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A REPORT ON CERTAIN RECENT LEGAL DEVELOPMENTS IN THE INTERNATIONAL MONETARY FUND*

*Joseph Gold***

I. AMENDMENT OF THE ARTICLES OF AGREEMENT OF THE IMF REFORM OF THE INTERNATIONAL MONETARY SYSTEM

A. *Reform of the International Monetary System*

1. In the recent past, the main activity of the International Monetary Fund in connection with the development of international law has been the negotiation and drafting of an amendment of the Fund's Articles of Agreement. The present report deals primarily with that activity, but also comments on the sixth general review of the quotas of member states in the Fund.

2. On August 15, 1971, the United States, having decided to free itself from certain constraints that had become unacceptable and to exercise greater autonomy for national policies, suspended the convertibility into gold or other reserve assets of balances of United States dollars held by the monetary authorities of other members of the Fund. This action made it clear that certain fundamental assumptions on which the Articles had been agreed at the Bretton Woods Conference in July 1944 were now disputable or even untenable. In due course, the Committee of the Board of Governors of the Fund on Reform of the International Monetary System and Related Issues (the Committee of Twenty), composed of Governors of the Fund, ministers, or others of comparable rank

* This report appeared in substantially its present form as a pamphlet commissioned by the World Peace Through Law Center.

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(such as governors of central banks), was appointed to negotiate reform of the international monetary system.

3. The Committee presented its final report, together with an *Outline of Reform*, on June 14, 1974.¹ In the *Outline*, the Committee set forth a blueprint for a reformed international monetary system, in which, however, some gaps remained. These gaps are discussed in a series of Annexes. One reason why the gaps were not eliminated in the *Outline* is that new uncertainties, including those associated with the problems of energy and rampant inflation, had supervened and had deterred members from undertaking the obligations that necessarily would be involved in accepting any comprehensive plan.

4. The Committee modified its original intention, so that both parts of the *Outline* have more modest aims than those for which the Committee was established. Part I "indicates the general direction in which the Committee believes that the system could evolve in the future." Part II recognizes that it will be some time before a reformed system can be agreed on and put into operation, and that in "the interim period" the Fund and its members should pursue the general objectives and observe the principles of Part I, so far as they might be applicable. In addition, the Committee set forth a number of "immediate steps" in order to begin "an evolutionary process of reform." Some of these steps required amendment of the Articles, others did not.

5. In the mid-summer of 1974, the Executive Board² began to consider the drafts of possible amendments of the Articles prepared by the legal staff of the Fund on the basis of, but not confined to, a list included in Part II. The Executive Board, at various stages of its work, requested and received guidance by the Interim Committee of the Board of Governors on the International Monetary System, which has succeeded, and is similar in composition to, the Committee of Twenty. On March 31, 1976, the Executive Board agreed on the modifications of the Articles that it would recommend, and sent to the Board of Governors a Report entitled

1. International Monetary Fund, *International Monetary Reform: Documents of the Committee of Twenty* (Washington, 1974), at 7-48.

2. The name of the organ called "the Executive Directors" under the present Articles will be changed to "the Executive Board" under the second amendment, and "executive directors", who compose the organ, will become "Executive Directors". In the Board of Governors, "governors" will become "Governors". For convenience, and also because it is already common practice, the nomenclature that will be official when the second amendment becomes effective is adopted in this Report, except in paragraphs 37 to 39.

*Proposed Second Amendment to the Articles of Agreement of the International Monetary Fund.*³ This document includes a detailed commentary on the proposed modifications of the Articles and a comparison of the present Articles with the text as it will be when amended.

6. The Board of Governors approved the proposed second amendment on April 30, 1976. Members are now in a position to accept the amendment in accordance with their constitutional procedures. The proposed amendment will become effective for all members when accepted by two-thirds of the members representing four-fifths of the total voting power. At present, 128 countries are members of the Fund, so that acceptances by 77 members will be necessary, but by more than that number if they do not have a sufficient proportion of the total voting power. The first amendment of the Articles became effective on July 28, 1969, approximately fourteen months after the Board of Governors approved the proposal of the Executive Board. The first amendment added a set of new provisions to the Articles in order to provide for the creation and regulation of the new reserve asset, the special drawing right (SDR), and for a small number of changes in the original provisions of the Articles.

7. The Seventh Conference on the Law of the World, held in October 1975 in Washington, D.C. under the sponsorship of the World Peace Through Law Center and allied Associations, adopted Resolution No. 24, entitled *Law and Reform of the International Monetary System*. The Resolution made the following recommendation among others:

RESOLVED that this Conference supports the efforts now being made by the organs of the Fund and by the Interim Committee to take certain immediate steps and to begin an evolutionary process of reform; stresses the important contribution to human welfare and the cause of peaceful and harmonious relations among member countries that can be made by amendment of the Articles of Agreement of the International Monetary Fund, and emphasizes the need to restore an international monetary system on a sound legal basis;

. . . .

The Managing Director circulated the Resolution to the Executive Board.

