The World Bank and the IMF Relationship – Quo Vadis?

IBRAHIM F. I. SHIHATA*

I. Introduction

It is gratifying that this magnificent school of law cooperates with many other institutions to honor today the memory of Sir Joseph Gold. Sir Joseph was a great man who combined unparalleled distinction in his profession with a unique scholarship in his field. Anyone who is familiar with his work knows that he contributed to the progressive development of international law in difficult areas where he was the leading pioneer. My remarks today are partly based on the vast literature Sir Joseph has left behind on the work of the International Monetary Fund and the World Bank. It represents an overview of past and prospective relationships between these two important institutions. Sir Joseph and I, each in his respective institution, had the privilege to occupy the same position for a long, though different, period of time. In his writings, he reflected the knowledge of an insider and the wisdom of a detached but experienced observer. My remarks will represent a modest assessment of one of the difficult issues Sir Joseph had so ably addressed – an issue that remains in need of further consideration by those concerned with international relations, law, economics, and politics.[**]

Shortly after the appointment of the current Managing Director of the IMF, Sir Joseph Gold, together with the President of the World Bank, issued a joint statement representing their "shared vision" for "an enhanced relationship" between the two Bretton Woods institutions.[1] Only a few, however, know that this much acclaimed statement, dated September 5, 2000 (to which I shall return later), represents the fifteenth attempt throughout the institutions' history to define in writing how they can work together. After growing apart for twenty years in "competitive independence,"[2] they have been trying, for over thirty-five

*Dr. Ibrahim Shihata was a former Senior Vice President and General Counsel of the World Bank. This article was prepared as a basis of the Keynote address before the Southern Methodist University Dedman School of Law in honor of Sir Joseph Gold, Dallas, Texas, March 7, 2001.

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1. *See* Joint Statement by James Wolfensohn, WBG, and Horst Köhler, IMF, dated September 5, 2000, addressed to Members of the Executive Boards and Members of the Staffs, *at* http://www.imf.org/external/np/omd/2000/part.htm.

2. *See* EDWARD S. MASON & ROBERT E. ASHER, THE WORLD BANK SINCE BRETTON WOODS 550 (1973). *See also* Joseph Gold, *The Relationship Between the International Monetary Fund and the World Bank*, 15 (2) CREIGHTON

years now, to mature together in an environment Sir Joseph once described as a "sibling rivalry."[3]

Why did this relationship need such repeated assurances of close collaboration? If this was due to inherently overlapping mandates, why were two institutions, rather than one, created in the first place? If separate functions were meant to be performed by each institution, how is it that some of their purposes explicitly allow them to cover the same areas, such as the promotion of international trade, while leaving many other areas, such as the financial sector, to be claimed by both? Is the overlap in jurisdiction really desirable, with its possible result of divergent policies and conflicting advice? More importantly, what can be done now to ensure that the objectives of their common membership may best be achieved in a manner that is cost efficient and most responsive to the needs of the recipients of assistance and advice from these institutions? These are the main questions I would like to address here.

II. Early History

In the early 1940s, the United States and the United Kingdom started to envision a world order for the post-World War II era. The economic order of that world was to be based, in their vision, on what Sir Joseph called a "trinity of comparable institutions"[4]: A bank for the financing of reconstruction and development, a fund to protect the stability of currencies under a fixed exchange rate system and to correct temporary disequilibria in the countries' balance of payments, and an organization to promote liberal, beneficial trade among nations.[5] Agreement on the creation of the first two institutions was reached at the Bretton Woods Conference in July 1944. The establishment of a world trade institution, which was only alluded to in the Final Act of that Conference, however, had to wait for another fifty years before it became a reality. (A draft charter prepared in 1947 for the creation of an international trade organization was reduced in 1964 to the General Agreement on Tariffs and Trade, the secretariat of which was transformed, as of the beginning of 1995, to the "World Trade Organization."[6])

The two progenitors of the Fund and Bank Articles of Agreement, Henry D. White of the United States and Lord John M. Keynes of the United Kingdom, had indeed considered from the outset whether two institutions were required for international financial and monetary cooperation. They separately opted for duality. Keynes' "Clearing Union" was to be separate from, but closely linked to his "Board for International Investment," so was White's Fund and Bank. The latter recognized in the first version of his plan (April 1942) that "in some of their facets and in many of their consequences there is considerable interdependence and interaction." Yet, he argued that "the two are different enough to call for separate instrumentalilties." He went on to say,

L. Rev. 499, 512 (1981–1982), *reprinted in* 2 Joseph Gold, Legal and Institutional Aspects of the International Monetary System: Selected Essays 474 (1984).

3. Gold, *supra* note 2, at 501.

4. *Id.* at 499.

5. *Id.* at 499–506.

6. For a brief history and the linkage between the WTO, the IMF and the World Bank, see Dukgeun Ahn, *Linkages between International Financial and Trade Institutions – IMF, World Bank and WTO*, 34(4) Journal of World Trade 1 (2000).

> Doubtless one agency with the combined function of both could be setup, but it could operate only with a loss of effectiveness, risk of over-centralization of power, and danger of making costly error of judgment . . . [The] best promise of successful operation seems to lie in the creation of two separate institutions linked together by one or two directors in common.[7]

In his subsequent draft (July 1943), he wrote,

> There is a strong inclination on the part of some to entrust to a single agency the responsibility for dealing with these and other international economic problems. We believe, however, that an international economic institution can operate most efficiently if it is not burdened with diverse duties of a specialized character.[8]

Two separate institutions with different funding mechanisms were thus proposed and later agreed upon at Bretton Woods. The absence of a third agreement on a world trade organization and the recognized relevance of international trade to both development and monetary policies led to laying emphasis on the promotion of international trade and balance of payments' equilibrium as objectives of the two institutions. An institutional linkage between them is also provided for in the Bank's Articles: Bank membership is predicated on membership in the Fund.[9] This was officially attributed to the need "to enable the Bank to count on stable conditions of exchange in its operations."[10] It was also unofficially explained by the need "to force countries to agree to standards in the monetary field as a condition to get the benefits of the Bank and to further reduce the risk of free ridership."[11]

Early insistence by the United Kingdom to give the Bank a role in financing long-term stabilization and economic recovery, in addition to its ordinary business of financing specific projects, resulted in a provision in the Bank's Articles allowing it to provide in special circumstances loans and guarantees for other than specific projects.[12] The formula was left vague, lest the U.S. Congress should object to the creation of the Fund if the Bank was categorically enabled to provide stabilization loans.[13] As it turned out, the U.S. Senate insisted in the Bretton Woods Agreements Act of 1945, that the United States request formal interpretations in the Boards of both institutions, which were granted in September 1946. According to these, the Bank would have the power to finance programs of economic

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7. THE INTERNATIONAL MONETARY FUND 1945 – 1965, TWENTY YEARS OF INTERNATIONAL MONETARY COOPERATION, vol. III, Document 39 (J. Keith Horsefield ed., 1969).

8. *Id.* at 84.

9. *See* International Bank for Reconstruction and Development Articles of Agreement, Feb. 16, 1989, art. II, § 1, *available at* http://www.worldbank.org/html/extdr/backgrd/ibdr/art2.htm [hereinafter IBRD]. The same applies by implication for three other IBRD affiliate organizations, the membership of which is predicated on membership of IBRD. *See* International Finance Corporation Articles of Agreement, Apr. 28, 1993, art. II, *available at* http://www.ifc.org/about/articles/article2.html [hereinafter IFC]; International Development Association Articles of Agreement, art. II, *available at* http://www.worldbank.org/ida/idaart03.htm [hereinafter IDA]; and Convention Establishing the Multilateral Investment Guarantee Agency, Oct. 11, 1985, art. II, *available at* http://www.miga.org/screens/about/convent/convent.htm [hereinafter MIGA]. In practice, application for membership in the Fund and the Bank are assessed simultaneously.

