

MECHANISM ADOPTED BY THE INTERNATIONAL MONETARY FUND IN TREATING ARREARS WITH ITS BORROWING COUNTRIES

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ABSTRACT

The liquidity of the International Monetary Fund (IMF) is prime to its existence, and just like other financial organizations, the IMF is neither an aid agency nor a charitable organization. This implies that whatever assistance it gives out is not for free but to be repaid most often with interest. Expressly, the Articles of Agreement requires that, the IMF makes its general resources temporarily available to members “under adequate safeguard.” The IMF considers that the best safeguard of repayment is a strong economic adjustment program and thus, it has not been the IMF practice to require collateral as a condition for making resources available to its members. In this light, members with financial obligations to the institution are all oblige to repay them as they fall due so that these resources can be made available to other members. Since the early 1980s, following the debt crisis, overdue obligations to the IMF have been a matter of serious concern because they weaken the IMF’s liquidity position and impose a cost on other members. The need for a strengthened and defined procedure for dealing with overdue financial obligations is a necessity for preventing the emergence of additional overdue financial obligations and eliminating existing ones. To this effect, the IMF has in place a cooperative arrears strategy which serves as first aid in treating arrears, and when there is evidence of bad fate in cooperation, remedial measures or sanctions becomes an option in treating arrears.

Keywords: International Monetary Fund, Treating Arrears, Borrowing Countries, overdue financial obligations, repurchase obligation, remedial measures, cooperative arrears strategy.

INTRODUCTION

Created in 1944, the IMF Articles of Agreement is, its fundamental law and by virtue of the provisions of this law, each member shall guarantee all assets of the Fund against loss resulting from failure or default on the part of the depository designated by it.ⁱ A member country's financial obligations under any variety of IMF arrangement that involves exchange of currencies consist of the repurchase obligationⁱⁱ and the obligation to pay periodic charges and any special charges levied on overdue obligations.ⁱⁱⁱ Considering that IMF loans were for free, who will not be a member of such an organization, and the reality is that such an Organization will cease to exist because it will obviously go out of cash. Overdue financial obligations to the IMF are a breach of a member's obligations under the IMF's Articles of Agreement and have important implications for the IMF and the member concerned.^{iv} The sanctions for overdue obligations to IMF are contained under article XXVI of the IMF Articles of Agreement.^v In its first decades, the IMF's experience with member countries in making timely repurchase was generally satisfactory. However, beginning in the early 1980s, the number and amounts of late payments increased significantly.^{vi} Though delays were temporarily and quickly corrected, the increase in protracted arrears raised serious concerns and highlighted the need for procedures to deal systematically with arrears.^{vii} Protracted arrears is defined as, overdue financial obligations of at least six months. As of April 30, 2019 to January 31, 2020, two countries were six months or more overdue in settling their financial obligations to the General Department of the IMF.^{viii} Generally, to accrue arrears a member has to have obligations outstanding to the IMF. However, some exceptions do exist as was the case in Afghanistan and Iraq where arrears accrued without obligations outstanding (to the IMF's SDR department on their net SDR holdings that were below their respective SDR allocations).^{ix}

Arrears to the IMF can be triggered by several factors such as civil and political unrest, the large amount of credit outstanding, lower per capital income, slower rate of economic growth, and higher inflation rate.^x Talking about protracted arrears to the IMF, political triggers could be the result of: wars and political acts, global triggers could include: commodity price swings; weather events; or debt crises, and country specific triggers such as: corruption; or poor policy implementation.^{xi} In the late 1980s and early 1990s,^{xii} the IMF strengthened its procedures for dealing with overdue financial obligations with the aim of preventing the emergence of additional overdue financial obligations and eliminating existing ones. This resulted in the

establishment of the Strengthened Cooperative Strategy on overdue financial obligations in the early 1990s.^{xiii}

The cooperative arrears strategy has been broadly successful in helping to resolve the cases of protracted arrears that existed at the end of the 1980s and preventing new cases from emerging.^{xiv} Reflecting success in resolving past cases of arrears and preventing the emergence of new cases, the level of overdue financial obligations to the IMF has declined sharply. In 2015, there was a temporary spike in overdue financial obligations when on June 30 and July 13, 2015, Greece did not repurchase obligations due amounting to SDR 1,232 million and SDR 360 million, respectively. Greece settled these overdue obligations on July 20, 2015. The largest share of the arrears to the IMF has been to the GRA, with the balance due to the Trust Fund, the Special Disbursement Account, and the Poverty Reduction and Growth Trust.