8. Since August 15, 1971, certain vital obligations of the inter-

3. The Report can be obtained from the Secretary, International Monetary Fund, Washington, D.C. 20431, U.S.A.

national monetary system created at the Bretton Woods Conference have not been observed. These failures might have acted as a contagion, so that the victim might have been not only the Bretton Woods system but also the commitment of the international community to the idea of a system regulated by law notwithstanding the determination, expressed in the creation of the Committee of Twenty, to restore the rule of law. The risk that it might not be possible to return to the rule of law in international monetary relations was the danger foreseen in the passage that has been quoted from Resolution No. 24. The danger has been averted by the international agreement that has been reached on the proposed second amendment. The provisions of the amendment will bring the Articles into conformity with current conditions, enable members to comply with more suitable obligations, and permit adaptation to future developments in international monetary relations. Members have realized that unlimited and uncoordinated freedom for all means freedom for none.

9. It has been seen that the *Outline* spoke about an "interim period" and an "evolutionary process of reform." This approach to the drafting of the second amendment became less apparent in the course of time. For example, at first the draft provisions on exchange arrangements distinguished between transitional and post-transitional periods. The final version does not make this distinction even in relation to the par value system that the Fund might decide to introduce. A par value system would be the most suitable general exchange arrangement in economic conditions at the time of the decision, but the par value system is not a promised land that inevitably must be reached after a period of wandering in the desert. The time may arrive for a par value system, but other general exchange arrangements may always be more suitable. The amended Articles will provide for all possibilities without suggesting that some general exchange arrangements have a legal, moral or economic superiority over others, although individual members will not be prevented from extolling the advantages of those that they prefer and from urging the widespread adoption of them.

10. The shift in emphasis from the regulation of an "interim period" and from the initiation of an "evolutionary process of reform" does not imply that there is no foreseeable need for further amendment of the Articles. The second amendment is more a collage than a blueprint. Other material might be incorporated at a later date, but the material that constitutes the second amendment is not designed to be impermanent. The approach to the provisions on exchange arrangements has been followed for other

elements in the second amendment. The new provisions might be maintained without substantial change when a third or subsequent amendment is undertaken in order to improve the international monetary system.

B. *Exchange Arrangements*

11. The table of contents of the commentary in the Report of the Executive Directors classifies the proposed modifications of the Articles under twenty headings and an Annex, only some of which can be considered here. One of the central topics, exchange arrangements, has been mentioned already. The thread that runs through the proposed provisions governing exchange arrangements is freedom of choice for members, but not freedom of behavior.

12. The present Articles assume that each member will establish a par value for its currency in terms of gold as a common denominator. Each member is bound to make the par value for its currency effective by adopting appropriate measures to ensure that exchange transactions in its territory involving its own currency and the currency of another member will take place only within narrow margins around the parity relationship between the two currencies, *i.e.* the ratio between them based on their par values. The present Articles do not enable the Fund to approve the action or inaction of a member that results in the ineffectiveness of the par value for its currency. If, for example, a member ceases to support the par value for its currency and allows it to be bought and sold in its exchange market at exchange rates outside the permitted margins, a practice described as "floating," the member is in default, and the Fund cannot validate the practice. At the present time, no member is maintaining an effective par value for its currency. Members are applying a broad range of practices. For example, some members have pegged their currencies to another currency such as the United States dollar, or to a combination of currencies according to some formula of their choice, or to the SDR. Some members allow their currencies to float independently, but others have agreed that their currencies will float jointly. These formal distinctions may be misleading. The exchange rate for a floating currency may be managed in order to make it hover more or less around a desired level. The peg for a pegged currency may be changed so often that the exchange rate fluctuates almost as much as one that floats. The amended provisions will mention certain types of exchange arrangements as practices that members may apply in the circumstances prevailing on January 1, 1976, but there will also be express authority for "other exchange arrange-

ments of a member's choice." The only proscribed practice will be maintenance of the value of a currency in terms of gold.

13. The second amendment will recognize that the international monetary system may change and that general exchange arrangements may develop in new directions to accord with these changes. Adaptation is possible by means of two procedures. The first is the adoption of decisions by the Fund, taken by a majority of eighty-five per cent of the total voting power, to recommend particular kinds of general exchange arrangements. The word "general" means that in principle the exchange arrangements could be applied by all members. The Fund's authority will be to recommend general exchange arrangements but not to impose an obligation to apply them. Each member will retain the right to apply exchange arrangements of its choice notwithstanding a recommendation by the Fund, but the size of the majority necessary for a decision to make a recommendation gives some assurance that there would be widespread observance of the decision. The only member that will be able to obstruct the adoption of a decision by its own abstention or opposition will be the United States, but any organized or *ad hoc* group of members with more than fifteen per cent of the voting power of all members will be in a similar position. Neither the proposed amendment nor the Report provides an example of the "general exchange arrangements" that the Fund might recommend. A possible example is the system of "central rates," a looser simulacrum of par values, that the Fund initiated on December 18, 1971,⁴ simultaneously with the realignment of exchange rates under the Smithsonian Agreement. General exchange arrangements of this kind might prepare the way for the par value system that is discussed in the next paragraph.

14. The second procedure for the adaptation of general exchange arrangements to accord with the development of the international monetary system is the exercise by the Fund of its authority to decide, by a majority of eight-five per cent of the total voting power, that, in accordance with specified criteria, international economic conditions permit the introduction of a widespread system of exchange arrangements based on stable but adjustable par values. If the Fund takes this decision, it will notify members, and a set of detailed provisions on par values will apply forthwith.