10. Proceedings and Documents of the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 1–22, 1944, at 547.

11. Jacques J. Polak, *World Bank and the IMF: A Changing Relationship*, *in* THE WORLD BANK – ITS FIRST HALF CENTURY 473 (Derepsh Kapur et al. eds., 1997).

12. *See* IBRD art. III, § 4(vii). "Loans made or guaranteed by the Bank shall, except in special circumstances be for the purpose of specific projects of reconstruction and development." *Id.*

13. *See Project and Non-project Financing Under the IBRD Articles*, *in* IBRAHIM F.I. SHIHATA, THE WORLD BANK LEGAL PAPERS 173 (2000).

reconstruction and recovery, including long-term stabilization loans, and the Fund would limit the use of its resources to "give temporary assistance in financing balance of payments deficits on current accounts for monetary stabilization operations."[14]

The seeds of potential conflict between the two institutions were thus planted from their very inception. Not only were overlapping competencies apparent in the texts of their respective charters and their early interpretation, but the basic assumptions underlying the differentiation were questionable at best. The concept that monetary stabilization and economic growth were two separate goals that warranted the creation of a separate international organization to support each of them, much like the theoretical assumption that short-term considerations can be disentangled from longer-term ones, was neither proven by economic analysis nor supported by experience. In fact, the Fund came later to assert, in the words of its Managing Director, that "monetary stability is an essential condition, and indeed the only reliable basis, for sustained growth."[15] On its part, the Bank was simultaneously maintaining, in the words of a senior official, that it "might be even more interested than the Fund in a diligent search for stabilization measures outside the field of investment if only to minimize the cutback that might be necessary in the size of the [borrowing countries'] investment program."[16] The first historians of the Bank found in 1973 that the principal difficulty in Bank-Fund collaboration was that both took "a relatively short-term view of their responsibilities toward members."[17] This, they maintained, was a "result of an overemphasis on stabilization as a necessary, though not sufficient, condition of growth—to the neglect of the equally important proposition that, in many situations, growth is a necessary, though not sufficient, condition for effective stabilization."[18] This overemphasis, which now seems to apply more accurately to the activities of the last two decades, would probably have been avoided if the two tasks were entrusted to one institution.

More important perhaps than the weakness of the presumptions underlying the creation of two institutions is the fact that the Fund's major role in the protection of the gold-based fixed exchange rate system came to an end with the demise in 1971 of the gold dollar and its related par-value system. Voluntary devaluation of currencies practically eliminated the need for the Fund's assistance to maintain fixed rates. Meanwhile, increased access of middle-income countries to commercial sources of finance before the debt crisis of the early 1980s decreased the need for reliance on Fund resources to meet temporary balance of payments' problems.

Matters changed, however, with the emergence of new needs and subsequent attempts to meet such needs. There is a need for massive resources: first, to meet the rising import bills of low income countries; second, to help resolve the debt crisis of the 1980s; third, to address the new challenges facing countries of the former Soviet bloc in the early 1990s, followed by the need to resolve the Asian financial crisis and its contagion effects in the late 1990s. All enhanced the relevance of both institutions, especially the Fund, and placed the issue of their collaboration on top of the world economic agenda. Recurrent financial

14. *See* JOSEPH GOLD, INTERPRETATION: THE IMF AND INTERNATIONAL LAW 416–17 (1996) and SHIHATA, *supra* note 13, at 179–82.

15. MASON & ASHER, *supra* note 2, at 549.

16. *Id.* at 550.

17. *Id.* at 556.

18. *Id.* at 557.

crises, along with the coincidence of personality conflicts at the top, seem to have worked in favor of expanding the Fund's role. Not only was it agreed in 1989 that each institution would, in its area of primary responsibility, "yield to the views of the other in case they differed from its own" (an arrangement that more often than not led to the Fund's prominence), but it was also concluded in late 1998 that the Fund would simply take the lead in the early stage of a financial crisis. The balance was restored only by the September 2000 Joint Statement. A review of developments in the Bank-Fund relationship sheds the light on this interesting evolution.

III. Practice of "Cooperation and Irritation"[19]

A. Growing Apart

Concern about how the relationship between the Fund and the Bank would work in practice was one of the earliest issues discussed by the Executive Directors (Boards) of the two institutions. Before either of them was fully in operation, their Boards established a joint standing committee on "Provisional Procedure for Liaison between Fund and Bank on Financial Assistance to Members."[20] A report by this committee, accepted in November 1946, represents the first official joint "agreement" on Bank-Fund collaboration. The report referred to the "complementarity" (a term that has since been frequently repeated) of the institutions' activities before suggesting that a procedure should be prepared quickly to ensure their close collaboration. A few months later, an elaborate system of liaison was established involving, separately, the heads of the two institutions, their Boards' aforementioned "Joint Standing Committee," their Departments and their Secretariats.[21] It details, notwithstanding, that the system apparently did not prevent occurrences of sharp conflict.

In early 1949, the Fund strongly objected to a Bank Staff Loan Committee recommendation to the effect that, in lieu of making a requested Bank loan to Lebanon, the Bank should first offer advice on monetary and exchange matters, which a Bank mission had found to be central to that country's problems. The Fund staff indicated, however, that the Bank should abstain from expressing views about such matters until the Fund had expressed its own. In response, the Bank's General Counsel at the time wrote what became for a long time the Bank's position on the matter:

> The Bank should at all times endeavor to cooperate with the Fund and should consult it about monetary and exchange problems. . . . [It] should endeavor to reconcile conflicting views in so far as possible, [but] the Bank must, however, preserve at all times [its] freedom of judgment and action. [Although] the Bank should not gratuitously undertake to advise countries on monetary and exchange problems within the province of the Fund, —[it] should consider and express [its] views on such matters only as they relate to proposed loans by it.[22]

19. The "uneasy cooperation" between the two institutions was also described as "mutually irritating" by Polak. *See* Polak, *supra* note 11, at 498, 518. Mr. Polak was a senior Fund official, then Executive Director, then senior advisor to the Managing Director. He later spoke of the "inevitable cohabitation" after the 1989 Concordat, referred to *infra* note 51.

20. IBRD Files, R-37, 1946, *quoted in* Mason & Asher, *supra* note 2, at 545. *See also* Twenty Years of International Monetary Cooperation, *supra* note 7, vol. I, at 145.

21. Mason & Asher, *supra* note 2, at 545 n.13.

22. Memorandum from Mr. Mclain (Feb. 11, 1949) (concerning memorandum from Leonard B. Rist to John L. McCoy, President, World Bank, Co-operation between Bank and Fund (Feb. 10, 1949)).

In a subsequent memorandum to the Managing Director of the Fund, a senior Fund official, who had participated at Bretton Woods as a U.S. delegate, expressed his disagreement with the above position and stated his understanding of the agreed-upon division of labor. There was, he wrote, "a broad field of common interest" between the Bank and the Fund but "a great confusion" would result if members were urged to follow separate and possibly conflicting advice on the same matters by the two institutions. Such a confusion, which prophetically took place in subsequent instances, especially in the 1980s, would be avoided, he argued, if the Bank conceded that advice on monetary policy was to be done by or through the Fund. The "appropriate specialization," according to that early memorandum was therefore as follows:

(a) The Bank would be directly and primarily concerned with investment, production, and commodity problems, all bearing on the long-run real economic position of its members.
(b) The Fund would be directly and primarily concerned with exchange, reserves, and monetary policy, all bearing on the immediate balance of payments position of its members.[23]

The fear of divergent advice was soon felt in 1950 with regard to a Bank operation in Guatemala. A draft detailed memorandum prepared by the Fund's Deputy Managing Director suggested certain working relationships, but the matter was not pursued further. In 1952, on the proposal of the United Kingdom, the heads of the Bank and the Fund appointed a joint committee, consisting this time of staff of the two institutions, to examine possibilities of closer cooperation. Interestingly, the committee reported that the only area offering promise of joint action, albeit in a limited way, was "administrative services."[24] Collaboration in the collection and composition of economic data and in the use of technical manpower might be advanced, according to the report, by frequent and regular meetings of the heads of operational and research departments, general counsels, and secretaries; no mention was made of joint missions or joint research. In fact, "[n]o Bank official was asked [during the 1950s] to serve on a Fund mission."[25] The Fund complained again in 1958 of the Bank's finding that Spain needed a stabilization program – this being, according to the Fund, a matter for only the Fund to decide.[26]

It may be noted here that throughout the 1950s, the Bank was much more active and visible than the Fund, which provided its first stand-by arrangement in 1953, in the modest amount of $35 million. The situation began to change only in 1957, when total Fund purchases and standby arrangements exceeded $2.3 billion and a new proactive Managing Director, Per Jacobsson, had already been in office one year. [Jacobsson's departure from the earlier narrow conceptions of the Fund's role started, however, at a time when the Bank also began to have a broader view of its activities by fitting individual projects into longer-term lending programs that required "country discussions."[27]] The cool relationship between the two institutions that prevailed in the 1950s continued in the early 1960s.