THE COOPERATIVE ARREARS STRATEGY

The Fund, as a cooperative institution, relies on the mutually supportive actions of its membership in all areas of its endeavours. Overdue financial obligations are a breach of obligations to the Fund and demonstrate a non-cooperative action, which imposes financial cost on the Fund's membership, impairs its capacity to assist members, and more generally weakens the Fund's ability to perform its broader responsibilities in the international financial system.^{xv}

As the experience with arrears demonstrates, countries which accumulate arrears to the Fund also damage themselves, in part through the weakening which unavoidably follows in their financial relations with other creditors. When arrears exist the Fund is not able to provide its own assistance and its effectiveness is diminished as a catalyst for helping the country restore regular financial relations with other creditors. As aforementioned, the Strengthen Cooperative Strategy consist of three elements: the preventive measures to avoid new arrears from emerging, intensified collaboration with members in arrears, and remedial measures of increasing intensity to encourage members to cooperate with the IMF in seeking a solution to their arrears.^{xvi}

PREVENTION OF ARREARS

The importance of preventing new cases of arrears has been stressed by the Executive Board. As noted in the past, the best safeguard is the quality of Fund arrangements. It is on this basis that the IMF places priority on: assisting members to design strong and comprehensive economic programmes, careful attention to access levels and phasing, explicit assessment of a member's capacity and willingness to repay the Fund, and adequate assurances regarding external financing during the period of the Fund arrangement.^{xvii}

In some cases, specific financial or administrative arrangements designed to ensure that forthcoming obligations to the Fund are settled on time will be used to increase the assurance that the Fund's resources will be repaid on time. Moreover, the importance of members remaining current on obligations falling due and observing the Fund's preferred creditor status will continue to be stressed.^{xviii}

COLLABORATION IN CLEARING ARREARS

For members with protracted arrears willing to cooperate with the Fund in settling overdue, the Fund has adopted an intensified collaborative approach, which incorporates exceptional efforts by the international financial community. To normalize relations with the IMF, the collaborative element of the arrears strategy provides a framework for cooperating members in arrears to establish a strong track record of policy performance and payments to the IMF. Accordingly, members use their own financial resources, or support from creditors, in order to clear their arrears to the IMF and regain access to IMF financial support. In this context, the IMF developed the Staff-Monitored Programme (SMP) and Rights Accumulation Programme (RAP) to help members in arrears to establish the required track record.^{xix}

The Rights Accumulation Programme (RAP)

It is an economic programme agreed between the IMF and an eligible member in protracted arrears to the IMF that provides a framework for the member to establish a satisfactory track record of policy and payments performance, and permits member to accumulate rights to future drawings of IMF resources following arrears clearance. The rights approach was established in 1990 with eligibility limited to the 11 members in protracted arrears to the IMF at the end of 1989.^{xx} Under the RAP, a member in arrears may earn a "right" that is, a claim toward a future

disbursement from the IMF in a future arrangement. This future disbursement is conditioned on establishing a track record on policies and payments to the IMF in the context of an adjustment programme monitored by the IMF, clearance of the member's overdue obligations, and approval of a successor arrangement by the IMF. The rights approach facilitated the clearance of arrears and normalization of financial relations with Peru (1993), Sierra Leone (1994), and Zambia (1995) and remains available to Somalia and Sudan.^{xxi}

Generally, all RAPs involve upper-credit-tranche conditionality and require modified financing assurances.^{xxii} Under these programmes, members are expected to adopt and implement strong adjustment programmes that establish a credible track record of policy implementation and help create conditions for sustained growth and substantial progress toward external viability. Such programmes should adhere to the macroeconomic and structural policy standards associated with programmes in the upper credit tranches and the Poverty Reduction and Growth Trust. To support the member's adjustment efforts, adequate external financing is required for the programme, including debt rescheduling and relief from bilateral and private creditors and new financing from various sources.^{xxiii} Under the RAPs members are expected, at a minimum, to remain current with the IMF and the World Bank on obligations falling due during the period of the programme. RAPs are normally three years in duration, although there is flexibility to tailor the length of the track record to the member's specific circumstances.^{xxiv}

Staff-Monitored Programmes

Staff-Monitored Programmes (SMPs) may be used in arrears cases if capacity constraints or insufficient financing assurances make it difficult for a member with protracted arrears to adopt and implement programmes that meet the standards of upper credit-tranche conditionality.^{xxv} In such circumstances, informal staff monitoring has allowed the IMF staff to engage in intensive policy dialogue, helping establish or re-establish a track record on policies and payments to the IMF that can also be informative to creditors and donors as to the member's commitment to credible and sound policies. As regards payments to the IMF, it is expected that the member will make payments at least equal to newly maturing obligations. The arrears of Vietnam (1993), the Democratic Republic of the Congo (2002), and Liberia (2008) were cleared under this approach.

In the late 1990s, the IMF's Executive Board noted the special challenges posed by large protracted arrears in post conflict countries. Noting that the IMF's arrears strategy had been

effective in restoring relations with countries in a wide range of situations, the Executive Board in 1999 agreed to relax its call for payments as a test of cooperation, provided a member is judged cooperative on policies and provided all other multilateral creditors take at least comparable action.^{xxvi} For members that are judged not to be cooperating actively with the Fund, remedial measures would be applied.