4. Decision No. 3463-(71/126), December 18, 1971, *Selected Decisions of the International Monetary Fund and Selected Documents*, Sixth Issue (Washington, 1972), at 12-15; Seventh Issue (Washington, 1975), at 14-21.

15. The provisions on par values have been influenced by the provisions of the present Articles and by the Fund's experience under them.⁵ This influence has been responsible not only for the incorporation in the proposed amendment of many features of the present Articles but also for the transformation of certain other features. The departures, some of which are mentioned in paragraph 16 below, are designed to achieve greater flexibility in the operation of par values and to avoid some of the rigidity and other flaws that became apparent in the functioning of the original par value system.

16. The common denominator of the par value system under the present Articles is gold. Under the amended Articles, it will be the SDR or some denominator selected by the Fund other than gold or a member's currency. The margins around the parity relationships between the currencies of members maintaining par values that will have to be observed for exchange transactions will be wider than the margins under the present Articles. The Fund will be able to vary these margins by decisions taken by a majority of eighty-five per cent of the total voting power. A member will be able to propose a change in the par value of its currency not only because it wishes to extract itself from a fundamental disequilibrium that has already overtaken it but also to forestall an emerging fundamental disequilibrium. The principle is retained that only a member will be entitled to propose a specific change in the par value of its currency, but under the amended Articles the Fund will have the duty to discourage the maintenance of an unrealistic par value.

17. When the Fund gives notice that par values may be established for the purposes of the Articles, a member that intends to establish a par value will have to propose one within a reasonable period. A member that does not intend to take this step will be required to engage in a special consultation with the Fund. If a member does not establish a par value within a reasonable period after the Fund's notice, the member will nevertheless be able to establish one at any later date. The provisions with respect to the Fund's concurrence in or objection to a proposed par value are similar to the provisions of the present Articles. The amended Articles will make a fundamental change by authorizing members to terminate a par value for the purposes of the Articles without

5. See Gold, *The Legal Structure of the Par Value System*, 5 LAW AND POLICY IN INT'L BUS. 155-214 (1973).

substituting a new par value, but the Fund may object to the termination by a decision taken by a majority of eighty-five per cent of the total voting power. Moreover, even if a member has not given notice of the termination of a par value, the Fund will be authorized to find that there has been a *de facto* abandonment of it. If a member terminates the par value of its currency, the member will have to engage in a special consultation with the Fund. The member will be able to establish a par value after any interval in which it has not maintained one.

18. A consequence of the provisions of the second amendment, including those that deal with the establishment of par values at some future date after notice by the Fund, is that all par values under the present Articles will cease to exist for the purposes of the amended Articles. This consequence may affect the application of clauses in numerous statutes, treaties, and contracts that refer to the par value or to the gold value of a currency under the Articles. The failure of members to maintain the effectiveness of the par values of their currencies as established under the present Articles has already created legal problems under clauses of the kind referred to, because legally these par values have not yet disappeared. They offer a formal, but of course unrealistic, basis for decision, but the amended Articles will not permit even this unsatisfactory solution. In a number of treaties that are now being negotiated or renegotiated, gold value clauses are being eliminated and the SDR substituted as the unit of value.

19. As noted in paragraph 11 of this report, members will be free to choose their exchange arrangements but not how they behave in applying the arrangements. There are two contrasts between the present and the future provisions in connection with behavior. The amended Articles will emphasize, on the one hand, the obligations of members to pursue policies, both domestic and external, to promote certain objectives, and, on the other hand, the duty of the Fund to oversee the international monetary system in order to ensure its effective operation and to oversee the compliance of members with their obligations. These are fundamental features of the provisions on exchange arrangements that will operate at all times whatever may be the arrangements that members choose to apply.

20. The amended provisions begin with a recitation of certain liberal purposes that members recognize and then impose, as the most general undertaking of members, the obligation "to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates." Particular obligations then follow, according to which members

must promote “orderly economic growth with reasonable price stability” and “orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions.” Members also undertake to avoid manipulating exchange rates or the international monetary system in order to prevent balance of payments adjustment or in order to gain an unfair competitive advantage over other members. If the convoluted economic language of these provisions were translated into ethical principles, it might be said that members will be required to strive for order, stability, and fairness in conducting those domestic and external policies that can affect exchange relationships. In one provision the word “orderly” appears four times and “stability” or “stable” three times, but these numbers should not be regarded as measurements of importance because there is only one reference involving fairness, and even that one is to unfairness.

21. The language of the provisions on exchange arrangements was influenced by the *Declaration of Rambouillet* issued on November 17, 1975, after a meeting of the Heads of States and Governments of France, Germany, Italy, Japan, the United Kingdom, and the United States. In paragraph 11, they announced that:

With regard to monetary problems, we affirm our intention to work for greater stability. This involves efforts to restore greater stability in underlying economic and financial conditions in the world economy. At the same time, our monetary authorities will act to counter disorderly market conditions, or erratic fluctuations, in exchange rates. We welcome the rapprochement, reached at the request of many other countries, between the views of the United States and France on the need for stability that the reform of the international monetary system must promote. This rapprochement will facilitate agreement through the IMF at the next session of the Interim Committee in Jamaica on the outstanding issues of international monetary reform.

