



## Finance Committee

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**Report on the process and criteria for the implementation  
of article 184 of the United Nations Convention on the Law  
of the Sea**

## **Report on the process and criteria for the implementation of article 184 of the United Nations Convention on the Law of the Sea**

**Prepared by the Secretary-General**

### **I. Introduction**

1. This report has been prepared to assist the Finance Committee in responding to an important request from the Assembly, namely, that a process and criteria be established to assist the Assembly in exercising its discretion to authorize the voting rights of a member State falling under article 184 of the United Nations Convention on the Law of the Sea.

2. Recalling the context of the request and the applicable legal provisions, this report offers a legal analysis by comparing the processes and criteria used by other intergovernmental organizations when addressing similar issues related to the suspension of voting rights of member States in arrears. Based on this comparison, this report proposes, for consideration by the Finance Committee, a framework for the assessment of conditions that will enable the Assembly to exercise its discretionary powers under article 184 of the Convention.

### **II. Background**

3. Prior to the twenty-ninth session of the Assembly, the Secretary-General sent a letter dated 31 May 2024 to the President of the Assembly ([ISBA/29/A/7](#)), outlining the list of member States that were in arrears under article 184 of the Convention. This letter also detailed the minimum payments needed for those member States to reduce their outstanding contributions so that they remained below the total assessed for the preceding two full years. The Secretary-General followed up with an updated letter dated 31 July 2024 addressed to the President of the Assembly ([ISBA/29/A/7/Rev.1](#)).

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\* [ISBA/31/FC/L.1](#).



4. During its meetings held from 10 to 12 July 2024, the Finance Committee discussed the current status of contributions and commended the Secretary-General for his efforts to collect the outstanding contributions, including by sending out notices regularly, holding bilateral meetings with the relevant member States and circulating pertinent information on various occasions. This outreach was also aimed at raising awareness about the work of the International Seabed Authority among member States that were in arrears and member States that had never paid their contributions to the Authority's budget. In addition, the Finance Committee recommended that any member States that had been in arrears for two full years, and thus fell under article 184 of the Convention, express their intent to exercise their voting rights at the earliest opportunity (see [ISBA/29/A/9-ISBA/29/C/20](#)).

5. On 2 August 2024, during the first formal vote for the election of the Secretary-General, the Assembly noted that Bolivia (Plurinational State of), Equatorial Guinea, Guinea-Bissau, Haiti, Honduras, Liberia and Senegal had communicated their wish to exercise their voting rights pursuant to article 184 of the Convention. This marked the first time that such communications had been presented to the Assembly.

6. However, the Assembly was unable to reach consensus and decided not to permit these States to exercise their voting rights. Instead, it requested the Finance Committee to establish a framework for the assessment of the conditions that would allow the Assembly to exercise its discretionary powers under article 184 of the Convention ([ISBA/29/A/2](#), para. 20).

### III. Relevant legal provisions

7. Article 184 of the Convention provides:

A State Party which is in arrears in the payment of its financial contributions to the Authority shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The 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.

8. This provision is repeated almost verbatim in rule 80 of the rules of procedure of the Assembly.<sup>1</sup>

9. Neither article 184 of the Convention nor rule 80 of the rules of procedure of the Assembly provides for a process or criteria for the Assembly to determine, to its satisfaction, that the failure to pay is due to conditions beyond the control of the member.

### IV. Legal analysis

10. Article 184 was first drafted at the 1975 session of the Third United Nations Conference on the Law of the Sea by the Chair of the First Committee and was slightly modified until its final formal formatting in 1982. In spite of the subject (suspension of rights), no controversy arose during the discussion on the content. Thus, the

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<sup>1</sup> Rule 80 provides that “a member of the Assembly which is in arrears in the payment of its financial contributions to the Authority shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a member of the Assembly to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.”

legislative history of article 184 of the Convention provides no indication of the process to be followed or the criteria to be applied.

