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MEMBERS IN ARREARS IN THE PAYMENT OF THEIR CONTRIBUTIONS TO AN EXTENT WHICH
WOULD JUSTIFY INVOKING ARTICLE 7 OF THE CONSTITUTION:
CAUSES OF DELAYED PAYMENT, AND POLICY AND PRACTICE IN OTHER
UNITED NATIONS ORGANIZATIONS

Report by the Director-General

In response to requests by some delegates at the Forty-third World Health Assembly, this report provides information on the possible causes of delayed payment of contributions and on the policy and practice concerning Members in arrears in other United Nations organizations.

Introduction

1. During the discussion by the Forty-third World Health Assembly of the item "Members in arrears in the payment of their contributions to an extent which would justify invoking Article 7 of the Constitution", it was suggested that the Secretariat should provide the Executive Board and the Health Assembly with information on (a) the possible causes of delayed payment of contributions by some Member States and (b) the policies and practices concerning Members in arrears in other United Nations organizations.

Possible causes of delayed payment of contributions by Member States

2. There are numerous circumstances giving rise to delays in the payment of contributions by Member States, which may be classified under five main headings as follows:

- political and social
- natural disasters on a national scale
- economic and financial problems
- procedural and logistic delays
- other causes

A detailed listing of the different circumstances is provided in Annex 1. It should be noted that while such circumstances may result in some Members being in arrears, others in similar circumstances have managed to pay their contributions in the year in which they were due and have even paid in advance.

Policy and practice concerning Members in arrears in WHO

3. Financial Regulation 5.6 relating to the timing of payment of contributions reads as follows:

"Instalments of contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Director-General referred to in regulation 5.4 or 5.5 above, or as of the first day of the year to which they relate, whichever is the later. As of 1 January of the following year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears."

4. Article 7 of the Constitution of WHO, concerning suspension of voting privileges and services, reads as follows:

"If a Member fails to meet its financial obligations to the Organization or in 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."

5. In May 1955 the Eighth World Health Assembly, by resolution WHA8.13, resolved that "if a Member is in arrears in the payment of its financial contributions to the Organization in an amount which equals or exceeds the amount of the contributions due from it for the preceding two full years at the time of the opening of the World Health Assembly in any future year, the Assembly shall consider, in accordance with Article 7 of the Constitution, whether or not the right of vote of such a Member shall be suspended".

6. In May 1988 the Forty-first World Health Assembly, by resolution WHA41.7, adopted the following statement of the principles to be applied in future:

"1. Towards the end of the year preceding each Health Assembly, the Director-General will invite Members that will, unless corrective action is taken, be in arrears to an extent which would justify invoking Article 7 of the Constitution pursuant to resolution WHA8.13, to submit to the Executive Board a statement of their intentions as to the payment of arrears so that the Health Assembly, when it considers whether or not the right of vote of those Members is to be suspended, can make its decision on the basis of the statements of the Members and the recommendations of the Executive Board.

2. Unless there are exceptional circumstances justifying a different measure, the Health Assembly will adopt a decision, by a two-thirds majority pursuant to Rule 72 of the Rules of Procedure of the World Health Assembly, under which the voting rights of a Member in arrears to the extent referred to in paragraph 1 above will be suspended as from the opening day of the following Health Assembly if at that time the Member is still in arrears to the extent referred to. If the Member is no longer in arrears to the said extent, the decision will lapse and the suspension will not take effect. Any suspension will be without prejudice to the right to request restoration pursuant to Article 7 of the Constitution."

7. The statement of principles contained in resolution WHA41.7 has not been consistently applied by the Health Assembly. In May 1988 the Forty-first World Health Assembly adopted resolution WHA41.20, as a result of which the voting privileges of four Member States, namely, Benin, Comoros, Dominican Republic and Sierra Leone, were suspended as from the opening of the Forty-second World Health Assembly in May 1989. However, in May 1989 the Forty-second World Health Assembly decided not to adopt a resolution recommended by the Executive Board, which called for the suspension of the voting privileges of certain other Member States which were in arrears in amounts which equalled or exceeded the amount of the contributions due from them for the preceding two full years. Similarly, in May 1990 the Forty-third World Health Assembly decided not to adopt a resolution recommended by the Board, which called for application of the principles set out in resolution WHA41.7. Furthermore, in order to maintain equity amongst Member States, the Assembly decided to restore the voting privileges of the three Members whose voting rights remained suspended under resolution WHA41.20.

Comparison of policy and practice of United Nations organizations

8. The policy and practice of the United Nations and four of the largest organizations in the United Nations system (ILO, UNESCO, FAO and IAEA) are described in Annex 2.

