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HOOSHANG ABDOLBAGHI

INTERNATIONAL MONETARY FUND AND
THE GROUP OF TEN
CERTAIN LEGAL ASPECTS

B.C.L., 1971

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ABBREVIATIONS

AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law.
Bank	International Bank for Reconstruction and Development.
BIS	Bank for International Settlements.
BYIL	British Year Book of International Law.
CLP	Current Legal Problems.
Cmd. .	United Kingdom Command Papers.
ECOSOC	United Nations Economic and Social Council.
FAA	Articles of Agreement of International Monetary Fund.
FBG	Board of Governors of International Monetary Fund.
FBL	By-Laws of International Monetary Fund.
FCC	Federal Communications Commission of the United States.
FEB	Executive Board of International Monetary Fund.
FED	Executive Directors of International Monetary Fund.
FMD	Managing Director of International Monetary Fund.
FRR	Rules and Regulations of International Monetary Fund.
Fund	International Monetary Fund.
Fund's Selected Decisions.	Selected Decisions of the Executive Directors and Selected Documents of the IMF, Third Issue, January, 1965.
GAB	General Arrangements to Borrow.
GATT	General Agreement on Tariffs and Trade.

HMSO Her Majesty's Stationary Office,
United Kingdom.

IBRD International Bank for Reconstruction and
Development.

ICJ International Court of Justice.

ICLQ International and Comparative Law Quarterly.

ILC International Law Commission.

ILO International Labour Organisation.

ILR International Law Reports.

IMF International Monetary Fund.

LQR Law Quarterly Review.

MLR Modern Law Review.

OECD Organisation for Economic Co-operation and
Development.

PASIL Proceedings of American Society of International Law.

PCIJ Permanent Court of International Justice.

UN United Nations.

UN Mon- Proceedings and Documents of United Nations
etary Monetary and Financial Conference, Bretton Woods,
Docu- New Hampshire, July 1 - 22, 1944.
ments.

UNTS United Nations Treaty Series.

World International Bank for Reconstruction and
Bank Development.

YBWA Year Book of World Affairs.

PREFACE

In this paper we are mainly concerned with the legal structure and scope of the Borrowing Scheme. The need for the formation of an arrangement like the Borrowing Scheme was economic; its necessity was, it is believed, due to the emergence of a new phenomenon in international monetary affairs, viz., short-term capital movement.

The short-term capital movement itself was partly due to the fact that after the inception of the Fund's operations, a considerable number of its members accepted the commitments of Article VIII of the Fund's Articles of Agreement. That is to say, they accepted the obligations of convertibility of their currencies, subject-matter of Sections 2, 3 and 4 of Article VIII.

It was, in a sense, the acceptance of this commitment, by the key member States of the Fund, that caused the above phenomenon (that is, the short-term capital movement); following which the Fund felt it necessary to set up the Borrowing Scheme.

Another factor which contributed to the formation of the Borrowing Scheme was, it is suggested, shortage of means of international liquidity. The fact that,

since the Fund's Articles of Agreement came into effect, the volume, as well as the price of, almost all commodities has increased considerably; whereas the means for international liquidity have not been increased accordingly.

The shortage of means of international liquidity had, therefore, to be coped with in one way or another. Some of its aspects were resolved by way of increases in the member States' quotas, and later by way of setting up the so-called Special Drawing Rights. Another step to supplement the above measures, was the formation of the Borrowing Scheme.

What we are trying to suggest here, is that although the chief objective of the setting up of the Borrowing Scheme was to cope with short-term capital movement, this does not necessarily mean that the Borrowing Scheme has had no other impact on international monetary affairs. For instance, another purpose to be achieved under the Borrowing Scheme was, it is believed, to offer the U.S. Government the opportunity to cope with its recent balance of payments difficulties — by way of using its drawing facilities on a larger scale. Therefore it is perhaps an economic view, *per incuriam*, to suggest that the only objective

of the Borrowing Scheme was to deal with the short-term capital movement. These are, however, matters of concern of international economists, and thus out of scope of this paper.

So far as short-term capital movement was concerned, it had to be coped with in a specific way; for, as we may notice, the movement of "hot" money usually affects the monetary stability of key member States of the Fund, particularly the so-called Group of Ten Countries. It would follow that the participation in the Borrowing Scheme had to be limited to the key member States of the Fund, that is, the Group of Ten Industrial countries.

Under the Borrowing Scheme, the Group of Ten have agreed to supplement the Fund's resources up to the equivalent of U.S. \$ 6 Billion of their own currencies. These currencies are to be borrowed only by the participants in the Borrowing Scheme and not by other member States of the Fund.

The thing which is to be mentioned here, is that before any agreement could be reached as to the contents of the Borrowing Scheme, various proposals were put forward and studied by the authorities concerned.

Two distinct approaches could be traced in nearly all these proposals:

(a) The approach under which it was believed that the Fund could achieve its objectives by bringing about necessary amendments to the existing provisions of the Fund's Articles of Agreement.

(b) The approach under which it was suggested that the Fund could achieve the same objectives without getting involved in the amendment of the Fund's Articles of Agreement; but by setting forth some supplementary arrangements under some of the existing provisions of the Fund's Articles of Agreement.

There is, however, sufficient evidence to believe that the above second approach has won the favour of the Fund and other interested bodies. This is perhaps the reasons why the Borrowing Scheme has been set up under Articles VII (2) of the Fund's Articles of Agreement; because Article VII (2) is formulated with a view to dealing with scarce currencies — something which has never been used for this purpose. Yet, suddenly it has been nominated as the legal basis for dealing with short-term capital movement, which movement was un contemplated at the time of the drafting of the Fund's Articles of Agreement. It would, therefore, follow that the drafters of the Borrowing

Scheme may have loaded on Article VII (2) something that it can hardly bear the weight.

Setting up of the Borrowing Scheme without attempting any corresponding amendment to the F.A.A. has brought about some legal and constitutional difficulties. This was one of the reasons prompted us to relate our work to the legal aspect of activities of the Group of Ten. However, due to the fact that the nature of activities of the Group of Ten demands it be as confidential as possible, the material available has not been as ample as expected. To this may be added the fact that so far no formal dispute has arisen out of the activities of the Group of Ten which could throw light on the meaning and scope of the contents of the Borrowing Scheme. In consequence of this, our study will be limited to the understanding of meaning and scope of the Borrowing Scheme in the light of pronouncements of the Fund and the Group of Ten, coupled with the comments by writers on international law.

However, before leaving this preface, let us have a few more words as to how the acceptance by the Group of Ten of commitments of Article VIII has brought about the necessity for setting up of the Borrowing Scheme.

