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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization

I. Introduction

1. At its Forty-second Session in June 2021, the Conference “*requested the conduct of a comprehensive review on the process for reinstating voting rights for Member Nations in arrears for consideration by the relevant Governing Bodies, including the Committee on Constitutional and Legal Matters, supported by a process of informal consultation led by the Independent Chairperson of the Council with the Chairpersons and Vice-Chairpersons of the Regional Groups*”.¹
2. The Committee’s consideration of this matter falls within its mandate under Rule XXXIV, paragraph 7 (a) of the General Rules of the Organization.
3. Unless otherwise specified in this document, references to “Rules” are references to the General Rules of the Organization (GRO).

II. The legal framework

4. Pursuant to Article XVIII, paragraph 2, of the Constitution of FAO, each Member Nation is under a legal obligation to contribute annually to the Organization its share of the budget, as apportioned by the Conference (i.e., in accordance with a scale of contributions approved by the Conference). Rule XXXVIII, paragraph 2, provides that one of the functions of the Director-General is to request and receive payments of contributions of Member Nations and report thereon. The Financial Regulations clarify that, at the beginning of each calendar year, the Director-General shall inform

¹ C 2021/REP, paragraph 25.

Member Nations of their obligations in respect of their annual contributions to the budget.² Contributions are due and payable in full within 30 days of receipt of the communication of the Director-General, or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions shall be considered to be one year in arrears.³

5. Article III, paragraph 4, of the Constitution provides that “*each Member Nation shall have only one vote. A Member Nation which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the Conference if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Conference may, nevertheless, permit such a Member Nation to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member Nation*”. Thus, Member Nations in arrears at the opening of a Conference Session automatically lose their voting rights, unless they make a payment during the Session reducing their arrears below the objective threshold set out in Article III, paragraph 4 of the Constitution. Such instances amount to an automatic restoration of voting rights, requiring no further approval by the Conference.

6. The Conference receives recommendations from the General Committee established under Rule X, paragraph 1 on requests received for the restoration of voting rights. The General Committee consists of “*the Chairperson and Vice-Chairpersons of the Conference and seven Member Nations elected by the Conference under Rule VII*”. The seven Member Nations are traditionally each elected from one of the geographical regions determined by the Conference for purposes of elections to the Council.⁴ The functions of the General Committee include, *inter alia*, determining and announcing the date of the elections for the offices of Chairperson of the Council and Director-General, and otherwise facilitating the orderly dispatch of the business of the Session.⁵ The GRO provide that decisions of the General Committee shall be taken by majority of the votes cast.⁶ However, in practice, its decisions are normally made by consensus. The General Committee meets in private⁷ and, unless otherwise expressly decided by the Committee, no record shall be kept of the proceedings of the General Committee other than the reports presented to the Conference.⁸

III. FAO’s practice on the restoration of voting rights

7. In the absence of explicit provisions in the Basic Texts concerning the implementation of Article III, paragraph 4, of the Constitution, a practice has developed whereby the General Committee has made recommendations and the Conference has restored the voting rights of Member Nations in arrears on the following bases:

- a) **Special consideration.** Member Nations in arrears may request special consideration under Article III, paragraph 4, of the Constitution. The General Committee assesses whether the arrears of the Member Nation concerned resulted from “*conditions beyond [its] control*” and

² Financial Regulation 5.4, sub-paragraph (a).

³ Financial Regulation 5.5.

⁴ Rule XXII, paragraph 10 (b). Traditionally, these regions are Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and Southwest Pacific.

⁵ Rules X, paragraph 2, XXIII, paragraph 1 and XXXVII, paragraph 4 for the election of the Chairperson of the Council and of the Director-General, respectively.

⁶ Rule X, paragraph 1.

⁷ Rule X, paragraph 1 provides that “*Meetings of the Committee shall be held in private unless otherwise determined by the Conference*”.

⁸ Rule XVIII, paragraph 1.

may note any reasons provided by the Member Nation in its request. The Committee's reports do not set out the reasoning for these recommendations. The Committee has, in general, recommended restoration of voting rights based on such requests. A review of the reports of the Conference reflects that there has only been one occasion, at the Thirty-seventh Session of the Conference in July 2011, where requests for special consideration were rejected; this was on the basis that additional inputs were not provided by the Member Nations concerned.⁹

- b) **Instalment plans.** Member Nations in arrears may request to repay their arrears through instalment plans reviewed by the General Committee and approved by Conference Resolution.

