

NOTE REGARDING LONG-TERM PENDING CONTRIBUTIONS TO ACCOBAMS



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At the Eighth Meeting of the Parties (MOP8), a financial report covering the period up to 30 June 2022 was presented. As of that date, the total balance of unpaid contributions amounted to 162 176 €, although some late payments were received thereafter. Eleven Parties had not paid their Ordinary Contributions by that time.

In this regards, Resolution 8.2 urged Parties to:

- Consider paying for the entire triennium in one instalment at the beginning of the period, especially those subject to minimum contributions;
- Pay their contributions as promptly as possible, but, in any case, no later than at the end of March of the corresponding year and in compliance with national legislation
- Pay their pending contributions within a reasonable time, at the latest two to three months after the end of 2022, to allow closure of the 2020–2022 budget.

In addition, MOP8 requested the Bureau to propose to the following Meeting of the Parties, a procedure concerning the management and the recovery of long-term pending contributions (Resolution 8.2, para. 11 b).

During the 2023-2025 triennium, the Bureau emphasized the importance of maintaining constructive relationships with all Parties, recognizing that the involvement of all ACCOBAMS countries is essential in achieving the Agreement's objectives, despite the existence of long-term pending contributions.

Bureau members agreed to prepare some proposed restrictions on voting rights, on eligibility for elections and on access to funding for Parties with long-term pending contributions as it is reflected in Draft Resolution 9.2.

A legal analysis of these aspects was prepared to assist the Bureau in formulating its views. It is proposed that the Rules of Procedure for the Meeting of the Parties will be amended accordingly to reflect these provisions and to ensure that the measures are formally integrated into the governance framework of ACCOBAMS.

This note and the relevant Draft Resolutions aim to ensure the financial sustainability of ACCOBAMS while preserving inclusivity and cooperation among all Parties.

NOTE REGARDING LONG TERM PENDING CONTRIBUTIONS TO THE ACCOBAMS*Legal analysis by Tullio Scovazzi¹*

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1. Terms of Reference

The legal consultant is asked to present a paper on the questions relating to conclusion 7 of the ACCOBAMS² Bureau meeting of 22 and 23 November 2023³. On that occasion, the ACCOBAMS Secretary presented to the Bureau a note on long-term pending contributions⁴, stating that seven Parties had unpaid contributions regarding the 2020-2022 period and previous years and that, as of 30 September 2023, nine Parties were still to make their respective payments.

The ACCOBAMS Secretary also recalled that the eighth Meeting of the Parties requested the Bureau to propose to the following Meeting of the Parties a procedure concerning the management and the recovery of long-term pending contributions (Resolution 8.2, para. 11 b)⁵.

After having discussed the matter, the Bureau adopted conclusion 7, providing as follows:

“The Bureau favoured the approach of preserving good relationship with all Countries, despite the existence of long-pending ordinary contributions, as in order to progress towards ACCOBAMS objectives the involvement of all ACCOBAMS countries is necessary.

The Secretariat was requested to present a draft document to the next Meeting of the Bureau, taking into account the following aspects:

- a restriction of the right to vote and to the involvement as Bureau or Scientific Committee members for Parties which are three or more years behind in paying their annual contributions on the date of the opening session of the Meeting of the Parties (MOP), unless these Parties provide the Secretariat a formal letter explaining the ‘exceptional circumstances’ originating the delay in payment, which is then to be deemed acceptable or otherwise by the MOP;
- a restriction to funding projects under the Supplementary Conservation Fund for governmental bodies from Parties which are five or more years behind in paying their contributions on the date of the opening of the MOP; however, national NGOs from these Parties are not to be affected by such restriction”.

2. The ACCOBAMS Provisions on Contributions and on Arrears in Payment

Treaties which establish international organizations or provide for the convening of periodical meetings of the parties usually have provisions about the payment of financial contributions by parties to the secretariats of the organization or treaty and, in certain cases, about the adoption of measures relating to parties non-complying with their financial obligations.

The ACCOBAMS includes two provisions about the Agreement budget. According to Art. III, para. 8:

“At each of its ordinary sessions, the Meeting of the Parties shall: (...)

e) adopt a budget for the next financial period and decide upon any matters relating to the financial arrangements for this Agreement; (...).”