23. Memorandum from E.M. Bernstein, to Camille Gutt, Cooperation of Fund and Bank on Advice to Members (Mar. 2, 1949).

24. *See* Twenty Years of International Monetary Cooperation, *supra* note 7, at 341–42. *See also* MASON & ASHER, *supra* note 2, at 546.

25. MASON & ASHER, *supra* note 2, at 547.

26. *See id.* at 556.

27. *Id.* at 549. Separate country discussions, not associated with a specific loan, started in the Bank in 1971 in Board Seminars that were later discontinued. They were formalized since 1992 under periodic Country Assistance Strategy (CAS) reports. *See* SHIHATA, *supra* note 13, at 680–89.

B. Maturing Together

A serious attempt to clarify the competencies and to strengthen cooperation began in 1965 with the encouragement of the heads of the two institutions. This culminated in two reports issued separately by the head of each institution, in January 1966 and December 1966, not as joint documents, but as dual memoranda having the same content. The first report was submitted to the respective boards, although it dealt only with procedural arrangements, including the possibility of sending parallel missions and the attaching of staff members of one institution to missions of the other.[28] Interestingly, the substantive memorandum of December 1966, which may have reflected Jacobsson's vision of a broader role for the Fund, was issued within the Bank as instructions to staff and later circulated to the Board for information.[29] It established what it called areas of "primary responsibility" for each institution and areas of "overlapping competence" for both. For the Bank, the primary responsibility was defined as "the composition and appropriateness of development programs and project evaluation, including development priorities" – a definition that seemed to exclude macroeconomic concerns.[30] For the Fund, the primary responsibility consisted of "exchange and restrictive systems . . . adjustment of temporary balance of payments disequilibrium and . . . evaluation and assisting members to work out stabilization programs as a sound basis for economic advance."[31] Each institution should inform itself of the views and position of the other in matters falling within its area. More importantly, each should "adopt these views as a working basis for their own work" and "not engage in a critical review of those matters with member countries" without the prior consent of the other institution.[32] As to the areas of overlapping competence, broad examples were mentioned, including the structure and functioning of financial institutions, adequacy of money and capital markets, the actual and potential capacity of a member to generate domestic savings, the financial implications of economic development programs, and foreign debt problems. In connection with these matters, "cooperative efforts should be made to avoid conflicting views or judgments."[33] Since the memorandum was not discussed in the Bank's Board, there was no chance for the latter to note that Bank management might have accepted too narrow a definition of the Bank's primary responsibility and that many of the areas described as overlapping had been previously thought of as more pertinent to the Bank's work.

The 1966 substantive understandings were nevertheless found by Bank officials to be "vague enough to be innocuous."[34] They left the matter again largely to officials holding parallel positions in the two institutions. However, these understandings were reaffirmed a few years later in a joint memorandum by the heads of the Bank and issued by the Fund in February 1970.[35] The latter document elaborated on the details of procedural cooperation with a view to assuring consistency of policy and advice and avoiding duplication. It provided, in particular, for collaboration before and after missions, exchange of draft and final

28. *See* Further Steps for Collaboration with the Fund, Jan. 19, 1966 (Bank Doc. Sec. 66–10).

29. *See* Memorandum on IBRD/IMF Collaboration, Dec. 13, 1966 (Bank Doc. Sec. M66 390).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Mason & Asher, *supra* note 2, at 552.

35. *See* Further Steps for Collaboration between the IMF and the IBRD, Feb. 18, 1970 (Bank Doc. Sec. M70–66).

documents, continuation of technical assistance activities, increase in the frequency of parallel missions. and applying the principles of cooperation to resident missions in member countries. The details were incorporated in a Bank Operational Policy Memorandum.[36]

In spite of these important steps, Bank historians, writing in 1973, found that there was still "much unnecessary duplication of effort," that "collaboration, except in the area of fiscal policy, [was] sometimes largely formal; and the question of satisfactory relationships of stabilization policies and growth policies, which should be of central concern to both organizations, remain[ed] on the periphery of attention."[37]

It was in the late 1970s, however, that the Fund witnessed the beginning of a great expansion that continued in the subsequent two decades. Not only did it go beyond its customary practices; it departed from the intentionist reading of its Articles of Agreement to which Sir Joseph Gold had attached particular importance.[38] The economic consequences of the demise of the gold dollar, along with sharp oil price increases and high interest rates, at a time of recession in industrial countries, had all created new problems and expanded the areas of common interest of the two institutions. Current account deficits of many countries became chronic and sharply reduced their investment prospects.

In 1974, the Fund created the Extended Fund Facility (EFF) to provide balance of payments' support for longer periods (up to eight years) and larger amounts (in relation to the countries' quotas). In 1976, it established a trust fund financed by its gold sales to give medium-term loans. In 1979, the repayment period of the EFF credits was further extended to up to ten years and the conditions of access to it became more accommodating. Supply-side policies designed to improve the investment climate, long thought to be the domain of the Bank, were declared in 1980 to be a Fund concern.[39] In 1984, the Fund's Managing Director went so far as to describe the Fund as a "development institution"[40] (less than two years after the publication of an article by a Fund Assistant General Counsel stating that "the International Monetary Fund is not a development agency").[41] In 1986, the Fund's Structural Adjustment Facility (SAF) was established to provide long-term (ten years) assistance to the poorest countries, similar to IDA's adjustment loans, except for the latter's longer repayment periods. The Extended Structural Adjustment Facility was added in 1987, enlarged in 1993, and transformed into the Poverty Reduction and Growth Facility (PRGF) in 1999.

During that expansion, the Fund's Executive Board insisted that Fund-supported programs be based "not only on demand management measures, but also on action designed to improve the efficiency of the productive sector of the economies concerned."[42] Further-

36. Bank OPM No. 510 issued on August 16, 1971.

37. Mason & Asher, *supra* note 2, at 553.

38. Gold, Interpretation, *supra* note 14, at 177–92. Sir Joseph states that "[t] he intent of the negotiators is sought because sovereignty is thought to require this technique." *Id.* at 180.

39. From the Summing up by the Fund's Managing Director of Executive Board discussion held on May 28, 1980, *quoted in* Bank Doc. Sec. M80–454.

40. Remarks by Jack de Larosiere, IMF Managing Director, at the Tidewater Seminar, "Adjustment Programs Supported by the Fund and Medium-Term Structural Reforms: Cooperation with Development Financing Agencies," Orivieto, Haly, July 7, 1984.

41. Stephen A. Silard, *Legal Aspects of Development Financing in the 1980's: The Role of the International Monetary Fund*, 32 Am. U.L. Rev. 89 (1981).