8. The processes for restoration of voting rights under paragraphs 7 (a) and 7 (b) above is initiated by a request from the Member Nation concerned. A review of the past seven reports of the Regular Sessions of Conference – from 2009 to 2021 – indicates that there have been 112 instances where Member Nations were in arrears at the beginning of the Conference. In 42 of those instances, the concerned Member Nation either did not make a payment during the Session nor request the Conference to restore their voting rights.

IV. Previous examination of the restoration of voting rights by the Governing Bodies

9. The establishment of procedures and criteria for the restoration of voting rights has been frequently considered by the Governing Bodies.

10. At its Twenty-seventh Session in November 1993, the Conference, mindful of concerns about the procedures and practices then followed by the Organization regarding the restoration of voting rights "*requested the Finance Committee and the Council to address the issue and report their findings to the 28th Session of the Conference*". The Conference also specifically requested that these findings include a review of "*the application of the provisions of Article III-4 [...] in general and with a view to defining the criteria to be applied in assessing and determining the conditions beyond the control of a Member Nation*". The Director-General was requested by the Conference to facilitate this work by reviewing the procedures and practices of the UN and the other Specialized Agencies and providing the Finance Committee with an assessment of the alternatives relative to those followed by the Organization at that time.¹⁰

11. At its Hundred and Seventh Session in November 1994, the Council expressed great concern over the deterioration of the payment of arrears at the time and considered that redressing the situation required a more restrictive approach for the restoration of voting rights.¹¹ Its conclusions transmitted to the Conference reflected, *inter alia*, that "*the criteria for what constitutes 'conditions beyond the control of the Member Nation concerned' were very difficult to define formally and fixed definitions could present complications. Accordingly, while keeping in mind the broad parameters of what might constitute such conditions, voting rights should only be restored in exceptional cases and only on the basis of a formal request by the Member Nation concerned, specifying the circumstances that in its view constituted 'conditions beyond its control'*".¹² It recommended that the Director-General continue searching for sustainable schemes that would respond to the "*particular problems of developing*

⁹ C 2011/REP, paragraph 29.

¹⁰ C 1993/REP, paragraph 38.

¹¹ CL 107/REP, paragraph 207.

¹² CL 107/REP, paragraph 208, sub-paragraph (b).

countries” without endangering the financial viability of the Organization, and taking into account the experience of other UN organizations.¹³ The Conference did not request any further action.

12. At the Twenty-eighth Session of the Conference in November 1995, the General Committee recommended to the Conference that the voting rights of Member Nations in arrears be restored only in exceptional circumstances and in accordance with the recommendations of the Hundred and Seventh Session of the Council in November 1994 (see paragraph 11 above).¹⁴ The Conference adopted this recommendation and stressed the necessity for outstanding arrears to be reduced over the next biennium and encouraged Member Nations to make timely payment of their assessed contributions.¹⁵

13. At its Thirty-third Session in November 2005, the Conference expressed its “*view that any past recommendations that voting rights be restored for all Member Nations on the first day of the Conference, or upon submission of a letter to that effect, should not be regarded as preventing the Conference from taking a different position in future*”.¹⁶ It recommended that the normal course of action should consist of actively encouraging Member Nations to submit instalment plans for the settlement of their arrears as a condition for the restoration of voting rights, without prejudice, however, to the authority of the Conference to permit such Nations to vote as contemplated in Article III, paragraph 4, of the Constitution. The Conference also recommended that, in future, requests for restoration of voting rights be referred to the Director-General for submission to the Session of the Finance Committee preceding the Conference, and that the Finance Committee submit its views to the Conference, through the Council, for consideration by the General Committee.

14. Subsequently, in the course of the 2006-2007 biennium, the Finance Committee considered measures to address a cash shortage situation of the Organization¹⁷ and, at its Hundred and Eighteenth Session in May 2007, agreed to recommend two draft Resolutions to the Conference, through the Council.¹⁸ The proposed measures included, *inter alia*, (i) the introduction of a rule requiring Member Nations in arrears for two calendar years to submit an instalment plan to the Finance Committee for review and subsequent approval by the Conference as a condition for the restoration of their voting rights; and (ii) the discontinuation of the practice of automatically restoring voting rights for all Member Nations on the first day of the Conference,¹⁹ as had been recommended by the Conference in 2005. At its Hundred and Thirty-second Session in June 2007, the Council agreed in principle to propose these Resolutions to the Conference on the understanding that their text would be discussed and refined.²⁰ At its Hundred and Thirty-fourth Session in November 2007, the Council noted that discussions were ongoing among concerned Member Nations on the two draft Resolutions and that additional time was required in order to arrive at a consensus.²¹ As a result of negotiations during the Thirty-fourth Session of the Conference in November 2007, the two draft Resolutions were submitted for adoption.²² The Conference adopted Conference Resolutions 13/2007 and 14/2007 without, however, these proposed measures. Nevertheless, Conference Resolution 13/2007 “*urge[d] all*

¹³ CL 107/REP, paragraph 208, sub-paragraph (e).

