

CIRCULAR COMMUNICATION TO COMMISSIONERS
AND CONTRACTING GOVERNMENTS
IWC.CCG.206

Arrears of Financial Contributions

At the 53rd Annual Meeting in London the Finance and Administration Committee reviewed document IWC/53/F&A6 "Countries with Financial Contributions Outstanding for a number of years". This paper had been prepared by the Secretariat with the encouragement of the Advisory Committee to try to identify a range of options to deal with the problem of Contracting Governments with substantial arrears of contributions and interest.

There was insufficient time for a detailed examination of the issues raised in IWC/53/F&A6 and therefore, in Plenary, the Commission endorsed the recommendation of the Finance and Administration Committee that Contracting Governments be asked to provide written comments on the document to the Secretariat no later than 31 October 2001. These written contributions will be reviewed by the Advisory Committee with a view to reporting back to IWC/54.

IWC/53/F&A6 is enclosed and the relevant extract from the Report of the Finance and Administration Committee is attached (Attachment 1). In view of the particular significance of this matter, this circular is being sent as individual correspondence to those Governments which, because of their arrears, do not currently receive Commission documentation (Financial Regulation F.2.).

Format of responses

IWC/53/F&A6 is a relatively long and complex document and a decision to act upon one of the options may have consequences for other options or make them redundant. It would promote consistency and assist the collation and consideration of comments if they were submitted in the order and format suggested in Attachment 2. It would also be helpful if you could answer the specific questions included in Attachment 2. However, I would stress that this structure is suggested purely for presentational purposes; it is not intended to define or limit the substance of any comments. Similarly, answers to any of the specific questions will be regarded as advisory and without prejudice to the final position of any Contracting Government.

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Finally, it was realised during the Annual Meeting that IWC/53/F&A6 did not address the related issue of what action can be taken to recover debts from former Contracting Governments which have withdrawn from the Convention with arrears. The Secretariat tries to maintain contact with such Governments and writes to each two or three times a year. Some successes have been achieved e.g. the former Contracting Government of the Philippines recently made a part payment of its arrears and has indicated that the balance will follow in due course. However, such examples are the exception rather than the rule and it would be appropriate for the Commission to address this aspect of the arrears question along with those which have been identified in the document. A further related concern is that, currently, the Commission has no procedure in place in the event that a former member, having withdrawn with arrears, re-adheres to the Convention with those arrears unpaid. The suggested format for responses contained in Attachment 2 includes some first thoughts from the Secretariat on these two related matters.

Action - Contracting Governments are invited to submit comments on IWC/53/F&A6 and additional material to the Secretariat no later than 31 October 2001

Dr. Nicky Grandy
Secretary to the Commission

c.c. Non-member Government Observers (for information)

Extract from
Report of the Finance And Administration Committee

London, Friday 20 July 2001

6.7 Governments with financial contributions outstanding for a number of years

The Secretariat introduced document IWC/53/F&A 6 which had been prepared in consultation with the Advisory Committee. The document identified a range of options to deal with the problem that a number of Contracting Governments were in arrears with their financial contributions to IWC and had been for some years. It was noted that those Contracting Governments had built up debts in the region of £500,000, had had their voting rights suspended and no longer played an active role in the work of the Commission.

The Secretariat explained that overall, the measures taken by the Commission for dealing with Contracting Governments in arrears (as detailed in Financial Regulations F. 1-5) had been successful and at, present, there did not appear to be a problem with Contracting Governments newly falling into arrears. However, the Secretariat noted that if that should happen, the current measures did not prescribe any course of action after the penalties had been applied; more particularly, the changes came too late to have any effect on those Governments which had already acquired substantial arrears

The Secretariat drew attention to Table 1 of the document which summarised the responses from seven other Intergovernmental Organisations on their procedures or experience. The Table highlighted that 4 organisations had the ability to suspend voting rights after periods of 1-2 years. This was automatic in 3 cases and discretionary in the other one. Three organisations had no penalties in the event of failure to pay in time. The personal view of one respondent was that the matter of arrears should be addressed quickly otherwise it might not be taken seriously.

The Finance and Administration Committee noted the comments made that the close attention paid by member governments to the situation of other members which had fallen or appeared likely to fall into arrears, was instrumental in reducing the likelihood of this happening as well as signalling the seriousness with which the matter of financial obligations was viewed. The document had set out three elements which might contribute to a solution to the problem of arrears, namely the further strengthening of existing procedures (e.g. by revising the Rules of Procedure and Financial regulations), having available an effective suite of measures to be swiftly applied if any Contracting Government fell into arrears, and consideration of the merits of an exercise to deal with those Contracting Governments which had already fallen seriously into arrears before the present arrangements took effect. These options were set out in more detail in section 5 of the document.

The USA remarked that their experience with other organisations – they had undertaken legal opinion – was that withdrawal of membership for a Contracting Government that failed to participate and pay its contribution over an extended period of time was not an available option. In response to Switzerland which suggested that greater communication with the Contracting Governments might help find out why they did not participate in the work of IWC and attend its meetings, the Secretariat noted that they made contact with the relevant Contracting Governments about three times a year with generally unproductive results. Monaco commented that in similar cases better results are invariably achieved by arranging a personal, high-level visit to the country and Ministry concerned. The Finance and Administration Committee agreed that the Secretariat should continue regular contacts with the Contracting Governments. Other approaches such as a letter from the Chair of the Commission or from Commissioners might be appropriate as well as using any other opportunities afforded by visits to these countries.