By 1961 the key member States of the Fund had accepted the undertaking to convert their currencies held by "non-residents" into gold or into another convertible currency. This convertibility of "reserve" currencies gives the speculators the opportunity to move their cash from one country to another.

There are various motives for the movement of short-term capital from one country to another, among which are: interest arbitrage; forward exchange transactions; higher interest rates in one country compared with another; speculation in foreign securities; and above all speculation in foreign exchange. And it is this last element which can be most harmful to the balance of payments and reserve position of the Group of Ten countries, and which has forced these Countries to come together to set up the Borrowing Scheme.

Most economists believe that the balance of payments and reserve position of the main industrial Countries is a manifestation of their economic success or failure. And any economic success or failure would sooner or later affect the balance of payments and reserve position of these countries. This, in turn, necessitates, from time to time, changes in economic policy and adjustments in the balance of payments and reserve position. These changes and adjustments could usually be achieved by way of inflating or deflating the economy. For instance, a country faced with balance of payments deficit may choose to follow an inflationary

policy. This policy can be implemented by way of either: (a) reduction of taxes and (b) increase in public expenditure; or by way of (a) increase in supply to the economy of money and (b) reduction in interest rates; or by way of (a) reduction in money wage rates and (b) devaluation of the currency.

If, on the other hand, a country is faced with balance of payments surplus, it may choose to follow a deflationary policy. This policy in turn may be achieved by way of either: (a) increase in taxes and (b) decrease in public expenditure; or by way of (a) decrease in supply to the economy of money, and (b) increase in interest rates; or by way of (a) increase in money wage rates and (b) upvaluation of the currency.

The object of inflating or deflating an economy can be achieved by employing one, two, several or all of the above economic measures. The degree to which an economy should be inflated or deflated is a matter of economic judgement. This is, at the same time, something on which one cannot find consensus of opinion among the economist. The main criteria for making any decision in this respect, however, are whether the country in question is (1) a surplus country with a domestic slump; (2) a surplus country with a domestic boom; (3) a deficit country with a domestic slump; (4) a deficit country with a domestic boom.

Another criterion here is consideration of the reaction of other industrial countries to the above changes, and adjustments. For instance, if a given country is interested in attracting more foreign capital for improving its overall balance of payments, it could do so by an increase in its interest rates. The success of such a policy is, however, dependent on not only many favourable internal factors, but

also the reaction of other main industrial countries. For example, this policy may not be successful if other members of the Group of Ten choose to increase their interest rates, thus curbing the outflow of capital from their territories.

One incidental inference from the above economic process is that there exists, at any given time, considerable amount of cash which can easily move from one country to another. The above movement of "hot" money may expose the balance of payments and reserve position of the Group of Ten to serious difficulties.

As we have seen, one of the choices open to the Group of Ten to avoid balance of payments and reserve difficulties (and to stop the speculation) is to change the par value of their currency. For instance, if a country is in balance of payments deficit, and this deficit has caused speculation in that currency, then the country in question can deal with it by resorting to the devaluation of its currency. Devaluation is not, however, an easy decision to take. It usually would be taken when other economic measures to protect the balance of payments position have not, for one reason or another, been successful.

It is at this stage that the country in deficit is forced to change the value of its currency with a view to achieving the same object, that is balance of payments equilibrium. When a deficit country reaches this stage when devaluation appears inevitable, the speculators will wish to convert any capital held in that currency into other convertible currencies, making the decision to devalue the more likely. This they will not hesitate to do because they are sure that under the circumstances, one of the following would happen:

(1) either they will lose almost no money if the currency in trouble were not devalued. All that has happened is that they have changed one convertible currency into another, with the same purchasing power; (2) or they will earn considerable amount of windfall profit, if the currency in trouble were devalued. And later, they can convert their cash into the devalued currency, and have more units of the devalued currency, as they had before, with more purchasing power.

Now, let us see why States always resist devaluation of their currency. There are many reasons for this, among which are:

(1) Devaluation is psychologically not much help for the par value of a currency; and recent experience in this respect has shown that once a given currency ^{has been} ~~was~~ forced to devalue, then it arouses^s the suspicion of the world monetary centres, and speculators. This suspicion, in turn, puts that currency in a position that the appearance of the slightest sign of weakness in it prompts the speculators to convert their cash held in that currency into some other convertible currency, and this not infrequently paves the way for another devaluation of that currency.

(2) As referred to earlier, devaluation is said to be one of the means by which States could achieve balance of payments equilibrium. All economists, however, do not believe that devaluation is a cure for balance of payments equilibrium, but an inevitable step to be taken irrespective of its advantages or disadvantages. As such, in economic circles and amongst the private holders of means of liquidity,

the devaluation of a currency will be interpreted as a step to prevent further weakness in its par value; and they will certainly not consider it as a sign of strength of that currency.

For these reasons, any State faced with balance of payments and reserve difficulties will resist a devaluation as far as possible. This resistance, however, can only be sustained if the country in trouble has got enough currency of other members of the Group of Ten to defend the par value of its currency. In other words, under the new conditions of convertibility of Article VIII, the country in trouble requires considerable amount of reserves to meet the demand of speculators to convert its currency into the currency of other members of the Group of Ten.

If the monetary authorities in the deficit country were successful in meeting all the demands for conversion of its currency into another; and if other economic requirements for a healthy balance of payments were existing, then the country in question has restored confidence to that currency and there will be no need for devaluing it.

But if other economic requirements for the preservation of the par value of that currency did not exist, and if the speculative pressure on that currency were ever increasing, then the monetary authorities would be forced to devalue the currency and to accept an appropriate new par value for it. At the same time, they will have lost a considerable amount of reserves.

What is again clear from the above economic process,

is that whether or not the country in trouble is going to resist a devaluation, there is inevitably a need for a considerable amount of reserves for that country. This need for a vast amount of convertible currencies is a new phenomenon in international monetary affairs, and something unthought of at the time of the drafting of the Fund's Articles of Agreement. In other words, the "drawing rights" of the Group of Ten (under the Fund's Articles of Agreement) were quite limited and was not sufficient to meet their balance of payments difficulties under the new conditions created by the convertibility of their currencies. It was these conditions which forced the Group of Ten to set up the Borrowing Scheme, and to replenish the Fund's holdings of scarce currencies. In a sense it was the obligation of the main industrial countries (which effectively control the world's means of liquidity) to step in to help any member of the Group in trouble; because under the new conditions of convertibility, all industrial countries would benefit, and one of the steps necessary to maintain such a benefit is to help each other in time of difficulty.