11. At the outset, it is important to note that article 184 of the Convention is found in Part XI, section 4, which relates to the institutional structure and financial arrangements of the Authority. Article 184 operates alongside articles 171–173, concerning the Authority’s budget and funding, and article 183, concerning tax privileges. Articles 184 and 185 together constitute subsection H, which addresses the suspension of the exercise of rights and privileges of members of the Authority. Article 185 relates to the broader suspension of rights and privileges of membership for serious and persistent violations. Such suspension may be imposed, upon the recommendation of the Council, only after the Seabed Disputes Chamber has found that the conditions set out in that article are met. In contrast to article 185, article 184 provides for the automatic suspension of the right to vote, unless the Assembly decides otherwise. This implies, for example, that a member whose voting rights have been suspended may still be counted towards the quorum of the Assembly and participate in meetings, despite lacking the right to vote. Article 184 differs, both procedurally and substantively, from article 185. Article 184 is therefore best understood as a compliance mechanism aimed at ensuring financial sustainability, rather than as a punitive sanction.

12. Article 184 sets out the penalty applicable to a State Party that fails to fulfil one of the core obligations of membership in the Authority, specifically, the timely payment of financial contributions based on a scale of assessments adopted by the Assembly.<sup>2</sup> This obligation continues to exist until the Authority has sufficient income from alternative sources to meet its administrative expenses. Member States in arrears at the opening of the session automatically forfeit their voting rights unless, during the session, they make a payment that reduces their arrears below the objective threshold set out in article 184 of the Convention. In contrast to article 185, article 184 enforces an automatic suspension of the right to vote, unless the Assembly decides otherwise. It is important to note that the Assembly may override the suspension of a member’s voting rights if non-payment is due to “conditions beyond the control” of the State. In this context, the Assembly’s exercise of its discretionary authority appears to promote a balance between financial discipline and sovereign equality.

13. Additionally, article 184 refers to financial contributions from a State Party and thus does not apply to agreed contributions paid by an intergovernmental organization or to contributions in kind, which, for example, are mentioned in article 82 of the Convention. Furthermore, article 184 does not differentiate between the obligation to make financial contributions to the administrative budget of the Authority and any other form of financial levy imposed upon a member State, including payments under article 82.

14. The fact that conditions beyond the control of the member State are not defined indicates that the Assembly will determine on a case-by-case basis whether such conditions exist, considering the merits of each request submitted by the member State concerned. However, while such assessments are made based on the merits of the request, criteria should be suggested to ensure fairness and similar treatment under similar circumstances, bearing in mind that the potential loss of voting rights is the only disincentive for late payment of contributions provided for under the Convention.

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<sup>2</sup> This scale is based on the scale used for the regular budget of the United Nations, as indicated in article 160, paragraph 2 (e).

15. Under section 9 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, the Finance Committee may provide advice on matters that have financial or budgetary implications. It is therefore competent to advise the Assembly in determining whether a member State in arrears for two or more full years has been prevented from paying due to conditions beyond its control. It should also be noted that voting in the Assembly is rare, as decisions are normally taken by consensus, which explains why article 184 of the Convention is rarely implemented in practice. It is not suggested to establish a specific committee such as the Committee on Contributions of the United Nations, given the aforementioned competence of the Finance Committee, and bearing in mind the difference in the number of requests received by and the nature of decision-making in the Assembly of the Authority.

16. Furthermore, it is recalled that, as a general rule, decision-making in the Finance Committee should be by consensus. If all efforts to reach a decision by consensus have been exhausted, decisions by voting on questions of procedure are to be taken by a majority of members present and voting. Decisions on questions of substance are to be taken by consensus.<sup>3</sup> In light of these provisions, decisions of the Finance Committee on matters concerning the implementation of article 184 of the Convention require consensus.

17. In addition, rule 78 of the rules of procedure of the Assembly provides that “any member of the Assembly that is not a member of a subsidiary organ shall have the right to explain its views to that organ when a matter particularly affecting it is under consideration”. To give effect to this provision, as part of the process for the implementation of article 184, it is suggested that if a member State is not represented in the Finance Committee and has communicated its wish to vote notwithstanding the suspension of its voting rights under article 184, that member State should have the right to explain its views before the Finance Committee.