¹⁴ C 95/LIM/28, paragraph 4.

¹⁵ C 1995/REP, paragraph 115.

¹⁶ C 2005/REP, paragraphs 32-33.

¹⁷ FC 115/8 (2006); FC 118/13 (2007); FC 119/8 (2007).

¹⁸ FC 118/REP (2007), paragraphs 55-57.

¹⁹ C 2007/LIM/7, page 3.

²⁰ CL 132/REP, paragraph 96.

²¹ CL 133/REP, paragraph 37.

²² C 2007/LIM/22, paragraph 2.

Member Nations [...] to submit instalment plans to accommodate the payment of their arrears, where appropriate".²³

15. The matter was again examined by the Finance Committee in the 2008-2009 biennium, but no concrete measures were proposed. The Conference, at its Thirty-sixth Session in 2009, requested that the matter remain under review.

16. In October 2012, the CCLM considered a document concerning "*Legal aspects of the treatment of arrears (restoration by the Conference of the voting rights of Member Nations in arrears)*".²⁴ It indicated that the Conference's practice for the implementation of Article III, paragraph 4, of the Constitution had been to rely on the advice of the General Committee. At its Hundred and Forty-fifth Session in December 2012, the Council took note of the CCLM's discussions and called upon the Finance Committee to examine the matter, taking into account the guidance provided by the Conference in November 2005.²⁵

17. The Finance Committee, at its Hundred and Forty-eighth Session in March 2013, requested the CCLM to examine whether the implementation of the recommendations of the Conference in November 2005 (set out in paragraph 13 above) would involve changes to the Basic Texts. At its Ninety-seventh Session in October 2013, the CCLM advised that it considered that these recommendations could be implemented through an amendment of the GRO or the adoption of a Conference Resolution included in Volume II of the Basic Texts. This Resolution introduced a procedure whereby Member Nations in arrears could voluntarily present to the Director-General, for submission to the Finance Committee, requests for the restoration of the voting rights (i) indicating that failure to pay is due to "*reasons beyond their control*" or (ii) proposing an instalment plan, including, *inter alia*: the total amount of arrears of contributions; the number of years over which payments will be made; the amount to be paid each year; and the date on which the payments will commence. Without prejudice to the authority of the Conference under Article III, paragraph 4, of the Constitution, the Finance Committee would then examine such requests and, through the Council, present its views to the General Committee. However, at its Hundred and Forty-ninth Session in June 2014, the Council did not endorse the draft Conference Resolution proposed by the CCLM and looked forward to reviewing the matter in the next biennium following further review by the Finance Committee.²⁶

18. FAO's practice concerning the restoration of voting rights under Article III, paragraph 4 of the Constitution has not been directly examined by the Governing Bodies since 2014. However, at its Hundred and Eight Session in March 2019, the CCLM considered a document proposing measures to improve timely payment of assessed contributions. This contained, *inter alia*, two draft Resolutions for consideration by the Conference amending the Constitution, GRO and Financial Regulations to (i) prevent representatives of Member Nations in arrears from being nominated in elections of the Council Committees and participating in the work of the Technical Committees, and (ii) amend the definition of arrears under Article III, paragraph 4, of the Constitution to an amount equal or exceeding one million United States Dollars (USD 1,000,000) due within the previous calendar year. The CCLM did not endorse these proposals and urged FAO Management to apply strictly existing

²³ Conference Resolution 13/2007, *Measures to Encourage Timely Payment of Contributions*, paragraph 1.

²⁴ CCLM 95/14.

²⁵ CL 145/REP, paragraph 39, sub-paragraph (f).

²⁶ CL 149/REP, paragraph 19.

mechanisms provided for in the GRO to ensure compliance with the requirements to pay assessed contributions on time.

V. The rules and practices of other UN System organizations

19. The Legal Office has consulted other UN System organizations and a table comparing and summarizing the rules and practices of twelve organizations²⁷ is set out in **Annex 1**. A more detailed comparison is provided in the *Web Annex* to this document.

20. The comparison confirms that FAO's current practice concerning the restoration of voting rights is consistent with the practice of other UN System organizations.