Furthermore, it is widely believed that the amount of reserves lost by any member of the Group (as a result of movement of hot money) is equivalent to the amount of reserves gained by other members of the Group. There are even some economists who believe that the deficit in balance of payments of one of the members of the Group is surplus in the balance of payments of another; and if the intention of the Group of Ten is to maintain the new conditions of convertibility, then

they must accordingly try to have a sort of multi-lateral balance of payments, by way of re-cycling the surpluses of surplus Countries to deficit Countries, or at least by way of providing necessary loans to the deficit Countries in trouble. What happened at the end of a series of consultations was that the Group of Ten, by setting up of the Borrowing Scheme, agreed to stand ready to replenish the Fund's holding of a scarce currency up to the amount of \$ 6 billion.

As a result, whenever the Fund sees that any member of the Group of Ten is in need of considerable amount of resources, and that the Fund's own resources are not sufficient enough to meet such a demand, then the Fund will call on other members of the Group to provide the Fund with the extra amount, and the Fund will then lend it to the member in need, with a very low rate of interest.

ABSTRACT

In this paper we have first studied the constituent instruments of the Borrowing Scheme and the status of parties thereto. Next, we have studied internal laws governing two of the parties to the Borrowing Scheme, which are central banks of their respective Countries. Third, we have studied the final clause of Paragraph 3(c) of the Borrowing Scheme, to see whether it has obligated the Group of Ten to give the force of law to the contents of the Borrowing Scheme in their respective Countries. We have then, in the Fourth Chapter, dealt with the actual machinery of the Borrowing Scheme. It is in this Chapter that we shall see how the borrowing Scheme works in practice, and what are the procedures to be followed, before any "borrowing arrangement" can be worked out. The last Chapter deals with the voting machinery of the Borrowing Scheme. Although in this Chapter an attempt has been made to describe the mechanism of the voting of the Borrowing Scheme, yet the main object has been the identification of the legal effects which it could bring about.

CHAPTER ONECONSTITUENT INSTRUMENTS OF THE
BORROWING SCHEMEI - INTRODUCTION

It may be known that the general pattern for constituent instruments of international engagements has been a main single document. And this single document has usually been kept in a depository, accompanied by signatures, instruments of ratification, acceptance, accession and so on.

Further, there can hardly be seen any difficulty ⁱⁿ ~~for~~ identifying the sponsors and the parties to those international engagements. And the question whether they are duly authorised representatives of their respective countries can be distinguished with the help of the position they hold, and with the help of instruments such as full powers and the like.

In the case of the 'Borrowing Scheme', however, the case is not as straightforward as that. For instance:

1. The constituent instruments of the Borrowing Scheme are more than one document; it contains at least two main documents ('The Letter' and 'The Decision').

2. Two out of ten parties to the Borrowing Scheme are the central banks of their respective Countries, and their international status requires further consideration.

For this reason we have been prompted to consider structure and scope of the Borrowing Scheme, as well as the status of parties thereto, under a separate Chapter. This we will attempt in the following way:

Firstly will come the Headings of 'The Letter' and 'The Decision', under which we shall study the structure and scope of these two documents.

Then will come the Headings of "Parties to 'The Letter'", and "Parties to 'The Decision'", under which we shall study the status of the parties to these two documents.

Now let us turn to the first of the above headings.

II - THE LETTER

Before any agreements could be reached concerning the Borrowing Scheme, it was necessary to carry out a series of studies and discussions, mainly at the Fund's

headquarters, Vienna and Paris, 1,2.

1. See Statement by the Governor for France, Jacques Brunet in "International Monetary Fund - Summary Proceedings", 1962, p.56, where he considers the Borrowing Scheme as "The Paris Agreement", Cf. the term "Paris Club" in the same periodical, year 1963 p. 37; Cf. also the same periodical year 1964, p. 48.

2. For the background, different discussions and proposals concerning the Borrowing Scheme, see generally, "International Monetary Fund - Summary Proceedings", year 1956, pp. 18, 19; year 1958, pp. 90, 91; year 1959, pp. 30, 31, 129, 130; year 1960, pp. 23 - 28; year 1961, pp. 14 - 16, 20 - 32, 41 - 46, 53 - 55, 58 - 64, 73 - 78, 111 - 118, 121, 157 - 158; year 1962, pp. 17 - 22, 33; year 1963, pp. 16, 17, 28 - 30, 285, 286. See also "International Monetary Fund - Annual Report", year 1958, pp. 51 - 53; year 1959, pp. 82 - 83, 94 - 95; year 1960, pp. 78 - 82, 84 - 88, 90 - 93, 96 - 100, 102 - 104; year 1961, pp. 18 - 19; year 1962, pp. 32 - 39, 172 - 174, 232 - 245; year 1963, pp. 28 - 29; "International Financial News Survey", year 1961, pp. 154, 225; year 1962, pp 1 - 2, 44, 110 - 111, 341, year 1963, pp. 89, 111 - 112, 445; year 1964, p. 245; "International Monetary Fund, 1945 - 1965", Twenty Years of International Monetary Cooperation, Edited by Keith Horsefield, I.M.F., Washington, D.C. 1969, volume, I, pp. 193, 491 - 492, 502 - 518, and 541 - 545; volume II, pp. 29 - 31, 34 - 35, 294 - 296, 373 - 377, 454 - 456, 521, 532, 539 - 541 and 686 - 688.
 In a sense part of activities of the Participants in the Borrowing Scheme came into operation before the Borrowing Scheme itself took effect. See, e.g., "International Financial News Survey", 1961, p. 225; "International Monetary Fund - Annual Report", 1962, pp. 6 - 7; "International Monetary Fund, 1945 - 1965", op. cit., volume I, pp. 482 - 484.

One of the results of these discussions was the draft of an agreement, known as the letter of M. Wilfrid Baumgartner,¹ (hereinafter referred to as 'The Letter').²

The letter contains elaborate terms and conditions for the borrowing of six billion U.S. dollars, by the Fund, of the currencies of the Group of Ten Countries.³

With a view to giving legal effect to its contents, the Letter was then sent to all the prospective participants in the Borrowing Scheme,⁴

1. The then Minister of Finance, France.
2. The term 'The Letter' for the above letter of M. Wilfrid Baumgartner has been adopted by Hans Aufricht, in his 'International Monetary Fund'. See, Hans Aufricht's 'The International Monetary Fund', London, Stevens & Sons, 1964, p.67.
3. The term, 'Group of Ten Countries' is a popular, name used in the press and economic circles to denote eight Participating Countries and two Participating Institutions of the Borrowing Scheme. They are also sometimes called 'the Group of Ten richest (industrial) countries (of the world)'.³
4. By the term 'Borrowing Scheme' in this paper, we mean all the relevant arrangements set out to regulate the credit arrangements of equivalent of six billion U.S. dollars. This term was apparently first used by Reginald Maudling, the then Governor of the Fund, for the United Kingdom. See, "International Monetary Fund - Summary Proceedings", 1962, p.64.