Under Art. IX, the scale of contributions to the budget of the Agreement is to be determined by the Meeting of the Parties at its first session (para. 1). Decisions relating to the budget and any changes to the scale of contributions that may be found necessary are adopted by the meeting of the Parties by *consensus* (para. 2). The Meeting of the Parties may establish a supplementary conservation fund from voluntary contributions of Parties or from any other source in order to increase the funds available for monitoring, research, training and projects relating to the conservation of cetaceans (para. 3).

² Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (Monaco, 1996).

³ See *Report of the Fifteenth Meeting of the ACCOBAMS Bureau*, ACCOBAMS-BU15/2023/Doc13, p. 6.

⁴ ACCOBAMS-BU15/2023/Doc09.

⁵ See *infra*, para. 5.

There is no provision in the Agreement on the question of Parties in arrear with the payment of their contributions and the relevant consequences. However, the matter is regulated by Art. 14, para. 2, of the Rules of procedure for the Meeting of the Parties:

“Representatives of Parties which are three or more years behind in paying their subscriptions on the date of the opening session of the Meeting of the Parties shall not be eligible to vote. However, the Meeting of the Parties may allow such Parties to continue to exercise their right to vote if it is satisfied that the delay in payment arises from exceptional circumstances”⁶.

A Party “not eligible to vote” can be considered as temporarily suspended from the right to vote. This suspension is limited to the right to vote at the Meeting of the Parties and does not affect the participation of the defaulting Party to the ACCOBAMS Agreement as a whole or any other rights and obligations arising from this treaty. For instance, the defaulting Party keeps the right to attend the Meeting of the Parties and to participate in its discussions, even though it is not entitled to cast its vote. It also entitled to nominate one of its representatives for the Bureau and to nominate a candidate for the Follow-up Committee.

The suspension applies automatically, in the sense that it is a mandatory consequence of the mere fact of a Party being three years or more behind the payment of the due subscriptions, without a need for a decision in this regard by the Meeting of the Parties. The critical moment to evaluate whether the breach occurs is the date of the opening of the Meeting of the Parties. It is implied that the defaulting Party resumes its right to vote when the due subscriptions are paid or when the amount of the unpaid subscriptions becomes less than what is due for three years.

In ACCOBAMS practice, in 2016, at the beginning of the Sixth Meeting of the Parties, the Secretary informed the meeting that three Parties were three or more years behind in paying their ordinary contributions⁷. Two of them were thus implicitly considered as not eligible to vote⁸, while the third⁹ was granted the justification of “exceptional circumstances”¹⁰. In 2019, at the beginning of the Seventh Meeting of the Parties, the Secretary informed the meeting that she contacted the Focal Points of two Parties that were three or more years behind in paying their ordinary contributions¹¹. As only one of them¹² was granted the justification of “exceptional circumstances”¹³, the other was implicitly considered as not eligible to vote.

The suspension of the right to vote has some consequences also for the determination of the required majority in the Meetings of the Parties. In applying Art. III, para. 6, or Art. X, para. 6, the Party suspended from voting cannot be taken into account for the calculation of the two thirds majority “of the Parties present and voting”.

However, it should be taken into account that, in most cases, the suspension of the right to vote has more a moral than an effective weight. The rule for ACCOBAMS Meetings of the Parties is to adopt decisions by *consensus*. In international practice, *consensus* is understood as the adoption of an instrument without a formal voting and in the absence of any request for voting. Within the ACCOBAMS Meeting of the Parties, voting takes place only in a few specified cases, namely where *consensus* cannot be achieved in respect of matters covered by the annexes to the Agreement (Art. III, para. 6) or where an amendment to the Agreement is proposed (Art. X, para. 4).

Incidentally, it is questionable whether the position of the defaulting Party should be taken into account for the determination of the existence of a *consensus*. The preferable answer seems a negative one, as the very purpose of

⁶ As stated in the records of the first ACCOBAMS Meeting of the Parties, “(...) the Secretariat made it clear that, generally speaking, the draft was based on the Rules of Procedure of the Meetings of the Parties of the mother Convention (CMS), of its Agreements and of the Barcelona Convention” (*Proceedings of the First Session of the Meeting of the Parties of ACCOBAMS* (Monaco, 28 February – 2 March 2002), para. 17).

⁷ See *Report of the Sixth Meeting of the Parties to ACCOBAMS*, 2016, p. 5.

