

**REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS**  
**SUPPLEMENT No. 10 (2000-2009)**

(Advance version, to be issued in volume II of Supplement No. 10 (forthcoming)  
of the *Repertory of Practice of United Nations Organs*)

**VOLUME II**

**ARTICLE 19**

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## TEXT OF ARTICLE 19

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.

## INTRODUCTORY NOTE

1. Part I, the General Survey, summarizes the decisions of the General Assembly regarding the application of Article 19. Part II, the Analytical Summary of Practice, has three sections. The first is a review of the manner in which the General Assembly addressed the issue of the pending arrears of the former Yugoslavia. The second section provides some details on the procedures adopted by the Committee on Contributions and the General Assembly to treat requests of Member States falling under the provisions of Article 19 to keep their right to vote. The last section of this Part II evokes the debates in the Committee on Contributions and in the General Assembly on possible measures to encourage Member States to pay their contributions to the financing of the Organization in time and in full.

## I. GENERAL SURVEY

2. In each of its annual reports to the Assembly, the Committee on Contributions gave the list of Member States that, by the end of its session - held usually in June - had lost their vote in the General Assembly because of arrears equaling or exceeding the amount of the contributions due by them for the preceding two full years.<sup>1</sup> On the 30<sup>th</sup> of June 2000, 30 Member States of the United Nations had fell under these terms of Article 19 and had no vote in the General Assembly.<sup>2</sup> At the end of June 2009, as had been the case in 2005, only one

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<sup>1</sup> The reports of the Committee on Contributions issued during the period under review were A/55/11, A/56/11, A/57/11, A/58/11, A/59/11, A/60/11, A/61/11, A/62/11, A/63/11, and A/64/11. These reports covered ten sessions of the Committee, from the 60<sup>th</sup> to the 69<sup>th</sup> session. The information and data given in this review have been taken, unless indicated otherwise, from these reports.

<sup>2</sup> These Member States were the following: Burundi, Cape Verde, Central African Republic, Chad, Djibouti, Dominica, Ecuador, Gambia, Grenada, Guinea, Haiti, Iraq, Kyrgyzstan, Liberia, Madagascar, Mauritania, Niger, Republic of Moldova, Rwanda, St Lucia, St Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, Togo, Turkmenistan, Vanuatu, Yemen, Yugoslavia.

Member State was in this situation,<sup>3</sup> and, in 2006, 2007 and 2008, not a single Member State was deprived of its right to vote.

3. The number reached in 2000 -30 Member States with no vote in the General Assembly – was a historical record and the culmination of a trend dating from the beginning of the 1990s. There were eight Member States deprived of their vote in 1990, 12 in 1991, 16 in 1993, 21 in 1994, 18 in 1995 and 1996, 19 in 1997, 23 in 1998, and 24 in 1999.<sup>4</sup> After the peak of 2000, the reduction was achieved rather rapidly in a span of five years: 9 Member States had no vote in 2001, 15 in 2002, 9 in 2003, 7 in 2004 and, as already noted, only one in 2005.

4. During this first decade of the 2000s, a total of 37 Member States lost their right to vote, for one year or for more, not always consecutive, years. Three of these 37 Member States had no vote for five years, two for four years, five for three years, seven for two years, and 20 for only one year.<sup>5</sup> Besides, a majority of these Member States affected by Article 19 in the 2000s were already in this situation, for one or more years, during the 1990s. For example, 13 of the 19 Member States with no vote in 1997 were again in the list of 30 of the year 2000.<sup>6</sup>

5. It should also be noted that these Member States that fell under the provisions of Article 19 during the period under review were all in the lower part of the scale of assessment for the apportionment of the expenses of the United Nations. Of the 30 Member States with no vote in June 2000, 16 were assessed at the minimum rate of 0,001 per cent, five at 0,002 per cent, six between 0,003 and 0.010 per cent, and three between 0.020 and 0,032 per cent. Of the seven Member States with no vote in June 2004, five were at the minimum rate of assessment, two at 0,002 per cent, and one at 0,136 per cent.<sup>7</sup>

6. As for the second element of Article 19, that a Member State in arrears may be permitted to vote if the Assembly is satisfied that such failure to pay is due to conditions beyond the control of the Member, the number of countries concerned did not vary very much during the period under review. The Assembly granted seven exemptions in 2000, seven again in 2007 and 2008, and six in 2009. In the rest of the period, the number was four in

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<sup>3</sup> This Member State was Chad.

<sup>4</sup> See reports of the Committee on Contributions, A/45/11, A/46/11, A/48/11, A/49/11, A/50/11, A/51/11, A/50/11 (55<sup>th</sup> session), A/50/11 (56<sup>th</sup> session), A/51/11, A/53/11 and A/54/11.

<sup>5</sup> The distribution of the 37 Member States by the number of years with no vote in the Assembly was as follows: Chad, Iraq, Liberia: Five years; Central African Republic, Niger: Four years; Kyrgyzstan, Mauritania, Seychelles, Somalia, Vanuatu: Three years; Burundi, Cape Verde, Djibouti, Guinea, Guinea-Bissau, Sao Tome and Principe, Uzbekistan: Two years; Dominica, Ecuador, Benin, Afghanistan, Democratic Republic of the Congo, Gambia, Haiti, Madagascar, Malawi, Republic of Moldova, Rwanda, St Lucia, St Vincent and the Grenadines, Sierra Leone, Togo, Turkmenistan, Tajikistan, Yemen, Yugoslavia: One year.

<sup>6</sup> See A/51/11 and A/55/11.

<sup>7</sup> For the assessments rates see GA resolutions 52/215 of 22 December 1997 and 58/1 B of 23 December 2003.

2001, eight in 2002, ten in 2003 and 2005, eleven in 2004, and nine in 2006.<sup>8</sup> A total of 12 Member States benefited from such exemptions: one for every year of the ten-year period, one for nine years, two for eight years, two for seven years, one for six years, one for five years, two for four years, and two for a single year.<sup>9</sup>

7. In granting these exemptions from the no-vote sanction, the General Assembly had before it, as in the past, recommendations from the Committee on Contributions, but there was, during the decade under review, a marked change in the degree of conformity between decisions and recommendations. In 2000, the Assembly decided on seven permissions to vote, whereas the Committee on Contributions had recommended only four.<sup>10</sup> In 2001 and 2002, the General Assembly decided to grant exemption to a Member State for which the Committee on Contributions had taken “no-action” because the request had, in both years, been presented too late.<sup>11</sup> In 2003, the General Assembly granted exemption to a Member State that submitted its request directly to its President, thus by-passing the Committee on Contributions.<sup>12</sup> In 2004,

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<sup>8</sup> See GA resolutions 55/5 of 26 October 2000, 57/4 of 27 September 2002, 58/1 of 16 October 2003, 59/1 of 11 October 2004, 59/312 of 14 July 2005, 60/237 of 23 December 2005, 61/2 of 12 October 2006, 62/1 of 15 October 2007, 63/4 of 13 October 2008, 64/2 of 8 October 2009.

<sup>9</sup> The distribution of the 11 Member States by the number of years for which they were granted exemption from the no vote under Article 19 during the period under review was the following: Ten years: Comoros; Nine years: Sao Tome and Principe; Eight years: Somalia, Tajikistan; Seven years: Central African Republic, Georgia; Six years: Liberia; Five years: Republic of Moldova; Four years: Burundi, Niger; One year: Iraq, Kyrgyzstan.

<sup>10</sup> The Committee on Contributions examined requests for exemption from seven Member States (all having been submitted on time, that is at least two weeks before the opening of the session of the Committee) and concluded that it was not in a position to recommend exemption under Article 19 for three Member States: Comoros, Sao Tome and Principe, and Tajikistan. It used, for each of these three cases, its standard language to formulate such negative decision: “While recognizing the continuing problems faced by ( ...) (or, “despite its economic problems”, or “while noting the serious economic problems faced by...”), the Committee was not convinced that the failure of (...) to make payment of arrears (or “to make the necessary minimum payment”) was due to conditions beyond its control. The Committee was not therefore in a position to recommend that an exemption under Article 19 be granted.” (see A/55/11, paragraphs 35, 53 and 58.) For each of these three cases, however, the report of the Committee indicated that “some members expressed reservations concerning the Committee’s decision, expressing the view that the failure of (...) to make the necessary payments to avoid the application of Article 19 was due to conditions beyond its control.” (see A/55/11, paragraphs 36, 54 and 59.) Moreover, at the end of the chapter of its report concerning exemptions under Article 19, the Committee noted that “a reservation was expressed by some members regarding the overall consistency of the seven above recommendations in response to the requests for permission to vote (...)” The General Assembly decided that these three Member States, as well as the four other for which the Committee had made a positive recommendation, (Burundi, Georgia, Kyrgyzstan, Republic of Moldova) should be permitted to vote. (see GA resolution 55/5, paragraph 3.)

