby find that:

- (1) The Public Health Service proposes to enter into contracts with the World Health Organization for various products and services. These contracts will contribute to the missions of the World Health Organization, the Public Health Service, and the Department of Health, Education, and Welfare, in helping to improve the health of citizens of the United States and all other nations of the world. In most, if not all, of these contracts, the World Health Organization is in a unique position to carry out important and beneficial programs requiring the cooperation of numerous nations. The inability to enter into and perform these contract projects would be detrimental to the public interest of both the United States and other nations.
- (2) However, the World Health Organization is unwilling to enter into any proposed contract which incorporates the Contract Disputes Act of 1978. While the World Health Organization accepts the interpretation of contracts according to United States law, it is unwilling to accept the provisions of the Contract Disputes Act of 1978, whereby disputes arising under the contract may ultimately be settled by United States courts. As part of the United Nations family of organizations in which the United States is a participating member, the World Health Organization is unwilling to submit to the jurisdiction of any particular member nation.
- (3) In lieu of incorporating the Contract Disputes Act of 1978, the World Health Organization has proposed alternative language that "any difference that may arise in the interpretation or application of this contract shall be submitted to the Assistant Secretary for Health, Department of Health, Education and Welfare of the United States of America and to the Assistant Director-General responsible for Administration and Finance of the World Health Organization, who will settle the question personally and jointly or through their duly authorized representatives." This same clause or a similar one was included in previous contracts as an approved alternative to the standard Disputes clause in the HEW-315A General Provisions. There is no record of a dispute or any other serious problem arising under previous contracts between the World Health Organization and the Public Health Service.
- (4) Section 3, Paragraph (c) of the Contract Disputes Act of 1978 states that "This Act does not apply to a contract with a foreign government, or agency thereof, or an international organization, or subsidiary body thereof,

if the head of the agency determines that the application of the Act to the contract would not be in the public interest. (41 U.S. Code 602) Section 2, Paragraph (1) of the Act defines the "head of the agency" to include "the head and any assistant head of an executive agency."

I hereby determine that:

On the basis of the above findings, application of the Contract Disputes Act of 1978 to contracts with the World Health Organization would not be in the public interest and its application is hereby waived pursuant to the authority of Public Law 95-563, Section 3, Paragraph (c), 41 U.S.C. 602. The alternate language set forth in Paragraph (3) above shall be substituted therefor.

SEP 28 1979  
Date

Julius B. Richmond  
Julius B. Richmond, M.D.  
Assistant Secretary for Health and  
Surgeon General