by Wilfrid Baumgartner on 15 December, 1961. ¹

Every prospective participant in turn sent a separate letter to the French Minister of Finance, confirming the receipt of 'The Letter' and stating that it was in agreement with its contents. These replies are known as 'the letters of confirmation'.²

Finally, M. Wilfrid Baumgartner, in another series of letters despatched to the prospective participants, confirmed that he had received 'the letters of confirmation' concerning 'The Letter' from all the Group of Ten. In this letter, he also informed them that he would notify the International Monetary Fund "of the general agreement thus realised with respect to the understandings reached during the recent discussions in Paris". ³

-
1. For the full text of 'The Letter', see Appendix I.
 2. For the text of one of the letters of confirmation, see Appendix II.
 3. For the text of one of the above letters of M. Wilfrid Baumgartner, see Appendix III.

A study of the way these documents have been exchanged would constitute a prima facie case for considering them as an "Exchange of Notes".¹ The title of "Exchange of Notes" for 'The Letter' would not probably reduce its effect in international law; because in some definitions, the term 'treaty' embraces "Exchange of Notes" also.

For instance, Articles 2(a) of the "Vienna Convention on the Law of Treaties", states:-

"(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instrument and whatever its

1. Cf. "International Monetary Fund - Summary Proceedings", 1962, p. 19 where it is said:

"... in an exchange of letters among themselves, the ten lending countries have set down the procedure they will follow in making the supplementary resources available to the Fund ... "

particular designation;" ¹

Another term which might suit the structure and scope of 'The Letter' seems to be 'Multilateral Declarations'. ²

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1. See "Vienna Convention on the Law of Treaties", with Final Act of the Conference, Declarations and Resolutions, Vienna 28 May, 1969. H.M.S.O., Cmnd. 4140, Law of Treaties, Miscellaneous No. 31 (1969), p.3. Cf. "Reports of the International Law Commission on the Second Part of its Seventeenth Session, January 3 - 28, 1966, and on its Eighteenth Session, May 4 - July 19, 1966, in the (1967), 61, A.J.I.L., p. 287, et. seq.; Comments by the Government of the United States of America on Parts I, II and III of the Draft Articles on the Law of Treaties Drawn up at its Fourteenth, Fifteenth and Sixteenth Sessions, Id., pp. 1123 - 1124. Cf. also Articles 1 and 2 of the Draft Articles of the 'Report on the Law of Treaties' of the I.L.C., U.N. Document A/CN. 4/63-24 March 1953, discussed by J.E.S. Fawcett in his "The Legal Character of International Agreements", (1953), 30, B.Y.I.L., p. 382. J.E.S. Fawcett, in this Article seems to doubt that "exchange of notes" could be accorded the status of "treaty". See Id. p. 385. Cf. the same writer, "The Law of Nations", Allen Lane, The Penguin Press, London, 1968, p. 91.

 2. See Lord McNair, "The Law of Treaties", Oxford University Press, 1961. p. 22. For some other terms employed in international law to nominate different international engagements see Id. pp. 22-25. Cf. J.E.S.Fawcett, "The Law of Nations", op.cit., pp. 91 - 92. Cf. also (1967), 61, A.J.I.L., pp. 290, 1124.

On the other hand, due to the nature of the understandings, spoken of in 'The Letter', it could be construed as a "Letter of Intent".¹ This is so because it, generally, speaks of "understandings" reached during the recent "discussions" and "procedure" to be followed by the participants, and so on; and thus it avoids, as far as possible, bringing about any clear cut legal obligation thereunder. For instance, preamble to 'The Letter', in guarded language, states:-

"The purpose of this letter is to set forth the understandings reached during the recent discussions in Paris, with respect to the procedure to be followed by the Participating Countries and Institutions ... in connection with borrowings by the International Monetary Fund of Supplementary resources ... which we expect will be established pursuant to a decision of the Executive Directors of the Fund."²

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1. See J.E.S. Fawcett, "The International Monetary Fund and International Law", (1964), 40, B.Y.I.L., P. 74.
 2. See Appendix I.

Thus, the participants seem to have attempted to avoid the formation of any legal obligation, vis-à-vis each other, under 'The letter'. Therefore, there seems to be no legal difficulty in construing 'The Letter' as a letter of intent in general sense.¹

Nevertheless, if one is going to consider 'The Letter' as the 'Letter of Intent', used by the Fund's member States, for the drawing of currencies, then this suggestion deserves more consideration. So let us first see what is meant by the 'Letter of Intent' in the Fund's terminology.

J. Keith Horsefield, the Chief Editor of the Fund, has attempted a definition for the 'Letter of Intent' as follows:

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1. Cf. however, the Statement issued on 2 October, 1963, by the Secretary of the Treasury of the U.S., on behalf of the participants in the Borrowing Scheme, especially where he calls 'The Letter' an 'agreement'. This Statement in part says:-

"1. In the course of the annual meeting of the International Monetary Fund, the Ministers and Central Bank Governors of the ten countries ... participating in the agreement of December, 1961 ('The Letter' that is), to supplement the resources of the International Monetary Fund met in Washington"

The parenthesis and emphasis added.

'Letter of Intent _____. A member seeking to make a drawing from the Fund, within the credit tranches, or to enter into a stand-by arrangement, is usually invited to describe to the Fund, in a "letter of intent", the policies which it is undertaking in order to overcome the difficulties which have caused its need for the drawing or stand-by' ¹

Now, if one is going to confer the status of 'Letter of Intent' (as described in the above definition) upon 'The Letter', the following difficulties may arise:

1. That a 'Letter of Intent' should be related only to 'drawings' from the Fund, and should not be related to both lending and drawing to and from the Fund _____ as is the case with the contents of 'The Letter'; ²
2. That the 'drawing' described in a 'Letter of Intent' must be within the 'credit tranches' of the Fund's member State;

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1. See J. Keith Horsefield, "Introduction to the Fund", International Monetary Fund, Washington, D.C., Second Edition, 1965, p.28.
 2. Cf. "International Monetary Fund - Annual Report", 1961, p.19.

whereas the drawings envisaged in 'The Letter' may exceed the 'credit tranches' of the Fund's member states; ^{1,2}

1. The term "credit tranches" has been described by J. Keith Horsefield as follows:-

"Drawings are said to be in the credit tranches if their effect is to increase the Fund's holdings of a member's currency to an amount greater than its quota ... A drawing in the "first credit tranche" increases the Fund's holdings of the currency to an amount greater than the member's quota, but not greater than 125 per cent of the quota; in the "second credit tranches" it increases the Fund's holdings to an amount greater than 125 per cent of the quota, but not greater than 150 per cent; and so on". See J. Keith Horsefield, "Introduction to the Fund", *op.cit.*, p.24.