⁸ Romania and Syria.

⁹ Libya.

¹⁰ *Infra*, para. 4.

¹¹ See *Report of the Seventh Meeting of the Parties to ACCOBAMS*, 2019, p. 7.

¹² Libya.

¹³ *Infra*, para. 4.

the suspension seems to prevent the defaulting Party from participating in any kind of decision-making process, irrespective of the existence of a formal voting¹⁴.

3. The Suspension of the Voting Right

The suspension of the right to vote is to be considered as a sanction for a Party that does not comply with one of the obligations arising from the ACCOBAMS Agreement, that is to pay its subscription to the budget of the Agreement according to the scale determined by the Meeting of the Parties (Art. IX, para. 1). If the lack or delay of payments has a serious nature, this could be seen as a breach of an obligation essential for the accomplishment of the general purpose of the ACCOBAMS, which is to ensure that coordinated measures are taken to achieve and maintain a favourable conservation status for cetaceans (Art. II, para. 1), and adversely affecting the implementation of the Agreement. Under Art. 60, para. 3, of the 1969 Vienna Convention on the Law of Treaties, the repudiation of the treaty or the violation of a provision essential to the accomplishment of its object or purpose are material breaches that can determine the termination or the suspension of the treaty for the defaulting party.

It is evident that the ACCOBAMS drafters have taken the position that simply being in arrear with the payment of the subscription is in general not a serious violation leading to the termination or suspension of the Agreement for the responsible Party. They have chosen a less severe sanction for the defaulting State, consisting in the suspension of its right to vote at the meeting of the Parties. The taking of such a position is allowed by the above-mentioned Vienna Convention, according to which the regime on the termination or suspension of a treaty as a consequence of its breach does not affect any provision in a treaty applicable in the event of a breach (Art. 60, para. 4).

However, it is reasonable to believe that, if the lack of payment of contributions were to persist for a considerable number of years, nothing would prevent the ACCOBAMS Parties from invoking this situation as a ground for terminating or suspending the ACCOBAMS Convention in the relations between themselves and the defaulting Party. If the latter does not cease its illegal conduct and the other Parties do not see any sense in continuing a sanction which does not bring the expected results, the Meeting of the Parties seems entitled to permanently terminate or suspend the participation of the defaulting Party to the Agreement.

4. The Justification of Exceptional Circumstances

The broad margin of discretion left to the parties to a treaty as regards sanctions explains why the ACCOBAMS Parties have decided to set forth an exception to the rule of the suspension of the right to vote, if the delay in payment arises from exceptional circumstances. This can be seen as a justification that prevents the application of the sanction arising from the breach of an international obligation. According to a rule of customary international law, necessity may be invoked by a State as ground for precluding the wrongfulness of an act not in conformity with an international obligation¹⁵.

¹⁴ A difficult question is whether the suspension of the right to vote of a regional economic integration organization party to the ACCOBAMS entails also the suspension of the right to vote of its member States. The answer seems to be an affirmative one, where voting relates to a matter within the competence of the organization (see Art. III, para. 5, of the Agreement). However, for the time being, the question is only an academic one, as there is no such organization among the ACCOBAMS Parties.

¹⁵ See Art. 25 of the 2001 International Law Commission draft on international responsibility of States for wrongful acts.

In the Rules of procedure of the Meeting of the Parties no examples of such circumstances are provided. But it is easy to envisage that situations beyond the control of a Party, such as conflicts, natural disasters, serious economic disruptions, are relevant instances in this regard.

In the case of “exceptional circumstances”, to avoid a sanction that otherwise would automatically apply there is a need for a decision of the Meeting of the Parties. In 2016, to facilitate this decision, the Bureau recommended that each Party facing exceptional circumstances provide the Secretariat with a formal letter explaining the “exceptional circumstances” that have led to the delay in payment. This document is to be examined at the opening of the Meeting of the Parties in order to decide if the Party deserves to be exceptionally granted the right to vote during the forthcoming meeting¹⁶. A similar attitude was taken by the Bureau at its fourth extended Meeting (2019), when it asked the Secretariat to contact the Focal Points of two Parties, requesting them to provide the Secretariat with a formal letter explaining such circumstances and it asked the forthcoming Meeting of the Parties to examine this document at its opening¹⁷.