42. Press Release, International Monetary Fund, No. 81/40 (May 21, 1981) (on file with author). By 1990, the Fund's Managing Director felt comfortable to state before the annual meeting of the U.N. Economic and Social Counsel that "our prime objective is growth," even though growth is not mentioned in the Fund's

more, it practically revoked the 1946 formal interpretation that limited the Fund's role in financing balance of payments deficits to "temporary assistance."[43] The Fund's prominence was enhanced by its large programmes for debt-striken middle-income countries in the 1980s and the early 1990s. It reached its peak in the aftermath of the Asian financial crisis in the late 1990s when it acted as the institution in charge, taking the lead even in areas like certain aspects of bankruptcy law, courts in Indonesia, and corporate governance in Korea. In the process, it might have relegated the Bank's role in certain instances to the filling of financial gaps.

For its part, in 1980, the Bank introduced its structural adjustment loans (SALs), and in 1984 extended this type of lending to sectoral adjustment, thus squarely involving itself in the area of balance of payments support (that was previously done only indirectly and almost inadvertently through expansion of the financing of local costs of projects). The Bank has since expanded, under various names, its lending for other than specific projects (always relying on the special circumstances exception) to the extent that this type of lending represented the majority of its loans in certain recent years. Conditionality under such loans, especially SALs, was not dissimilar to those of the Fund and at times exceeded the latter's requirements in areas closer to the Fund's mandate.[44] In this, the Bank was not only acting on its new conviction that policy adjustment was necessary in order for specific projects to yield their developmental purposes; it was also responding to the increasing need to provide quickly disbursed cash to developing countries (and later to assist in their debt reduction), following formidable problems of liquidity and insolvency that deprived them of access to commercial loans (their major source of external financing in the 1970s) and threatened default towards the Bank itself. It was also responding to the developed countries' (especially the United States) requests to increase financial flows to heavily indebted, middle-income countries as a way to ease the debt crisis with manageable sacrifices on the part of their creditor banks.

The World Bank, which relies on borrowing from the market, used its intermediary role to assist the Fund in reducing the burden of the debt crisis on taxpayers in the creditors' countries as well as the indebted ones. The result, however, was that the distinction between Bank and Fund activities became increasingly blurred and their conditionality often coincided. Throughout this period, pressure from developed countries on the Bank and the Fund to strengthen their cooperation and unify their advice increased, while pressure from recipient countries against "cross conditionality"[45] was growing.

In mid-1980 (that is, after the Bank had mainstreamed its adjustment lending but just before the Fund started its SAF), the two institutions reviewed the arrangements previously agreed upon in 1966 and 1970. They concluded that there was no need for a formal revision and simply issued parallel instructions on the need for effective collaboration.[46] In late 1984,

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proposes stipulated in its Articles. *See* JACQUES J. POLAK, THE CHANGING NATURE OF IMF CONDITIONALITY 18–19 (ESSAYS IN INTERNATIONAL FINANCE) (1991).

43. *See* GOLD, INTERPRETATION, *supra* note 14, at 416.

44. For instance, in more than one case, the Bank's conditionality in the 1980s envisioned a deeper devaluation or higher interest rates than those agreed between the country and the Fund. Such Bank conditions were not objected to by Fund representatives in the Bank's Loan Committee.

45. *See* Nicholas Kremmydas, *Cross-Conditionality Phenomenon – Some Legal Aspects*, 23 INT'L L. 651 (1989). *See also* SHIHATA, *supra* note 13, at 720–21.

46. *See* Memorandum from Senior Vice President, Operations, to Regional Vice Presidents, Structural Adjustment Lending—Collaboration with IMF (June 9, 1980) (on file with author).

the Fund management, concerned about the Bank's macroeconomic conditionality in adjustment lending and encouraged perhaps by the Fund's increasingly enhanced role, submitted to the Bank for comment a draft paper on "The Fund and the Bank in the Adjustment Process: Issues for Consideration."[47] Bank management noted the "expansionary terms" of the draft and submitted instead, in early 1985, a paper to its Board reasserting the validity and adequacy of the 1966 demarcation of responsibilities. Guidelines were again issued to Bank staff on "Procedural Aspects of Bank-Fund Collaboration."[48]

C. "Mutual Turf Battles"; Fund Expansion; "Inevitable Cohabitation" and Close Cooperation

The relationship between the two institutions went through a particularly difficult period when the Bank considered making a large loan to Argentina in 1988, despite the lack of a Fund program and the Fund's major disagreement with the country's macroeconomic policies. The loan was made, however, with the support of the United States.[49] A loan to Turkey was also made by the Bank in the same year against the Fund's advice. Meanwhile, the Fund continued to make adjustment credits to the Côte d'lvoire, despite the Bank's strong reservations regarding that country's exchange rate policy, which was supported by France. The troublesome "mutual turf battle" of the 1980s, a term used by a former senior Fund official,[50] led to the conclusion of a comprehensive agreement between the heads of the institutions in 1989 (the so-called 1989 concordat on Bank-Fund collaboration)[51] issued in the form of a joint memorandum to staff. The Fund, which prepared the first draft of that document, seems to have been so anxious to have it adopted in its original form that its Managing Director circulated it to the Fund's Executive Board and scheduled a Board meeting to discuss the document before it was agreed on with the Bank.[52] The final text was disputed by several Bank Board members who received it after it was circulated to staff. As the Banks' General Counsel at the time, I took the position that, inspite of other statements to the contrary, the document did not constitute a binding agreement between the two institutions (such agreements, unless of a temporary or administrative character, require approval by the Board of Governors under the Bank's Articles).

The 1989 concordat remained until September 2000 the basic document on the Bank-Fund relationship. It was remarkable in further broadening the definition of the primary responsibilities of both institutions at the expense of creating further opportunities for overlapping competencies. The Fund's purpose, as reflected in its prepared draft of the concordat, was to reserve for itself primary responsibility for all that was macroeconomics while also recognizing for itself newly asserted role in development. Hard negotiations with senior Bank staff led to the inclusion of a qualification of the Fund's focus on macroeconomic policies to the "aggregate aspects" of such policies and their related instruments. This mysterious qualification[53] remained, however, broad enough to include "public

47. Memorandum from C. David Finch to S. Shahid Hossam (Sept. 7, 1984) (on file with author).

48. *See* Note from International Monetary Fund, President, to International Monetary Fund, Bank Executive Directors (May 29, 1986).

49. *See* Polak, *supra* note 11, at 503–09.

50. *Id.* at 477.

51. Bank-Fund Collaboration in Assisting Member Countries (Bank Doc. R 89-45, Mar. 30, 1989).

52. *See* Polak, *supra* note 11, at 511–12.

53. The qualification, introduced by Stanley Fisher, then Bank Chief Economist, was explained to the Fund's Board by Jacob Frankel, then Fund Economic Counseler, as follows: "there was no way to have a meaningful

sector spending and revenues, aggregate wage and price policies, money and credit, interest rates and the exchange rates."[54] The concordat also recognized the Fund's broad responsibility for "surveillance, exchange rate matters, balance of payments, the promotion of economic conditions conducive to growth, price stability, and their related instruments."[55] The Bank's focus, on the other hand, was on promoting economic growth and conditions, which deal with the efficient allocation of resources in both public and private sectors, development strategies, sector and project investments, structural adjustment programs, priorities of government expenditures, reform of administrative systems, production, trade and financial sectors, and the restructuring of state enterprises and sector policies.

The clear overlapping of areas included in both definitions was the price of the agreed compromise. Although the issue of creditworthiness of members was sensibly left to the Bank, the latter's exercise of its responsibilities was generally circumscribed by "the aggregate aspects of the economic policies mentioned in the context of the description of the Fund's responsibilities."[56] Procedures for resolving staff disagreements were also addressed. In the event that difference of views persisted at the staff level, "the institution which does not have the primary responsibility would, except in exceptional circumstances, yield to the judgment of the other institution."[57] In such exceptional circumstances, optimistically described as "extremely rare," the managements would wish to consult their executive boards before proceeding with a decision. Since various primary responsibilities overlapped, the formula could not be helpful in the event they were simultaneously claimed by both institutions.