18. In accordance with financial regulation 6.8 of the Financial Regulations of the International Seabed Authority (see [ISBA/6/A/3](#)), the Secretary-General submits to each regular session of the Assembly, the Council and the Finance Committee a report on the collection of contributions and advances to the working capital fund. As mentioned above, the important role of the Secretary-General in collecting outstanding contributions needs to be taken into account in establishing a process for determining the existence of conditions beyond the control of a member State falling under article 184 of the Convention. The Secretary-General not only communicates to the President of the Assembly the list of members in arrears prior to the Assembly’s session, but also regularly sends notices to the member States concerned in order to remind them of their arrears, in addition to holding bilateral meetings with them.

## **V. Comparison with the process followed and criteria used in other intergovernmental organizations with provisions similar to article 184 of the Convention**

19. As shown in the table in annex II to this report,<sup>4</sup> with the exception of the World Trade Organization, many organizations have provisions similar to article 184 of the Convention, providing for the suspension of voting rights for member States in arrears for a specified period. Many organizations have rules whereby their governing bodies

<sup>3</sup> See rule 22 of the rules of procedure of the Finance Committee.

<sup>4</sup> See also Food and Agriculture Organization of the United Nations, Finance Committee, *Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization* (FC 191/5), para. 19, table 1, May 2022.

may permit a member State in arrears to vote if they are satisfied that its failure to pay is due to “exceptional and unavoidable circumstances” or “conditions beyond its control”. The United Nations Educational, Scientific and Cultural Organization (UNESCO) is the only organization that defines in its provisions conditions beyond the control of a member State, identifying such conditions as being “wars and armed conflicts, economic and financial criteria and natural disasters”. In its rules, UNESCO also establishes how the relevant criteria should be applied, indicating that the situation invoked must have had proven effects over the two preceding years. For many organizations, this discretion is exercised on a case-by-case basis, guided by the recommendations of a committee, commission or other subsidiary organ. A few organizations require such recommendations in order to describe or explain the conditions beyond the control of the member State concerned. Such recommendations are not published, however.

20. Article 184 of the Convention is modelled on article 19 of the Charter of the United Nations, which also provides for the suspension of voting rights due to arrears. Article 19 reads:

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.

21. The Committee on Contributions advises the General Assembly on the action to be taken concerning the application of Article 19 of the Charter.<sup>5</sup> The *Repertory of Practice of United Nations Organs* provides many examples of circumstances beyond the control of a Member State in arrears, including natural hazards or disasters, armed conflicts or wars and economic circumstances.<sup>6</sup> Within the Committee on Contributions, attention is also paid to institutional mechanisms aimed at reducing arrears. For example, member States are encouraged to submit multi-year payment plans, under which, in addition to paying their annual assessed contributions, they also pay a fraction of their arrears.

22. In its resolution 54/237-C of 23 December 1999, the General Assembly set out a process and criteria for the implementation of Article 19 of the Charter. In that resolution, the Assembly urged: “All Member States in arrears requesting exemption under Article 19 of the Charter to provide the fullest possible supporting information, including information on economic aggregates, government revenues and expenditure, foreign exchange resources, indebtedness, difficulties in meeting domestic or international financial obligations and any other information that might

<sup>5</sup> The Committee on Contributions is a standing committee of 18 members elected ad personam by the General Assembly on the basis of broad geographical representation, personal qualifications and experience. Initially, the Committee on Contributions was composed of 10 members appointed by the Assembly (Assembly resolution 14 (1) of 13 February 1946). Subsequently, membership increased to 12 (Assembly resolution 2390 (XXIII) of 25 November 1968), then to 13 (Assembly resolution 2913 (XXVII) of 9 November 1972) and to 18 (Assembly resolution 31/95 of 14 December 1976). See also rule 158 of the Assembly’s rules of procedure. The Committee on Contributions meets annually for three to four weeks, usually in June of each year. Its report is considered by the General Assembly through the Fifth Committee at the subsequent main session, under the agenda item entitled “Scale of assessments for the apportionment of the expenses of the United Nations”.