The epicure of diplomatic language will be aware that the Heads of States and Governments “agreed to declare,” a phrase that lacks the spice of the word “agreed.”⁶ Nevertheless, as noted, much of the language has been given the force of international agreement by incorporation in the proposed amendment. Moreover, the third sentence of paragraph 11 goes beyond the content of the future provisions on the obligations of members. In view of the present

6. See Weintraub, *Coping With Code Words*, 51 FOREIGN AFFAIRS 740-46 (1973).

state of exchange arrangements, the sentence has received more attention than any other aspect of paragraph 11.

22. In order to perform the functions that are its duty, the Fund must "exercise firm surveillance over the exchange rate policies of members" and must "adopt specific principles for the guidance of all members with respect to those policies." It will be obvious from this language, and not simply from the adjective "firm," that the drafters of the second amendment intend to place on the Fund an even heavier responsibility than in the past to maintain discipline among members in the application of their exchange arrangements. Although this responsibility is not different in principle from the responsibility that the Fund has had, and would have again, in a par value system, in such a system much of the discipline is exerted by the obligation of members to make the par values of their currencies effective. The likelihood that diverse exchange arrangements will be applied at least for some years was one motive, but not the only motive, for the use of such emphatic language to express the responsibility of the Fund under the amended Articles.

23. The sequence of thought in the provisions must be emphasized. It is that in order to fulfill its function of overseeing the compliance of each member with its obligations, the Fund must exercise firm surveillance over the exchange rates policies of members, and must adopt specific principles for the guidance of members with respect to those policies. It follows from this sequence that the behavior of a member in relation to the principles adopted by the Fund might lead to the conclusion that the member was not observing its obligations. The Fund's exercise of its authority to adopt principles could have a profound effect on the operation of exchange arrangements, even though the principles must not derogate from the freedom of members to choose their arrangements. The authority to adopt principles will apply to all exchange arrangements. They will be more extensive, therefore, than the guidelines for the management of the exchange rates of currencies that are floating independently, which the Fund has adopted under its present powers. Finally, the Fund's authority to adopt principles can be exercised by a majority of the votes cast, in contrast to the high majority of the total voting power that is required for the exercise of the Fund's authority to make recommendations on general exchange arrangements to accord with the development of the international monetary system.

C. Gold

24. Under the present Articles gold serves as the common denominator of the par value system, the unit of value of the SDR, and a reserve asset that can be used in various ways to support the value of currencies and to discharge certain obligations. These functions made it possible to speak of gold as the "ultimate" reserve asset. Another way to describe the role of gold is to say that before August 15, 1971, the fundamental norm on the basis of which the international monetary system rested was the willingness of the monetary authorities of the United States to buy and sell gold, for the settlement of international transactions, with the monetary authorities of other members of the Fund, at prices in United States dollars that differed from the par value of the dollar by no more than the margin fixed by the Fund. There was growing disenchantment with arrangements in which gold performed its various monetary functions. The new production of gold could not be relied on to provide adequate supplements to global monetary reserves. Gold was also a commodity. Fluctuations in its price resulting from industrial and artistic demands and from speculative trading exerted a destabilizing effect on currencies. The giddy changes in the market price of gold after August 15, 1971, reinforced the conclusion among members that the role of gold in the international monetary system would have to be changed. They have not reached full agreement on what the ultimate role should be. Some would deprive gold of all its monetary functions, others would retain gold as a reserve asset and take advantage of its high price as a commodity. These differences of opinion on the ultimate role of gold have not prevented agreement on a gradual reduction in its role. Gold is at present, therefore, on the road to an unknown destination. The first major step on the road was the invention of the SDR as a reserve asset that could be allocated to supplement gold and other existing reserve assets. A second major step will be taken by the second amendment. Its impact on the three functions of gold will be discussed in turn.

25. It has been noted already that members will be obligated not to maintain the value of their currencies in terms of gold, although they will have freedom in all other respects to choose their exchange arrangements. Moreover, if the Fund decides to reintroduce a par value system, gold will not be the common denominator of that system.

26. The unit of value of the SDR will cease to be defined in terms of gold. The Fund will be empowered to adopt the method

of valuation it deems most efficacious. That method will not refer to gold.

27. The status of gold as a reserve asset will be affected—impaired according to the hopes of some members—by a number of modifications in the Articles. There will be no official price for gold, and the Fund will be forbidden to attempt to manage or fix the market price. All obligations by the Fund to accept or make payments in gold, except in the liquidation of the Fund, will be abrogated, although the Fund will be able to accept payments in gold by agreement with an obligor under decisions taken by a majority of eighty-five per cent of the total voting power. The Fund will be required to dispose of one-sixth of its holdings of gold, of which half will be sold to members in proportion to their present quotas at the present official price and the other half will be sold on the basis of market prices for the benefit of developing members. The Fund has already auctioned two installments of gold for the latter purpose. The United States Treasury also has held two public auctions of some of its holdings of gold. The Fund will be authorized to decide, by a majority of eighty-five per cent of the total voting power, to dispose of the rest of its gold, or some of it, by sales to members at the present official price or by sales on the basis of market prices. The Fund may use the proceeds of the latter sales that exceed the present official price in its ordinary operations and transactions or in extraordinary operations and transactions, including those designed for the special benefit of developing countries. Members undertake to collaborate with the Fund and with each other in order to ensure that their policies on reserve assets will be consistent with the objectives of promoting better surveillance of international liquidity and making the SDR the principal reserve asset in the international monetary system. The provision is written in Stressperanto, the language of laborious international compromise. The provision means, among other things, that, in ways to be determined later, members will collaborate on a gradual reduction in the role of gold. The second amendment contains no provisions by which members will be required or enabled to deposit gold in the Fund in return for SDRs. Proposals were made for this purpose because some members hold the view that international control of the volume of reserve assets, which was one of the objectives for which the SDR was invented, cannot be achieved unless SDRs become the substitute for, and not, as at present, solely the supplement to, other reserve assets.