For more description of the term "credit tranches", as well as terms "gold tranche", "super gold tranche" and differences existing between these terms and that of "drawings" under the G.A.B., see "Report of the Study Group on the Creation of Reserve Assets", Rome, Bank of Italy Press, 1965, Paragraphs 57 - 61. For an illustrated example in this respect, see Rinaldo Ossola, "On the Creation of New Reserve Assets: the Report of the Study Group of Ten", (1965), 18, Banca Nazionale del Lavoro, Roma, Via Vittorio, Veneto, p. 279, Cf. *Id.*, p. 281.

2. See International Financial News Survey", 1965, pp. 169 - 170. See also "International Monetary Fund - Press Release", No. 695, June 19, 1968; and No. 743 June 27, 1969; "International Monetary Fund, 1945-1965", *op.cit.*, volume II, p. 457, Cf. *Id.* pp. 530 - 532. For the bodies (other than the Group of Ten) which could contribute currencies, under a borrowing arrangement of the Borrowing Scheme, see *infra*, under the Chapter "Consultative Arrangements of the Borrowing Scheme".

3. That for every individual 'drawing' a new 'Letter of Intent' — describing the circumstances under which the drawing is requested — seems to be necessary, and this 'drawing' should be governed by Article V of the Fund's Articles of Agreement; whereas 'The Letter' has been an arrangement of a general nature, describing the ways and means by which the Fund's holdings of 'scarce currencies' should be replenished, and, further it is to be governed by Article VII of the Fund's Articles of Agreement. And finally;

4. That if a 'Letter of Intent' is intended to describe circumstances under which a drawing is requested, that is something to be achieved — so far as the Borrowing Scheme is concerned — by way of "discussion" between a "drawer" on the one side and the Fund (and other participants) on the other.¹ As such, it does not require any written document, known as the 'Letter of Intent'.

1. See, e.g., paragraphs A, B and C of 'The Letter'. Cf. paragraph (6) of 'The Decision'. For more discussion in this respect, see *infra*, under Chapter — "Consultative Arrangements of the Borrowing Scheme".

Therefore, a preferable construction here is that 'The Letter' can be regarded as "Exchange of Notes."

III - 'THE DECISION'

After the contents of 'The Letter' were agreed upon by the Group of Ten, the Fund took another step to complement its terms and conditions. This step was in the form of a Decision of the Fund's Executive Directors.

The Fund's Executive Board, in its Decision No. 1289 -(62/1) dated 5 January, 1962¹, set out another detailed set of rules and procedures to be followed for "borrowing arrangements", under the Borrowing Scheme.²

The Fund's Decision No.1289- (62/1) (hereinafter referred to as 'The Decision')³ was not, of course, unexpected.

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1. As amended by the Fund's Executive Board Decisions No.1415-(52/47), and No. 1362-(62/32).
 2. For the text of the above Decision of the Fund's Executive Board, see Appendix IV.
 3. The term 'The Decision' for the Fund's Executive Board Decision No.1289-(62/1), has also been adopted by Hans Aufricht; see Hans Aufricht, "International Monetary Fund", op.cit., p.67.

In fact, when the contents of 'The Letter' were formulated, it was anticipated that the Fund's Executive Board would set out terms and conditions to complement the rules and procedure of 'The Letter'.¹

The contents of paragraphs of 'The Decision' are more elaborate, as compared with the contents of paragraphs of 'The Letter'. A comparison between the contents of the two documents would reveal some similarities between their provisions. This in itself would mean that there can be traced some overlaps in the contents of the two documents. This would also mean that there can be found some inconsistencies between the provisions of the two.²

It is not, however, clear that in the case of inconsistencies between the contents of the two documents which one is to prevail. It is particularly apparent if a comparison be staged between the preamble to 'The Decision' and the preamble to 'The Letter', which comparison may reveal a sort of circular argument.

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1. See Preamble to 'The Letter', Appendix I.
 2. See, for instance, under the Chapter "Consultative Arrangements of the Borrowing Scheme", infra.

On the one hand we have Preamble to 'The Decision' stating that: in order to give effect to the 'intention' of the main industrial countries (which intention has been manifested in 'The Letter') the terms and conditions of 'The Decision' have been adopted. It says:-

"the main industrial countries have agreed that they ... will stand ready to lend their currencies to the Fund ... In order to give effect to these intentions, the following terms and conditions are adopted"

On the other hand, we have Preamble to 'The Letter', talking of the understandings reached during the recent discussions in Paris, with respect to the procedure which "will be established" by the Fund's Executive Directors in 'The Decision'. It says:-

"the purpose of this letter is to set forth the understandings reached during the recent discussions in Paris with respect to the procedure to be followed ... in connection with borrowings by the International Monetary Fund of Supplementary Resources ... which we expect will be established pursuant to a decision of the Executive Directors of the Fund ('The Decision', that is).¹

1. See Appendix I. Parenthesis added. Cf. "International Monetary Fund - Annual Report", 1962, p.35.

It could, however, be argued that ——— due to the fact that the International Monetary Fund possesses "objective International Personality",¹

1. See J. Gold, "The International Monetary Fund and Non-Member States, Some Legal Effects", I.M.F., Washington, D.C., 1966, pp.37-38. As to other views concerning the personality of the Fund, see e.g., Clive Parry, "The Public Corporative Symposium", The Carswell Co.Ltd., Toronto, Canada, 1954, p.591; C. H. Alexandrowicz, "World Economic Agencies, Law and Practice", London, Stevens and Sons, 1962, pp.111 - 112. F. A. Mann, "International Monetary Co-operation" (1945), 22, B.Y.I.L., p.252; "Money in Public International Law", Academie de Droit International Recueil des Cours, volume 96 (I), 1959, pp.22-23.

to which the Group of Ten are generally parties — in the case of an inconsistency between the provisions of 'The Decision' and the provisions of 'The Letter', the provisions of 'The Decision' would prevail.¹

Nevertheless, it should be borne in mind that if any inconsistency can be discovered in the interpretation of the two documents, its resolution would, prima facie, be a matter of reconciliation of them. And matters of interpretation, raised in connection with 'The Decision', are to be resolved to "the mutual satisfaction of the Fund, the participant raising the question, and all other participants".² Therefore, as such, the principle of unanimity envisaged in Paragraph (20) of 'The Decision' may virtually outweigh the argument that, in the case of the above inconsistency, the provisions of 'The Decision' should prevail; because the Group of Ten are parties to both 'The Decision' and 'The Letter'; and if incidentally a participant's interest touches the argument that, e.g., Paragraphs A, B and C of 'The Letter' are to prevail over Paragraphs 6 and 7 of

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1. Cf. J. Gold in "International Monetary Fund, 1945-1965", op,cit., volume II, p. 518. Cf. also (1967), 61, A.J.I.L., p. 346.
 2. See paragraph (20) of 'The Decision', Appendix IV.