REMEDIAL MEASURES AS USED BY THE IMF

This third element of cooperative strategy raises the question of the scope of the IMF's legal authority to sanction members that fail to meet their financial obligations to the IMF. Remedial measures are applied to member countries with overdue obligations to the IMF that are not actively cooperating with the IMF in seeking a solution to their arrears problem. Interestingly, repurchase allows for removal of outstanding remedial measures applied on defaulting borrowers. The case of Zimbabwe is a good example whereby remedial measures such as, the declaration of non-cooperation with the Fund, the partial suspension of provision of Fund technical assistance, and the removal of Zimbabwe from the list of PRGT-eligible countries were uplifted.^{xxvii} Unlike Zimbabwe, Somalia and Sudan are evidence of countries that have cooperated with the IMF in clearing their arrears.^{xxviii}

Preliminary Measures

The procedures initiated immediately after a member falls into arrears provide for a sequence of actions by management, the staff, and the Executive Board.^{xxix} Whenever a member fails to settle an obligation on time, the staff immediately sends a cable urging the member to make the payment promptly. This communication is followed up through the office of the Executive Director concerned.^{xxx} The member is not permitted to use any of the IMF resources nor is any request for the use of resources placed before the Executive Board until the arrears are cleared.

When an obligation has been outstanding for two weeks, management sends a communication to the Governor for that member country stressing the seriousness of the failure to meet obligations to the Fund and urging full and prompt settlement. The Executive Board understands that the Governor will bring this communication and the circumstances that gave rise to it to the attention of his authorities at the highest level. The communication to the Governor would also note that unless payment is received in due course, the Managing Director

would intend to raise with the Executive Board the possibility of communicating with Governors of the Fund concerning the situation.^{xxxii} The Managing Director has on occasion raised the matter of overdue financial obligations to the Fund directly with the head of government of the member concerned, and he would intend to continue to do so in those cases where he believes it would be a useful procedure.^{xxxiii} The Managing Director notifies the Executive Board normally one month after an obligation has become overdue, when the longest overdue obligation has been outstanding for six weeks, the Managing Director informs the member concerned that unless the overdue obligations are settled a complaint will be issued to the Executive Board in two weeks' time.^{xxxiii}

The Managing Director would in each case recommend to the Executive Board whether a communication should be sent to a selected set of Fund Governors, or to all Fund Governors. If it were considered that it should be sent to a selected set of Fund Governors, an informal meeting of Executive Directors would be held, some six weeks after the emergence of over dues, to consider the thrust of the communication.^{xxxiv} Alternatively, if it were considered that the communication should be sent to all Fund Governors, a formal Board meeting would be held to consider a draft text and the preferred timing.^{xxxv}

Limits on Member's use of Resources

It is important to understand that the Fund retains the power in the case of a member which had previous exchange transaction with the Fund, to declare the member ineligible or limit its use of the resources of the Fund if the member is, in the opinion of the Fund, using the resources of the Fund in a manner contrary to the purposes of the Fund.^{xxxvi} When there is no evidence of improvements, a complaint by the Managing Director is issued two months after an obligation has become overdue, and is given substantive consideration by the Executive Board one month later. At that stage, the Executive Board has usually decided to limit the member's use of the general resources,^{xxxvii} and if the member has overdue obligations in the SDR Department, to suspend its right to use SDRs, and has provided for a subsequent review of the decision. This and subsequent review periods would normally not exceed three months. It would be understood that the Managing Director may recommend advancing the Executive Board's consideration of the complaint regarding the member's overdue.

When a member has overdue financial obligations outstanding for more than three months, a brief factual statement noting the existence and the amount of such arrears will be posted on

the member's country-specific page on the Fund's external website. This implies that the member's access to the Fund's resources, including the Poverty Reduction and Growth Trust and the Heavily Indebted Poor Countries resources has been and will remain suspended for as long as such arrears remain outstanding. A press release will be issued following the Executive Board decision to limit the member's use of the Trust resources. A similar press release will be issued following a decision to lift such limitation.^{xxxviii}

The Annual Report and the financial statements will identify those members with overdue obligations to the Trust outstanding for more than six months.^{xxxix} Beyond these procedures, the Executive Board has expressed its intention to provide that a member must first discharge its overdue financial obligations to the General Resources Account before it would be permitted to pay for an increase in its quota under the Ninth General Review, and that, in the event whereby, the quota payment were not made within a prescribed period, the proposal for an increase in the member's quota would lapse. Another measure being considered by the staff relates to the possibility of withholding SDR allocations for members with arrears in the General Department.