In reviewing this document as negotiated by the staff of both institutions, the difference in the description of the Bank's responsibilities, compared to those outlined in its Articles of Agreement, was obvious to me. At that late stage of the process, I asked for the inclusion of a number of sentences, which were later incorporated in the text. These included statements to the effect that "the purposes and mandates of the Bank and the Fund are defined in their Articles of Agreement, as interpreted by their respective Boards," that "each institution must continue to proceed with its own financial assistance according to the standards laid down in its Articles of Agreement and the policies adopted by its Board," and that the text of the joint memorandum (which had not been adopted by the Executive Directors as an authoritative interpretation of the Articles) cannot limit the authority of the Executive Directors in interpreting the mandate of each institution under its Articles in the future.[58] This language, which was meant to protect the rights of the Bank, proved later to be particularly helpful in easing the tension that arose in the Bank's Board.[59]

In 1992, another joint memorandum on Bank-Fund Collaboration on the States of the Former Soviet Union was issued by the heads of the two institutions, but discussed be-

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macroeconomic analysis with reference to a single-value macroeconomic variable or aggregate. . . . [F]or the Fund to discharge its responsibilities in the various areas of surveillance – growth oriented stabilization policies and related instruments – the proper level of aggregation was necessary." Polak, *supra* note 11, at 514.

54. 1989 concordat on Bank-Fund collaboration, *supra* note 51.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *See* The Implications of Discussing the Memorandum on Bank-Fund Collaboration in the Committee of the Whole, Legal Opinion of the [Bank] General Counsel, May 15, 1989, *in* SHIHATA, *supra* note 13, at 712–15.

forehand only in the Fund's Board.[60] This document required that prior to lending to these countries, the Bank would receive from the respective government a policy letter that sets out its program for structural adjustment in a macroeconomic framework based on understandings reached with the Fund. Although the issuance by borrowers of "development policy letters" was common in the Bank's adjustment lending, this was the first time Bank lending was made explicitly conditional on reaching an understanding between the borrowing country and the Fund. In addition, the 1992 document provided that "consideration will be given to the preparation of comprehensive tripartite documents involving the authorities as well as Bank and Fund staff."[61] This was an attempt to apply to the former Soviet Republics a procedure similar to, but more formal for the Bank than the procedure of preparing Policy Framework Papers (PFP) for the poorest countries receiving Fund ESAF credits. Both provisions caused a storm of criticism in the Bank's Board by developing countries' representatives in particular, especially as the 1989 concordat had reaffirmed the principle of no cross-conditionalilty and stated that preparation of documents for middle-income countries on the PFP model would not be done before presenting the matter to the Board.[62]

The early 1990s witnessed the beginning of the Bank's and the Fund's strong emphasis on the overall level and composition of a country's public expenditures as an essential matter for the effective use of domestic and foreign resources. Given the possible overlap in the two institutions' work on this matter, joint notes pertaining to them were issued by their respective heads to their staff in June 1995. Agreement was reached on the need for joint annual staff reviews of their experience with previous efforts and discussion of the institutions' prospective work in this area. Once priority issues were identified, the staff of both institutions would meet to agree on a common work program and exchange information about their respective analysis. Draft papers by the staff of either institution on this issue would also be commented upon by the staff of the other institution. In spite of its great sensitivity and its vital relevance to the work of national governments and parliaments, this document, like its predecessors, was not discussed beforehand by the Bank's Board. Only a subsequent draft report to the Development Committee commenting on the Declaration of the 1995 Copenhagen Social Summit and explaining the Bank's role in this area was discussed in the Bank's Board Committee of the Whole as part of the preparation for the Development Committee meeting under normal procedure. (The latter Committee, which is a joint Ministerial committee of the Board of Governors of the Bank and the Fund, "endorsed the Bank's and the Fund's move to improve their member governments' public expenditure, especially by increasing attention to funding economic development programs and reducing non-productive spending (including excessive military expenditures) within a framework of sustainable economic growth.")[63] In a 1996 book, Sir Joseph Gold, who by then had long left the position of the Fund's General Counsel, had the occasion to criticize

60. *See* Bank-Fund Collaboration on the States of the Former Soviet Union, Apr. 28, 1992 (Bank Doc. R92–76).

61. *Id.*

62. *See* Questions in Respect of the Note on Bank-Fund Collaboration Regarding the States of the Former Soviet Union, Legal Opinion of the Bank's General Counsel, May 14, 1992 (Bank Doc. M92–0640), *in* SHIHATA, *supra* note 13, at 714–22.

63. Communiqué of the World Bank Development Committee, on the Declaration of the 1995 Copenhagen Social Summit (Oct. 9, 1995).

the creeping of the Fund into new areas not envisioned under its Articles, "like Carl Sandberg's frog [creeping] on little cat feet."[64]

Just before the eruption of the Asian financial crisis, a joint statement by the heads of the Bank and the Fund was issued in April 1997 on Collaboration in Strengthening Financial Sectors in member countries.[65] It clarified that the Fund's involvement in this area relates primarily to the macroeconomic aspects of financial systems and markets, while the Bank's role concerns primarily the sectoral and developmental aspects. Thus, while the Fund would oversee economic performance and policies and promote frameworks for sound financial systems, the Bank would assess the sector's performance from a longer-term development perspective and a more structural orientation. Both institutions would continue to provide advice and support to countries seeking to build strong financial systems. The detailed language of the document showed once again that overlapping activities would not be avoided; the document attempted, however, to differentiate the modality of assistance to be provided by each institution: The Bank Group makes loans specifically designed to promote financial sector soundness while the Fund supports macroeconomic adjustment programs.

In 1997, the Bank and the Fund jointly launched the Heavily Indebted Poorest Countries Initiative, known as HIPC.[66] The initiative amounted to a programmed debt relief for such countries after they completed agreed-upon reforms. Preparation for the initiative had started at the Bank, which soon realized that its success required full Fund cooperation. The initiative required a change in work practices involving more joint missions and joint documents. Decisions under this initiative also required parallel approval by the Executive Directors of both institutions.

Subsequent developments in 1997 necessitated closer working relationships between the Bank and the Fund also in the financial sector. The Asian financial crisis, which started in mid-1997, put the arrangements agreed upon two months earlier to the test. They proved inadequate under the pressing circumstances of that crisis. Another attempt to delineate the respective responsibilities and strengthen procedures for cooperation took place in late 1998, in the form of a joint report from the heads of the two institutions on Bank-Fund Collaboration in Strengthening Financial Systems.[67] It provided, in light of recent experience, a more detailed description of the substantive responsibilities of each institution and of procedures to avoid friction. It also clearly stated that in crisis management the Fund will "lead the overall program design, including the adoption of urgent structural adjustment measures in the initial phase of crisis management assistance," thus codifying the practice already followed in the aftermath of the Asian crisis.[68] The document added, however, that the Bank will lead in the subsequent formulation of financial sector reforms, including the design and implementation of bank restructuring programs, taking into account the requirements of the stabilization policies elaborated by the Fund. The main procedural innovation was the creation of a Bank-Fund Financial Sector Liason Committee to help delineate the assignments of each institution so as to optimize the use of their

64. GOLD, INTERPRETATION, *supra* note 14, at 485.

65. *See* Joint Statement by the President of the World Bank and the Managing Director of the IMF on Collaboration in Strengthening Financial Sectors, Apr. 27, 1997 (Bank Doc. Sec. MG7).

66. For a description of the HIPC initiative and its developments, see IBRAHIM F.I. SHIHATA, THE WORLD BANK IN A CHANGING WORLD, VOL. III, 365–74, 375–79 (2000).

67. *See* Review of Bank-Fund Collaboration in Strengthening Financial Systems, Sept. 3, 1998 (Bank Doc. Sec. M98–732).