<sup>11</sup> The Member State was Burundi and the Committee on Contributions made a similar statement in its reports on its 61<sup>st</sup> and 62<sup>d</sup> sessions: “The Committee recalled that the General Assembly, in its resolution 54/237 C, decided that requests for exemption under Article 19 must be submitted by Member States to the President of the General Assembly at least two weeks before the Committee’s session so as to ensure a complete review of the requests. As the Permanent Representative’s letter had been received less than two weeks before its session, the Committee decided that it could take no action on Burundi’s request.” (see A/57/11, paragraph 35, and, for a similar text, A/56/11, paragraph 29).

<sup>12</sup> The Member State was the Niger: see A/C.5/58/4 for a letter of the President of the General Assembly to the Chairman of the Fifth Committee transmitting a letter dated 26 September 2003 from the Permanent

the Assembly took the same decision with respect to two Member States that presented their demand orally in the Fifth Committee at the beginning of its session.<sup>13</sup> In 2005, the Assembly granted exemption to two Member States for which the Committee on Contributions had taken “no-action” and, in both 2005 and 2006, the Assembly took the same decision for a Member State that had presented its request directly.<sup>14</sup>

8. This was, however, the last time during the period under review that there was a discrepancy between the decisions of the General assembly and the recommendations of the Committee on Contributions on exemptions under Article 19. At its 62d, 63d and 64<sup>th</sup> sessions the General Assembly took decisions on exemptions that mirrored exactly the recommendations of the Committee.<sup>15</sup> These decisions were reported in short, quasi-identical resolutions adopted in the first part of October of 2007, 2008 and 2009, that is at the beginning of the regular sessions of the Assembly. The exempted countries were the same seven in 2007 and 2008, and again in 2009 with the exception of Tajikistan, a Member State that ceased to need the permission to vote it had obtained for the last eight years.<sup>16</sup> To reach its decisions, the Assembly had before it only the reports of the Committee on Contributions and it did not have to consider late or direct requests from Member States. The Committee on Contributions itself did not have to deal with late requests.<sup>17</sup>

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Representative of the Niger to the United Nations, and see GA resolution 58/1, paragraphs 4 and 5 for the decision of the Assembly. Paragraph 5 reads as follows: “ (The General Assembly) Concludes that the failure of the Niger to pay the full minimum amount necessary to avoid the application of article 19 of the Charter was due to conditions beyond its control, and invites the Niger to submit appropriate information to the Committee on Contributions if similar circumstances prevail in the future.” On the other hand, also in 2003, the Assembly concurred with the Committee on Contributions that had taken “no-action” on a request from the Democratic Republic of the Congo because the request had been submitted too late. (see A/58/11, paragraphs 84 and 85, and see GA resolution 58/1 which makes no mention of the Democratic Republic of the Congo).

<sup>13</sup> The two Member States were Georgia and Liberia: see GA resolution 59/1, first preambular paragraph and paragraphs 5,6 and 7. Paragraph 6 reads as follows:“(The General Assembly) Concludes that the failure of Georgia and Liberia to pay the full minimum amount necessary to avoid the application of Article 19 of the Charter was due to conditions beyond their control, and invited Georgia and Liberia to submit appropriate information to the Committee on Contributions if similar circumstances prevail in the future.” See also *Official Records A/C.5/59/SR.4*, and corrigendum.

<sup>14</sup> The two Member States were Liberia and the Niger (see A/60/11, paragraphs 109 and 111, and GA resolution 59/312, paragraphs 5, 6 and 7). Regarding the Niger, the Committee on Contributions, while having taken “no-action” because of the late submission of the request, had expressed its” appreciation to the Niger for the payment of the second installment under its multi-year payment plan in 2005.” (see A/60/11, paragraph 111). The Member State considered directly by the Fifth Committee and granted exemption in both 2005 and 2006 was Sao Tome and Principe. (see GA resolutions 59/312, paragraphs 5,6 and 7, and 60/237, paragraphs 7,8 and 9.)

<sup>15</sup> See GA resolutions 62/1, 63/4 and 64/2 and the reports of the Committee on Contributions bearing the symbols A/62/11, A/63/11 and A/64/11.

<sup>16</sup> The Member States exempted in 2007 were: Central African Republic, Comoros, Guinea-Bissau, Sao Tome and Principe, Liberia, Somalia and Tajikistan. The same seven were exempted in 2008, and again in 2009, with the exception of Tajikistan. See GA resolutions 62/1, paragraph 6, 63/4, paragraph 6, and 64/2, paragraph 6.

<sup>17</sup> See A/62/11, A/63/11 and A/64/11.

9. Such smooth relationships between the General Assembly and its advisory body on the granting of exemptions to the no-vote sanction due to arrears, together with the above mentioned drastic reduction of the number of Member States actually deprived of their vote, represented a very significant change in the course of the first decade of the 2000s. To recall the facts: in 2000, 30 Member States had lost their right to vote and, of the seven exemptions decided by the Assembly, three had not been recommended by the Committee on Contributions; in 2009, one Member State had no vote, and the six granted exemptions were recommended by the Committee. Short of a full explanation of this evolution, which would be beyond the scope of this review, it is appropriate to indicate some factual elements of the context of the implementation of Article 19 immediately before and during the period under review.

10. As the number of peace-keeping operations grew dramatically in the course of the 1990s, and as most of these operations became more complex and more costly, the stagnation in real terms of the regular budget was not sufficient to prevent a large increase of the total assessment levied each year on the Member-States of the United Nations. In 1995, this aggregate assessment reached a historically unprecedented four billion dollars, compared to one billion in 1990, and it remained at a comparable level in the following years.<sup>18</sup> During the same period, the number of Member States deprived of their right to vote went from nine in 1990 to eighteen in 1996 and to a maximum of thirty in 2000.<sup>19</sup> It is therefore not unreasonable to state that, in the last decade of the 1990s, the brutal and lasting increase of the level of assessments contributed to the tripling of the number of Member States falling under Article 19.

11. Combined with high assessment levels, was the keeping until 1998 of a minimum assessment rate, or floor, of 0.01 per cent. In the 1990s, as in the first part of the decade under review, Member States having lost their right to vote were almost exclusively at the bottom of the income ladder. A strict application of the principle of capacity to pay measured by the Gross National Product per capita, would have placed many of them under the minimum rate of 0.01 per cent. Such rate was objectively making it difficult for these Member States to avoid accumulating arrears. This was acknowledged by the Committee on Contributions in its report of 2000, the year with the record number of Member States –thirty – with no vote in the Assembly. The tenfold reduction of the floor to 0,001 per cent in 1998 aimed at addressing this

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<sup>18</sup> See A/45/830, of 6 December 1990, Current Financial Crisis of the United Nations, Report of the Secretary-General, A/55/504, 20 October 2000, Improving the Financial Situation of the United Nations, Report of the Secretary-General. For the years following 1995, included for the first decade of the 2000s, a report with the same title, "Improving the Financial Situation of the United Nations, was issued in the fall with data on assessments, arrears, cash flows, and payments to troop contributors. These reports were then updated at the end of December.

<sup>19</sup> See the reports of the Committee on Contributions, A/45/11, A/50/11 and A/55/11.

problem, but, noted the Committee, “a number of these Member States (those which were previously subjected to the 0.01 per cent minimum) were still faced with significant arrears accumulated during earlier scale periods. If those Member States had not had arrears in the past, they would not have fallen under Article 19.”<sup>20</sup>

12. This decision, a scale with a floor at 0,001 per cent, produced its full benefits for low income countries as years went by and as accumulated arrears were reduced, and it certainly contributed to the reduction of “delinquent” Member States from thirty in 2000 to one in 2005 and none in 2006, 2007 and 2008.

13. Another development going in the same direction was the reform of the scales for the regular budget and for peace-keeping operations that was decided by the General Assembly in December 2000.<sup>21</sup> Before this reform, all developing countries, except those classified as “least-developed”, were grouped together in a single category with discounts reaching a maximum of 90 per cent of regular budget assessments and calculated on an ad-hoc basis with complex and changing criteria. The result was that a number of countries still classified as developing but having experienced rapid economic growth over decades –or benefiting from oil exports - were contributing relatively less to the financing of United Nations activities than small developing countries with low per capita income. Such inequities among developing countries were removed with the creation of seven levels in the scale for peace-keeping operations, with precise thresholds in an income per capita ladder, and, most importantly, automatic movements along these levels on the basis of statistical observations conducted every three year by the Secretary-General. The result was that a number of small and relatively poor Member States – the great majority of the 30 having lost their vote in 2000 – were in a better position to pay their dues and avoid building up arrears.

