



# COUNCIL

## Hundred and Seventieth Session

13-17 June 2022

### Report of the 116th Session of the Committee on Constitutional and Legal Matters (Rome, 8 June 2022)

#### Executive summary

The Committee on Constitutional and Legal Matters (CCLM) brings to the attention of the Council its findings and recommendations on the:

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

#### Suggested action by the Council

The Council is invited to endorse document CL 170/19, “*Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization*”, and the Draft Resolution .../2023 “*Procedures for the restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization*” as amended and set out in the Annex to this Report and forward it to the 43rd Session of the Conference for adoption.

*Queries on the substantive content of this document may be addressed to:*

Annick VanHoutte  
Secretary, Committee on Constitutional and Legal Matters  
Tel: +39 06570 54287  
Email: [Annick.Vanhoutte@fao.org](mailto:Annick.Vanhoutte@fao.org)

## I. Introduction

1. The Hundred and Sixteenth Session of the Committee on Constitutional and Legal Matters (CCLM) was held on 8 June 2022.
2. The Session, open to silent observers, was chaired by Ms Alison Storsve, who welcomed all the participants.
3. The following Members joined the Session:
  - H.E Mr Khaled Ahmad Zekriya (Afghanistan)
  - Ms Julie Émond (Canada)
  - Mr Esala Nayasi (Fiji)
  - H.E. Ms Mónica Robelo Raffone (Nicaragua)
  - Ms Nina P. Cainglet (Philippines)
  - Ms Zora Weberová (Slovakia)
4. Ms Lamia Ben Redouane (Algeria) was unable to join the Session.
5. The Session was convened in hybrid modality, with some Members participating in person at FAO headquarters (Canada, Nicaragua, Philippines, and Slovakia) and others participating virtually (Fiji and Afghanistan) on an exceptional basis due to the COVID-19 pandemic in Italy and worldwide.
6. The CCLM followed the modalities applied to the CCLM 110th Session, as reflected in the Note from the Chair (Annex 1 to CL 164/2) and agreed to suspend the rules that may be incompatible with the hybrid session, in accordance with Rule VII of the Rules of Procedure.

## II. Item 1: Opening of the Session and Adoption of the Agenda (CCLM 116/1)

7. The CCLM Members took note of the exceptional arrangements for the Session and approved its Agenda.

## III. Item 2: Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization (CL 170/19)

8. The CCLM considered document CL 170/19, "*Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization*".
9. It appreciated the productive consultations conducted by the Independent Chairperson of the Council (ICC) with Members and welcomed the ICC's presentation of Council document CL 170/19, including the Draft Resolution .../ 2023, "*Procedures for the restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization*" ("Draft Resolution").
10. The CCLM recommended amendments to the text of document CL 170/19 and the Draft Resolution in order to align with the Report of the 191st Session of the Finance Committee (CL 170/12). Subject to these amendments, the CCLM considered the document and its Draft Resolution as consistent with the Basic Texts of the Organization.
11. The CCLM invited the Council to endorse document CL 170/19 and the Draft Resolution as amended and set out in the Annex to this Report and forward it to the 43rd Session of the Conference for adoption.

12. The Committee also invited the Council to recommend to Management to explore the feasibility of a contemporaneous application of the UN Scale of Assessments, as is done in other UN specialized agencies, as set out in document CL 170/19.

#### **IV. Item 3: Any other matters**

13. No other matter was raised under this item.

**Annex****I. Background**

1. The General Committee of the 42nd Session of Conference<sup>1</sup> requested the conduct of a comprehensive review on the process of reinstating voting rights for Member Nations in arrears for consideration by the relevant Governing Bodies, including the Committee on Constitutional and Legal Matters (CCLM), and supported by a process of informal consultation led by the Independent Chairperson of the Council (ICC). This request was reiterated by the 167th Session of the Council when it considered matters arising out of the Conference Session.<sup>2</sup>

2. Since, the matter has gone through a two-pronged consultation process, with formal review of the issue by the relevant Governing Bodies, as well as informal consultations led by the ICC with the Membership. Such informal consultations built upon the review of the matter by the 113th and 115th Session of the CCLM the 168th Session of the Council, and the 188th Session of the Finance Committee. This document outlines Members' specific recommendations made in the context of these informal consultations.

3. Following the 42nd Session of the Conference in June 2021, the CCLM considered the issue of the restoration of voting rights for Member Nations in arrears at its 113th Session in October 2021.<sup>3</sup> The CCLM noted that the practice developed by the Food and Agriculture Organization of the United Nations (FAO) was consistent with the approach of most other UN System organizations. The CCLM was of the view that a blanket waiver of the rules regarding voting rights established by the Basic Texts should be avoided, looked forward to additional consultations led by the ICC and recommended that these discussions address whether substantive and practical criteria were needed.

4. A detailed analysis of the practice of the Organization on these matters, past discussion amongst Members, as well as the practice of other UN System organizations is set out in document CCLM 113/3, Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization, and its Web Annex. A comparison of the rules and practices of other organizations with FAO rules and practices may be found in document CCLM 113/3.