68. *Id.*

respective resources, facilitate dissemination of information on good practices and, on request, resolve differences of views on recommendations or approaches regarding the financial sector. Subsequent periodic progress reports on the work of this Liaison Committee showed "substantial progress" as it became a forum for consensus building. As a result, a joint Financial Sector Assessment Program was launched on a country-by-country basis, and the two institutions worked jointly on issues related to the redesign of international financial architecture.

The September 1998 Joint Report on the financial sector was accompanied by two other reports. The first suggested a Program for Enhanced Bank-Fund Collaboration in Low-Income Countries,[69] which called on staff to experiment with new ways for enhanced cooperation to improve the integration of structural, social sector, and macroeconomic policies and reforms. The work was to focus on acceleration of lagging core structural reforms, identification of potential adverse social consequences of reform programs, and assessment of medium-term investment needs and related capacity to attract and absorb external funds, both public and private. The pilot phase of the program was reviewed in September 1999. The review report noted satisfaction with the support provided by the Bank (through IDA credits) and the Fund (through ESAF) and "innovative processes that improve and expedite joint action."[70] On that occasion, a proposal was made for a new tripartite "Poverty Reduction Strategy Paper" (PRSP) as the overall framework for IDA and ESAF-supported programs in pilot cases as well as for the countries going through the HIPC process.[71] Unlike the PFP, which it replaced, this new document would involve far-reaching tripartite discussions, with the intention of giving the government involved a greater say. It was also to be discussed and endorsed by the Bank's Board, unlike the PFP, which was only reviewed in that Board's Committee of the Whole. More importantly, it involved the Fund in social impact assessments, a process previously limited to the Bank. Joint staff reports thus became common in matters related to all IDA/ESAF countries as they had been in respect of HIPC countries.

The other report issued in September 1998 was a general report on Bank-Fund Collaboration. It reiterated the 1989 arrangements but restated the principles that underpinned them under new headings: "Clarity for members," "full consultation between Bank and Fund," and "separate accountability [of each institution] for its lending decisions."[72] It also added to the previously agreed-upon measures new procedures for further coordinating the institutions' activities. It introduced guidelines for a clearer assignment of decision-making on specific issues, and the designation of contact points within each institution. Further, it required information-sharing and confidentiality of shared information. Specific types of operations were also identified for enhanced cooperation. Once again, the examples given broadened further the scope of the Fund's activities, this time in an attempt to meet pressure

69. *See* Proposed Pilot Program for Enhanced Bank-Fund Collaboration in Low Income Countries, Sept. 3, 1998 (Bank Doc. Sec. 798–731).

70. *Id.*

71. *See* Heavily Indepted Poor Countries (HIPC) Initiative: Strengthening the Link between Debt Relief and Poverty Reduction, Aug. 26, 1999 (Bank Doc. IDA/Sec. M99–545). The PRSP became the basis of credits provided by the Fund for low income countries under the Poverty Reduction and Growth Facility (PRGF) and supports the CAS reports on IDA recipient countries. The Bank also gives consideration to provide Poverty Reduction Sectoral Credits (PRSC) similar to those provided by the Fund under the PRGF.

72. *See* Report of the Managing Director and the President on Bank-Fund Collaboration, Sept. 4, 1998 (Bank Doc. Sec. M98–733).

exerted by NGOs and certain member countries to involve the Fund in areas that were clearly not envisioned under the purposes stated in its Articles of Agreement. For instance, surveillance over members' economic and financial policies, correctly described as a matter "at the core of the Fund's mandate," was defined in new terms that included not only macroeconomic and financial issues, but also "labor market, military expenditure, economic aspects of governance, the environment and the social sector."[73] Reference to these broad areas was not limited to the review of public expenditure, including social expenditure, in which the Fund had some record of cooperation with the Bank.

The Bank management accepted this great expansion of Fund functions, which left little to the Bank's exclusive or primary responsibility. It seemed it was influenced in this respect by pressure from certain members and civil society groups who had less concern for the principle of specialization of different organizations and the statutory requirements of the charter of each organization than for improving the social impact of Fund operations and broadening its powers vis-à-vis borrowing members. The Bank seemed to have been content with the statement that "in areas where the Bank and others have the lead, the Fund would primarily aim at identifying areas of potential difficulty, and learn from, and use in its own analysis the work undertaken by the Bank (and other organizations)."[74] The new Fund attention to the social sector has had its positive effects, however. It has led to putting much greater emphasis in the design of stabilization programs on the need to protect and, in some cases, increase spending on social services.

Sensibly, in another important area (coordination of policy advice and lending programs), the general 1998 report required the staff of both institutions to reach early agreement on how the overall delineation of primary responsibilities and activities would be applied and on a common timetable of action. It also admitted that the country involved should take the lead in developing its policies and reform program, with each institution providing assistance in its area of primary responsibility and expertise. As if to give added comfort to the Bank, the report stated that the latter's assessment of "structural policy reviews" permitted better coordination of structural policies with the Fund's stabilization programs.

By 1999, the Fund established the Poverty Reduction and Growth Facility (PRGF) to replace ESAF. Focus on the social sector became a common concern of the two institutions, supported by their members through communiqués of the Development Committee and governors' speeches in the annual meetings of the Boards of Governors.

A joint Board Seminar on Bank-Fund Collaboration held in July 2000 (one of two unprecedented recent joint gatherings of the two institutions' Executive Directors; the other being a meeting on the review of the HPIC initative) found no difficulty to conclude, *inter alia*, that "the promotion of social development and poverty reduction are the most important challenges faced by both the Bank and the Fund."[75] Some Board members of both institutions spoke on that occasion of the overlap in the work of the Bank and the Fund not only as "inevitable" but also "desirable." The concluding remarks noted only that "the Fund should seek inputs from the Bank" rather than develop greater expertise in social areas. Although senior officials of both institutions explained that the focus of each institution was different (e.g., in the financial sector, the Fund, according to its First Deputy

73. *Id.*

74. *Id.*

75. Point 1 in "the main conclusions of the 4 groups of the Seminar," as summarized by the Rapporteur, July 28, 2000.

Managing Director, focused on surveillance, crisis prevention and crisis resolution, while the Bank was concerned with the economic development aspects of financial systems"),[76] the discussion left delineation between the separate mandates of the Bank and the Fund more blurred than ever.

In May 2000, however, a new Managing Director was chosen for the Fund amidst a public debate on the future role of that institution. He found the relationship between his institution and the World Bank successively regulated by jointly prepared and sometimes jointly issued documents that lacked precision but consistently added new functions to one or both institutions. It probably would not have been difficult for him to also find that, notwithstanding this multitude of documents, the Bank-Fund relationship depended more on what major members wanted it to be and the personal interaction between the main players, especially the institutions' heads. The United States, a major force in both institutions, started in early 2000 to reverse, through statements by its Secretary of the Treasury, its support of the expansion of the Fund's mandate.[77] The new Managing Director also made statements to the same effect, before and after he actually took responsibility of his office. In this context (the lapse of the financial crises in Southeast Asia and Brazil; earlier concern expressed by influential sources for the need to involve the Fund in the social sector; new awareness of the United States that the Fund's continued expansion in other areas ought to be checked; and a new Fund Managing Director with no expansionist tendencies), agreement on the September 5, 2000 Joint Statement did not come as a surprise.