14. In this favorable context of scales of assessments seen after 2000 as broadly fair and transparent – and certainly not penalizing the small and economically weak Member States – the introduction of the “multi-year payment plan” also played a role in the quasi-disappearance of cases of application of Article 19 and, also, in the positive evolution of the working relationships between the General Assembly and the Committee on Contributions. Since they represented an innovation of this first decade of the 2000s, multi-year payment plans are treated at some length in this Part I of this review.

15. In the chapter of its report of 2000 entitled “Measures to encourage the timely, full and unconditional payment of assessed contributions”, the Committee on Contributions, having noted that a number of Member States were faced with “large and persistent arrears in the

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<sup>20</sup> See A/55/11, paragraph 23.

<sup>21</sup> See GA resolutions 55/5 B and 55/235 both of 23 December 2000. These two resolutions are analyzed in details in *Repertory, Supplement No 10*, Article 17(2) (2000-2009).

payment of their assessed contributions” and were “unlikely to be in a position to eliminate their arrears immediately”, expressed the view that agreed that “multi-year payment plans could be a useful tool in reducing arrears to the Organization in the case of those Member States which seek a rescheduling of the payment of their arrears.” The Committee then decided to consider this question at its next session “in the light of any guidance from the General Assembly.”<sup>22</sup>

16. The Assembly, first requested the Committee on Contributions to consider further multi-year payment plans, among other possible measures to “encourage the timely, full and unconditional payment of assessed contributions” and taking into account “the experiences with incentives and sanctions” of other organizations.<sup>23</sup> The Committee, at its session of June 2001, noted that other organizations of the United Nations had such multi-year payment plans and did not consider them incompatible with their equivalent of Article 19, reiterated its conclusion such plans could be useful, provided some precisions on their modalities, and recommended that “the General Assembly, on the basis of a report from the Secretary-General putting forward proposed guidelines for such plans, take a decision on the matter.”<sup>24</sup> The Assembly recognized that “multi-year plans, subject to careful formulation, could be helpful in allowing Member States to demonstrate their commitment under Article 19 of the Charter to pay their arrears” and requested the Secretary-General “to propose guidelines for such multi-year payment plans through the Committee on Contributions.”<sup>25</sup>

17. The Secretary-General submitted such report<sup>26</sup> and the Committee on Contributions “agreed that Member States should be encouraged to submit multi-year payment plans, which constitute a useful tool for reducing their unpaid assessed contributions and a way for them to demonstrate their commitment to meeting their financial obligations.” The Committee then enumerated a number of requirements for such plans, including that they should remain voluntary, that they “should provide for payment each year of the Member State’s current year assessments and a part of its arrears”, that they “should generally provide for elimination of a Member State’s arrears within a period of up to six years”, that the Secretary-General “should be requested to provide information on the submission of such plans to the Assembly, through the Committee on Contributions”, and that “for those Member States that are in a position to submit a payment plan, the Committee on Contributions and the General Assembly should take

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<sup>22</sup> See A/55/11, paragraph 11 and 15. The Committee had already evoked this question at its special session of February 1999 and at its 59<sup>th</sup> session. Different views had been expressed, including on the link of multi-year payment plans and Article 19. Some members of the Committee felt such linking would be inconsistent with the Charter. See in particular A/54/11, paragraphs 84 and 85.

<sup>23</sup> See GA resolution 55/5, paragraph 7.

<sup>24</sup> See A/56/11, paragraphs 62 and 63.

<sup>25</sup> See GA resolution 56/243 A, paragraph 3.

<sup>26</sup> See A/57/65, 16 April 2002, Multi-year payment plans, Report of the Secretary-General

the submission of a plan and its status of implementation into account as one factor when they consider requests for exemption under Article 19.”<sup>27</sup>The General Assembly, in December 2002, simply endorsed “the conclusions and recommendations of the Committee on Contributions concerning multi-year plans, as contained in paragraphs 17 to 23 of its report.”<sup>28</sup>

18. In June 2003, the Committee on Contributions reported that four Member States – Georgia, Republic of Moldova, Sao Tome and Principe and Tajikistan – had worked out multi-years payment plans with the Secretariat. It noted that these plans had all been “submitted in the context of requests for exemption under Article 19”; it reaffirmed its “earlier conclusion that multi-year payment plans are a useful tool for reducing Member States’ unpaid assessed contributions”; and it recommended “that the General Assembly encourage Member States in arrears to consider submitting payment plans.”<sup>29</sup>

19. One year later, the Committee took note of the payment plan submitted by the Niger, noted “with appreciation the considerable efforts made by those which had honored the commitments that they had made when they submitted their multi-year plans” and reiterated its recommendation to the Assembly to encourage Member States to submit such plans.<sup>30</sup> The Assembly simply took note of the report of the Committee and of the report of the Secretary-General.<sup>31</sup> In the following year, in 2005, a payment plan was submitted by Iraq, and the republic of Moldova, having completed payments under its plan, no longer fell under the provisions of Article 19.<sup>32</sup> These developments led the Assembly, prompted again by the Committee on Contributions, to endorse the conclusions and recommendations of the Committee on multi-year plans and to “encourage Member States with arrears to consider submitting such a plan.”<sup>33</sup>

20. By the end of the decade, four Member States – Georgia, Iraq, the Niger and Tajikistan - had, in addition to the republic of Moldova, completed their payments and were no longer under Article 19, and, two Member States –Liberia and Sao Tome and Principe were still in the

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<sup>27</sup> See A/57/11, paragraphs 17 to 23.

<sup>28</sup> See GA resolution 57/4 B, paragraph 1.

<sup>29</sup> See A/58/11, paragraphs 51 to 55 and Conclusions and recommendations, paragraphs 56 to 58. The report of the Secretary-General, the first describing the agreements reached with Member States seeking a multi-year payment plan, was issued on 24 February 2003, with the symbol A/58/63. As requested by the General Assembly in its resolution 57/4, this report was first submitted to the Committee on Contributions. In the following years, similar reports were issued annually by the Secretary-General: see A/59/67, A/60/66, A/61/68, A/62/70, A/63/68 and A/64/68.

<sup>30</sup> See A/59/11, paragraphs 17, 22 and 23.

<sup>31</sup> See GA resolution 59/1, paragraphs 1 and 2.

<sup>32</sup> See A/60/11, paragraphs 57, 63, 64 and 65.

<sup>33</sup> See GA resolution 60/237, section B, paragraph 12.

process of implementing their payment plans.<sup>34</sup> Given that experience, the Committee on Contributions, in the report on its session of June 2009, recognized the “considerable efforts” made by those Member States having completed their plans and concluded that such plans “continued to be a viable means available to Member States to assist them in reducing their unpaid assessed contributions” The Committee, however, noted that no new multi-year payment plans had been submitted and repeated its recurrent recommendation that the Assembly encourage submission of such plans.<sup>35</sup> The Assembly made no explicit mention of multi-year payment plans in its resolutions of 2006, 2007, 2008 and 2009 on requests under Article 19 of the Charter.<sup>36</sup>

21. It was noted at the outset of this General Survey that the sudden and considerable increase in total annual assessments due to the multiplication of peace-keeping operations in the early 1990s, must have played a role in the equally considerable increase in the number of Member States that fell under the no-vote provision of Article 19, a number that reached 30 in the year 2000. In the first decade of the 21<sup>st</sup> century, assessments continue to mount, but arrears remained relatively stable, and, as emphasized above, the number of Member States deprived of their vote in the General Assembly dwindled to one and none. Therefore, a number of factors, including the three identified in this review –a lower minimum rate of assessment, a reform of the scales at the beginning of the decade and the introduction of multi-year payment plans – explain at least partly the behavior of Member States regarding the application of Article 19. The figures on assessments and arrears were the following:

*Total assessments and total arrears, 2000-2009, billions of US dollars<sup>37</sup>:*

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Assessments <sup>38</sup>	3.3	4.0	3.4	3.9	5.9	5.4	5.5	9.2	9.1	8.7
Arrears	3.1	3.9 <sup>39</sup>	2.4	2.4	3.3	2.9	3.4	3.5	3.2	3.4

*Source: Data compiled from the annual reports of the Secretary-General entitled “improving the financial situation of the United Nations”. See A/55/504, A/56/464, A/57/498, A/58/531, A/59/524, A/60/427, A/61/556, A/62/539, A/63/514 and A/64/497. Starting in 2007, the annual report of the Committee on*

<sup>34</sup> See A/61/11, chapter IV, paragraphs 66 to 78, A/62/11, chapter IV, paragraphs 65 to 74, A/63/11, chapter IV, paragraphs 85 to 95, and A/64/11, chapter IV, paragraphs 75 to 84.

<sup>35</sup> See A/64/11, paragraphs 82 and 84.

<sup>36</sup> See GA resolutions 61/2, 62/1, 63/4 and 64/2, all entitled “Scale of Assessments for the apportionment of the expenses of the United Nations : requests under Article 19 of the Charter.”

<sup>37</sup> Figures for assessments and arrears are at the end of October of each year.