5. In its consideration of the Report of the 113th Session of the CCLM, the Council at its 168th Session:

*“recalled the request by the 42nd Session of the Conference for 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 CCLM, supported by a process of informal consultation led by the Independent Chairperson of the Council (ICC) with the Chairpersons and Vice-Chairpersons of the Regional Groups, noted that the practice developed by the Organization over past years on the restoration of voting rights is consistent with the approach of most other UN System organizations, encouraged the ICC to hold transparent and inclusive informal consultations open to all Members on the subject-matter, taking into account the existing rules and procedures, the CCLM’s findings and recommendations and relevant United Nations General Assembly (UNGA) resolutions, as appropriate, and invited the ICC to report the progress to the Council at its next Session”.*<sup>4</sup>

---

<sup>1</sup> C 2021/LIM/22, Report of the Fourth Meeting of the General Committee, paragraph 3.

<sup>2</sup> CL 167/REP, paragraph 11 (a).

<sup>3</sup> CL 168/10, paragraphs 12-16.

<sup>4</sup> CL 168/REP, paragraph 30 (c)). In its consideration of the reports of the Finance Committee, the Council “expressed concern regarding the impact of the non-payment of arrears on the Organization’s activities, Programme of Work and financial situation and recognized the timeliness of its consideration of this issue in view of the global COVID-19 pandemic and its potentially devastating effects on Members, recalled the request of the 42nd Session of the Conference for the conduct of a comprehensive review of the process for reinstating voting rights for Member Nations in arrears for consideration by the relevant Governing Bodies, asked Management to study options, including through leveraging local currencies and repayment plans to address this issue, and looked forward to its consideration by the Finance Committee at its next Session concerning FAO matters, in line with its mandate” CL 168/REP, paragraph 27 (b).

6. In light of this request, the ICC held transparent and inclusive informal consultations open to all Members on the subject-matter, taking into account the existing rules and procedures, the CCLM's findings and recommendations, and relevant United Nations General Assembly (UNGA) resolutions, as appropriate, on 4 March and 20 April 2022.

7. Subsequently, the 115th Session of the CCLM, held on 21-23 March 2022, further addressed the matter and appreciated the update from the ICC on his consultations and welcomed the work being undertaken on a procedure for timely submission of applications, types of information, means of payment and payment plans. The CCLM stood ready to consider, within its mandate, "any criteria developed by this process or draft resolution for consideration by the Council and the Conference."<sup>5</sup>

## **II. Results of the informal consultations led by the Independent Chairperson of the Council with all Members**

8. This section outlines the prevalent issues raised during the informal consultations held by the ICC with the entire Membership of FAO on the subject matter, as well as the specific recommendations and proposals made by Members in this regard.

9. In accordance with Article III.4 of the FAO Constitution, 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 to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member Nation.

10. The consultations took into account the rules and practices of other UN System organizations with respect to four main elements:

- a) the information to be provided to support a statement of inability to pay;
- b) payment plans;
- c) payments in local currency; and
- d) scale of contributions.

### **A. Statement of inability to pay**

11. In line with other UN organizations, Members highlighted the need for Member Nations in arrears requesting exemption under Article III, 4 to provide:

- a) an explanation of the nature of the conditions beyond the Member Nation's control;
- b) the fullest possible supporting information, ~~including which may include, where possible,~~ information on economic aggregates, government revenues, expenditure, foreign exchange resources, indebtedness, and difficulties in meeting domestic or international financial obligations;
- c) an indication of the measures which will be taken in order to settle the arrears; and
- d) any other information that might support the claim that failure to make necessary payments had been attributable to conditions beyond the control of the Member Nation.

12. Members recommended to set a timeline for submission of such requests. They recommended that the restoration of voting rights under Article III.4 of the FAO Constitution should be submitted by Member Nations to the Director-General at least two weeks before the session of the Conference, to ensure a complete review of the requests by the General Committee.

---

<sup>5</sup> CL 170/13, paragraphs 34-37.

13. Members recommended that such requests for the restoration of voting rights under Article III.4 of the FAO Constitution should be submitted by the Permanent Representative of the Member Nation, the designated *chargé d'affaires*, or the responsible minister of the government of the Member Nation.

#### ***B. Payment plans***

14. During the informal consultations, Members discussed the need for Member Nations in arrears who wish to reschedule the payment of their arrears as part of an arrangement to have their voting rights restored to submit with its request in writing to the Director-General a written payment plan.

15. Members recommended that the payment plan should include the following information:

- a) the total amount due, including the current year's assessment;
- b) the period over which payment is proposed;
- c) the minimum amount of payment that the Member Nation intends to make each year;
- d) the date and the amount of the first payment;
- e) an indication of whether the Member Nation expects to request approval from the Director-General to make the payment in local currency, in accordance with the Financial Regulations and Financial Rules; and
- f) a commitment from the Member Nation to pay its future assessed contributions in full and on time and in accordance with the Financial Regulations of the Organization.

