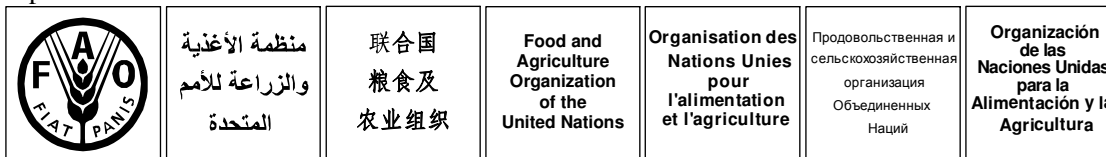


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# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

**Ninety-fifth Session**

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**Legal aspects of the treatment of arrears (restoration by the Conference of the voting rights of Member Nations in arrears)**

## I. INTRODUCTION

1. This document contains a summary review of the main legal provisions and practice regarding restoration by the Conference of voting rights of Member Nations which are in arrears of their contribution to the budget of the Organization.

## II. MAIN PROVISIONS OF THE BASIC TEXTS ON RESTORATION OF VOTING RIGHTS AND TREATMENT OF ARREARS

2. Under 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). The Financial Regulations clarify that, at the beginning of each calendar year, the Director-General shall inform Member Nations of their obligations in respect of their annual contributions to the budget (cf. Financial Regulation 5.4). 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 (cf. Financial Regulation 5.5).

3. The Basic Texts of FAO foresee three measures that apply to Members which are in arrears of payment of their contributions.

3.1. First, under Article III, paragraph 4 of the Constitution, “*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*”.

3.2. Second, under Rule XXII, paragraph 5 of the General Rules of the Organization (GRO) no Member Nation shall be eligible for election to the Council if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.

3.3. Third, under Rule XXII, paragraph 7 of the GRO, a Member Nation shall be considered to have resigned if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.

### **III. PRACTICE CONCERNING RESTORATION BY THE CONFERENCE OF VOTING RIGHTS OF MEMBERS IN ARREARS**

4. As regards the implementation of Article III, paragraph 4 of the Constitution, a practice has developed over the years whereby the General Committee of the Conference makes a recommendation to the Conference on whether lost voting rights should be restored. A list of Member Nations with potential voting rights at a forthcoming session of the Conference is made available and the concerned countries are informed that they will not have the right to vote at the Conference unless regularize their situation. The Finance Committee is also informed of the situation of these countries as part of its functions.

5. While this has not been formally reflected in the GRO, or in any other legal text, the General Committee has, on the basis of long standing practice, examined requests for restoration of voting rights by Member Nations in arrears. In practice this has taken several forms. The General Committee at the beginning of a session of the Conference is informed of the situation of the Member Nations which are in arrears and is invited to make a recommendation to the Conference as to whether the voting rights of these Members should be restored. These Members are invited to make requests for restoration of voting rights, including on the reasons for which they are in arrears, which are examined by the General Committee.

6. Past practice reveals some differences in the manner in which the Committee carries out this function. In many cases, the General Committee has not examined requests for restoration of voting rights at the beginning of a session and has recommended that all Members be allowed to take part on the votes that are held during the first days of a session of the Conference. Subsequently, the General Committee reviews the requests made in detail and makes a recommendation to the Conference. Only Member Nations in arrears which

have made requests for restoration of voting rights which are entertained by the Committee are allowed to take part in the votes that take place towards the end of the Conference (including the vote on the level of the budget, the election of the Independent Chairperson of the Council and any ballots which may be held for the election of Members of the Council). However, there were also occasions where the General Committee has examined requests for restoration of voting rights at the beginning of the Conference.

7. In general, the General Committee has recommended the restoration of voting rights of Members which have made a request to that effect providing the reasons for that.

8. There were situations in the past where Members have accepted or requested installment plans for the settlement of their arrears. These plans were reviewed by the General Committee and approved by Conference Resolution. The Conference Resolutions conform to a standard format which identifies the number and amount of annual installments to be paid. It is foreseen that the annual payment of these installments, together with the payment of each contribution in the calendar year of assessment (and any advances to the Working Capital Fund) shall be considered as fulfillment of the financial obligations of the country towards the Organization. It is also foreseen that default in payment of two installments renders the installment plan null and void.

9. At its Thirty-third Session in November 2005, the Conference restored the voting rights of a number of Members and approved some installment plans. On that occasion,

*“32. The Conference expressed its concern at the high number of Member Nations in arrears and held the 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. While taking note of Article III, paragraph 4 of the Constitution whereby the Conference may permit a Member Nation in arrears to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member Nation, the Conference recommended that, in future, the normal course of action in respect of Member Nations in arrears should consist in actively encouraging them to submit an Installment Plan for the settlement of such arrears, as a condition for the restoration of their voting rights.*

*33. The Conference recommended that consideration be given in future that requests for restoration of Voting Rights should be referred to the Director-General for submission to the Autumn Session of the Finance Committee, in Conference years, which would submit its views to the Conference, through the Council, for consideration by the General Committee, without prejudice to the authority of the Conference to make autonomous determinations under Article III, paragraph 4 of the Constitution”.*

10. Discussions took place within the Finance Committee on the how to improve the cash shortage situation of the Organization throughout the biennium 2006-2007 which led to the adoption by the Conference, at its Thirty-fourth Session in November 2007 of two

Resolutions containing a number of measures to encourage prompt payment of contributions and decided to keep the matter under review. The matter was again examined by the Finance Committee throughout the biennium 2008-2009 but no concrete measures were proposed. The Conference, at its Thirty-Sixth Session in 2009 requested that the matter should remain under review. However, presumably in view of a comparative reduction in the number of countries in arrears as compared to the situation which prevailed in 2005 and the reform process that was under way, the particular recommendations made by the Conference in 2005 regarding restoration of voting rights were not implemented.

11. It is important to emphasize that although the issue of the treatment of arrears may be examined by the CCLM from a legal perspective, the matter is primarily one for the Finance Committee.

#### **IV. SUGGESTED ACTION BY THE COMMITTEE**

12. The Committee is invited to review this document and make such comments and observations thereon as appropriate.

13. Taking into account the fact that matters pertaining to the treatment of arrears are traditionally examined by the Finance Committee, the CCLM may wish to recommend that the Finance Committee should examine the matter.