'The Decision',¹ it can achieve this object by invoking the principle of unanimity of Paragraph 20; and thus frustrate² the understanding of the Fund or other participants in this respect. For instance, it can argue that: Paragraphs of 'The Decision' are to give effect to the "intentions" of the participants as manifested in Paragraphs of 'The Letter'³, and thus in the case of an inconsistency between the Paragraphs of the two documents, the Paragraphs of 'The Letter' are to prevail.⁴

1. See "Pre-Call Consultative Arrangements of 'The Letter' infra under the Chapter "Consultative Arrangements of the Borrowing Scheme".
2. Cf. "Report of the International Law Commission on the Work of The Second Part of Its Seventeenth Session", Monaco, January 3-28, 1966, in (1967), 61, A.J.I.L., p. 335.
3. See the Preamble to 'The Decision', discussed above. Cf. F. A. Mann, "The Interpretation of Uniform Statutes", (1946), 62, L.Q.R., p.281. Cf. also I. M. Sinclair, "Vienna Conference on the Law of Treaties", (1970), 19, I.C.L.Q., pp. 60 - 66.
4. Cf. however, Joseph Gold, where he says:-

"... The letters ('The Letter', that is), are res inter alios acta from the viewpoint of the Fund ..."

See J. Gold, "Interpretation by the Fund", International Monetary Fund, Washington, D.C., 1968, p. 57. Parenthesis added. Cf. also (1967), 61, A.J.I.L., pp. 365 - 373 esp. at p. 366.

Hans Aufricht, however, with regard to relations between 'The Letter' and 'The Decision', has fairly pointed out that:-

"... The contents of the two documents supplement each other. The Fund is not a party to the Letter; however, the participants regard the Letter an integral part of the Borrowing arrangements, as amongst themselves, as evidenced by the following paragraph (Preamble to 'The Letter', that is),¹

However, as in the case of 'The Letter', it could be of some interest to have a look at the legal structure of 'The Decision', under contemporary international law. ~~As we have referred to earlier,~~ 'The Decision', is basically a Decision of the Fund's Executive Board. It contains twenty Paragraphs and an Annex. Its Annex bears the names of Participants and the amounts of their credit arrangements. The full title to 'The Decision' reads "General Arrangements to Borrow".²

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1. See H. Aufricht, 'International Monetary Fund', op.cit., p. 67. Parenthesis added. Cf. J.E.S. Fawcett "International Monetary Fund and International Law", op.cit., pp. 74-75. Cf. also "International Monetary Fund - Annual Report", 1962, p.35.
 2. The term "The General Arrangements to Borrow" has occasionally been used in this paper also. The term has sometimes been abridged by writers, and quoted as "General Arrangements". It has also been abbreviated and quoted as "G.A.B."

'The Decision' envisages terms and conditions under which certain countries, as well as certain Institutions can adhere to it. For instance, Paragraph 3(a) of 'The Decision' states:-

"(a) Any member or institution specified in the Annex may adhere to this Decision in accordance with Paragraph 3(c)".¹

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1. See Appendix IV. The contents of the above Paragraph 3(a) would imply that the participation in the activities of the Borrowing Scheme is not open to all member States of the Fund or their "fiscal agencies". Cf. Sub-Paragraph (b) of the same paragraph. For the criticism made in this connection see "International Monetary Fund - Summary Proceedings", 1961, pp. 58, 60 and 78; "Guidelines for Improving the International Monetary System", Report of the Sub-Committee on International Exchange and Payments of the Joint Economic Committee, Congress of the United States, U.S. Government Printing Office, Washington, D.C. 1965, p. 17. Cf. however, statement by Per Jacobsson, the F.M.D., in the "International Monetary Fund - Summary Proceedings", 1961, pp. 26, 158; Statement by the Governor for the United Kingdom, Reginald Maudling, Id., year 1964, pp. 166 - 167; Statement by the Governor for Brazil, Id., pp. 117 - 119; "International Financial News Survey", 1962, p.111; "International Monetary Fund, 1945-1965", op. cit., volume I, p. 512; volume II, pp. 376-377 and 532; (1967), 61, A.J.I.L., pp. 312 - 313.

Sub-Paragraph (c) of the same Paragraph, states:-

"(c) A member or institution shall adhere to this decision by depositing with the Fund an instrument setting forth that it has adhered in accordance with its law and has taken all steps necessary to enable it to carry out the terms and conditions of this Decision" ¹

Then, Paragraph (4) of the same document, in respect of the date of entry into force of 'The Decision', states:-

"This Decision shall become effective when it has been adhered to by at least seven members or institutions included in the Annex with credit arrangements amounting in all to not less than the equivalent of five and one half billion United States dollars of the weight and fineness in effect on 1 July, 1944" ²

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1. Pursuant to the above Sub-Paragraph (c), every participant has deposited with the Fund an instrument known as "Instrument of Adherence", which bears the undertakings spoken of in that Sub-Paragraph. For the text of one of these Instruments of Adherence, see Appendix V.
 2. 'The Decision' came into effect on October 24, 1962. See the Fund's Selected Decision, p.66.

With regard to the structure and scope of 'The Decision', writers vary considerably. J.E.S. Fawcett takes a cautious line in this respect. He considers 'The Decision' as "pactum de contrahendo", at most.¹ Joseph Gold, however, considers 'The Decision' as an international agreement. He says:-

"... The arrangements that were negotiated by the Fund and the ten members, constitute an elaborate international agreement, called the General Arrangements to Borrow ...²

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1. See J. E. S. Fawcett, 'The International Monetary Fund and International Law', op.cit., p.75. J. E. S. Fawcett was the General Counsel of the International Monetary Fund during the years 1955 - 1960.
 2. See J. Gold, 'Interpretation by the Fund', op.cit., p.54. Cf. the same, in his 'The Reform of the Fund', where he calls 'The Decision' as "a decision of the Fund which is also a multilateral agreement between the Fund and the participants". See J. Gold, "The Reform of the Fund", International Monetary Fund, Washington, D.C., 1969, p. 15. See also his; "The next stage in the Development of International Monetary Fund Law: The Deliberate Control of Liquidity", (1968), 62, A.J.I.L., p. 376, footnote 35. J. Gold is the present General Counsel of the Fund.