The Finance and Administration Committee recognised that document IWC/53/F&A 6 had raised a number of important issues, among them legal issues, which needed further consideration and it therefore recommended that Contracting Governments should be asked to submit written comments on the document to the Secretariat not later than 31 October 2001. Furthermore the results of the written contributions should be reviewed by the Advisory Committee with a view to reporting back to IWC54.

SUGGESTED FORMAT FOR COMMENTS ON IWC/53/F&A6

Pages 1- 3 of the document covering the introduction and numbered sections 1 to 3 provide background and explanation including the experience and practice of other Intergovernmental Organisations in dealing with arrears of contributions. It would be helpful, in commenting on this part of the document, to address not only the material in the document but also to provide suggestions for general principles which might help to guide the Commission's overall approach.

Numbered sections 4 and 5 of IWC/53/F&A6 explain the structure of the remainder of the document in sections identified as **A**, **B** and **C**. Comments are sought by section under the headings given below. When commenting on any item which might involve re-numbering of Rules or Regulations please identify such items by 'old' and 'new' numbering.

Headings for comments:	Specific Questions
SECTION A Improvements to Existing Procedures	
General	Any comments on existing procedures?
Financial Regulation F.1.	Should an interest penalty be maintained? If 'yes', at what level and for how long? Would you support an amendment to F.1. as indicated in the document?
Financial Regulation F.2.	Is withholding documentation a useful tool? Would you support deletion of F.2. as suggested in the document?
Rule of Procedure E.2. and Financial Regulation F.3.	Would it be helpful to ensure that the suspension of voting rights should occur before an Annual or Special Meeting? Would you support the amendment of Rule of Procedure E.2 and Financial Regulation F.3 as suggested?
Rule of Procedure E.1, and possible new Rule of Procedure E.2 (a).	Should some formal acknowledgment of the financial obligations of adherence to the Convention be required from new members? If 'yes' what form should it take? Would you support amendment of Rule of Procedure E.1. and the inclusion of a new Rule of Procedure E.2 (a) along the lines suggested ?
Financial Regulation E.3,	Would you support amendment of Financial Regulation E.3 as suggested?

SECTION B. New Measures to implement if a Government falls into arrears	
General	Should a more formal process be initiated for reporting on and considering before and/or during each Annual Meeting, the position of Governments in arrears or in danger of falling into arrears ?
<ul style="list-style-type: none"> • Secretary to report after the due date but prior to suspension of voting rights 	If 'yes' what procedure should be followed and at what level?
<ul style="list-style-type: none"> • Secretary to prepare a Commission document at each Annual Meeting for discussion under a specific item on the Plenary agenda 	Is this a useful idea to consider?

SECTION B. New Measures to implement if a Government falls into arrears	
<ul style="list-style-type: none"> Formally approach Governments which may be in difficulties prior to each Annual Meeting for explanations and likely timing of payments 	<p>Is this a useful idea to consider?</p> <p>If 'yes' should the approach be in the form of 'inviting', 'requesting' or 'requiring' ?</p> <p>At what level should the approach be made and by whom?</p>
<ul style="list-style-type: none"> Include formal record of above two measures in the Chairman's Report 	<p>Is this a useful idea to consider?</p>
<ul style="list-style-type: none"> Other available measures 	<p>Are there other measures which should be considered?</p>

SECTION C A once-only exercise to deal with Governments which already have substantial arrears	
General	<p>Is a once-only attempt to resolve the particular problem of Governments with existing extensive (more than 2 –3 years) arrears an acceptable concept?</p>
Options A to H	<p>Which if any of these options should be considered further?</p> <p>Some support has already been indicated for option H. What are your Government's views on this option in particular?</p> <p>The list of options is probably not exhaustive. Are there others which should be considered?</p>

Additional material (not covered in IWC/53/F&A6) Some initial thoughts and questions are given below:	
Governments which withdraw from the Convention with arrears.	
<p>a. Commission to formally request payment – by decision or Resolution at Annual Meeting</p> <p>b. Chairman or Secretary to make formal written representation</p> <p>c. Chairman and/or Secretary to visit the Governments concerned (or the appropriate 'local' diplomatic missions) to seek payment of the debt</p> <p>d. Contracting Governments to make co-ordinated representations at the diplomatic level</p> <p>e. Commission to offer to write-off some or all of the debt (possibly in exchange for an undertaking that any re-adherence by the Governments concerned within a specified period would entail re-instatement of the debt.)</p>	<p>} Any general observations? Should former Contracting Governments with arrears be treated any differently from present members with arrears?</p> <p>} Do you have any suggestions for recovering such debts?</p> <p>} Which, if any, of a. to e. should be pursued ?</p> <p>} Any other suggestions ?</p>
The re-adherence of former members with arrears .	
<p>f. Commission to develop a policy to deal with the future re-adherence of any former member with outstanding arrears.</p>	<p>How should this be handled? By informal guidelines ? By seeking undertakings from withdrawing Governments prior to their withdrawal ? By Rules of Procedure and Financial Regulations ?</p>