28. It follows from the provisions that have been described that there will be an immediate reduction in the role of gold in the Fund as soon as the second amendment becomes effective, and even

before that date because the disposition of the Fund's holdings of gold will begin under the present Articles. The danger exists, at least in principle, that the members holding substantial amounts of gold, including gold disposed of by the Fund, might take action among themselves in the future to impede the progress of gold on the road out of the system. The Group of Ten and Switzerland have agreed, therefore, that in order to give effect to the understanding among members that there should be a gradual reduction in the role of gold—the eye should not glide over the word gradual—they would refrain from any action to peg the price and would not increase the total amount of gold held by them and by the Fund. The agreement is for a period of two years, after which it may be continued, modified, terminated, or resiled from by any party.

D. *Special Drawing Rights*

29. The SDR was the result of an international agreement that was embodied in the first amendment of the Articles. SDRs are reserve assets that the Fund can allocate to members participating in the SDR scheme, or can withdraw from them and cancel, in order to meet the global need for reserves. The purpose of the agreement was to free members from the need to rely on acquisitions of gold or on deficits in the balances of payments of the members issuing reserve currencies by providing a new source of international liquidity. It was hoped that, by means of allocations and cancellations of SDRs, the Fund would be able to control the global volume of reserve assets, and thereby promote attainment of the purposes of the Fund, and avoid economic stagnation and deflation as well as excess demand and inflation in the world. The second amendment will require the Fund and members to pursue the objective of making the SDR the principal reserve asset of the international monetary system. To bring the objective within reach, it will be necessary to reduce the role of other reserve assets and to improve the SDR. The second amendment will bring about improvements in the characteristics of the SDR and extend its uses. Some of these changes will take effect immediately on amendment, others as the result of powers that the Fund will have to adapt features of the SDR to changing circumstances. The legal analysis of the SDR, which challenged the discriminating scholar on its first appearance, will become even more provocative in its second manifestation.

30. Among the improvements in the characteristics of the SDR, two have been mentioned already. The SDR will be detached

from gold, and the Fund will have express authority to establish the mode of valuing the SDR in terms of currencies. The Fund has been able to adopt a mode of valuation, based on a weighted average of sixteen currencies, even before amendment. The SDR will become the unit in terms of which the currencies of members held in the general resources of the Fund will be maintained in value and on the basis of which computations will be made in applying the provisions of the Articles. Other improvements will be greater flexibility for the Fund to determine the rate of interest on the SDR and to modify or abrogate the rules requiring members participating in the SDR scheme to maintain minimum average balances of the asset over time.

31. Participants will be able to make more extensive uses of SDRs by making payments to the Fund in lieu of gold, and by entering into new kinds of transactions with the Fund. Official entities not included in the present Articles may be permitted to hold SDRs, although not receive allocations as if they were participants, and may be permitted to engage in operations and transactions in SDRs with the Fund, participants, or other holders of SDRs. The Fund will be able to allow participants to engage in operations in SDRs between themselves that are not possible under the present Articles, such as loans, grants, pledges, or the direct settlement of obligations. At the moment, a participant wishing to discharge an obligation with the use of SDRs must transfer them in order to obtain currency with which to discharge the obligation. One of the most important developments in connection with the use of SDRs will be the expansion of the present limited authority of participants to transfer SDRs in transactions between themselves without the necessity for designation of the transferee by the Fund. Under the amendment, the obligation of the Fund to designate a transferee and the obligation of the designated transferee to accept the transfer up to the maximum amount prescribed by the Articles remain the legal foundations of the SDR as a reserve asset, but participants will be free to enter into transactions by agreement without any necessity for designation by the Fund. Furthermore, although in transactions involving designation the transferor of SDRs is expected to observe the principle that transfers are justified if there is a need to use reserve assets and not if the transferor is disposing of SDRs in order to change the composition of its reserves, this expectation will not apply to consensual transfers.

E. General Department

32. Under the present Articles, operations and transactions involving the general resources of the Fund are conducted through the General Account, and operations and transactions involving SDRs are conducted through the Special Drawing Account. Under the amended Articles, the two Accounts will be renamed the General Department and the Special Drawing Rights Department. The main reason for the new nomenclature is that three separate Accounts will be established in the General Department. One of these will be the General Resources Account, in which the Fund will hold the general resources now held in the General Account. The Investment Account will be established as the Account through which the Fund may exercise an express power of investment that it has not had hitherto, although in the past the Fund found by interpretation that it had a limited power of investment. The express power will be more extensive in a number of ways and will enable the Fund to invest currency transferred for the purpose from its general resources or part of the profits realized by the sale of its gold (*i.e.* part of the proceeds of sale that exceed the present official price). The total of amounts invested may not exceed the total of the Fund's considerable reserves. The purpose of investment will not be to give assistance to the members or the international financial organizations issuing the securities in which the Fund will be able to invest, but to raise income to meet the expenses of the Fund, including the remuneration it pays to members when using their currencies in the operations and transactions conducted through the General Resources Account. The use of income from investment to pay expenses, however, means that an equivalent amount of the Fund's general resources need not be used in this way and can be used in the operations and transactions conducted through the General Resources Account.