<sup>6</sup> See [https://legal.un.org/repertory/art19.shtml?\\_gl=1\\*t6jgf8\\*\\_ga\\*MTEyMDAwNjMwNy4xNjc3ODc4MjI4\\*\\_ga\\_TK9BQL5X7Z\\*\\_czE3NzY3MzNzgwNjQkbzE4OSRnMSR0MTc3Mzc3ODE1MCRqNjAkbdAkaDA](https://legal.un.org/repertory/art19.shtml?_gl=1*t6jgf8*_ga*MTEyMDAwNjMwNy4xNjc3ODc4MjI4*_ga_TK9BQL5X7Z*_czE3NzY3MzNzgwNjQkbzE4OSRnMSR0MTc3Mzc3ODE1MCRqNjAkbdAkaDA).

support the claim that failure to make necessary payments had been attributable to conditions beyond the control of the Member States.”

23. In the same resolution, the General Assembly decided 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”.

24. The process and criteria for the implementation of article 61 of the Convention on the International Maritime Organization (IMO) are set out in rule 58 of the rules of procedure of the IMO Assembly. With regard to criteria, rule 58, set out below, defines “exceptional, unforeseeable events and circumstances” as “events characterized as force majeure” and provides an indicative list of such circumstances:

1. The Secretary-General shall send at least one written notification to any Member which has failed to discharge its financial obligations to the Organization under Article 61 of the IMO Convention. The notification shall call attention to the terms of Article 61 regarding the loss of vote in the Assembly, the Council, the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee, the Technical Cooperation Committee and the Facilitation Committee.

2. Any Member wishing to request a waiver of the provision of Article 61 in respect of itself shall submit a written application to the Secretary-General at least one month before the Assembly giving reasons therefor, with a payment schedule indicating the timescale over which arrears will be paid.

3. In exceptional, unforeseeable events and circumstances (events characterized as force majeure) which have occurred in a time frame no longer than three months before the opening session of the Assembly and which do not allow a Member to request a waiver of the provision of Article 61 in accordance with sub-paragraph 2, such Member shall submit a written application to the Secretary-General at its earliest convenience before the opening session of the Assembly. The written application shall present exceptional, unforeseeable circumstances (events characterized as force majeure) including natural hazards or disasters, civil unrest or war-like conflicts and the time period when they occurred and necessary reasons that the failure for requesting a waiver in conjunction with sub-paragraph 2 was due to conditions beyond their control. A payment schedule indicating the timescale over which arrears will be paid shall be submitted within six months after the Assembly session and the Secretary-General shall inform the Council accordingly.

4. The Secretary-General shall submit to the Council a list of Members which have failed to discharge their financial obligations, together with any requests for waiver of the provision of Article 61 which have been received from any such Members.

5. The Council shall submit to the Assembly a report on the matter, together with its recommendations on the submission by any Member of a request for waiver of the provision of Article 61 of the IMO Convention.

6. The Assembly shall consider the report of the Council at the commencement of each session. Taking into account the recommendations of the Council, and assessing each application on its individual merits, the Assembly shall take decisions on the waiver of the provision of Article 61 of the IMO Convention in respect of any or all of the Members from which requests for waiver have been received, together with any conditions attached to such a waiver.

7. A decision to waive the provision of Article 61 may only be taken in respect of a Member which has submitted a request for waiver in accordance with subparagraphs 2 and 3 above.

8. A decision to waive the provision of Article 61 will normally be taken only in respect of a Member which has discharged in full the requirements, at the date of submitting the request for waiver, of the financial undertaking given under the terms of any previous request for waiver.

9. In exercising its discretion, the Assembly will not normally consider an application for waiver from a Member whose payments are three years or more in arrears.