Declaration of ineligibility to use IMF resources

Even before the amendment of Article XXVI adding the loss of voting rights, the IMF Executive Board could declare a member ineligible to use IMF resources or expel a member. The power of discretion is given to the Executive Board,^{xl} and is subject to prior notification of the member so that it can state its case both orally, and in writing.^{xli} As a result of this discretionary power, some countries with arrears to the IMF were not declared ineligible to use IMF resources. A good example is the case of Cambodia who has never been declared ineligible despite its long overdue obligations to the IMF. However, a member that is declared ineligible can request resumption from the Executive Board. With its discretionary power, the Executive Board can accept resumption or present to the member further actions to be followed before such resumption is permitted.^{xlii}

The interval between when resources are limited and declaration of ineligibility^{xliii} is thirteen months. In a situation where a member continues in its failure to settle its overdue obligations to the Fund, the Executive Board declares the member ineligible to use the general resources of the Fund.^{xliv} The timing of the declaration of ineligibility would vary according to the Board's assessment of the specific circumstances and of the efforts being made by the member

to fulfil its financial obligations to the Fund.^{xlv} The procedures for dealing with members with protracted arrears that have been declared ineligible include further reviews at intervals of not more than six months. Such reviews may be postponed for periods of up to one year however in exceptional circumstances where the Managing Director judges that there is no basis for an earlier evaluation of the member's cooperation with the Fund.^{xlvi}

Members not showing a clear willingness to cooperate with the Fund have been informed that in these circumstances the provision of technical assistance^{xlvii} as contained in article V, section 2 (b) of the IMF Article of Agreements would be inappropriate, but the Fund would reconsider providing technical assistance once the member has resumed active cooperation. The Managing Director may also limit technical assistance provided to a member, if in his judgment that assistance was not contributing adequately to the resolution of the problems associated with over dues to the Fund.

A further remedial measure in cases of protracted arrears would be communications with all Governors of the Fund and with heads of certain international financial institutions. Use of such communications would normally be raised for the Executive Board's consideration at the time of the first post-ineligibility review of the member's arrears. At that time the staff would prepare a draft text of communication. It should be noted that the Fund's communication to certain other international financial institutions, such as the three main regional development banks (Asian Development Bank, African Development Bank, Inter-American Development Bank), like its communication to the Governors, would not request the addressee to take specific actions and would leave any action to the institution's discretion. However this does not prevent informal contacts with other international financial institutions. In the event where the Executive Board judges that the member concerned is not cooperating actively with the Fund in efforts to resolve the problem of its overdue financial obligations to the Fund, the staff would propose to send this type of communication on the occasion of the next post-ineligibility review for members.^{xlviii}

Removal from the list of PRGT-eligible countries

To strengthen discipline in the IMF relation with its member countries, and borrowers in particular, when a member's longest overdue financial obligation has been outstanding for six months, the Executive Board will review the situation of the member and may remove the member from the list of Poverty Reduction and Growth Trust eligible countries and any

reinstatement of the member will require a new decision of the Executive Board.^{xlix} A decision to either remove or reinstate, shall take the form of a press release, and if pertinent, it shall be included in the Annual Report for the year concern.

Censure or declaration of non-cooperation

A declaration of censure or non-cooperation would come as an intermediate step between a declaration of ineligibility and a resolution on compulsory withdrawal.¹ A declaration of noncooperation with the Trust may be issued by the Executive Board whenever a member's longest overdue financial obligation has been outstanding for twelve months. The decision as to whether to issue such a declaration would be based on an assessment of the member's performance in the settlement of its arrears to the Trust and of its efforts, in consultation with the Fund, to follow appropriate policies for the settlement of its arrears.^{li} The decision as to whether to issue such a declaration would be based on an assessment of the member's performance in the settlement of its arrears to the Fund and of its efforts, in consultation with the Fund, to follow appropriate policies for the settlement of its arrears. Three related tests would be germane to this decision regarding:^{lii}

- the member's performance in meeting its financial obligations to the Fund taking account of exogenous factors that may have affected the member's performance;
- whether the member had made payments to other creditors while continuing to be in arrears to the Fund; and
- The preparedness of the member to adopt comprehensive adjustment policies.

The declaration would follow any communication to Governors after ineligibility and would be considered at a subsequent post-ineligibility review. The period between such communications and the declaration could be about six months, but this time period would be determined on a case-by-case basis. Upon a declaration of non-cooperation, technical assistance to the member will be suspended unless the Executive Board decides otherwise.^{liii} A draft of the declaration is set out and would be adopted by the Executive Board and published. Just like ineligibility, the declaration of non-cooperation can be lifted on condition that the member becomes committed in paying its arrears.^{liv}

Suspension of Voting Rights

When the application for membership is filed and procedure for membership well respected, a member country gains the right to vote as concerned IMF decisions. Empowered to regulate lending, the IMF has the responsibility to ensure that members in the exercise of their right to vote do not breach obligations given to them at the time of joining membership. At any time when a breach is noticed, the IMF can punish a member country that fails to meet its obligation to the IMF by suspending its voting rights. This suspension of voting right express as, ... *the Fund may, by a seventy percent majority of the total voting power, suspend the voting rights of the member. During the period of the suspension, the provisions of Schedule L shall apply. The Fund may, by a seventy percent majority of the total voting power, terminate the suspension at any time.*^{lv}