33. The third Account also will be new. The Fund will hold other profits realized by the sale of its gold in the Special Disbursement Account. By decisions taken with seventy per cent of the total voting power, the Fund will be able to transfer profits held in this Account to the General Resources Account for immediate use in the ordinary operations and transactions conducted through that Account. The Fund may "capitalize" these transfers by offering increases in quotas to members, in proportion to their quotas, without any obligation on their part to pay subscriptions in respect of these increases. By decisions taken with the higher majority of eight-five per cent of the total voting power, the Fund will be able to use the profits for operations and transactions not authorized by

other provisions of the Articles, including balance of payments assistance on advantageous terms for the benefit of developing members, especially those with low per capita income. Part of the amount that the Fund might decide to use for these extraordinary operations and transactions could be distributed instead as direct transfers to developing members in proportion to their quotas.

34. The provisions of the Articles on the basic transaction by which a member in difficulties in its balance of payments can purchase the currencies of other members in return for its own currency will be thoroughly revised by the amendment. Many of the modifications are designed to eliminate provisions that have become cumbersome or outmoded and to substitute new, and on the whole more flexible, provisions in accordance with policies and practices that have evolved over the years. These modifications are too numerous to examine in detail in this report, but it should be said that nothing in the amended Articles will authorize the Fund to depart from its traditional role of giving financial assistance in connection with maladjustment in the balance of payments.

35. Some amendments will be improvements that go beyond current policies and practices. The best example of this development will be the obligation of a member to provide a "freely usable currency" in exchange for its currency when purchased from the Fund unless its currency is "freely usable". There is no obligation of this kind under the present Articles. The effect of the obligation will be to enable the Fund to sell all the currencies it holds whenever the sale of them accords with its policies.

F. *Services*

36. The Fund's Accounts are separate from other accounts that the Fund, if requested, may agree to administer. A new provision in the amended Articles will give expression to what is at present an implied power of the Fund to perform financial or technical services, including the administration of resources contributed by members, that are consistent with the purposes of the Fund. Services under this provision could not impose an obligation on a member to make a contribution or to undertake any other action without the member's consent. Operations and transactions involved in the performance of financial services could not impose any liability or obligation on the Fund for which it could make available the assets held in the Accounts of the General Department or in the Special Drawing Rights Department. Under its present implied power, the Fund already holds and administers a Subsidy Account to which some members have made contributions to help

certain other members meet the charges payable for use of the Fund's resources under one of its policies. More recently, the Fund has established a similar account in the form of a Trust to administer resources, including profits from the sale of gold, for the benefit of developing members. The flexibility of the Fund's powers is illustrated by the fact that at one time a separate legal entity created by a new international agreement among members was suggested for this latter purpose.

G. *Structure of the Fund*

37. Under the present Articles, the Fund is composed of the Board of Governors, the plenary organ consisting of a governor and alternate governor appointed by each member, the Executive Directors consisting at present of twenty directors, and the Managing Director and staff. The Managing Director is the chief of the operating staff and also the Chairman of the Executive Directors. Certain specific powers are conferred directly on the Board of Governors, on the Executive Directors, and on the Managing Director. These powers are not delegated and cannot be withdrawn. All powers not directly conferred are vested in the Board of Governors, and, unless they are expressly reserved to the Board by the Articles, they can be delegated to the Executive Directors, who are in continuous session at the headquarters of the Fund in Washington, D.C. The Executive Directors are responsible for the conduct of the general operations of the Fund, for which purpose they exercise all the powers delegated to them by the Board of Governors. The maximum delegation has been made by the Board of Governors.

38. When the original Articles were being discussed, there was support among some negotiators for an organ of the Fund that would consist of officials of member governments, who, because of their domestic positions, would be able to communicate the innermost intentions of their governments and integrate their policies with those of the Fund. An organ of this kind would not have functioned in continuous session. The proposal was not accepted, but some governments made an effort to achieve the same effect by having part-time directors. The effort failed after a few years not only because the Cabots speak only to the Lodges, but also because the ordinary business of the Fund had become so extensive and multifarious that there was an incontestable need for an organ in continuous session. This development did not eliminate the need for the Cabots and Lodges of monetary officialdom to meet from time to time at ministerial or sub-ministerial level in smaller gatherings than the meetings of the Board of Governors. Groups

were formed outside the framework of the Fund, with the Group of Ten in the vanguard. Discontent with factional negotiations was responsible for the creation within the framework of the Fund of the Committee of Twenty for the purpose of negotiating reform of the international monetary system. The Committee was composed of persons of ministerial rank who were appointed by the twenty constituencies that appointed or elected executive directors.

39. Experience with the Committee of Twenty convinced members of the Fund that a similar body should be established after the Committee had completed its task. The Interim Committee of the Board of Governors on the International Monetary System is the successor Committee, with a membership composed on the same model as its predecessor, but with terms of reference that include advising the Board of Governors with respect to its supervision of the management and adaptation of the international monetary system. The Interim Committee bears that name because it will give way to the Council whenever, under the amended Articles, the Fund decides, by a majority of eighty-five per cent of the total voting power, to bring the Council into existence.