#### ***C. Payment in local currency***

16. With regard to the payment of arrears in local currency, Members considered the current practice of the Organization as defined by Financial Regulation 5.6. Aside from the conditions related to exchange rates, Members also set the conditions that payment in local currency would only be possible for Member Nations where FAO has an Office or programme and that such payment is limited to the amount spent by FAO in local currency in that country.

#### ***D. Scale of contributions***

17. Members discussed the economic difficulties faced by several Member Nations and Associate Members, *inter alia*, as a result of the COVID-19 pandemic. Noting the established practice for FAO to follow the United Nations Scale of Assessments, subject to adaptation for the different membership of FAO, some Members highlighted that the time difference between the adoption of the three-year United Nations Scale of Assessments and the two-year FAO Scale of contributions based thereupon could be detrimental to the countries most affected by economic hardship in their capacity to pay, as these countries had to wait one or two years before seeing their share reduced in relative terms. Some Members therefore saw merit in FAO exploring the feasibility of a contemporaneous application of the United Nations Scale of Assessments, as is done in other specialized agencies such as UNESCO.

### **III. Recommendations**

18. Members recommended the Council to submit the draft Conference Resolution .../2023 on the Procedures for the Restoration of Voting Rights and Payment of Arrears, contained in *Appendix A*, for adoption by the 43rd Session of the Conference of FAO.

## Appendix A

## RESOLUTION \_\_ /2023

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

THE CONFERENCE,

**Reaffirming** Article XVIII of the Constitution and the obligation of each Member Nation and Associate Member to contribute annually to the Organization its share of the budget, as apportioned by the Conference, and urging all Member Nations and Associate Members to pay their assessed contributions in full, on time and without conditions;

**Noting** the critical liquidity situation of the Regular Programme in 2018 as a result of delays in the payment of contributions and the continued high level of contributions that remained unpaid from prior years, in particular by major contributors;

~~**Reaffirming** Article XVIII of the Constitution and the obligation of each Member Nation and Associate Member to contribute annually to the Organization its share of the budget, as apportioned by the Conference, and urging all Member Nations and Associate Members to pay their assessed contributions in full, on time and without conditions (UNGA Resolution A/RES/76/238);~~

**Acknowledging** the necessity of maintaining sufficient cash flow to cover obligations and ensure implementation of the approved Programme of Work;

**Acknowledging** the need for a more specific procedure for the payment of arrears in relation to restoration voting rights;

**Recalling** that the Committee on Constitutional and Legal Matters, at its 115th Session, and the Finance Committee, at its 191st Session, convened in March and May 2022, respectively, examined and recommended to the Council at its Hundred and Seventieth Session, to endorse the proposal to complement the General Rules of the Organization in order to strengthen the measures imposed for the non-payment of contributions;

1. **Decides** to adopt the procedures as outlined in this Resolution for the restoration of voting rights under Article III.4 of the FAO Constitution.
2. Member Nations in arrears requesting the restoration of voting rights under Article III.4 of the FAO Constitution should provide, ~~including but not limited to:~~
  - a) an explanation of the nature of the conditions beyond the Member Nation's control;
  - b) the fullest possible supporting information, including which may include, where possible, information on economic aggregates, government revenues, and expenditure, foreign exchange resources, indebtedness, difficulties in meeting domestic or international financial obligations;
  - c) an indication of the measures which will be taken in order to settle the arrears; and
  - d) any other information that might support the claim that failure to make necessary payments had been attributable to conditions beyond the control of the Member Nations.

3. **Requests** for the restoration of voting rights under Article III.4 of the Constitution to be submitted by Member Nations to the Director-General at least two weeks ahead of the session of the Conference concerned, to ensure a complete review of the requests by the General Committee.
4. **Requests** for the restoration of voting rights under Article III.4 of the Constitution to be submitted in writing by the Permanent Representative of the Member Nation, the designated *chargé d'affaires*, or the responsible minister of the government of the Member Nation.
5. Member Nations in arrears who wish to reschedule the payment of their arrears as part of an arrangement to have their voting rights restored should submit with its request in writing to the Director-General a written payment plan.
6. The payment plan as referred to in paragraph 5 should include the following information:
  - a) the total amount due, including the current year's assessment;
  - b) the period over which payment is proposed;
  - c) the minimum amount of payment that the Member Nation intends to make each year;
  - d) the date and the amount of the first payment;
  - e) an indication of whether the Member Nation expects to request approval from the Director- General to make the payment in local currency, in accordance with the Financial Regulations and rules, and with relevant resolutions of the Conference; and
  - f) a commitment from the Member Nation to pay its future assessed contributions in full and on time and in accordance with the Financial Regulations.
7. **Requests** FAO to establish and maintain a publicly accessible, exhaustive and up-to-date information section on the FAO website reflecting the status of payment of assessed contributions.
8. **Requests** the Director-General to include the present Resolution in Volume II of the *Basic Texts of the Organization*.