D. A New Approach – the September 2000 Joint Statement

The latter document begins by stating that "both institutions share the same broad objective: helping to improve the quality of life and reduce poverty through sustainable economic growth" – a statement no doubt based on the rhetoric of recent years, not the respective Articles of Agreement, especially those of the Fund.[78] The latter Articles indirectly speak of the "maintenance of the high level of employment and real income" and of "development of productive resources" only as ultimate objectives of the facilitation of the expansion of international trade.[79] The document also states that the work of both institutions is guided by the same set of principles of:

a. a comprehensive approach (previously adopted in early 1999 only in the Bank under the Comprehensive Development Framework (CDF) that practically addresses all areas needed for a country's development),
b. equity, to ensure that benefits of development must be accessible to all (also a new concept for the Fund and arguably for the Bank),
c. country ownership of development strategies and programs (a concept found in both institutions to be essential for the success of adjustment but often questioned in view of the tendency of their staff to pressure governments to take unpopular measures they hardly "own"),

76. Stanley Fischer, Address on Collaboration in the Financial Sector (July 28, 2000) (speaking notes).

77. The trend started with a major speech by Larry Summers, U.S. Secretary of the Treasury. *See* Stephen Fidler & Gillian Tett, *World News: G7 to Review IMF Funding Procedures and World Bank Role*, Fin. Times, Jan. 14, 2000, at 8.

78. September 2000 Joint Statement, *supra* note 1.

79. *See* Gold, Interpretation, *supra* note 14, at 484 *et seq*. *See also* Shihata, *supra* note 66, at 73.

d. support from the institutions to be linked to the countries' level of performance, and
e. transparency to ensure clarity and accountability around roles, responsibilities and outcomes.[80]

As to the definition of separate roles, we see in this document for the first time after three decades of expansion a return by the Fund to its traditional role, which brings it closer to the main functions stated in its Articles, with the addition of the acquired concern for economic growth. The Fund's core mandate—states the document—is

> To promote international financial stability and the macroeconomic stability and growth of member countries. To that end, the Fund must focus on its core responsibilities: monetary, fiscal and exchange rate policies and their associated institutional and structural aspects.[81]

The Bank group's core mandate, as stated in the document, is

> To help countries reduce poverty, particularly by focusing on the institutional, structural and social dimensions of development–thus complementing the Fund's macroeconomic process.[82]

According to the joint document,

> To be most effective, each institution needs to focus on its respective core tasks, while working together in a complementary fashion in areas such as the financial sector—where [their] responsibilities overlap.[83]

In crisis situations, instead of the relegation of the Bank's role to a second stage, as agreed in 1998,

> [t]he Fund is expected to take the lead in negotiating an overall stabilization and reform program. *At the same time*, the Bank should take the lead in the design of those structural parts of the program that fall within its area of responsibilities.[84]

The above approach coincides more readily with the division of labor reflected in the institutions' respective Articles of Agreement as the institutions' successive general counsel, Sir Joseph Gold and I included, have advocated in their time. It is, however, for the future to tell whether this sensible approach is a reflection of its specific circumstances, including a new attitude by the United States, subsiding of international financial crises and the interaction of a new head of the Fund with an experienced head of the Bank, or the result of a genuine conviction by the institutions and the major actors within them of the validity of the original division of labor first envisoned in their constituent charters.

IV. Directions for the Future

Member countries of the Bank and the Fund, or those among them, such as the United States, which have an enormous capacity to cause changes in the structure and functions of these institutions, have many choices to consider for their future. Each choice needs to be carefully assessed in light of the high stakes involved.

80. September 2000 Joint Statement, *supra* note 1.
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*

1. *Maintaining the New Status Quo*

The first and least cumbersome course to follow is for the members to insist on the strict application of the agreement articulated in the joint September 5, 2000 statement. Such insistence should be coupled, however, with the understanding that the Fund's concern for poverty reduction would be limited to ensuring that the macroeconomic adjustment and related reforms supported by the Fund would not take place at the expense of the poor. The Fund need not go beyond this to act as a development institution for which, I believe, it has neither the mandate nor the competence.

This choice is the closest to the text and spirit of the Articles of Agreement of the two institutions. It means that member countries would commit themselves to ensure that the institutions' Boards and managements would not deviate from the division of labor envisioned under the Articles for the sake of individual national interests or temporary convenience. It also means that maximum synergy would be maintained between the institutions' activities to avoid costly conflict and duplication.

Although there is much to be said in favor of this choice, its sustainability clearly depends on the attitude of major members and the personality of the individuals who run these institutions. The temptation to deviate from it and revert to more flexible, but less defensible, approaches should not thus be underestimated. Some skepticism on the part of the Fund staff seems to have been emerging already regarding the sustainability of this approach.

2. *Reverting to the Status-Quo Ante*

Members may prefer the state of affairs that prevailed in earlier years, leaving the matter to the pressing needs of each situation, even if it means the continued expansion of the operations of one institution or the other (regardless of their legal boundaries) and increased overlapping in their activities. Under this approach, members would put the brake on such incremental expansion only if new circumstances so required. The exercise would be guided by the exigencies of the time and the varying interests of members, rather than the text of their charters. Although this is a likely scenario, it can result in a great measure of frustration, especially among those members and staff who joined the institutions on the assumption that they will live by their rules as written. It may be encouraged by certain national legislatures and NGOs in industrialized countries, which aspire to play an increasing role in the future direction of these institutions. For the vulnerable countries that came to depend on these institutions for their development or even for financial survival, they run the risk of having the Bank and the Fund develop, in many respects, as a world government that decides which policies they should follow and how much external financial resources they can receive and spend. Clearly, this is not a choice that can be advocated on sound legal grounds.

3. *Sharpening the Distinction of Roles*

Member countries may also attempt, through amendment of the institutions' Articles of Agreement or an authoritative interpretation by the Executive Directors, to better define the boundaries between the respective responsibilities, and thus eliminate to the extent possible the areas of overlapping competencies. They can also complement this step by establishing a special organ, e.g., a joint committee of the Board of Governors or of the Executive Directors, to resolve through recommendations to the board involved disputes that may nonetheless arise in practice. The matter would not then be left to a unilateral determination by each institution's management or executive board without serious efforts to settle it to the satisfaction of both.

Although this alternative has obvious benefits, its disadvantages are also clear. Underlying it is the presumption that it is both possible and useful to clearly distinguish between short-term considerations of stabilization and correction of temporary imbalances on the one hand, and the longer-term considerations of growth and development on the other hand. As already mentioned, the experience of both institutions has belied this presumption. It suggests instead that it would be naïve to expect a different behavior on the part of influential member countries, acting in pursuance of their interests, or for that matter on the part of the institutions' managements and staff, driven by their convictions and ambitions, just because the rules governing these institutions are more precisely drafted. Departure from better-defined boundaries of the areas of competence could in fact cause greater frustration to helpless member countries and concerned staff, especially the lawyers among them. It could further highlight the fears first expressed by Lord Keynes who, from the beginning, cautioned that the "two brats" may turn political and lose the confidence of the suspicious world unless their approach to every problem was and appeared to be "absolutely objective and oecumenical, without prejudice or favour."[85]

4. *Unified or More Closely Concerted Action*

Member countries may come to realize that the distinction between the functions of the Bank and the Fund was not in the first place based on solid justifications and became more questionable with the demise of the par value system. They may recognize that the competencies are not only complementary or overlapping but constitute in fact different aspects of the effort needed to help countries meet the conditions of growth and overcome their financial weaknesses.

The virtues of avoiding duplication, achieving consistency in policy and advice, and maintaining economy and efficiency in operation may thus cause member countries to seek a more concerted or even unified action. The most straightforward approach to this appears to be a merger of the two institutions. The members' quotas in the Fund would in such a case be contributed as paid up local currency additions to their shares in the Bank's capital. In total, they would constitute the capital of a unified "World Organization for Economic and Financial Cooperation" that may have two separate departments but replace the existing two institutions and succeed to their assets and liabilities.