9. The main observations to be made from a comparison of the constitutional texts, other regulations and practices of WHO, and those of the other United Nations organizations are as follows:

(a) In the United Nations and the specialized agencies in question, Members in arrears to the required extent shall have no vote in their governing bodies whereas in WHO the Health Assembly may, "on such conditions as it thinks proper, suspend the voting privileges and services to which a Member is entitled". In the United Nations and the other specialized agencies the constitutional texts state that the governing body may nevertheless "permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member" whereas in WHO the statement of principles adopted in resolution WHA41.7 calls for the suspension of voting privileges unless "there are exceptional circumstances justifying a different measure". Thus in the other organizations, suspension is automatic under the Constitution, unless otherwise exceptionally waived by a governing body resolution, whereas in WHO suspension requires a governing body resolution, with a two-thirds majority of those present and voting. In WHO it is not possible, without an amendment of the Constitution, for the Health Assembly to take a decision providing for automatic suspension of voting rights if, at any time in the future, a Member is two years in arrears. The reference to "exceptional circumstances" indicates that each case must be considered on its merits as it arises; and, under a strict interpretation of the wording, which must be followed with respect to Article 7 in so far as it involves the imposition of sanctions, the power to suspend the voting rights of a Member in arrears can be exercised only "if a Member fails to meet its financial obligations to the Organization", and not before. Thus in WHO it is the Health Assembly and not the Constitution (as in other organizations) which determines when and under what conditions suspension can be decided in the case of failure to pay contributions.

(b) In WHO and the other organizations studied, apart from UNESCO, a Member has to be in arrears in an amount which equals or exceeds the amount of the contributions due from it for the preceding two full years for the suspension of voting rights to be considered. In WHO this period has been determined by decision of the Health Assembly whereas in the other organizations it is specified in the Constitution. In UNESCO the Constitution goes one step further, providing for automatic suspension of voting rights in the General Conference if the total amount of contributions due from a Member exceeds "the total amount of contributions payable by it for the current year and the immediately preceding calendar year".

(c) Whereas in the other organizations suspension of voting rights is immediate if the Member is in arrears to the required extent, resolution WHA41.7 affords one further year's period of grace before any suspension can come into effect.

(d) In the other organizations the application of the constitutional provision may be waived in individual cases which were due to "conditions beyond the control of the Member". In WHO a waiver may be made under resolution WHA41.7 where there are "exceptional circumstances justifying a different measure".

(e) In the other organizations, with the exception of UNESCO, the constitutional provisions concerning suspension of voting rights are generally applied. In UNESCO these provisions are generally waived.

Conclusion

10. The above report is provided for the information of the Executive Board in response to requests made by some delegates at the Forty-third World Health Assembly, during the discussion of the item "Members in arrears in the payment of their contributions to an extent which would justify invoking Article 7 of the Constitution".

POSSIBLE CAUSES OF DELAYED PAYMENT OF CONTRIBUTIONS BY MEMBERS

Political and social

War
Civil war
Revolution
Political and social upheavals

Natural disasters on a national scale

Earthquakes
Floods
Famine
Other major disasters

Economic and financial problems

Socioeconomic policy changes
Successive large devaluations
Hyperinflation
Budget deficits
Balance of payments problems
International debt problems
Fall in prices of commodities and other export items
Unfavourable exchange rate of Member's currency against the US dollar

Procedural and logistic delays

Budget approval
Foreign exchange approval
Inter-ministerial approval
Delays in transmission between banks
Different fiscal periods for Member States and WHO
Delays in routing within the government of assessment and reminder letters

Other

Not interested or priority not given to early payment
Not aware of importance of early payment, both as concerns consequences for the Organization and the benefits accruing to the Member State under the financial incentive scheme.

POLICY AND PRACTICE OF OTHER UNITED NATIONS ORGANIZATIONS
CONCERNING MEMBERS IN ARREARS IN THE
PAYMENT OF THEIR CONTRIBUTIONS

Policy

Practice

United Nations

Article 19 of the Charter
of the United Nations

"A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."

In general the policy is strictly followed; a few exceptions have been made by the General Assembly in accordance with the provisions of the second sentence.

International Labour Organisation (ILO)

Article 13.4 of the Constitution of ILO

"A Member of the Organisation which is in arrears in the payment of its financial contribution to the Organisation shall have no vote in the Conference, in the Governing Body, in any committee, or in the elections of members of the Governing Body, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years: Provided that the Conference may by a two-thirds majority of the votes cast by the delegates present permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."

In general the policy is strictly followed.

Section D of the Standing Orders
of the International Labour Conference
Disqualification from voting of
Members which are in arrears in
the payment of their contributions
to the Organisation

ARTICLE 29

Notification to Member in arrears

1. If the Director-General finds that the amount of the arrears due from a Member of the Organisation which is in arrears in the payment of its contributions to the Organisation will, in the event of no payment being received from the Member during the succeeding three months, increase so as to equal or exceed the amount of

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the contribution due from that Member for the two full years preceding the expiration of the said period of three months, he shall send to the Member in question a communication calling its attention to the terms of article 13, paragraph 4, of the Constitution.