<sup>38</sup> Assessments for regular budget, peace-keeping operations, tribunals, and, from mid-decade, capital master plan.

<sup>39</sup> This figure was on 15 October 2001. At the end of December 2001, however, arrears were reduced to 2.1 billion, notably because a payment of \$1,669 million by the United States, as had been promised during the negotiation on the reform of the scales at the end of 2000. See *Repertory, Supplement No10*, Article 17 (2) (2000-2009).

*Contributions gave aggregate figures on the amount of outstanding contributions (arrears) due by Member States. See A/62/11, paragraph 121, A/63/11, paragraph 145, and A/64/11, paragraph 127.*

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. UNPAID CONTRIBUTIONS OF THE FORMER YUGOSLAVIA<sup>40</sup>

22. During 1991-1992, the Socialist Federal Republic of Yugoslavia, which was one of the 51 original members of the United Nations, disintegrated into five successor States: Croatia, Slovenia, The former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, and the Federal Republic of Yugoslavia (Serbia and Montenegro). In the fall of 1992, the Security Council indicated that the Federal Republic of Yugoslavia could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and recommended to the General Assembly that it decide that the Federal Republic of Yugoslavia should apply for membership in the United Nations and that it should not participate in the work of the General Assembly.<sup>41</sup> In the spring of 1993, the Security Council made the same recommendation regarding the participation of the Federal Republic of Yugoslavia in the work of the Economic and Social Council.<sup>42</sup>

23. In response to this recommendation, the General Assembly, in its resolution 47/1 of 22 September 1992, simply repeated the views of the Security Council. It indicated that it considered that the Federal Republic of Yugoslavia could not continue automatically the membership of the Socialist Federal Republic of Yugoslavia and decided that the Federal Republic of Yugoslavia should apply for membership in the United Nations and should not participate in the work of the General Assembly.<sup>43</sup> And, similarly, the Assembly decided a few months later that the Federal Republic of Yugoslavia should not participate in the work of the Security Council.<sup>44</sup>

24. The Assembly, however, did not take any action to effectively terminate the membership of the former Yugoslavia in the United Nations. And it is only when, in November 2000, the General Assembly decided to admit the Federal Republic of Yugoslavia to membership in the United Nations that the membership of the former Yugoslavia (the Socialist Federal Republic of Yugoslavia) was automatically

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<sup>40</sup> The information provided in this section of Part II of the review is mainly drawn from two reports issued by the Secretary General on this issue of the arrears of the former Yugoslavia: the first is contained in the Annex entitled "Unpaid assessed contributions of the former Yugoslavia" to the Letter dated 27 September 2001 from the Secretary-General to the President of the General Assembly (A/56/767, of 9 January 2002); the second is entitled "Unpaid assessed contributions of the former Yugoslavia" (A/60/140 of 16 September 2005).

<sup>41</sup> See Security Council resolution 777 (1992) of 19 September 1992.

<sup>42</sup> See Security Council resolution 821 (1993) of 28 April 1993.

<sup>43</sup> See GA resolution 47/1 of 22 September 1992, Recommendation of the Security Council of 19 September 1992, paragraph 1. This resolution was adopted by a vote of 127-6-26.

<sup>44</sup> See GA resolution 47/229 of 29 April 1993, Recommendation of the Security Council of 28 April 1993, paragraph 1. This resolution was adopted by a vote of 107-0-11.

terminated.<sup>45</sup> The Federal Republic of Yugoslavia had submitted its application for admission to the Secretary-General on 27 October 2000.<sup>46</sup> In the meantime, not only the Assembly did not take action to terminate the membership of the former Yugoslavia, but it included this de facto defunct State in the scale of assessments for the periods 1995-1997 and 1998-2000 and it used, for establishing the rates, the national income data of Serbia and Montenegro.<sup>47</sup>

25. Moreover, during the same period between April 1992 (when the Federal Republic of Yugoslavia came into existence) and October 2000 (when the same State applied for membership), the Federal Republic of Yugoslavia claimed that it constituted the Government of the Member State that was the former Yugoslavia and that it continued the personality under international law of that same State. Accordingly, it performed a number of acts in the name of this former Member State, including availing itself of the right to establish and maintain missions to the United Nations Headquarters and Offices and circulating communications as official documents of the United Nations. It also requested that its officials be invited in meetings of the Security Council as representatives of the former Yugoslavia.<sup>48</sup>

26. In the context of this complex legal and political situation, the Secretary-General wrote to the President of the General Assembly to draw his attention on the arrears incurred by the former Yugoslavia before its membership was automatically terminated in November 2000 by the decision of the Assembly to admit as a Member the Federal Republic of Yugoslavia. "At the time of this decision, wrote the Secretary-General, the former Yugoslavia still had outstanding assessed contributions and these are reflected in the accounts of the United Nations. As the former Yugoslavia has ceased to exist, it is not possible to look to it for payment of these arrears. It will therefore be necessary for a decision to be taken with regard to the treatment of the arrears of the former Yugoslavia. I should like to draw this question to the attention of the General Assembly in the context of its consideration of item 125 (Scale of assessments for the apportionment of the expenses of the United Nations) of the agenda of its fifty-sixth session. The relevant information is provided in the attached note, which has been prepared by the Secretariat (see annex)."<sup>49</sup>

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<sup>45</sup> See GA resolution 55/12 of 1 November 2000, Admission of the Federal Republic of Yugoslavia to membership in the United Nations. This resolution was adopted by consensus. The recommendation of the Security Council, dated 31 October 2000, is contained in document A/55/525, and the application for membership in document A/55/528-S/2000/1043, annex.

<sup>46</sup> The other successor states were admitted in the United Nations at the following dates: Slovenia, Bosnia Herzegovina and Croatia on 22 May 1992 (GA resolutions 48/236, 48/237 and 48/238), and The former Yugoslav Republic of Macedonia on 8 April 1998 (GA resolution 47/225 of 8 April 1993, Admission of the State whose application is contained in document A/47/876-S/25147). In this resolution, it is stated that "this State (is) provisionally referred to for all purposes within the United Nations as "the former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the State." Greece was the state the most directly involved in this controversy.

<sup>47</sup> See A/56/767, paragraph 5.

<sup>48</sup> Ibid, paragraph 6 and 7.

<sup>49</sup> Ibid, covering letter.

27. The annex to this letter indicated that the total amount of outstanding assessed contributions for the former Yugoslavia amounted to \$16,218,555.<sup>50</sup> For the part of this debt which was outstanding at the date of the dissolution of the Socialist Federal Republic of Yugoslavia, “in accordance with the rules of general international law regarding the succession of States in respect of State debts, the United Nations may decide to look for the five successor States of the Socialist Federal Republic of Yugoslavia.” As regards the other part of this debt, incurred between the dissolution of the Socialist Republic and the legal disappearance of this State, “no succession of States having taken place between the former Yugoslavia and any other State” when it ceased to exist, the same general international law does not apply. However, since “the previous Government of the Federal Republic of Yugoslavia claimed to represent the former Yugoslavia (...) the Federal Republic of Yugoslavia may now be considered to be stopped from denying responsibility for the liabilities of the former Yugoslavia (...) On that basis, the United Nations might seek payments from the Federal Republic of Yugoslavia of assessments that became due from and payable by the former Yugoslavia after the final dissolution of the Socialist Federal Republic of Yugoslavia and that remained unpaid as of 1 November 2000.”<sup>51</sup>

28. The annex to the letter of Secretary-General also contained explanations and suggestions concerning the dates of succession to the Socialist Federal Republic of Yugoslavia and the relative shares of the successor States. On the latter, it mentioned the rates set by the General Assembly for the scale of assessments for the period 1992-1994 and mentioned also the proportions of the external debt of the Socialist Federal Republic of Yugoslavia that the five successor States had agreed upon in an agreement signed on 29 June 2001. These proportions were the following: The Federal Republic of Yugoslavia: 38.0 per cent; Croatia: 23.0 per cent; Slovenia: 16.0 per cent; Bosnia and Herzegovina: 15.5 per cent; The former Yugoslav Republic of Macedonia: 7.5 per cent.<sup>52</sup>

29. On all these matters, in order to assist the General Assembly, the Secretariat had requested the Permanent Representatives of the five successor States to indicate their views. In two letters, dated 7 September 2001 and 19 November 2001, the five Permanent Representatives “indicated their common view that the remaining arrears of the former Yugoslavia should be written off.”<sup>53</sup> In its conclusions, the Secretariat presented such writing off as the first option opened to the General Assembly. A second option was to seek from the five successor States payment of the arrears incurred before the dissolution of the Socialist Federal Republic of Yugoslavia. That will require an agreement between these States on their shares. Also opened was the possibility to seek from the Federal Republic of Yugoslavia payment of the arrears incurred by the former Yugoslavia after its dissolution. If all or part of the overall debt was left unpaid, the Assembly will need to take action regarding the balance of the arrears. And, if the Assembly having decided on payment of all or part of the arrears, the successor States did not reach

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<sup>50</sup> Ibid, paragraph 10. The breakdown of this sum of \$16,2 million, given in Appendix 1 of this document was the following, in rounded terms: regular budget: 11,2 million; peace-keeping operations: 4,8 million; tribunals: 0,2 million.