Looking at ACCOBAMS practice, in 2016, the Sixth Meeting of the Parties, “convinced that decisions-making will benefit from the active participation of as many Parties as possible”, decided that, although one Party¹⁸ was more than three years behind in paying its ordinary contribution, the current economic situation of this Party could be considered as an exceptional circumstance and that this Party could exceptionally exercise its right to vote at the meeting (Resolution 6.1)¹⁹. In 2019, a similar decision was taken by the Meeting of the Parties as regards the same Party (Resolution 7.1)²⁰. Again, a similar decision was taken in 2022 by the Meeting of the Parties as regards two Parties²¹ (Resolution 8.1)²².

5. Other Measures

Other instances in ACCOBAMS practice show that unpaid contributions have become a growing concern for the Agreement organs.

At its 4th meeting (2007), the Bureau decided

“to prevent non-paying countries to be part of the Bureau and not to take in charge their representatives within the Scientific Committee”²³.

In 2010, the Bureau requested the Secretariat

“to adjourn any support to Parties having more than 2 years pending contributions”²⁴.

In the same year, the Meeting of the Parties decided to exclude Parties “in arrear of more than three years of contribution to the Trust Fund” from the provision of financial support for the participation of delegates to the ACCOBAMS meetings (Resolution 4.3, para. 3)²⁵. In 2013, 2016, 2019 and 2022, the Meeting of the Parties reiterated this measure (respectively, Resolution 5.16, para. 3, Resolution 6.6, para. 3, Resolution 7.6, para. 2 and Resolution 8.2, para. 2).

¹⁶ See *Report of the Sixth Meeting of the Parties to ACCOBAMS*, 2016, p. 79.

¹⁷ *Provisional Report of the Fourth Meeting of the ACCOBAMS Extended Bureau* (Monaco, 18-19 April 2019), para. 5.1.

¹⁸ Libya.

¹⁹ See *Report of the Sixth Meeting of the Parties to ACCOBAMS*, 2016, p. 5.

²⁰ See *Report of the Seventh Meeting of the Parties to ACCOBAMS*, 2019, p. 7.

²¹ Greece and Libya.

²² See *Report of the Eighth Meeting of the Parties to ACCOBAMS*, 2022, p. 7.

²³ See *Report of the Third Meeting of the Contracting Parties to ACCOBAMS*, 2007, p. 67.

²⁴ See *Report of the Fourth Meeting of the Contracting Parties to ACCOBAMS*, 2010, p. 90.

²⁵ The financial support is limited to countries with middle and low incomes, as defined in the Human Development Report of the United Nations.

During the intersessional period between the seventh and eighth Meetings of the Parties, at each of its meetings the Bureau addressed the issue of unpaid contributions and requested the Secretariat to send a reminder to the Parties concerned urging them to swiftly fulfil their obligations towards the ACCOBAMS Trust Fund, in order to enable the implementation of activities relevant to the Agreement. In particular, the Bureau advised the Secretariat to contact the Ministries of Foreign Affairs of the Countries with more than three unpaid annual contributions²⁶.

In 2022, the eighth Meeting of the Parties asked

“the Parties that have unpaid pledges to pay their pending contributions within a reasonable time, at the latest two to three months after the end of 2022, in order to close the budget for the 2020-2022 triennium as soon as possible” (Resolution 8.2, para. 9).²⁷

It also requested the Bureau to

“propose to the Meeting of the Parties a procedure concerning the management and the recovery of the long term pending contributions” (Resolution 8.2, para. 11, b)²⁷.

6. The Rules Applying in Other Meetings of the Parties or in International Organizations

Several instances of suspension of the right to vote as a special sanction for delays in payment of contributions can be found in the rules of procedure relating to meetings (or conferences) of the parties to treaties or to organs of international organizations²⁸. Some instances are recalled hereunder.

The Rules of procedure of the Meeting of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1969) provide as follows:

“Representatives of Parties that are three or more years in arrears in the payment of its assessed contributions on the date of the opening session of the meeting of the Conference of the Parties shall not be eligible to vote. However, the Conference of the Parties may allow such Parties to exercise their right to vote if it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances, and shall receive advice in this regard from the Standing Committee. The exceptional and unavoidable circumstances shall be communicated in advance by the Party concerned to the Standing Committee for consideration at its meeting prior to the meeting of the Conference of the Parties” (Rule 13, para. 2).