21. With the notable exception of the World Trade Organization (WTO)²⁸, all the concerned organizations have rules which foresee the loss or suspension of voting rights as a measure to be applied to Members which are in arrears for a specified period, typically two full fiscal or calendar years. This measure applies automatically for all these organizations, save for the International Civil Aviation Organization (ICAO) and the World Health Organization (WHO). In ICAO, the Assembly retains the discretion to impose a suspension of voting rights.²⁹ In WHO, the World Health Assembly may impose a suspension of voting rights by a two-thirds majority and on such conditions as it thinks proper.³⁰

22. As concerns the restoration of voting rights, seven of the twelve organizations have in place rules similar to Article III, paragraph 4, of the FAO Constitution which enable their governing bodies to permit a Member in arrears to vote if satisfied that its failure to pay is due to 'exceptional and unavoidable circumstances'³¹ or 'conditions beyond its control'.³² For most of these organizations, and consistent with the practice of FAO, this discretion is exercised on the basis of a case-by-case decision, guided by the recommendations of a committee, commission, or other subsidiary organ.

23. Three organizations - the United Nations Educational, Scientific and Cultural Organization (UNESCO)³³, the World Tourism Organization (UNWTO)³⁴ and the International Labour Organization (ILO)³⁵ - require such recommendations, which are not published, to describe or explain the conditions beyond the control of the concerned Member.

24. One organization, UNESCO, possesses formal criteria defining such 'conditions' (wars and armed conflicts, economic and financial criteria, and natural disasters). UNESCO's rules also establish

²⁷ The United Nations (UN), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Industrial Development Organization (UNIDO), the United Nations World Tourism Organization (UNWTO), the World Trade Organization (WTO), the International Labour Organization (ILO), the World Health Organization (WHO), the World Intellectual Property Organization (WIPO), the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the Universal Postal Union (UPU) and the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO). Information was also received from the International Fund for Agricultural Development (IFAD); this has been excluded due to IFAD's rules on the types of votes afforded to Members i.e., membership votes and contributions votes, being notably different to those of the other organizations consulted.

²⁸ Web Annex, pages 7-8.

²⁹ Web Annex, pages 14; Convention on International Civil Aviation, Article 62.

³⁰ Web Annex, pages 11, WHO Constitution, Article 7.

³¹ This formulation is specific to WIPO (see Web Annex, pages 11-12; Convention Establishing the WIPO, Article 11).

³² The IMO Assembly may, at its discretion, waive the loss of voting rights. This is done taking into account the recommendations of the IMO Council and assessing each application on its individual merits (see Web Annex, pages 17-18); Convention of the International Maritime Organization, Article 56; Resolution A.781(19) – *Amendments to Rules 56bis and 56ter of the Rules of Procedure of the Assembly*).

³³ Web Annex, page 4; Rules of Procedure of the General Conference, Rule 80, paragraph 8.

³⁴ Web Annex, pages 6; Financial Regulations and Rules, Financial Regulation 8, sub-paragraph 7, sub-paragraph (a).

³⁵ Web Annex, pages 9-10; Standing Orders of the ILO, Article 63, paragraph 2, sub-paragraph (a).

how the criteria should be applied i.e., taking into account whether the situation invoked has proven effects over the two preceding years and since the establishment of the current scale of contributions, and the real intention of the Member State to pay its total financial contributions.³⁶

25. Three organizations - UNESCO³⁷, the United Nations Industrial Development Organization (UNIDO)³⁸ and ILO³⁹ – specify that, where the governing body concerned has made a finding of ‘conditions beyond the control’ of the Member concerned, it shall indicate the measure to be taken to settle the arrears. This is normally a schedule of instalment payments for the settlement of the arrears.

26. Five of the twelve organizations do not have rules concerning ‘conditions beyond the control’ of the Member in arrears. However, their governing bodies retain the discretion to waive the suspension or loss of voting rights where the concerned Member has either:

- a) paid its arrears in full (the Universal Postal Union (UPU)⁴⁰ and ICAO⁴¹);
- b) reduced its arrears to a level justifying such a waiver (WHO⁴²); or
- c) agreed to a schedule of instalment payments aimed at liquidating arrears (WHO⁴³, the International Maritime Organization (IMO)⁴⁴), an amortization schedule (UPU⁴⁵), or an agreement for the settlement of the balance of arrears (ICAO⁴⁶).

27. Two organizations (UNESCO⁴⁷ and ILO⁴⁸) require that any decision to permit a Member in arrears to vote is conditional upon that Member’s compliance with the recommendations for settlement made by the governing body concerned.