<sup>51</sup> Ibid, paragraph 14.

<sup>52</sup> Ibid, paragraphs 20 and 21.

<sup>53</sup> Ibid, paragraph 22.

agreement within a reasonable time, “the United Nations might claim payment from each of them of an amount that it considered constituted an equitable portion of those arrears.”<sup>54</sup>

30. At its 56<sup>th</sup> session, in March 2002, the General Assembly requested the Committee on Contributions to consider the issues raised in the letter of the Secretary-General and decided to revert to the matter at its 57<sup>th</sup> session.<sup>55</sup> The Committee on Contributions, while concluding “that the question of how to treat the arrears of the former Yugoslavia raised a number of legal and political issues that went beyond its competence as a technical advisory body”,<sup>56</sup> confirmed the facts and observations made by the Secretariat in the annex to the letter of the Secretary-General and added some further precisions. Regarding the arrears incurred before and after the de-facto dissolution of the Socialist Federal Republic of Yugoslavia, it noted that “the respective amounts would depend on the exact date of that event, but that an illustrative calculation indicated that the amounts would be approximately equal.”<sup>57</sup> The Committee also noted that “while the five successor States clearly took the view that arrears of the former Yugoslavia arising after the dissolution of Socialist Federal Republic of Yugoslavia should be written off, their position with regard to the arrears that arose prior to this dissolution was less clear.”<sup>58</sup> One of the conclusions of the Committee was that “since the existence of these (total) arrears was itself undisputed, there was no technical grounds for them to be written off, pending the resolution of the legal and political issues involved.”<sup>59</sup>

31. At its 57<sup>th</sup> session, in December 2002, the Assembly decided “to consider further the question of the outstanding assessed contributions of the former Yugoslavia at its fifty-eight session.”<sup>60</sup> In December 2003, at its 58<sup>th</sup> session, the Assembly took the same decision and deferred consideration of the issue until its 59<sup>th</sup> session.<sup>61</sup> The decision in December 2004 was to defer until the first part of the resumed 59<sup>th</sup> session.<sup>62</sup> And, in April 2004, the Assembly decided deferment without indicating a time for resumption of consideration of the issue. Finally, it was in December 2008 that the General Assembly found itself in a position to adopt resolution 63/249 reflecting agreement on the unpaid assessed contributions of the former Yugoslavia.<sup>63</sup> Deferment of decision during the best part of the decade did not mean, however, absence of discussions, and the most important developments leading to resolution 63/249 needs to be mentioned before reviewing the provisions of this resolution.

32. In the fall of 2002, during the debate in the Fifth Committee on the arrears of the former Yugoslavia, the representative of Ghana made the suggestion that arrears incurred before the

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<sup>54</sup> Ibid, Conclusions, paragraphs 23 to 30.

<sup>55</sup> See GA resolution 56/243 B of 27 March 2002, Scale of assessments for the apportionment of the expenses of the United Nations, paragraphs 1 and 2.

<sup>56</sup> See A/57/11, section IX Arrears of the former Yugoslavia, paragraphs 107 to 122, and, for this quote, the first conclusion of the Committee, paragraph 117

<sup>57</sup> Ibid, paragraph 110

<sup>58</sup> Ibid, paragraph 115

<sup>59</sup> Ibid, paragraph 118

<sup>60</sup> See GA resolution 57/4 B, paragraph 17.

<sup>61</sup> See GA resolution 58/1 B, paragraph 18.

<sup>62</sup> See GA resolution 59/1 B, paragraph 5

<sup>63</sup> GA resolution 63/249 of 24 December 2008, Unpaid assessed contributions of the former Yugoslavia.

dissolution of the Socialist Federal Republic of Yugoslavia be apportioned between the five successor States and that outstanding contributions imputed to this same State for the period between such dissolution and the decision of the Assembly to accept the Federal Republic of Yugoslavia as a Member State be written off.<sup>64</sup> The apportionment would take into account the shares agreed upon by the successor States in their Agreement on Succession Issues of 29 June 2001 and the dates at which these States declared their independence from the Socialist Federal Republic of Yugoslavia.<sup>65</sup> The Secretariat calculated that the proposal of Ghana would mean that the five successor States would have to pay a total sum of \$8,009,454. In November 2006, Slovenia, on behalf of the five successor States wrote a letter to the Secretary-General calling for a conclusion of the issue of arrears of the former Yugoslavia, expressing its agreement with the principles underlying the proposal of Ghana, and rejecting the figure advanced by the Secretariat for the sum owed by the five States. It stated that the “accurate” amount was \$784,545”, i.e. less than ten per cent of the Secretariat’s figure.<sup>66</sup> This letter, together with the two reports of the Secretary-General and other related documentation was before the Fifth Committee when it negotiated resolution 63/249.

33. The first decision of the General Assembly in its resolution 63/249, which was adopted without a vote, was to set the unpaid assessed contributions of the former Yugoslavia, up to 27 April 1992, at \$1,254,230. The 27 April 1992 was the date at which the last of the five successor States, the then Federal Republic of Yugoslavia, has separated itself from the Socialist Federal Republic of Yugoslavia. The set amount was to be “apportioned among the successor States (...) taking into account the respective dates on which each successor State informed the Secretary-General that it had ceased to exist as part of the Socialist Federal Republic of Yugoslavia, and the proportions set forth in article 5(2) of annex C to the Agreement on Succession Issues of 29 June 2001,<sup>67</sup> as well as relevant decisions of the General assembly concerning the United Nations Emergency Force and the United Nations Operation in the Congo.”<sup>68</sup>

34. The second decision of the General Assembly was to write off unpaid assessed contributions amounting to \$14,817,896. The language used in the resolution was the following: “Also decides that, after taking account the remaining advance of \$26,000 to the Working Capital Fund, the net balance of

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<sup>64</sup> This suggestion of the representative of Ghana was well received in the Fifth Committee and reported in the second report of the Secretary-General in the issue of arrears of the former Yugoslavia: see A/60/140, paragraph 29.

<sup>65</sup> Already alluded to above in the context of the shares of the five successor States, the Agreement on Succession Issues was negotiated by the five States in Vienna and signed on 29 June 2001. It came into force on 2 June 2004. It should be noted that the Federal Republic of Yugoslavia was renamed Serbia-Montenegro in February 2003. Then, Montenegro was admitted as a new Member State on 28 June 2006.

<sup>66</sup> See A/C.5/61/11, Letter dated 2 November 2006 from the Permanent Representative of Slovenia to the Secretary-General of the United Nations. Paragraph 21 of the annex to this letter read as follows: “The firm position of the successor States is that the amount calculated by the Secretariat does not reflect all today known facts and is inaccurate and therefore unacceptable for the succession States.” And, paragraph 21 stated that “after extensive review of all pertaining to the financial documentation for the accounts of the Socialist Federal Republic of Yugoslavia, the accurate unpaid assessed contribution amounts to \$784,545.”

<sup>67</sup> Footnote 5 of resolution 63/249 indicated that this document could be found in United Nations, *Treaty Series*, vol. 2262, No. 40296.

<sup>68</sup> See GA resolution 63/249, paragraph 1.

the unpaid assessed contributions to the account of the former Yugoslavia in the amount of \$14,817,896 shall be charged against the respective fund balances.”<sup>69</sup> It might be noted that the addition of the two sums –amount to be paid and amount written off – was still very close to the initial amount of \$18.2 million mentioned by the Secretary-General in his first report on the issue.

35. The third decision was to request the successor States “to inform the Secretary-General as soon as possible of their respective shares of the outstanding amounts and credits” set in the first decision.<sup>70</sup> And the fourth and related decision was that “the issue of the unpaid assessed contributions to the account of the former Yugoslavia shall be considered to be finally resolved upon receipt by the Secretary-General of the information requested in paragraph 3 above, and that the resolution of the issue of the unpaid assessed contributions of the former Yugoslavia to the United Nations shall be applicable only to that issue, without prejudice to any other related decisions and issues.”<sup>71</sup>

36. After the adoption in the Fifth Committee of the draft resolution which became resolution 63/249, the representative of Serbia, who was the only speaker “welcomed the settlement of the long standing issue of the unpaid assessed contributions of the former Yugoslavia, believing that the solution reached was just, fair and in keeping with all the legal norms and practices and the financial regulations and rules of the Organization. He recalled that the five successor States of the former Socialist Federal Republic of Yugoslavia were due to deliberate further, within the committee of financial experts operating under the auspices of the Working Group on Succession Issues, regarding the amounts to be reported to the Secretary-General pursuant to paragraph 3 of the draft resolution. That was also the forum in which to discuss the contribution of \$3 million paid by the Federal Republic of Yugoslavia, that is Serbia and Montenegro, during the period following 27 April 1992, as well as the contribution of the other successor States during the same period (...) The amounts mentioned in paragraph 2 of the draft resolution are no more than accounting statistics, as no contribution should or could have been assessed on a State that did not exist.”<sup>72</sup>

## **B. TREATMENT OF REQUESTS FOR EXEMPTION UNDER ARTICLE 19**

37. A distinction needs to be made between the procedures that Member States seeking exemption are required or encouraged to follow, and the review process of the requests by the Committee on Contributions and the General Assembly.