Hans Aufricht seems to go even one step further in this respect. He argues that not only is the General Arrangements to Borrow an international agreement, but it also has modified the Fund's Articles of Agreement. He says:-

"The modification of the (Fund's Articles of) Agreement can be traced back primarily to ... rights and responsibilities of the Fund conferred on the Fund by other international Agreements such as ... the General Arrangements to Borrow (G A B)" ¹

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1. See Hans Aufricht, "The Fund Agreement : Living Law and Emerging Practice", Princeton University Press, Princeton, New Jersey, U.S.A., 1969, p.1. Parenthesis added. Here it may be added that one can hardly deny the fact that the Fund's Articles of Agreement has been practically modified by the General Arrangements to Borrow. See, e.g., the statement of Herr F. J. Strauss, quoted in 'The Guardian', January 20, 1969, p. 10. Cf. Fritz Machlup, "Plans for Reform of the International Monetary System", Princeton University Press, Princeton, New Jersey, U.S.A., 1962, p.22.

One thing, however, should be clear. If other requirements for considering 'The Decision' as an 'international agreement' are existing then the fact that it was first a decision of the Executive Board of the Fund, would not diminish its instrumentality.¹ In a sense, it would increase its value in international law; for, 'The Decision', has in fact been twice endorsed by the Group of Ten.

The first time was when it was agreed upon by the Fund's Executive Directors, whose decision the Group of Ten have the power to carry; because they hold the majority of the weighted votes of the decision-making bodies of the Fund.²

The second time it was endorsed was when they (the Participants) actually adhered to it, in accordance with Paragraph 3(c) of 'The Decision'.

1. Cf. U.N. Monetary Documents, pp. 52 and 422.

2. Cf. Rudolf Kroc, "The Financial Structure of the Fund", International Monetary Fund, Washington, D.C., Second Edition, 1967, p. 34 - 37. As regards the status of the Executive Directors of the Fund, however, see C. H. Alexandrowicz; "World Economic Agencies: Law and Practice", op. cit., p.189.

Furthermore, this set of agreements — that is, the agreement adopted by an intergovernmental organisation, and then adhered to by some sovereign States; has precedent in international relations, (It has a place in the Lord McNair's book, "The Law of Treaties". He, under the title "Adoption by League Assembly or approval by United Nations Assembly followed by Accession", shows the practice developed (in this respect) during the period of the League of Nations, which practice is still developing in the period of the United Nations).¹

Therefore at this stage this much we can say that 'The Decision' has the potentiality^{of} ~~for~~ being considered as an "international engagement". However, due to the fact that the status of parties to the instruments of international potentiality affects the

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1. See McNair, "The Law of Treaties", op.cit., pp. 123, 124, Cf. 'Conventions' and 'Recommendations' in the practice of the I.L.O. See D. W. Bowett, "The Law of International Institutions", London, Stevens & Sons, 1970, pp. 127-129. Cf. also Articles 1, 2 (1 - a), 3 and 5 of the "Vienna Convention on the Law of Treaties", Cmd. 4140, 1969; "Resolution Relating to Article I of the Vienna Convention on the Law of Treaties", Id. p. 38; (1967), 61, A.J.I.L., pp. 293, 394; "Comments of the Government of the United States on the Draft Articles on the Law of Treaties Drawn up by the International Law Commission", (1968), 62, A.J.I.L., pp. 567-68.

status of the instruments themselves, and since we have not yet properly considered the status of all parties to 'The Decision' and/or 'The Letter', therefore it would be an attempt in vain to come to any definitive understanding in this respect at this stage.

Thus let us at this stage — which stage we are more or less acquainted with the structure of the Borrowing Scheme —, break down our argument and first consider the status of parties to 'The Letter' and 'The Decision'. Then we shall return to the status of 'The Letter' and 'The Decision' themselves. This process would at the same time, be of some help in finding out a more appropriate definition for these two documents.

IV - PARTIES TO 'THE LETTER'

With regard to 'The Letter' its contents were first sent by M. Wilfrid Baumgartner ¹ to nine member States of the Fund, i.e., U.S.A., United Kingdom, West Germany, France, Italy, Japan, Canada, Netherland

1. The depository authority.

and Belgium. It was also sent to the Deutsche Bundesbank and the Sveriges Riksbank. ¹

The replies received by M. Wilfrid Baumgartner were, as expected, from the above member States of the Fund; as well as from the Deutsche Bundesbank and the Sveriges Riksbank. ²

What sets of legal objects were to be achieved, by the way in which the above instruments have been exchanged, is not quite clear. ~~This~~^{It} may be also added that:

1. As we may notice, the Deutsche Bundesbank and the Sveriges Riksbank are the Central Banks of the Federal Republic of West Germany and the Kingdom of Sweden, respectively.
2. See, e.g. the Deutsche Bundesbank's "Mitteilung nr. 7002/62" in which the German version of both 'The Letter' and the 'Letter of Confirmation' (sent by the Deutsche Bundesbank to M. W. Baumgartner, on 27 December, 1961) have been produced. In the above "Mitteilung No. 7002/62", it is pointed out that the contents of 'The Letter' have also been received by the Federal Minister of Economics of West Germany. It is also pointed out that a reply to this effect has been sent, from the Federal Minister of Economics, to M. W. Baumgartner, on 28 December, 1961 (footnote: Cf. Swedish "Kungl. Maj:ts proposition nr 102 år 1962", Bilaga B. pp. 26-30). As such, in the case of West Germany two copies of 'The Letter' have been sent — one to the Ministry of Economics and another to the Deutsche Bundesbank; whereas in the case of Sweden, only one copy of 'The Letter' has been sent there, that is to the Sveriges Riksbank. Cf. Appendix XXVII.

1. When 'The Letter' was sent to the above mentioned Countries and Banks, it was not specified therein that 'The Letter' was being sent to the Deutsche Bundesbank and the Sveriges Riksbank. It was simply said that 'The Letter' was being sent to the above mentioned Countries. For instance the copy of 'The Letter' sent by Monsieur W. Baumgartner, to the Chancellor of the Exchequer of the United Kingdom, ends with:

"I shall appreciate a reply confirming that the foregoing represents the understandings which have been reached with respect to the procedure to be followed in connection with borrowings by the International Monetary Fund under the credit arrangements to which I have referred. I am sending identical letters to the other participants — that is, Belgium, Canada, Germany, Italy, Japan, the Netherlands, Sweden and the United States I shall notify all of the participants of the confirmations received in response to this letter".¹

2. As referred to earlier, after 'The Letter' was sent to the prospective participants, and after 'the letters of confirmation' were received by M. W. Baumgartner, from the respective Participants, he finally sent his

1. See "Arrangements for Borrowing by the International Monetary Fund", 1962, H.M.S.O., Cmnd. 1656, p. 15. Emphasis added.

letter of 9 January, 1962, to them, pointing out that he has received the "letters of confirmation" from all the prospective Participants, and that he is now notifying the International Monetary Fund of the agreement thus realised.