2. When the amount of the arrears due to the International Labour Organisation from a Member which is in arrears in the payment of its contribution to the Organisation equals or exceeds the contribution due from that Member for the preceding two full years, the Director-General shall notify the Member in question of this fact and call its attention to the terms of article 13, paragraph 4, of the Constitution.

3. Contributions are due on 1 January of the year to which they relate, but the year in respect of which they are due shall be regarded as a period of grace and a contribution shall be regarded as being in arrears for the purpose of this article only if it has not been paid by 31 December of the year in respect of which it is due.

ARTICLE 30

Notification to Conference and
Governing Body that Member
is in arrears

The notification provided for in paragraph 2 of article 29 shall be brought by the Director-General to the attention of the next sessions of the International Labour Conference, the Governing Body, and any other committee of the International Labour Organisation in which the question of the right to vote of the Member concerned may arise, and to the attention of the electoral colleges provided for in articles 49 and 50 of the Standing Orders of the Conference.

ARTICLE 31

Procedure where proposal is made
to permit Member in arrears to vote

1. Any request or proposal that the Conference should nevertheless permit a Member which is in arrears in the payment of its contributions to vote in accordance with article 13, paragraph 4, of the Constitution shall be referred in the first instance to the Finance Committee of the Conference, which shall report thereon as a matter of urgency.

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2. Pending a decision on the request or proposal by the Conference, the Member shall be entitled to vote.
3. The Finance Committee shall submit to the Conference a report giving its opinion on the request or proposal.
4. If the Finance Committee, having found that the failure to pay is due to conditions beyond the control of the Member, thinks fit to propose to the Conference that the Member should nevertheless be permitted to vote in accordance with article 13, paragraph 4, of the Constitution, it shall in its report -
 - (a) explain the nature of the conditions beyond the Member's control;
 - (b) give an analysis of the financial relations between the Member and the Organisation during the preceding ten years; and
 - (c) indicate the measures which should be taken in order to settle the arrears.
5. Any decision which may be taken by the Conference to permit a Member which is in arrears in the payment of its contribution to vote notwithstanding such arrears may be made conditional upon the Member complying with any recommendations for settling the arrears which may be made by the Conference.

ARTICLE 32

Period of validity of a decision to permit Member in arrears to vote

1. Any decision by the Conference permitting a Member which is in arrears in the payment of its contributions to vote shall be valid for the session of the Conference at which the decision is taken. Any such decision shall be operative in regard to the Governing Body and committees until the opening of the general session of the Conference next following that at which it was taken.
2. Notwithstanding the provisions of paragraph 1 of this article, after the Conference has approved an arrangement under which the arrears of a Member are consolidated and are payable in annual instalments over a period of years, any decision by the Conference permitting that Member to vote shall be valid

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as long as the Member concerned pays both its current contributions and the instalments on its consolidated arrears during the year in respect of which they are due.

ARTICLE 33

Cessation of disqualification
from voting

When, as a result of the receipt by the Director-General of the International Labour Office of payments made by a Member, article 13, paragraph 4, of the Constitution ceases to be applicable to that Member -

- (a) the Director-General shall notify the Member that its right to vote is no longer suspended;
- (b) if the International Labour Conference, the Governing Body, the electoral colleges provided for in articles 49 and 50 of the Standing Orders of the Conference, or any committee concerned, has received the notification provided for in article 30 of the present section, the Director-General shall inform it that the right to vote of the Member is no longer suspended.

United Nations Educational, Scientific
and Cultural Organization (UNESCO)

Article IV, section C, paragraphs 8(b)
and (c) of the Constitution of UNESCO

- "(b) A Member State shall have no vote in the General Conference if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year.
- (c) The General Conference may nevertheless permit such a Member State to vote, if it is satisfied that failure to pay is due to conditions beyond the control of the Member Nation."

The provisions of paragraph 8(b) were waived for all Members at UNESCO's General Conference in 1989.

Paragraphs 3 and 4 of Rule 79 of
the Rules of Procedure of the General
Conference of UNESCO

- 3. Before each ordinary session of the General Conference the Executive Board shall consider communications received from Member States invoking the terms of

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Article IV, paragraph 8(c), of the Constitution and make recommendations thereon in a report to the General Conference.

4. Before taking a decision on the communications referred to in paragraph 3 above or on any other communications of the same nature received after the adoption by the Executive Board of the above-mentioned report, the General Conference may decide to refer the question for examination and report to one of its committees or commissions.

Food and Agriculture Organization
of the United Nations (FAO)

Article III (4) of the Constitution
of FAO

"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."

The policy is generally implemented, with a few exceptions.

International Atomic Energy Agency (IAEA)

Article XIX of the Statute of IAEA

- "A. A Member of the Agency which is in arrears in the payment of its financial contributions to the Agency shall have no vote in the Agency if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two years. The General Conference may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.
- B. A Member which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute may be suspended from the exercise of the privileges and rights of membership by the General Conference acting by a two-thirds majority of the members present and voting upon recommendation by the Board of Governors."

The policy is consistently applied; only seven exceptions have been made in the history of IAEA.