38. On the procedures, the work done in the 1990s led to the adoption by the General Assembly in December 1999 of a plea regarding the information that Member States in arrears ought to submit and to a related decision on the timing of requests for exemption.<sup>73</sup>

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<sup>69</sup> Ibid, paragraph 2

<sup>70</sup> Ibid, paragraph 3.

<sup>71</sup> Ibid, paragraph 4.

<sup>72</sup> See A/C.5/63/SR.28, *Official Records*, paragraph 5.

<sup>73</sup> See GA resolution 54/237 of 23 December 1999, Scale of assessments for the apportionment of the expenses of the United Nations, section C, paragraphs 3 and 4. For a complete review of the treatment of these issues in the

39. With regard to the information that Member States requesting exemption ought to submit, the Assembly stated the following: “(The Assembly) Urges all Member States in arrears requesting exemption under Article 19 of the Charter to provide the fullest possible supporting information on economic aggregates, government revenues and expenditures, foreign exchange resources, indebtedness, difficulties in meeting domestic or international financial obligations and 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 States.”<sup>74</sup>

40. The decision on the timing for requests was that “requests for exemption under Article 19 of the Charter must be submitted by Member States to the President of the General Assembly at least two weeks before the session of the Committee, so as to ensure a complete review of the requests.”<sup>75</sup>

41. In the report on its session of June 2000, six months after the Assembly had made these pronouncements, the Committee on Contributions stated the following: “Seven requests for exemption under Article 19 were received by the time specified in the resolution (54/237) and none subsequently. The Committee welcomes this improvement in procedures for consideration of requests for exemption under Article 19. While noting that the information available with respect to the seven requests still varied considerably, the Committee recognized and welcomed an overall improvement in the availability of information from the Member States concerned and from the Secretariat, due in part to Member States’ adherence to the provisions of Assembly resolution 54/237 C.”<sup>76</sup>

42. In the following years, the timing for submission of requests was generally well respected. In 2001, three requests were made on time, one after the deadline. In 2002 and 2003, again one was submitted after the deadline, and seven and nine were on time. In 2004, all the ten requests were on time. And, if 2005 was not perfect – eight on time, two not on time – the last four years of the decade saw strict adherence of all Member States seeking exemption under Article 19 to the deadline of submission of their requests at least two weeks before the opening of the annual session of the Committee on Contributions.<sup>77</sup> In 2005, the General Assembly had requested the Secretary-General to bring this deadline to the attention of Member States, “including through an early announcement in the *Journal of the United Nations* and through direct communication.”<sup>78</sup> Thereafter, in all its resolutions on requests under Article 19, the Assembly simply repeated this demand to the Secretary-General.<sup>79</sup>

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1990s, including the provisions of resolution 54/237, see *Repertory, Supplement No.9*, Article 19, General Survey and Part II (d).

<sup>74</sup> Ibid, section C, paragraph 3

<sup>75</sup> Ibid, section C, paragraph 4

<sup>76</sup> See A/55/11, paragraph 22

<sup>77</sup> For this information on timing for submission of requests, see the annual reports of the Committee on Contributions: A/56/11, paragraph 24; A/57/11, paragraph 30; A/58/11, paragraph 61; A/59/11, paragraph 35; A/60/11, paragraph 73; A/61/11, paragraph 81; A/62/11, paragraph 77; A/63/11, paragraph 98; A/64/11, paragraph 87.

<sup>78</sup> See GA resolution 60/237, section A, paragraph 3.

<sup>79</sup> See GA resolutions 61/2, paragraph 3; 62/1, paragraph 3; 63/4, paragraph 3; 64/2, paragraph 3.

43. The request to the submitting Member States for “the fullest possible supporting information” was less successful. The “overall improvement in the availability of information” noted by the Committee on Contributions in 2000, was followed, three sessions of the Committee later, by the remark that “the nature and quality of the information provided by Member States requesting exemptions under Article 19 varied significantly.”<sup>80</sup> Two years after, the Committee noted “with concern” that the nature and quality of the information provided “varied widely”, with some Member States “providing little, if any information to support their request.”<sup>81</sup> In 2008, however, having reviewed the procedural aspects of its consideration of requests for exemption under Article 19, notably the deadline and the provision of sufficient information, the Committee concluded that “these arrangements were working well.”<sup>82</sup> The General Assembly continued to routinely “urge” all Member States requesting exemption “to submit as much information as possible in support of their requests and to consider submitting such information in advance of the deadline specified in resolution 54/237 C, so as to enable the collation of any additional detailed information that may be necessary.”<sup>83</sup>

44. Related to the procedures for submission of requests for exemption was the observation made by the Committee on Contributions that requests “made at the highest level of government showed the seriousness of the commitment made by the Member States to settle their arrears.” The Committee “therefore encouraged all Member States submitting such requests in future to follow that example.”<sup>84</sup>

45. Turning now to the process of review of requests for exemption, the period was marked by unsuccessful efforts to “tighten” the application of Article 19 through two ideas : the first was to apply Article 19 on 1 January and 1 July of each year, rather than on 1 January only; the second was to make calculation based on amounts due and payable at the beginning of each period compared with the total **net assessment** (emphasis added) actually due and payable in the preceding two full years, instead of the **gross assessment** (emphasis added).” In December 1998, the General Assembly had requested the Committee on Contributions, in the context of “recommendations on the possibilities for tightening the application of Article 19 of the Charter”, to study of the implications of these two changes.<sup>85</sup> The Committee, at its 59<sup>th</sup> session, had decided “to consider these questions further at an appropriate future session in the light of any policy guidance from the General Assembly.”<sup>86</sup> At its 60<sup>th</sup> session, in June 2000, the Committee “noted that no such guidance has been forthcoming from the General Assembly, and given other priorities it decided to defer further consideration of these matters to an appropriate future session.”<sup>87</sup>

46. The response of the General Assembly was to keep the two ideas on the agenda by requesting a report from the Secretary-General.<sup>88</sup> The conclusion of this report, issued in February 2001, was as

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<sup>80</sup> See A/58/11, paragraph 64.

<sup>81</sup> See A/60/11, paragraph 77.

<sup>82</sup> See A/63/11, paragraph 102.

<sup>83</sup> See GA resolutions 61/2, paragraph 4, 62/1 paragraph 4, 63/4, paragraph 4, 64/2, paragraph 4.

<sup>84</sup> See A/62/11, paragraph 76, A/63/11, paragraph 97, and A/64/11, paragraph 86.

<sup>85</sup> See GA resolution 53/36 C of 18 December 1998, Assessed budget contributions, paragraphs 3 and 4.

<sup>86</sup> See A/54/11, paragraph 60.

<sup>87</sup> See A/55/11, paragraph 20.

<sup>88</sup> See GA resolution 55/5, paragraphs 5 and 6.

follows: “The General Assembly may wish to take note of the information provided in the present report on the possible biannual calculation for and application of Article 19 and the use of a “net to net” comparison for those calculations. It may also wish either to make final decisions with regard to procedures for the application of Article 19 at this stage, or to provide guidance to the Committee on Contributions in its further consideration of the matter. In the context of a revision of the procedures for the application of Article 19, the Assembly may also wish to consider a suitable revision of the financial regulations of the United Nations.”<sup>89</sup>

47. The Committee on Contributions, having examined first the report of the Secretary-General, noted that the “illustrative information” it contained “supported its earlier conclusions.”<sup>90</sup> It recalled its previous debates on the two proposals and reported the views of its members, from which it emerged that the only “general agreement” was that “any changes decided by the General Assembly should not be implemented immediately, with some members suggesting changes from the beginning of the next scale in 2004.”<sup>91</sup> Then, the Committee presented three conclusions/observations/recommendations to the General Assembly:

- First, it “noted that the two changes proposed would potentially affect a significant number of Member States. This could have consequences for decisions to be taken under Article 108 of the Charter. It could also result in an increase in the number and frequency of Member States requesting exemption under Article 19 (...) This change could also have implications for the Committee’s timetable and programme of work.”
- Second, the Committee “recommended that, should the General Assembly decide to proceed with these changes in the current practices for the application of Article 19, the Assembly should consider implementing them gradually. It might, for example, begin by implementing the net to net comparison and subsequently consider fully the matter of biannual calculations of arrears for the application of Article 19, taking into account the results of the first change.”
- Third, “should the General Assembly decide to proceed with either change, it might also wish to consider providing a grace period before implementation so as to give Member States adequate time to make the necessary adjustments.”<sup>92</sup>

48. In December of the same year, 2001, the General Assembly requested the Secretary-General “to update the information contained in the annexes to his report on the application of Article 19 of the Charter of the United Nations”<sup>93</sup> (this was the above quoted A/55/789). Subsequently, during the remaining years of the decade under review, neither the Committee on Contributions in its reports, nor the General Assembly in its resolutions, made any allusion to these two possible modifications of the

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<sup>89</sup> See A/55/789, 16 February 2001, Application of Article 19 of the Charter of the United Nations, Report of the Secretary-General, paragraph 29.