25. Based on the above comparison between Article 19 of the Charter and article 184 of the United Nations Convention on the Law of the Sea, the key differences are as follows:

(a) The Convention applies within a specialized economic regime;

(b) The Authority's membership differs from that of the United Nations, and its funding is more limited and technical, making arrears proportionately more disruptive;

(c) The Authority lacks alternative enforcement tools (e.g. sanctions and withholding of benefits).

26. Accordingly, article 184 appears to carry greater relative importance for institutional viability than its United Nations counterpart.

## **VI. Considerations relevant to a suggested process and criteria for the implementation of article 184 of the Convention**

27. Taking into account the practice adopted by several organizations, it is suggested that the Finance Committee review two considerations, namely the timing and content of requests by member States and the criteria defining "conditions beyond the control" of the member States.<sup>7</sup> Since article 184 of the Convention is modelled on Article 19 of the Charter, it is suggested that the process and criteria used by the General Assembly serve as the main reference points for the implementation of article 184 in the context of the Authority, bearing in mind the infrequency of voting in the Assembly of the Authority and the competence of the Finance Committee, which encompasses that of the Committee on Contributions.

### **A. Consideration for a suggested process**

28. As mentioned above, in the absence of provisions defining the timing and content of requests by a member State, the existing practice – which is limited in scope – is for requests to be submitted as soon as possible. However, the submission of requests very close to the commencement of the meetings of the Assembly and during the meetings of the Finance Committee shortens the time available for the Assembly to assess the requests based on the advice of the Finance Committee. That situation is exacerbated by the lack of clearly defined assessment criteria.

<sup>7</sup> At present, the review of considerations relating to instalment plans is not suggested, given that such plans are not currently used by the Authority.

29. Accordingly, consideration could be given to requiring that requests be submitted at least two weeks before the Committee's session.

## **B. Consideration for suggested criteria**

30. As mentioned above and in the table included in annex II to this report, most organizations, including the Authority, do not define in their rules "exceptional and unavoidable circumstances" or "conditions beyond the control" of a member State, with the exception of UNESCO. This creates the possibility of either a narrow interpretation (e.g. force majeure, economic collapse and conflict) or a broad interpretation (e.g. structural economic hardship and external shocks). The absence of such a definition might undermine the consistency of the Assembly's practice or increase the risk of politicization.

31. First, the Committee could consider the need for more guidance regarding situations that could constitute "conditions beyond the control" of a member State (e.g. wars and armed conflicts, severe economic and financial constraints and natural disasters), which should be subject to a temporal requirement (i.e. the situation invoked must have had proven effects over the two preceding years).

32. Second, the Committee could discuss whether requests should also be required to include explanations as to whether the circumstances beyond the control of the member State were unforeseeable and/or unavoidable and whether the implementation of mitigating measures could have reasonably been expected to prevent the events from taking place or reduce their negative impact on the economy.

33. Third, the Committee could consider whether requests should be required to include a description of measures taken by the member States to compensate for the loss of income or to address the financial or economic consequences of the events in question.

34. The following practical guidance is also offered to the Finance Committee:

(a) Develop clear criteria as objective indicators for identifying "conditions beyond the control" of a member State, with the aim of avoiding ad hoc political decisions;

(b) Strengthen arrears monitoring: maintain transparent arrears reporting dashboards and ensure regular communication of the status of arrears through letters from the Secretary-General addressed to the President of the Assembly;

(c) Consider supplementary mechanisms such as payment plans and incentives tied to participation in activities of the Authority.

35. Bearing in mind General Assembly resolution [54/237-C](#) mentioned above, it is suggested that formal communications be accompanied by "the fullest possible supporting information, including information on economic aggregates, government revenues and expenditure, 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 [is] attributable to conditions beyond the control of the [member] States".

## **VII. Recommendation**

36. The Finance Committee is invited to take note of this report and to provide guidance on the process and criteria suggested therein, as summarized in annex I.