Suspension of a member's voting rights is, however, one in a series of escalating remedial measures that the IMF applies to members that fail to meet their obligations under its Articles of Agreement. Suspension of voting rights, however, requires a 70% of the total voting powers of the Fund.^{lvi} The decision to suspend a member's voting rights is vested on the Executive Board, and just like the case with declaration of ineligibility, is subject to prior notification with the aim of allowing the member to state its claims both orally and in writing.^{lvii} On September 11, 2002, the Executive Board agreed to initiate the procedure to suspend Zimbabwe's voting and related rights in the IMF. Nevertheless, a member whose voting rights are suspended has the possibility to request termination of suspension from the Executive Board who has the discretion to either accept or with a written report, present to the member further actions that the member needs to take before such a suspension is uplifted.^{lviii}

Compulsory Withdrawal

Generally, by virtue of the provisions of section 22 of the By-Laws, there is the availability to the Fund, procedures on compulsory withdrawal. Compulsory withdrawal is the red card which is only followed once the Fund has exhausted all other possible avenues to redress the problem of overdue financial obligations. That is, despite a declaration of noncooperation, the member has not exhibited a willingness to cooperate with the Fund.^{lix} The Articles of Agreement and the By-Laws provide procedures for settling claims by the Fund on a member in the event that it withdraws from the Fund. It is the responsibility of the IMF to initiate compulsory withdrawal procedures as was the case for Zimbabwe.^{lx} If the procedures were initiated, the staff would

prepare an analysis of the effect of the member's withdrawal on the Fund's financial position. The initiation of this procedure requires a decision of the Board of Governors with majority votes.^{lxi} Compulsory withdrawal is therefore a remedy within the reserved powers of the Board of Governors which as aforementioned is largely composed of ministers of finance or presidents of central banks.

OTHER MODALITIES TO DEAL WITH OVERDUE OBLIGATIONS

Added to the cooperative arrears strategy, we will further look at Arrears clearance and special charges as additional efforts by the Fund to treat overdue financial obligations.

Arrears Clearance Modalities

A number of modalities allow members with overdue financial obligations to the IMF to clear their arrears, including using their own financial resources, grants from donors, or a bridge loan from key creditors. In the case of the latter, the IMF can assist the member in arranging for an intraday bridge loan from key creditors without interest, charge, or other cost. Following clearance of its arrears to the IMF and the Executive Board's approval of a new IMF financial arrangement, the member uses the proceeds of the first disbursement, made available on the same day as the arrears clearance, to settle the outstanding bridge loan.^{lxii}

Special Charges

These are additional charges that are levied on a member's overdue repurchase and charges. Aside the legal remedies considered by the IMF, we can equally talk of special charges and additional interest on overdue obligations as compensation for delay payments. The legal basis for special charges on overdue repurchases to the fund is Article V, Section 8(c) and (d). A special charge equal to the rate of interest on the SDR shall be paid by a member on the unpaid amount of charges owed by it under Article V, Section 8(a) and (b).^{lxiii} The Fund is permitted to levy special charges on overdue interest on Trust Fund loans at a rate equal to one half the sum of the interest on Trust Fund loans and the rate of interest on the SDR, and the overdue amounts of repayments of Trust Fund loans at a rate equal to one half of the sum of the rate of interest on Trust Fund loans and the rate of interest on the SDR, less one-half percent.^{lxiv} However, the Fund shall not levy special charges be it on interest or overdue obligations of members that is due six months and above. Special charges therefore, serve as incentive to

encourage borrowers to make timely repurchase. Special charges shall be payable following the Fund's financial quarters and the member shall be notified promptly of any special charges due. Concerning special charges on overdue repurchases in the General Resource Account, payment shall be made in SDRs to that account, relating to overdue repayments and interest on Trust Fund loans, payment shall be made in U.S dollars or SDRs to the Special Disbursement Account.^{lxv}

CONCLUSION

Countries fail to honour obligations to the IMF for complex reasons, which vary from case to case. Generally, failure may be a consequence of unsustainable economic policies, exogenous shocks, or political developments like conflicts and international sanctions. When a country messes up with the Fund, the information about the overdue financial obligation is made available to the public, and this situation could result to legal, financial and moral outcomes. Talking about legal consequences it is the most severe because most bonds issued by Sovereign States, as well as loan agreements in which they are party as a borrower, include a cross-default clause which considers the lack of payment to the IMF as an event of default.^{lxvi} Likewise the breach of an obligation under any IMF arrangement conveys financial impacts because other lenders would refuse to facilitate new resources to a nonperforming country, and even if the country were able to find another source of financing, it would be more costly because of complex interest rates. When this happens, the defaulting borrower is likely to cut back expenses and this will likely lead to domestic riots. In addition, the public becoming aware of a country's default would expose a country to the censure by the international community. When all these happen, foreign investors and direct investors will divert their interest to other countries, inflation is likely to increase and savings and wealth will be destroyed. If the IMF were to be forgetting all its debts, it would have long ceased to exist because it would have ran short of resources. From our findings, we discovered that the use of the cooperative arrears strategy and the applicability of sanctions for breach of financial obligations to the IMF and the consequences that follows has pushed many defaulters to make repurchase to the Fund. Despite the limited application of IMF sanctions however, such remedies do exist and make financial and other obligations to the Fund enforceable.