VI. Summary of findings

28. The FAO Governing Bodies have considered the restoration of voting rights of Member Nations in arrears on multiple occasions. They have also regularly reviewed the practices that have developed in the absence of explicit provisions in the Basic Texts concerning the implementation of Article III, paragraph 4, of the Constitution. Proposals have, from time to time, been developed. However, these deliberations have not led to the adoption of Conference Resolutions nor modifications to the Basic Texts. They have also not resulted in a specific set of criteria defining ‘conditions beyond the control’ of Member Nations that qualify for the restoration of voting rights, nor the establishment of a formal requirement for an instalment plan. It has also not resulted in additional procedures, such as the review of instalment plans by the Finance Committee.

³⁶ Web Annex, page 2-3; General Conference Resolution 30 C/Res. 82 - *Conditions under which the right to vote may be granted on an exceptional basis to the Member States referred to in Article IV.C, paragraph 8(c), of the Constitution*, paragraph 3.

³⁷ Web Annex, pages 3-4; Rules of Procedure of the General Conference, Rule 80, paragraph 7, sub-paragraph (c).

³⁸ Web Annex, pages 4-5.

³⁹ Web Annex, pages 9-10; Standing Orders of the ILO, Article 63, paragraph 2, sub-paragraph (c).

⁴⁰ Web Annex, pages 18-19; General Regulations of UPU, Article 149, paragraph 2.

⁴¹ Web Annex, pages 14-16; Assembly Resolution A39-31 - *Discharge by Member States of financial obligations to the Organization and action to be taken in case of their failure to do so*, paragraphs 4, 6-8.

⁴² Web Annex, pages 11-13; Health Assembly Resolution A73/26, paragraph 6; Healthy Assembly Resolution WHA41.7.

⁴³ See above footnote.

⁴⁴ Web Annex, pages 17-18; Resolution A.781(19) – *Amendments to Rules 56bis and 56ter of the Rules of Procedure of the Assembly*, Rule 56bis, paragraphs ii, vi, and vii and Rule 56ter.

⁴⁵ See footnote 40.

⁴⁶ See footnote 41.

⁴⁷ Web Annex, pages 3-4; Rules of Procedure of the General Conference, Rule 80, paragraph 7, sub-paragraph (c).

⁴⁸ Web Annex, page 10; Standing Orders of the ILO; Article 63, paragraph 4.

29. Nevertheless, the practice of the Organization is consistent with the approach of most other UN System organizations, which (a) broadly possess similar rules addressing the loss, and discretionary restoration, of voting rights of Member Nations in arrears, and (b) have not adopted specific criteria for this purpose.

VII. Suggested action by the Committee

30. The Committee is invited to review this document and, within the context of its mandate, make such comments and observations thereon as it considers appropriate.

Annex 1

Summary of the rules and practices of UN System organizations concerning the restoration of voting rights of Members in arrears

Organization	Rules providing for suspension of voting rights for Members in arrears	General rules providing for a discretionary decision to restore voting rights	Provisions for restoration of voting rights based on an instalment plan	Provisions for restoration of voting rights due to 'conditions beyond the control' of the Member concerned	Provisions defining 'conditions beyond the control' of the Member concerned
United Nations (UN)	Yes	Yes	No	Yes	No
United Nations Educational, Scientific and Cultural Organization (UNESCO)	Yes	Yes	Yes, optional	Yes	Yes
United Nations Industrial Development Organization (UNIDO)	Yes	Yes	No	Yes	No
United Nations World Tourism Organization (UNWTO)	Yes	Yes	No	Yes	No
World Trade Organization (WTO)	No	No	No	No	No

Organization	Rules providing for suspension of voting rights for Members in arrears	General rules providing for a discretionary decision to restore voting rights	Provisions for restoration of voting rights based on an instalment plan	Provisions for restoration of voting rights due to 'conditions beyond the control' of the Member concerned	Provisions defining 'conditions beyond the control' of the Member concerned
International Labour Organization (ILO)	Yes	Yes	Yes, optional	Yes	No
World Health Organization (WHO)	Yes	Yes	Yes, mandatory	No	No
World Intellectual Property Organization (WIPO)	Yes	Yes	No	Yes	No
International Civil Aviation Organization (ICAO)	Yes	Yes	Yes, mandatory	No	No
International Maritime Organization (IMO)	Yes	Yes	Yes, mandatory	No	No
Universal Postal Union (UPU)	Yes	Yes	Yes, mandatory	No	No
Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO)	Yes	Yes	No	Yes	No