<sup>90</sup> See A/56/11, paragraph 19.

<sup>91</sup> Ibid, paragraph 10.

<sup>92</sup> Ibid, paragraphs 20, 21 and 22.

<sup>93</sup> See GA resolution 56/243 A, paragraph 2.

application of Article 19. It might be noted, however, that on a related but less complex and less controversial matter, the General Assembly decided in December 2005 that “future exemptions under Article 19 of the Charter shall generally be granted through the end of the session of the General Assembly at which related requests are considered.”<sup>94</sup>

### C. MEASURES TO ENCOURAGE THE PAYMENT OF ARREARS

49. At its 58<sup>th</sup> session, in June 1998, the Committee on Contributions considered the procedures for the application of Article 19 and noted that the loss of voting rights was “currently the only sanction against Member States not meeting their financial obligations” and that “in recent years all but a few Member States falling under Article 19 at the beginning of the year had taken measures to make the necessary minimum payments to retain their vote in the General Assembly before the end of the year.”<sup>95</sup> This observation led the Committee to look for procedural changes that might have a positive impact on payments by Member States in arrears.<sup>96</sup> But, beyond such changes, “pursuant to its general mandate under paragraph 3 of General Assembly resolution 14 A (I)”<sup>97</sup>, the Committee also discussed the possible indexation of arrears, to take into account of the loss of purchasing power of the amounts in question, as well as restricting access for Member States in arrears to recruitment and procurement opportunities offered by the Organization.<sup>98</sup> These were examples of incentives/sanctions that could be put in place to supplement the loss of voting rights under Article 19 and encourage Member States to meet their financial obligations.

50. Having considered this report of the Committee on Contributions, the General Assembly requested the Committee to study the procedural changes it had mentioned and, also, “to consider further and to make recommendations, as appropriate, on the issues raised in paragraph 28 of its report, including measures to encourage the timely, full and unconditional payment of assessed contributions, pursuant to its general mandate under paragraph 3 of General Assembly 14 A(I) of 13 February 1946.”<sup>99</sup> Responding to this request, the Committee, at its session of June 1999, debated and reported upon such measures, in a new section of its report entitled “Measures to encourage the timely,

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<sup>94</sup> See GA resolution 60/237, section A, paragraph 10. Previously, exemptions were generally granted until the 30<sup>th</sup> of June of the following year. In all resolutions subsequent to this decision made through resolution 60/237, exemptions were granted “until the end of the (same) session.”

<sup>95</sup> A/53/11, paragraph 21. In this same paragraph, the Committee illustrated this practice with the following example: “At the beginning of 1997, 53 Member States owed sufficient arrears to fall under Article 19. Of the 49 Member States not granted an exemption, 42 had made the necessary minimum payments to regain their right to vote.”

<sup>96</sup> These procedural changes were mentioned in section B of this review.

<sup>97</sup> GA resolution 14 A (I) of 13 February 1946, Budgetary and financial arrangements, paragraph 3: “A standing expert Committee on Contributions of ten members (instead of seven as laid down in rule 40 of the provisional rules of procedures) be appointed with instructions to prepare a detailed scale of apportionment of expenses, based on the principles set out in paragraph B of section 2 of chapter IX of the Report of the Preparatory Commission for consideration at the second part of the first session.”

<sup>98</sup> See A/53/11, paragraph 28.

<sup>99</sup> See GA resolution 53/36 C of 18 December 1998, Assessing budget contributions, paragraph 5.

full and unconditional payment of assessed contributions.” The measures were divided into nine categories and detailed comments were made under each of them. They were: 1 Budgetary surpluses; 2 Reimbursement of troop contributors; 3 Incentives payments and credits; 4 Redeemable peace-keeping certificates; 5 Interest or indexation of arrears; 6 Ineligibility for elections; 7 Recruitment and procurement; 8 Multi-year payment plans; 9 Other proposals.<sup>100</sup> The General Assembly decided that the Committee “should not consider further the questions” pertaining to categories 2 and 4 above, and otherwise reiterated its request made a year earlier to the Committee for a consideration of measures to encourage the timely, full and unconditional payment of assessed contributions.<sup>101</sup>

51. Such was the situation in January 2000 at the beginning of the period under review. In its reports for the next three following years, the Committee on Contributions kept a chapter entitled “Measures to encourage the timely, full and unconditional payment of assessed contributions”, as it had started to do for its report in 1999.<sup>102</sup> Then, in 2003, 2004 and 2005, the title of this chapter was changed to read “Measures to encourage the payment of arrears.”<sup>103</sup> In the report of 2005, the last of the three conclusions of the brief chapter under this title was the following: “The Committee decided not to consider further the question of measures to encourage the payment of arrears unless it receives any guidance from the General Assembly.”<sup>104</sup> The Assembly took note,<sup>105</sup> and in the subsequent four years of the decade never mentioned again in its resolutions the measures that could be put in place to encourage payment of assessed contributions and payment of arrears. The Committee on Contributions followed suit and dropped this issue from the agendas of its sessions of 2006 to 2009.

52. This does not mean that nothing had been achieved since the Assembly had requested the Committee to engage in this type of work at the end of the 1990s. Of the nine categories of measures proposed by the Committee and listed above, one came to fruition: this was the development of Multi-year payment plans, an innovation that was treated at some length in the first part of this review. The other possible measures to encourage Member States to refrain from incurring arrears – those enumerated in 1999 and those suggested in the following years – were thoroughly studied but could never be agreed upon. The different episodes of this unsuccessful effort need to be recalled.

53. The Committee on Contributions, the members of which had different views on most of the measures under study, indicated in the report of its 60<sup>th</sup> session, held in 2000, that “it was suggested that a number of the proposals considered then (at its 59<sup>th</sup> session) were either beyond the terms of reference of the Committee or raised serious political questions for which the guidance of the Assembly would be required.” It then decided to limit its work at its next session, apart from multi-year payment plans, to “the possibility of indexation or of interests of arrears and the new assessed fund suggested by

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<sup>100</sup> See A/54/11, chapter IV, section C, paragraph 61 to 86.

<sup>101</sup> See GA resolution 54/237, section B, paragraphs 1 and 2.

<sup>102</sup> See A/55/11, chapter III, A/56/11, chapter IV, and A/57/11, chapter IV, all three chapters with the same title: “Measures to encourage the timely, full and unconditional payment of assessed contributions.”

<sup>103</sup> See A/58/11, chapter VII, A/59/11, chapter VI, and A/60/11, chapter V, all three chapters with the same title: “Measures to encourage the payment of arrears.”

<sup>104</sup> See A/60/11, paragraph 70.

<sup>105</sup> See GA resolution 60/237, section C, paragraph 15.

one of its members at its fifty-ninth session.”<sup>106</sup> The General Assembly did not mention the latter idea, but added “early reimbursement of troop contributing countries” and “further suggestions” to the measures to be further considered by the Committee.<sup>107</sup>

54. In the report of its 61<sup>st</sup> session, the Committee devoted six pages to the measures it discussed. Leaving aside multi-year payment plans, its main conclusions were the following:

- First, on “general issues”, the Committee stated that “it might be prudent to fix the deadline for timely payment of assessment from the date of issuance of the assessments rather than from the date of their receipt (...) This could be accompanied by a short extension of the deadline, perhaps from 30 to 35 days. Such a change would require a revision of the financial regulations and rules of the United Nations and there would need to be some provision for the treatment of timely but misdirected payments or those that come to the Secretariat late even though paid on time.” Also, “it would be necessary for the General Assembly to decide, for particular measures, whether this related to all assessed contributions or would be applied to an account-by-account basis.”<sup>108</sup>
- Second, on “indexation of and interest of arrears”, the Committee concluded that “indexation of arrears would pose more complex technical issues than would the imposition of interest.” And, “should the General Assembly decide to introduce interest charges on arrears, the rate should be fixed at a low level (...) It should be done only with regard to arrears arising after the adoption of the decision (and) this would require a review of the financial regulations.” Then, the Committee “decided to consider this question further at its 62d session **in the light of any guidance from the General Assembly** (emphasis added). In that context, it agreed that issues to be addressed included: (a) The date from which indexation or interest charges would accrue; (b) The index or interest rate that should be applied; (c) The periodicity or indexation or interest charges; (d) The basis on which the charge should be calculated; (e) Whether the charges would be compounded in the event of continued non-payment; (f) The appropriate use of for income from indexation or interest charges.”<sup>109</sup>
- Third, as to the “early reimbursement of troop-contributing countries,” the Committee had difficulties interpreting the request from the General Assembly to consider this measure. Some members understood this request as relating “to the idea that only those Member States which are current in their payments to the United Nations should be given priority in reimbursement of troop and equipment costs. Other members, however, did not agree to this interpretation (...) It was suggested that such a policy might discourage some Member States from contributing to peace-keeping operations.” In conclusion, the Committee “agreed that it will consider the matter further at a future session on the basis **of further guidance from the General Assembly**

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<sup>106</sup> See A/55/11, paragraphs 9 and 10.