ENDNOTES

ⁱ See IMF Articles of Agreement 1944, Art. XIII, Sect. 3.

ⁱⁱ International Monetary Fund, *Facilities: IMF Provides Resources to Members Under Various Facilities*, IMF Surveillance, Supplement on the IMF, September 1992, p. 14-16. From the different IMF facilities earlier discussed, it is evident that repurchase obligations arises depending on the type of arrangement. In addition, repurchase must be made in SDR or in a currency accepted by the Fund.

ⁱⁱⁱ International Monetary Fund, Executive Board Decision No. 8165-(85/189), December 30, 1985, as amended and reprinted in Selected Decisions and Selected Documents of the International Monetary Fund 413, 16th issue, 1991, p. 225-227 (imposing special charges on overdue financial obligations) and also Executive Board Decision No. 9723-(91-63), April 24 1991, reprinted in Selected Decision, p. 227-228 (suspending special charges on certain member countries cooperating with the IMF)

^{iv} Overdue obligations to the General Resources Account (GRA) and Special Drawing Rights (SDR) departments constitute breaches of obligations under the Articles of Agreement. Overdue obligations to the PRGT are not breaches of obligations under the Articles and are thus not subject to Article XXVI sanctions. Remedial measures for dealing with PRGT overdue obligations include removal from the list of PRGT-eligible countries, declaration of noncooperation and suspension of technical assistance. The Fund also levies the SDR interest rate on any amounts of any overdue interest on, or overdue repayments of, Trust loans.

^v This article states that, If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article V, Section 5 or Article VI, Section 1.

(b) If, after the expiration of a reasonable period following a declaration of ineligibility under (a) above, the member persists in its failure to fulfill any of its obligations under this Agreement, the Fund may, by a seventy percent majority of the total voting power, suspend the voting rights of the member. During the period of the suspension, the provisions of Schedule L shall apply. The Fund may, by a seventy percent majority of the total voting power, terminate the suspension at any time.

(c) If, after the expiration of a reasonable period following a decision of suspension under (b) above, the member persists in its failure to fulfill any of its obligations under this Agreement, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the Governors having eighty-five percent of the total voting power.

^{vi} Overdue obligations to the IMF from SDR 178 million at the end of 1984 rose to a peak of SDR 3.6 billion at the end of 1991.

^{vii} Aylward L. & Thorne R., *Countries' Repayment Performance Vis-à-vis the IMF*, IMF Staff Papers, Vol. 45, No. 4, December 1998, pp. 595-618.

^{viii} International Monetary Fund, *Financial Statements for the Quarters Ended January 31, 2020, and 2019*, Washington, D.C., IMF, 2020, p. 15. These two countries are Somalia and Sudan. In March 2020, Somalia however settled all of its overdue obligations to the IMF General Department, including GRA credit outstanding and overdue charges of SDR 96 million and SDR 128 million, respectively.

^{ix} Boughton M., *Silent Revolution: The International Monetary Fund 1979-1989*, International Monetary Fund, Washington DC, 2001, pp. 850-851. Iraq had no outstanding debts to the GRA but was forced into arrears as a result of sanctions imposed by the international community. In addition, Afghanistan which also had no general obligations outstanding ran out of SDR holdings in November 1995. For several years before then, the country had been in a state of civil war, waged in the near vacuum of governance created by the departure of Soviet troops in 1989.

^x Oeking A. & Sumlinski M., "Arrears to the IMF- A Ghost of the Past?", IMF Working Paper 16/225, International Monetary Fund, 2016, p. 9.

^{xi} Boughton James, *Tearing Down Walls: The International Monetary Fund 1990-1999*, International Monetary Fund, Washington, D.C., 2012.

^{xii} This period relates to the debt crisis to which the IMF massively increased its financing especially to developing countries that were most affected by the crisis. Garritsen M., *The IMF in a changing World 1945-1985*, Washington, D.C., International Monetary Fund, 1986, p. 184.

^{xiii} International Monetary Fund, *Annual Report of the Executive Board*, Washington, DC, IMF, 1991, p. 69, viewed at <https://www.imf.org/external/pubs/ft/ar/archive/pdf/ar1991.pdf>, on the 14 of May 2019.

^{xiv} International Monetary Fund, *Selected Decisions*, 16th Issue, 1991, *op. cit*, p. 73-97

^{xv} IMF Executive meeting No. 89/100 and 89/101, July 27, 1989, as amended by Decision No. 12546-(01/84), August 22, 2001.