In order to counteract growing financial problems and to ensure the long-term work of the Secretariat, at the thirteenth Conference of the Parties (2020) to the Bonn Convention a resolution was adopted that marked a new trend within this instrument. The Conference of the Parties decided

“(…) that representatives from countries with contributions in arrears of three years or more should be excluded from holding office in Convention bodies and be denied the right to vote” (Resolution 13.2, para. 10).

It also requested

“the Executive Secretary to explore with these Parties innovative approaches for the identification of possible funding to resolve their arrears prior to the next meeting”.

This measure provoked lively discussions among the Parties. Some States voiced their concerns, fearing that their rights as parties of the Convention could be undermined. Other states successfully requested to have the paragraph included in the resolution.

At its fourteenth meeting (2024), the Conference of the Parties, noting “with concern that a number of Parties have not paid their contributions to the core budget for 2023 and for previous years which were due on 1 January of

²⁶ See *Report of the Eighth Meeting of the Parties to ACCOBAMS*, 2022, p. 106.

²⁷ In the preamble, the Resolution stresses, *inter alia*, “the importance of the payment by all Parties of the contributions due to the budget of the Agreement”.

²⁸ See RZESZOWSKI, *The Practice of Applying the Regulations of the Suspension of Rights of a Member State Shown on the Example of Selected International Organizations*, in *International Journal of Legal Studies*, 2020, p. 375.

each year, thus adversely affecting the implementation of the Convention” and urging “all Parties with arrears to cooperate with the Secretariat in arranging for the payment of their outstanding contributions without delay and consult the Secretariat and UNEP [United Nations Environment Programme] about new approaches available to make these payments”, decided that

“(…) delegates from developing countries and countries with economies in transition shall be eligible for funding to attend the Convention’s meetings, and as a general rule furthermore, to exclude from such eligibility countries that have payments in arrears of three years or more (…)

“(…) representatives from countries with contributions in arrears of three years or more should be excluded from holding office in Convention bodies, and be denied the right to vote” (Resolution 14.2, paras. 10 and 11).

The Conference of the Parties also requested “the Executive Secretary to explore with these Parties innovative approaches for the identification of possible funding to resolve their arrears prior to the next meeting”.

The Rules of procedure for meetings and conferences of the Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona, 1976) provide as follows:

“A Contracting Party that is more than twenty-four months in arrears with its contribution shall not be entitled to vote. However, the meeting may authorize this Contracting Party to participate in the vote if it finds out that arrears are due to circumstances beyond its control” (Rule 42, para. 2A).

Stricter delays are envisaged by the Rules of procedure of the Whaling Commission, established by the International Convention for the Regulation of Whaling (Washington, 1946), which provide as follows:

“The right to vote of representatives of any Contracting Government shall be suspended automatically when the annual payment of a Contracting Government including any interest due has not been received by the Commission by the earliest of these dates:

- 3 months following the due date prescribed in Regulation E.2 of the Financial Regulations; or
- the day before the first day of the next Biennial or Special Meeting of the Commission if such a meeting is held within 3 months following the due date; or
- in the case of a vote by postal or other means, the date upon which votes must be received if this falls within 3 months following the due date.

This suspension of voting rights applies until payment is received by the Commission, unless the Commission decides otherwise in the case of exceptional circumstances” (Rule E, para. 2, a).

As regards the organs of international organizations, a well-known instance of suspension of the right to vote is regulated by the Charter of the United Nations (San Francisco, 1945):

“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” (Art. 19).

Other analogous instances are found, *inter alia*, in the Constitution of the International Labour Organization (Art. 13, para. 4)²⁹, the Convention establishing the International Maritime Organization (Art. 56)³⁰, the Convention establishing the International Civil Aviation Organization (Art. 62)³¹, the Convention establishing the International Agency for

²⁹ “A Member of the Organization which is in arrears in the payment of its financial contribution to the Organization shall have no vote in the Conference, in the Governing Body, in any committee, or in the elections of members of the Governing Body, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years: Provided that the Conference may by a two-thirds majority of the votes cast by the delegates present permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member”.

³⁰ “Any Member which fails to discharge its financial obligation to the Organization within one year from the date on which it is due, shall have no vote in the Assembly, the Council, the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee or the Technical Co-operation Committee unless the Assembly, at its discretion, waives this provision”.