40. The terms of reference of the Council will be similar to those of the Interim Committee, with the difference, however, that the Committee can do no more than give advice or make recommendations, while the Council, as an organ, will be able to make decisions. The most important powers of the Council will be those that will be delegated to it by the Board of Governors. The amended Articles will not distinguish between the Council and the Executive Board in connection with the powers that can be delegated. The result might be that powers would be delegated to the two organs concurrently. If that should be done, decisions of the Council in the exercise of a power would override decisions of the Executive Board if there were to be a conflict between them, and, of course, decisions of the Board of Governors would prevail over decisions of both the other organs.

41. The Council also will be composed on the basis of the constituencies that appoint or elect Executive Directors, but it will resemble the Board of Governors in some respects. One similarity, which has been noted already, is that the decisions of the Council will prevail over those of the Executive Board if there should be any inconsistency between them. Another is that each constituency of members will have the right to appoint up to seven Associates, who, together with Executive Directors, will be entitled to attend meetings of the Council unless they are held in restricted session. The object is to permit attendance by the officials of many more than the twenty members of the Fund whose officials com-

pose the Committee. The most striking resemblance to the Board of Governors will be "split voting." An Executive Director can cast the number of votes allotted to the member that appointed him or to the members that elected him only as a unit. A Councillor appointed by a constituency of two or more members will be able to split his votes by casting separately the number of votes allotted to each member. The reason for this departure is that the Council will be composed of persons with political responsibility, so that they will constitute an organ closer in character to the Board of Governors, in which Governors vote individually.

H. *Organization*

42. Numerous changes will be made in relation to organizational aspects of the Fund. One of the most controversial of the proposed amendments in this category relates to the composition of the Executive Board. Issues relating to the composition of an organ that makes decisions in the exercise of the Fund's regulatory and financial powers have an obvious political importance for all members. The present Articles provide for not fewer than twelve Executive Directors, of whom five are appointed by the five members that have the largest quotas, two are elected separately by the American Republics not entitled to appoint Executive Directors, and five are elected by all other members. Elections are held every two years. The Board of Governors decides how many Executive Directors are to be elected at each election. In most elections in recent years, the number to be elected by the American Republics has been three, and by other members twelve, with the result that there have been twenty Executive Directors in all. This number has been considered reasonable because, on the one hand, it does not prevent the effective dispatch of business, and, on the other hand, it enables members to form constituencies of their choice and to satisfy certain other desiderata. Under the amended Articles, there will continue to be five appointed Executive Directors, but provision will be made for fifteen to be elected in a single election by all members not entitled to appoint Executive Directors. The Board of Governors will be able to increase or decrease the number of Executive Directors to be elected in any biennial election by a decision taken by a majority of eighty-five per cent of the total voting power.

43. Under the present Articles, the five members having the largest quotas are required to appoint Executive Directors. If these five members do not include the two members that have made available the largest absolute amounts of resources utilized by the

Fund, on the average over the two years preceding an election, these two members also are required to appoint Executive Directors. In order to avoid the involuntary disturbance of a constituency of members, the amended Articles will give each of the two members an option to appoint an Executive Director or to join in the election. Moreover, if a member decides to appoint an Executive Director, it will be able to agree with individual members in its former constituency that the appointed Executive Director may cast the number of votes allotted to other members in that constituency. The present Articles permit an appointed Executive Director to cast only the number of votes allotted to the member that appointed him.

44. If one or two additional Executive Directors are appointed (*i.e.* in addition to the five appointed by the members with the five largest quotas), the total number of Executive Directors will be maintained at twenty by reducing the number to be elected by one or two as the case may be. The Board of Governors may decide, by a majority of eighty-five per cent of the total voting power, to prevent a reduction in the number of Executive Directors to be elected if the reduction would hinder the effective discharge of the functions of the Executive Board or of Executive Directors or would threaten to upset a desirable balance in the Executive Board.

I. *Decisions*

45. The basic rule in the present Articles is that decisions are taken by a majority of the votes cast. This rule will be unchanged in the amended Articles. In accordance with the rule, votes not cast because of abstention or for any other reason are excluded from calculation and not treated as negative votes. For a number of decisions under the present Articles, various proportions of the total voting power of all members are required.⁷ Under the amended Articles, the number of different majorities will be reduced. Subject to one exception, the special majorities will be reduced to two: seventy per cent and eighty-five per cent. The tendency has been to require the smaller majority for certain decisions that will be operational in character but not routine, although they will not be of the same importance as those for which the larger majority will be necessary. Decisions of greater import-

7. See J. GOLD, *VOTING AND DECISIONS IN THE INTERNATIONAL MONETARY FUND: AN ESSAY ON THE LAW AND PRACTICE OF THE FUND* 123-55 (Washington, 1972).

ance for the international monetary system will be taken by the larger majority, but there is no single explanation for the choice of all the decisions subject to this majority. Although the number of special minorities will be reduced, the number of decisions for which special majorities will be necessary has been greatly increased.

46. The requirements for the acceptance of amendments of the Articles by members will be modified. For proposals to amend all but three provisions, for which unanimity is required, acceptance by three-fifths of the members representing eighty per cent of the total voting power is necessary at present. The proportion of voting power will become eighty-five per cent when the amendment takes effect. The unanimous acceptance necessary for the amendment of the three safeguarded provisions⁸ will remain unchanged.