^{xvi} International Monetary Fund, Annual Report, Washington, DC, IMF, 1992, p.23, see also International Monetary Fund, IMF Addresses Problem of Overdue Financial Obligations, IMF Survey-Supplement on the IMF, September 1992, p. 23.

^{xvii} IMF, Executive meeting No. 89/100 and 89/101, July 27, 1989, as amended by Decision No. 12546-(01/84), August 22, 2001.

^{xviii} *Ibid*, paragraph 1.

^{xix} Historically, IMF-Monitored Programs were also used to clear arrears. Like RAPs, such programs were expected to adhere to the macroeconomic and structural policy standards associated with programmes in the upper credit tranches. The arrears of Guyana (1989) and Panama (1990) to the IMF were cleared through IMF-Monitored Programs.

^{xx} These countries included Cambodia, Guyana, Honduras, Liberia, Panama, Peru, Sierra Leone, Somalia, Sudan, Vietnam, and Zambia. See International Monetary Fund, Review of Fund's Strategy on Overdue Financial Obligations, IMF Policy Paper, International Monetary Fund, Washington, D.C., July 2018.

^{xxi} To reassure lenders to the PRGT that they would be repaid for PRGT (formerly PRGF Poverty Reduction and Growth Facility) loans made in connection with the encashment of rights under the RAP, the IMF in 1993 pledged to sell up to 3 million ounces of gold if it was determined that the PRGT Reserve Account, plus other available means of financing, were insufficient to meet payments due to creditors.

^{xxii} Financing assurance was modified from the usual IMF arrangements in the sense that arrears to the IMF (and possibly to other multilateral institutions) could remain outstanding during the program period, although members are expected to make maximum efforts to reduce their overdue obligations to the IMF.

^{xxiii} International Monetary Fund, Review of Fund's Strategy *op.cit.*, p. 12, Para 18.

^{xxiv} The length of the RAPs of the three countries that have made use of the rights approach was 1½ years for Peru, 1¾ years for Sierra Leone, and 3 years for Zambia.

^{xxv} A Staff-Monitored Program is an informal and flexible instrument for dialogue between the IMF staff and a member country on its economic policies and not necessarily specifically intended for arrears cases. Under a Staff-Monitored Program, the country's targets and policies are monitored by the IMF staff; a Staff-Monitored Program is not supported by the use of the IMF's financial resources, nor is it subject to the endorsement of the Executive Board of the IMF.

^{xxvi} Similarly, flexibility would be applied with respect to payments to the IMF by members in protracted arrears that have been hit by a qualifying catastrophe or health disaster. In assessing such members' cooperation on payment under the de-escalation policy, the IMF would exercise flexibility in accepting significantly reduced payments.

^{xxvii} International Monetary Fund, Review of Fund's Strategy *op.cit.*, p. 5, para 5.

^{xxviii} *Ibid*.

^{xxix} IMF Executive meeting No. 89/100 and 89/101, July 27, 1989, as amended by Decision No. 12546-(01/84), August 22, 2001. See also, Supplement to the Thirty-Ninth Issue of Selected Decisions and Selected Documents of the International Monetary Fund, Washington, D.C., P. 70, February 28, 2018.

^{xxx} *Ibid*.

^{xxxi} *Ibid*.

^{xxxii} *Op.cit.*, Decision No. 12546-(01/84), of August 22, 2001.

^{xxxiii} IMF Executive meeting No. 89/101, July 27, 1989, as amended by Decision No. 12546-(01/84), August 22, 2001.

^{xxxiv} Para. 7, Decision No. 12546-(01/84), August 22, 2001.

^{xxxv} *Ibid*, Para. 7.

^{xxxvi} See IMF Executive Board Decision No. 284-3, of March 10, 1948

^{xxxvii} See the IMF Articles of Agreement, *op. cit.* Art. V Sect. 5.

^{xxxviii} Paragraph 5, appendix II on procedures for addressing overdue financial obligations to the Poverty Reduction and Growth Trust, seen in supplement: selected decisions and selected documents of the International Monetary Fund, 2019, 40th issue, p. 49.

^{xxxix} *Ibid*, paragraph 6.

^{xl} Head J., Suspension of Debtor Countries' Voting Rights in the IMF: An Assessment of the Third Amendment to the IMF Charter, *Virginia Journal of International Law*, vol. 33, 1993, p. 591-644

^{xli} Rules and Regulations of the IMF, *op.cit.*, Rule K-2 and 3.

^{xlii} *Ibid*, Rule K-4.

^{xliii}The New Humanitarian, IMF declares Zimbabwe ineligible for future lending, Johannesburg, politics and Economics News, 26 September 2001, at: thenewhumanitarian.org. Later, in November 14, 2016, following Press Release No. 16/505, IMF Executive Board removed remedial measures applied to Zimbabwe. This follows Zimbabwe's full settlement of all its overdue financial obligations to the PRGT of SDR 78.3 million on October 20, 2016. Zimbabwe is now current on all of its financial obligations to the IMF.