<sup>107</sup> See GA resolution 55/5, paragraph 7.

<sup>108</sup> See A/56/11, paragraphs 48 and 49.

<sup>109</sup> Ibid, paragraphs 57 to 60.

(emphasis added).<sup>110</sup>

- Fourth, as regard the idea of “a new assessed fund” in which “the contributions of each Member State would depend on its payment record”, the Committee “felt that the proposal was overly complicated and was unlikely to prove effective in encouraging timely, full and unconditional payment of assessed contributions. The Committee therefore decided not to consider the proposal further.”<sup>111</sup>
- Fifth, was the idea of “crediting budgetary surplus only to Member States that are current with their financial obligations to the Organization.” The Committee noted that “unencumbered or surplus balance under the regular budget were returned to Member States through a corresponding reduction of the overall level of a subsequent assessment, while surpluses arising in peace-keeping accounts were typically allocated among individual Member States. The Committee also noted that these surplus often did not reflect cash resources due to the late payment or non-payment of assessed contributions for peace-keeping operations. Some members considered that this proposal could encourage more timely payments of assessed contributions. Others had doubts about its justification and effectiveness.” The Committee “decided to consider the question further at a future session, and in particular the technical issues raised in paragraph 67 of its report on its fifty-ninth session, **in the light of any guidance from the General Assembly** (emphasis added).”<sup>112</sup>
- Sixth, was the idea of “having incentive payments keyed to the payments status of Member States.” Views of members again differed on this measure. Its effectiveness was also questioned. The Committee “agreed that it could consider the matter at a future session **on the basis of any guidance from the General Assembly** (emphasis added).”<sup>113</sup>
- Seventh, was the proposal that “Member States in arrears should be ineligible for election to committees and other bodies.” The Committee recalled that “in an earlier opinion, the Legal Counsel had concluded that the proposal (...) is not a sanction provided for in the Charter and would therefore not be in keeping with Article 19.” Therefore, “in view of the legal and political issues involved, the Committee decided to consider this proposal further only if the General Assembly requested it to do so.”<sup>114</sup>
- Eight and last, was the proposal “to restrict access of citizens and companies of Member States in arrears to opportunities for recruitment and procurement.” Here, the Committee “reaffirmed the serious doubts that had been expressed at its 59<sup>th</sup> session as to whether the proposal to restrict the access of member States in arrears to opportunities for recruitment and

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<sup>110</sup> Ibid, paragraphs 64 to 66.

<sup>111</sup> Ibid, paragraphs 67 and 68.

<sup>112</sup> Ibid, paragraphs 70 and 71.

<sup>113</sup> Ibid, paragraph 72.

<sup>114</sup> Ibid, paragraph 74.

procurement fell within its terms of reference, raising as it did a variety of complex issues outside the Committee's area of competence."<sup>115</sup>

55. The response of the General Assembly, besides recognizing the interest of multi-year payments plans and requesting the Secretary-General to propose guidelines for their development and use, was the following: " (The General Assembly) requests the Secretary-General to propose or consider further measures to encourage Member States in arrears to reduce and eventually pay their arrears, and to report thereon to the General assembly during the main part of its fifty-seventh session for subsequent consideration at its resumed fifty-seventh session."<sup>116</sup> In its report on its session following this resolution of the General Assembly, the Committee on Contributions noted that it had considered the report of the Secretary-General on multi-year payment plans and that "it was also provided with a copy of the Secretary-General's report on measures to encourage Member States in arrears to reduce and eventually pay their arrears (A/57/76)." It decided to consider further (again apart from multi-year payment plans) only two possible measures: "the imposition of indexation of or interest on arrears and the proposal to credit surplus balances only to Member States that are current with their financial obligations to the Organization."<sup>117</sup>

56. On the first measure, the indexation of and interest on arrears, the Committee concluded the following in the report of this same 62d session held in June 2002: " The Committee recalled and reaffirmed its conclusions and recommendations at its sixty-first session concerning the question of indexation of and interest on arrears. In that connection, it recalled in particular its conclusion that, if the General Assembly decided to introduce interest charges on arrears, the rate should be fixed at a low level and should not have retroactive effect. The Committee felt that this annual rate should not exceed 1 per cent."<sup>118</sup> Regarding the second measure, the treatment of budgetary surpluses, the Committee noted the approach proposed in the report of the Secretary-General (A/57/76) and did not offer a conclusion or a recommendation (it had done so in the reports of its 59<sup>th</sup> and 61<sup>st</sup> sessions) but stated the following: "Members of the Committee did not agree on the merits of the suggestion or on the proposals for its implementation but agreed that the Committee could revert to the matter should the General Assembly decide to proceed with it."<sup>119</sup>

57. The next step was, in April 2003, the request of the Assembly to the Committee "to make recommendations on **measures with a positive impact** (emphasis added) to encourage Member States to pay their arrears, and to report thereon to the General Assembly at its fifty-eight session."<sup>120</sup> The

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<sup>115</sup> Ibid, Paragraph 75.

<sup>116</sup> See GA resolution 56/243 A, paragraph 6.

<sup>117</sup> See A/57/11, paragraphs 14 and 15. In paragraph 14, the Committee "noted that it had considered a number of other possible measures at earlier sessions but decided not to consider them further at the current session for various reasons, including reservations expressed at earlier sessions and the need for guidance or further mandates from the General Assembly."

<sup>118</sup> Ibid, paragraph 24.

<sup>119</sup> Ibid, paragraph 27.

<sup>120</sup> See GA resolution 57/4 C, paragraph 2. In the other paragraph of this very brief resolution, the Assembly took note of the report of the Secretary-General on measures to encourage Member States to reduce and eventually pay their arrears (A/57/76).

Committee on Contributions devoted a very short chapter of the report on its 63d session on this question. It “decided to consider the question of measures to encourage the payment of arrears further at its 64<sup>th</sup> session, **in the light of any guidance from the General Assembly** (emphasis added) and of updated information from the Secretariat on the related experience of other organizations of the United Nations system and to report thereon to the General Assembly before the end of its 58<sup>th</sup> session.”<sup>121</sup> The Assembly noted this decision of the Committee and requested it to report thereon at its 59<sup>th</sup> session.<sup>122</sup>

58. In its report on its session of 2004, the Committee recalled that it had considered this question since 1998 and that its conclusions were reflected in earlier reports. It repeated a number of these conclusions and recommendations, including “that it might be prudent to fix the deadline for timely payments from the date of issuance of the assessments, rather than from the date of their receipt, and to extend the deadline from 30 to 35 days.” It also repeated its conclusions on measures such as charging interests on arrears. It evoked a new proposal from one of its members that would grant rebates on payments within the three months deadline and charge penalties for non-payment after nine months, thus establishing a “neutral” period between three and nine months after the assessments. It recalled the decisions of the Assembly that the Committee should cease considering a number of measures. And it did not obfuscate the differences of views among its members that had marked its work.<sup>123</sup>

59. At its 59<sup>th</sup> session, the Assembly was silent on this question and, in 2005, came the decision of the Committee and the reaction of the Assembly that were mentioned earlier and that effectively stopped, at least for the period under review and in the context of the implementation of Article 19, debates and decisions on measures to encourage Member States to pay their dues and reduce and eliminate their arrears. The context of this “failure” ought, however, to be recalled. In addition to the relatively successful implementation of the measure known as multi-year payment plans, it was already pointed out that the total amount of arrears remained more or less constant during the decade, whereas total annual assessments increased threefold. Also, only one Member States lost its right to vote during the second part of the first decade of the 2000s.

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<sup>121</sup> See A/58/11, chapter VII, paragraph 130.

<sup>122</sup> See GA resolution 58/1 B, paragraph 13.

<sup>123</sup> See A/59/11, chapter VI, paragraphs 24 to 32.