If such a major step is to be considered, it may better be preceded by a consolidation of the four financial institutions of the World Bank Group, so that the IBRD, IFC, and MIGA may be merged in one World Bank, with IDA being converted to a trust fund administered by the Bank. The latter trust fund may have the same World Bank Board or a separate board or committee where only IDA donors and recipients would be represented. In this approach, the World Bank Group would not only be following the path of consolidation and merger that private financial institutions found most appropriate to the needs of a globalized market, it would in addition put an end to the uncalled for, yet expanding, trend of the IDA Deputies to practically determine the policies of all of the four financial World Bank Group institutions.[86] This latter solution would eliminate the need for coordination

85. John Maynard Keynes, Address before the Inaugural Meeting of the Bank and the Fund in 1946, *quoted in* R.F. Harrod, The Life of John Maynard Keynes 632 (1951).

86. *See* Shihata, *supra* note 66, at 129–35 (explaining the evolution of the role of the IDA Deputies).

of the different activities of the IBRD/IDA, IFC, and MIGA, the separate existence of which has sometimes caused more problems than the advantages that may be attributed to it. It would also simplify the next logical step of merging the Bank and the Fund.

Straightforward solutions, however, are not always found to be the most practical, especially by governments. Should a formal merger be seen to be too drastic a measure, many of its advantages may be achieved through less drastic steps that may not even require an amendment or new interpretations of the respective Articles of Agreement. These might include an informal agreement among members to appoint the same person as the President of the Bank and the Managing Director of the Fund, and/or appointing and electing the same persons as Executive Directors of both institutions. In the Bank and the Fund, only France and the United Kingdom have always appointed the same person to serve in the Boards of both institutions. So did, for a long while, the constituency that included Brazil. Broader examples of this approach exist within the World Bank Group itself. Members of the Board of IBRD are *ex officio* members of the Boards of IFC and IDA. The President of IBRD is *ex officio* the chairman of the Board of IFC, IDA, and MIGA. In practice, the President of IBRD has also served as the President of IFC (since 1966) and as President of MIGA (since its inception). The Board of MIGA, which was not meant to consist of the same IBRD/IDA/IFC Executive Directors, has also consisted in practice of these individuals with very few exceptions. Although these measures cannot guarantee complete synergy, they can certainly reduce friction, increase harmonious action, and produce a clearer division of labor over time.

5. *Other Ideas*

Once the gate of original thinking is opened, there could no doubt be endless suggestions for change based on different degrees of separation or integration among the institutions involved. One can envision, for instance, a sharper distinction among three separate institutions: one donor-financed institution to be primarily in charge of providing development aid to the poorest countries; a second, market-financed institution to be in charge of financing complex projects in middle-income countries; and a third institution to assess the vulnerability of the economies of emerging markets and assist them to avoid financial crises and help resolve such crises when they arise. One can also envision a much more integrative system for the delivery of multilateral financial assistance that would re-examine the roles of the Bank and the Fund in a broader context that includes other inter-governmental development finance institutions, including the regional development banks.[87] Some attempts of such a broad review of the world institutional financial framework are currently made in the G20 concerned with international financial architecture.

The idea of a complete merger of the Bank and the Fund seems to be gaining ground, however. George Schultz, after having served as U.S. Secretary of the Treasury and Secretary of State, found it, in 1995, the most appropriate approach.[88] In fact, successive U.S. Secretaries of the Treasury in the 1980s and 1990s, like many of their counterparts in other countries, spoke of "the Bank and the Fund" as if they were one institution expected to

87. The above ideas were provided to the author by a senior Fund official who served previously as a senior Bank official.

88. *See* George P. Schultz, former Secretary of State, Lecture before the American Economic Association: Economics in Action – Ideas, Institution, Policies (Jan. 6, 1995).

pursue the same proposed actions.[89] The *Economist* magazine wrote in 1997 about the "inevitability" of eventual Bank-Fund merger.[90]

The fact that the world needs an institution to protect and monitor the international monetary system and oversee international financial architecture does not necessarily require that this task be done by a separate institution, especially when other existing institutions try to play a role in these areas as well. Rather, it requires only that these functions be done efficiently and effectively. The fear of centralizing too much power in the same hands is being raised even under present conditions due to the continuous and increasing joint actions by the Bank and the Fund staffs. In any event, such a fear may be addressed by strengthening the roles of Executive Directors who represent member countries and by extending their terms of service beyond the inadequate two-year period, through an amendment of the Articles or simply through the practice of Member States.

6. *The Voting Structure Dilemma*

Developed countries have traditionally opposed, however, any major restructuring of the Bretton Woods institutions. In addition to their general concern that this may lead to the opening of a Pandora's box with unpredictable outcomes, they seem to be particularly worried about any alteration of the voting structure that ties votes to financial contributions. This latter concern may be exaggerated, however. As a practical matter, the relative economic and political strength of members is recognized in all international organizations, regardless of their voting structure. In international financial institutions, some form of weighted voting is usually recognized and can reasonably be expected to remain in place in any restructuring exercise. In any event, efforts are always made in such institutions to reach decisions by consensus or near consensus. In the Bank and the Fund, many developing countries chose to be represented in the executive boards by nationals of developed countries, even though no vote splitting is permitted. Prevention of control by only a few countries, as Sir Joseph Gold had reminded us in his writings,[91] was also an important consideration in the U.S. proposal to introduce the egalitarian component in the voting structure of the Bank and the Fund (through the uniform equal votes allotted to each member in addition to the votes corresponding to contributions). A formula could always be developed to maintain adequate control by the countries that pay the most without offending the numerical majority of developing countries.

The formula accepted for MIGA is a case in point. According to that formula, the equal number of votes given to each member in addition to the votes based on the number of shares subscribed was calculated so as to give each category of countries (developed/developing) half of the total votes when all countries join, while the more important decisions are to be taken by a special majority.[92] Also, the special majority requirement was heavily introduced to the Articles of the African Development Bank in 1998, effectively to give developed members adequate control, even though they have a minority of the total votes.

89. *See* Polak, *supra* note 11, at 519–20.

90. *See Sisters in the Wood; Two Pillars of Wisdom*, THE ECONOMIST, Oct. 12, 1991, at 5; *see also Sisters in the Wood; Prelude to a Testing Time*, THE ECONOMIST, Oct. 12, 1991, at 47.

91. *See* Joseph Gold, *The Origins of Weighted Voting Power in the Fund*, *in* FINANCE AND DEVELOPMENT, Mar. 1981, at 27; *see also* GOLD, INTERPRETATION, *supra* note 14, at 434, on the impact of unequal voting among members and the oppurtunities it and other factors offer for political influence.

92. *See* IBRAHIM F.I. SHIHATA, MIGA AND FOREIGN INVESTMENT: ORIGINS, OPERATIONS, POLICIES AND BASIC DOCUMENTS OF THE MULTILATERAL INVESTMENT GUARANTEE AGENCY 301–18 (1988).

Donor countries have also accepted equal representation in various international financial mechanisms when decisions are taken by a special majority of members representing a special majority of subscriptions/contributions. The council of the Global Environment Facility is the most impressive recent example.

V. Concluding Remarks

Whatever approach is chosen for the future direction of international financial institutions, an important question centers on the wisdom of requiring such institutions to extend their competencies far beyond economic and financial matters and closely-related issues that have a direct and manifest impact on such matters – mainly environmental and social issues for development finance institutions. Arguments can always be made that it is not possible to divest the economic from the political. Attractive banners can also be used to involve financial institutions in matters falling beyond their mandates. What seems to be certain, however, is that the jurisdictional expansion of institutions that practically address only a certain group of countries while relying mainly on the financial support of another group of countries would inevitably lead to undesirable results. Not least among these is the weakening of the internal democratic process in the recipient countries and their increased dependence on donor countries, to the eventual detriment of both. Blurring the borderline between the two equally essential requirements of self-determination, including self-help on the one hand, and increased multilateral assistance on the other hand, can hardly be in the interest of the world community or its individual member countries.

Finally, if no formal institutional or jurisdictional changes are to be considered, existing structures and rules must be respected as required by the rule of law. Interpretation of existing rules should not reach the unsafe borders of a virtual amendment.

This is what Sir Joseph Gold advocated throughout his life. And this is what I firmly believe in.