³¹ “The Assembly may suspend the voting power in the Assembly and in the Council of any contracting State that fails to discharge within a reasonable period its financial obligations to the Organization”.

Atomic Energy (Art. 19A)³², the Constitution of the World Health Organization (Art. 7)³³, the Convention establishing the World Meteorological Organization (Art. 31)³⁴, the UNESCO Constitution (Art. 4, para. 8B)³⁵, the Statute of the Council of Europe (Art. 9)³⁶.

7. Options for Addressing the Question

As the question is not specifically addressed in the Agreement, the establishment of further measures to deal with the problem of unpaid contributions can take the form of a resolution by the Meeting of the Parties, which is entitled to “adopt specific actions to improve the effectiveness of the Agreement” (Art. III, para. 8, lett. c) and to “decide upon any matters relating to the financial arrangements for this Agreement (Art. III, para. 8, lett. e). It would be preferable to adopt a specific Resolution on “financial and administrative matters” (this is the title of the Resolution 14.2, adopted in 2024 by the Conference of the Parties to the Bonn Convention³⁷) or, more specifically, on “measures to address the question of arrears in payment of ACCOBAMS subscriptions”, especially if the measures were not be limited to voting in the Meeting of the ACCOBAMS Parties. Such a resolution, like most decisions of the Meeting of the Parties, needs to be adopted by *consensus* (Art. III, para. 6).

It appears from the above-mentioned conclusion 7 of the 2023 ACCOBAMS Bureau meeting³⁸, that the Bureau, while committed to propose to the Meeting of the Parties measures addressing the question of the recovery of unpaid contributions, is willing to take also in consideration the objective to preserve good relationship with all Parties, despite the existence of long-pending ordinary contributions, “as in order to progress towards ACCOBAMS objectives the involvement of all ACCOBAMS countries is necessary”. This is fully understandable in light of the general character of the ACCOBAMS, which, rather than being based on the establishment of reciprocal rights and obligations between one Parties and another, is oriented towards the common purpose of achieving and maintaining a favourable conservation status for cetaceans within the geographic scope of application of the Agreement. Nature, as embodied by the migratory species of cetaceans, is first beneficiary of the ACCOBAMS

Accordingly, the strengthening of measures aiming at the recovery of unpaid contributions should be seen as a means to facilitate a Party in meeting its obligations, rather than a sanction to punish it. It is understood that, if a Party were to reject altogether the obligation to pay its ACCOBAMS contributions in a deliberate, serious and unwarranted way, the consequences of the suspension or termination of the participation of that Party to the Agreement would always be applicable³⁹.

As regards the substance of the measures, the following remarks seem relevant.

³² “A member of the Agency which is in arrears in the payment of its financial contributions to the Agency shall have no vote in the Agency if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two years. The General Conference may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member”.

³³ “If a Member fails to meet its financial obligations to the Organization or in other exceptional circumstances, the Health Assembly may, on such conditions as it thinks proper, suspend the voting privileges and services to which a Member is entitled. The Health Assembly shall have the authority to restore such voting privileges and services”.

³⁴ “If any Member fails to meet its financial obligations to the Organization or otherwise fails in its obligations under the present Convention, Congress may by resolution suspend it from exercising its rights and enjoying privileges as a Member of the Organization until it has met such financial or other obligations”.

³⁵ “A Member State shall have no vote in the General Conference if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year”.

³⁶ “The Committee of Ministers may suspend the right of representation on the Committee and on the Consultative Assembly of a member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled”.

³⁷ *Supra*, par. 6.

³⁸ *Supra*, par. 1.

³⁹ *Supra*, par. 3.

- a) The present measure of suspension of voting rights in the Meeting of the Parties (Art. 14, para. 2, of the ACCOBAMS Rules of Procedure for the Meeting of the Parties) should be confirmed.
- b) The Meeting of the Parties could as well confirm on a permanent basis the measure of the exclusion of Parties in arrear of more than three years of contribution from the provision of financial support for the participation of delegates to the ACCOBAMS meetings, which was already repeatedly decided by the Meeting of the Parties in 2010, 2013, 2016, 2019 and 2022.
- c) Restrictions in participation or voting in other ACCOBAMS organs could be considered as a further measure. It seems logical that a Party affecting by its non-compliance the implementation of an Agreement can be denied full participation in the bodies established by the same Agreement.