## Annex I

### **Suggested process and possible criteria for the implementation of article 184 of the United Nations Convention on the Law of the Sea**

#### **A. Suggested process**

- Issuance of a letter from the Secretary-General addressed to the President of the Assembly indicating the member States in arrears under article 184 of the Convention and the minimum payments necessary for those member States to reduce their outstanding contributions so that they remain below the gross amount assessed for the preceding two full years. The letter could also list any requests under article 184 that have been received from such members.
- Submission by the member State of a formal communication invoking conditions beyond its control at least two weeks prior to the opening of the session of the Finance Committee, so as to ensure a complete review of the relevant requests and enable the collation of any additional detailed information that may be necessary. Such submissions should be accompanied by the fullest possible supporting information, including information on economic aggregates, government revenues and expenditure, 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 is attributable to conditions beyond the control of the member State.
- If the request is from a member not represented in the Finance Committee, the member may explain its views at the meeting at which the Finance Committee considers its request.
- Provision of advice by the Finance Committee to the Assembly.
- Issuance of decisions by the Assembly on formal communications on a case-by-case basis, prior to any voting during the relevant meeting of the Assembly.

#### **B. Suggested criteria**

- Number of years in arrears.
- Member State's history of payment of assessed contributions.
- Existence of any partial payments.
- Submission of any multi-year settlement plans.
- Any previous formal communications invoking conditions beyond the control of the member State.
- Completeness of the communication (inclusion of the fullest possible supporting information, including information on economic aggregates, government revenues and expenditure, 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 is attributable to conditions beyond the control of the member State).

## Annex II

## Comparative table

<i>Organization</i>	<i>Rules providing for the suspension of voting rights for members in arrears</i>	<i>General rules providing for a discretionary decision to restore voting rights</i>	<i>Provisions for the restoration of voting rights based on an instalment plan</i>	<i>Provisions for the restoration of voting rights due to "conditions beyond the control"</i>	<i>Provisions defining "conditions beyond the control"</i>
Food and Agriculture Organization of the United Nations	Yes	No	No	No	No
United Nations	Yes	Yes	No	Yes	No
United Nations Educational, Scientific and Cultural Organization	Yes	Yes	Yes, optional	Yes	No
United Nations Industrial Development Organization	Yes	Yes	No	Yes	No
World Tourism Organization	Yes	Yes	No	Yes	No
World Trade Organization	No	No	No	No	No
International Labour Organization	Yes	Yes	Yes, optional	Yes	No
World Health Organization	Yes	Yes	Yes, mandatory	No	No
World Intellectual Property Organization	Yes	Yes	No	Yes	No
International Civil Aviation Organization	Yes	Yes	Yes, mandatory	No	No
International Maritime Organization	Yes	Yes	Yes, mandatory	No	No
Universal Postal Union	Yes	Yes	Yes, mandatory	No	No
Preparatory Commission for the Comprehensive Nuclear Test-Ban-Treaty Organization	Yes	Yes	No	Yes	No

## Annex III

### **Suggested draft decision of the Assembly concerning a process and criteria for the implementation of article 184 of the United Nations Convention on the Law of the Sea**

*The Assembly of the International Seabed Authority,*

*Having considered* the relevant parts of the report of the Finance Committee,<sup>1</sup>

*Reaffirming* the obligation of all member States to bear the expenses of the International Seabed Authority, as apportioned by the Assembly,

1. *Urges* all member States to pay their assessed contributions in full, on time and without imposing conditions, to prevent financial difficulties for the International Seabed Authority;

2. *Reaffirms* its role in accordance with the provisions of article 184 of the United Nations Convention on the Law of the Sea and the advisory role of the Finance Committee;

3. *Urges* all member States that are in arrears under article 184 of the Convention and have communicated their wish to be allowed to vote to provide the fullest possible supporting information, including information on economic aggregates, government revenues and expenditure, 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 is attributable to conditions beyond the control of the member States;

4. *Decides* that communications from member States whose voting rights have been suspended under article 184 of the Convention must be submitted to the President of the Assembly at least two weeks before the session of the Finance Committee, so as to ensure a complete review of the communication.

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<sup>1</sup> ISBA/31/FC/5.