II. INCREASES IN QUOTAS

47. Each member in the Fund is assigned a quota. That datum affects or determines a broad range of rights and obligations. For example, it determines a member's subscription, affects the amount of other members' currencies it can purchase from the Fund, and is the basis for allocations of SDRs. The quota is also a determinant of a member's voting power. Each member has two hundred and fifty basic votes plus one additional vote for each part of its quota equal to one hundred thousand SDRs. At the moment, the gamut of the voting power of members runs from 0.08 to 20.75 per cent of the total. At intervals not exceeding five years the Fund must review all quotas and propose any adjustments that it considers appropriate. Eighty-five per cent of the total voting power is necessary for decisions on the adjustment of quotas as the result of a general review. The quota of a member cannot be changed without its consent. In view of the importance of both the absolute and relative amounts of quotas and the necessity for so high a majority of the total voting power for decisions on the adjustment of quotas, the negotiation of changes, which in practice means the negotiation of increases, becomes an extraordinarily difficult and prolonged task. The sixth general review, which was approved by the Board of Governors in March 1976, was complicated even further by the fact that the second amendment of the Articles was being negotiated at the same time. It was clear that special

8. Gold, *Weighted Voting Power: Some Limits and Some Problems*, 68 AM. J. INT'L L. 694-96 (1974).

majorities were going to be required for many more decisions than under the present Articles, so that relative voting power was a more dominant consideration than it had been in earlier reviews.

48. The three issues around which most of the controversy swirled were the size of an increase in total quotas, the distribution of the total increase among members, and the payment of the subscriptions that would be exigible as a result of the increases. Agreement was reached that the total of quotas would be expanded from SDR 29.2 billion to SDR 39 billion. This increase did not meet the aspirations of all members, and it was agreed, therefore, that the next general review would be held after three years instead of five years.

49. On the distribution of increases, it was agreed that the share in the enlarged Fund of the major oil exporters as a group would be doubled. The collective share of all other developing members would not be reduced. These understandings meant that the total share of industrial members would have to be reduced. The percentages of total voting power of various groups of members before and after quotas are increased will be as follows:

(a) Industrial members	57.74	55.09
(b) Other developed and more advanced developing members	9.44	9.17
(c) Major oil exporting members	5.49	9.90

Hard bargaining took place within each group, and more particularly within the group of industrial members. The United States finally concurred in a reduction in its voting power from 20.75 per cent to 19.96 per cent on the understanding that the proportion of total voting power for the adoption of amendments would be increased from eighty per cent to eighty-five per cent and the majority of eighty per cent for the decisions for which it was required would be increased to eighty-five per cent. It should be noted that percentages of total quotas are not the same as percentages of total voting power because of the two hundred and fifty basic votes allotted to each member in addition to the votes proportioned to quotas. For example, the quota of the United States is 22.93 per cent of the total of present quota and will be 21.53 per cent after the increases become effective. The relationships among quotas, in contrast to relative voting power, has its own importance, for example in connection with the distribution of an allocation of a determined amount of SDRs.

50. The issue of the mode of payment involved the drafting of certain provisions of the Articles as well as the form in which, under the amended provisions, subscriptions should be paid in

respect of increases in quotas resulting from the sixth general review. The desire to reduce the role of gold in the international monetary system and to enhance the status of the SDR were among the reasons for urging the modification of the present provisions. It was also argued that the liquidity of the Fund would be helped by the receipt of a larger proportion of currency than in the past under the proposals designed to ensure that the Fund would be able to make effective use of its holdings of all currencies in its operations and transactions. It has been seen that under the present Articles the Fund has the power to sell all currencies without exception but that sales can be rendered nugatory by certain issuing members unless they are willing to exchange the balances of their currencies sold by the Fund for a freely usable currency. The amended Articles will impose an obligation on members to make these exchanges at a prescribed rate of exchange. The amendment will require that payment be made in SDRs of the twenty-five per cent of an increase in quota formerly payable in gold, but the Fund may decide that all or part of this portion may be paid in the currencies of other members, with their concurrence, or in the paying member's currency. The balance of a member's subscription continues to be payable in its currency. For the sixth general review, it has been decided that all three means of payment of the "gold" portion should be available.

51. The problem of the Fund's ability to use all currencies will be solved by the amendment, but the resolution of the Board of Governors on the sixth general review deals also with the use of the Fund's holdings before amendment. The resolution calls on all members to make cooperative arrangements for this purpose before amendment, but without depriving members of the privilege of increasing their quotas if they do not respond.

52. The formula agreed for increases in the quotas of classes of members had the effect of putting the burden on industrial members to make a "contribution" in the form of decreases in their shares in total quotas and in total voting power. The quota of the United States is so large in relation to other quotas that its contribution of a small percentage can be considerable in absolute terms. If eighty per cent of the total voting power continued to be necessary for certain decisions and for the adoption of amendments, the reduction of the relative voting power of the United States to a little more than twenty per cent could deprive it of the vetoes it can now exercise, because new members might enter the Fund and reduce the relative voting power of the United States to below the Plimsoll line. The agreed solution was to change the references to eighty per cent in the Articles to eighty-five per cent.