It appears that such restrictions can apply to the Bureau. Even if the members of the Bureau exercise “their functions in their personal capacity and shall not represent any single ACCOBAMS Party” (Art. 1, para. 3, of the Rules of Procedure for the Bureau, Resolution 6.4), they are elected by the Meeting of the Parties “from among the representatives of the Parties present at the Meeting” (Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties). Due to the limited composition of the Bureau (five members) and its operative functions, it seems counterproductive to deny to one of its members the voting or speaking rights. This is why the measure should consist in preventing a representative of the Party in arrear of more than three years of contribution from being elected as chairperson or vice-chairperson of the Meeting of the Parties and, as an automatic consequence, as a member of the Bureau.

An analogous measure could be applied as regards the members (three) or alternate members (one) of the Follow-up Committee who are elected after nomination by a Party (see Art. 3, para. 2, of the Rules on the ACCOBAMS Follow-up Procedure, Resolution 6.8). The Party in arrear of more than three years of contribution could be prevented from nominating a candidate to the Follow-up Committee.

In principle, no measure can affect the composition and the speaking or voting rights of the members of the Scientific Committee. In their quality of experts acting in their personal capacity, they are not elected or appointed by ACCOBAMS Parties⁴⁰. However, the measure preventing the participation to the Scientific Committee could be envisaged only in the case of additional members that may be designated by the Parties on a voluntary basis under Art. 2, para. 5, of the Rules of Procedure of the Scientific Committee (Resolution 8.3)⁴¹.

- d) If the situation of non-compliance persists for another two-year term (or a term of different duration), the suspension of the right to speak at the Meeting of the Parties or to attend the Meetings of the Parties could be discussed as a possible additional measure.
- e) Another possible additional measure if the situation of non-compliance persists could be a restriction or prevention of receiving financial support from the Supplementary Conservation Fund for governmental bodies of a Party in arrear with its contribution. The measure should not be automatic and should be considered with particular care, as projects financed by the Fund are usually aimed at the general purpose of achieving and maintaining a favourable conservation status for cetaceans and are not intended to benefit single ACCOBAMS

⁴⁰ See Art. 2, para. 1, of the Rules of Procedure of the Scientific Committee (Resolution 8.3): “The Scientific Committee shall consist in principle of the following members, namely: - Three experts proposed by CIESM; - Three experts proposed by IUCN; - Up to three representatives for each Region defined in the Appendix, appointed by the Meeting of the Parties; - One representative from the Scientific Committee of the International Whaling Commission (IWC) and one representative from the Scientific Council of the Convention on the Conservation of Migratory Species of Wild Animals (CMS)”.

⁴¹ As the cost of the participation of such additional members to the meetings of the Scientific Committee is not covered by the Agreement’s funds, it is unlikely that a defaulting Party will designate them. Nevertheless, the case cannot be completely excluded.

Parties. Being not responsible for the non-compliance, non-governmental organizations, including those having the nationality of the defaulting Party, shall not be affected by any funding restriction or prevention.

- f) In order to show the non-punitive character of the procedure, mechanisms of co-operation between the defaulting Party and the ACCOBAMS Secretariat should be put in place. The Party should be invited to keep contact with the Secretariat in order to reach a reasonable arrangement to reschedule the payment of the arrears under a written payment plan to be approved by the Bureau. This arrangement could lead to the Meeting of the Parties, on proposal by the Bureau, to revoke the measures adopted.
- g) The justification of “exceptional circumstances” should remain unchanged. However, as already recommended by the Bureau⁴², the Party concerned should provide the Secretariat with a formal letter explaining the “exceptional circumstances” that have led to the delay in payment. This document should be examined at the opening of the Meeting of the Parties in order to take the decision whether the Party deserves to be exonerated from the measures applying in cases of arrear with the payment of contributions. However, also a justified Party should be invited to keep contact with the Secretariat in order to reach a reasonable arrangement to reschedule the payment, when improvements in its situation allow it.

In the light of the views taken by the Bureau on the matter of pending contributions, the legal expert is available to promptly prepare a draft ACCOBAMS resolution specifying the recommended measures.

⁴² *Supra*, par. 4.