^{xliv} See the IMF Articles of Agreement *op.cit.*, Art. XXVI, Sect. 2a, and as well Decision No. 284-3 of March 10, 1948, from the Selected Decisions and Selected Documents of the IMF, Fortieth issue on the use of IMF resources under Art. V, Section 5, lastly updated April 30, 2019.

^{xlv} Before the amendment of Sect. XXVI, declaration of ineligibility was automatic and not discretionary as it is now.

^{xlvi} See IMF Executive Board Decision No. 15225-(12/83), August 27, 2012, viewed in the Selected Decisions and Selected Documents of the IMF.

^{xlvii} The IMF provides technical assistance, including training, to the governments and central banks of member countries and, in some cases, nonmembers and international organizations. Much of this assistance is given to countries implementing IMF-supported adjustment and reform programs more specifically, to their main economic ministries, such as the finance and planning ministries, and the central bank. It thus helps members to design economic policies and manage their finances more effectively.

^{xlviii} IMF Executive Board Decision No. 89/100 and 89/101, July 27, 1989, as amended by Decision No. 12546-(01/84), August 22, 2001, paragraph 3.

^{xlix} Supplement of Selected Decisions, 40th Issue, *op.cit.*, Appendix II, Paragraph 7, p. 51.

^l IMF, Financial Organization and Operations of the IMF, Pamphlet Series No. 45, Washington, D.C., IMF, 1991, p. 89.

^{li} Supplement of Selected Decisions, 40th Issue, *op.cit.*, Appendix II, Paragraph 8, p. 51-52.

^{lii} IMF Executive Board Decision No. 89/100 *Op. cit.* paragraph 4.

^{liii} See Press Release No. 02/28, IMF Adopts Declaration of Non-cooperation for Zimbabwe and Suspends Technical Assistance, June 14, 2002.

^{liv} A declaration of non-cooperation was issued on Sudan on the 4 of September 1990 and following its commitments in repayment schedules, the IMF uplifted the declaration of non-cooperation in 1999. See IMF Survey: Volume 28, issue 18, January 1999.

^{lv} See article XXVI, Section 2 (b) of the IMF Articles of Agreements.

^{lvi} See IMF Articles of Agreement, *op. cit.*, Art. XXVI Sect. 2b.

^{lvii} See Rules and Regulations of the IMF, *op. cit.* Rule K-6

^{lviii} *Ibid*, Rule K-7.

^{lix} Gold J., *The IMF Invents New Penalties* in N.M. Blokker and S. Muller (eds), Towards More Effective Supervision by International Organizations, Martinus Nijhoff Publishers, Dordrecht, 1994, p.131.

^{lx} Press Release No. 03/210 of the International Monetary Fund, 2003. In September 2001 the Fund declared Zimbabwe ineligible to use the general resources as a result of the overdue financial obligations and lack of cooperation with the IMF. Later in June 2003, the Executive Board suspended the voting rights of Zimbabwe. Finally, failing to fulfill its obligation pushed the IMF with the decision to initiate the compulsory withdrawal process of Zimbabwe in December 2003. However, Zimbabwe considering the partial payment made in February 2006, the Executive Board decided to suspend the withdrawal process.

^{lxi} See IMF Articles of Agreement, *op.cit.*, Art. XII Sect. 2(b) (vi), Art. XXVI Sect. 2(c) and Art. XV Sect. 2(a).

^{lxii} Historically, the bridge loan modality has been used in most arrears clearance. Afghanistan (2003) used grant contributions from a group of creditors to clear its arrears to the IMF, Iraq (2004) used its own financial resources, Liberia (2008) used an intraday bridge loan from another member, and Zimbabwe (2016) used its own resources (SDR holdings) to clear its arrears to the PRGT.

^{lxiii} See IMF Decision No. 8165-(85/189) GTR, December 30, 1985, effective February 1, 1986, severally amended with the most recent been Decision No. 13001-(03/39) G/TR, April 25, 2003, Section II.

^{lxiv} *Ibid*, Sect. III.

^{lxv} *Ibid*, Sect. V, paragraph 1 and 2, see also Decision No. 7142-(82/85) TR, June 18, 1982, as amended by Decision No. 8640-(87/101) S/TR, July 9, 1987.

^{lxvi} See for example the Listing Memorandum prepared by the Bolivarian Republic of Venezuela for the offer of the US\$1,500,057,000 5.75% Bonds due 2016 which includes as an event of default 'if (i) the Republic ceases to be a member of the IMF or ceases to be eligible to use the general resources of the IMF'. Bolivarian Republic of Venezuela, 'Listing Memorandum US\$1,500,057,000 5.75% Bonds due 2016', p. 22, Available at https://www.bancobest.pt/ptg/BESTSite/best_docs/VENZ_USP97475AG56.pdf, accessed on the 25 of November 2019.