But, in his letter of 9 January, 1969, it is pointed out that two of the "letters of confirmation" have been received by him from (a) The President of the German Federal Bank and (b) the Governor of the National Bank of Sweden; and no reference has been made therein to the Minister of Economics of West Germany who had received a copy of 'The Letter'. The copy of this letter, sent to the Chancellor of the Exchequer of the United Kingdom, in part, reads:-

"You have been kind enough to confirm to me your agreement regarding the procedure to be followed in connection with borrowing by the International Monetary Fund of Supplementary Resources from the Participating Countries and Institutions.

I have the honour to inform you that I have received similar confirmations from the Minister of Finance of Belgium, the Minister of Finance of Canada, the President of the German Federal Bank, the Minister of the Treasury of Italy, the

Minister of Finance of Japan, the Minister of Finance of the Netherlands, the Governor of the National Bank of Sweden, and the Secretary of the Treasury of the United States.

I should also like to confirm to you the agreement of the French Government regarding the terms of my letter of December 15, 1961..."¹

3. The Preamble to 'The Letter' does not specify who were the original parties thereto. It simply says:-

"The purpose of this letter is to set forth the understandings reached during the recent discussions in Paris with respect to the procedure to be followed by the Participating Countries and Institutions....."

4. The Preamble to 'The Decision', however, speaks of the agreement reached between the main industrial "countries", regarding the contents of 'The Letter'; and no reference has been made, therein, to the effect that some of the parties to 'The Letter' were or were not Sovereign States. It says:-

1. See "Arrangements for Borrowing by the International Monetary Fund", op.cit., p.17. Emphasis added.

"... the main industrial countries ¹ have agreed that they will, in a spirit of broad and willing co-operation, strengthen the Fund by general arrangements under which they will stand ready to lend their currencies to the Fund ... " ²

Therefore, so far we cannot see clearly who were all sponsors and original parties to 'The Letter'. It is true that now two of the active Participants in the Borrowing Scheme are (a) the Deutsche Bundesbank, and (b) the Sveriges Riksbank; but it must also be borne in mind that, e.g., Ministry of Economics of West Germany is exercising some functions in the consultative arrangements of 'The Letter' ³.

The problem here is, had there been access to the travaux préparatoires and some other related instruments

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1. Take note of the term "countries" in the above context.
 2. See Appendix IV.
 3. The issue of functions to be performed by the Ministry of Economics of F.R. of West Germany, has been considered under the Heading "Reservations and Consultative Arrangements of the Borrowing Scheme". See infra under the Chapter "Consultative Arrangements of the Borrowing Scheme".

in this respect, it would have resolved the question of sponsors and real parties to 'The Letter'.¹

V - PARTIES TO 'THE DECISION'

With regard to parties to 'The Decision', the question is more or less similar to that of 'The Letter'. For instance, in the first text of 'The Decision' (dated 5 January, 1962), the name of Sweden has appeared in the Annex to 'The Decision'.²

On 7 June, 1962, the Sveriges Riksbank sent an "Instrument of Adherence" to the Fund, to the effect that the Sveriges Riksbank is adhering to 'The Decision' on behalf of Sweden.³

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1. Here we may add that we have attempted to have access to these instruments, which are being kept in the Ministry of Finance, France (footnote: See Appendix XXIV), but we were answered that these instruments are not available to the public. (footnote, see Appendix XXV)
 2. See "Supplement to International Financial News Survey", Vol. I, XIV, No.1, International Monetary Fund, 12 January, 1962, p.12. Cf. Kangl Maj:ts proposition nr 102 år 1962, p.25. Cf. also "International Monetary Fund - Annual Report", 1962, pp.155,245.
 3. See Appendix VI. Cf. "International Financial News Survey", 1962, p.245.

Yet, later on we see, surprisingly, that instead of the name of Sweden, the name of Sveriges Riksbank has appeared in the Annex to 'The Decision'.¹ This is surprising, because if the Sveriges Riksbank is adhering to 'The Decision' on behalf of the Kingdom of Sweden, then the principal and real party to 'The Decision' should be the Kingdom of Sweden, and not the Sveriges Riksbank. Accordingly, the name of Sweden in the Annex to 'The Decision' should not be replaced by that of the Sveriges Riksbank.²

Whatever the above situation may be the Sveriges Riksbank is now an active participant in the Borrowing Scheme.

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1. See the Fund's Selected Decisions, p. 66. Cf. "International Monetary Fund - Summary Proceedings", 1962, p. 20.
 2. The above replacement has been effected by the Fund Executive Board's Decision No. 1362 (62-32). This Decision has not been published in the Fund's "Summary Proceedings" of 1962. In order to have a look at its contents, we applied to the Fund for a copy thereof. But, the actual contents of this Decision is apparently not available to the public. See Appendices VII and VIII. Cf. "International Monetary Fund, 1945 - 1965", op. cit., volume I, p.512.

So far as the Deutsche Bundesbank is concerned, from the outset it has been a participant in 'The Decision'; for, even in the first text of 'The Decision', its name (and not that of the Federal Republic of West Germany) has appeared in the Annex to 'The Decision',¹ Furthermore, it, in its 'Instrument of Adherence' has stated that the Deutsche Bundesbank is adhering to 'The Decision'.²

VI - PARTIES TO 'THE LETTER AND
' THE DECISION' ——— FURTHER
CONSIDERATION

What is certain, however, is that the participation of the Sveriges Riksbank and the Deutsche Bundesbank in the Borrowing Scheme, is not an incidental and

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1. See the Fund's Selected Decisions, p.66., Cf. "International Financial News Survey", Vol XIV. No.1, January 12, 1962. p.1.
 2. See Appendix V. Cf., however, J. Gold. 'Interpretation by the Fund', op.cit., p.54., where he seems to suggest that 'The Decision' was first "negotiated" by member States of the Fund (and not by the Participants); and then adhered to by the Participants. And, as we may notice, the term "Participants" here is intended to include the above two "Institutions".

unexpected participation. And, the approximate status and capacity of the so-called 'Participating Institutions', as parties to the Borrowing Scheme, has been well anticipated in both 'The Letter' and 'The Decision'.

For instance, Preamble to 'The Letter' in this respect says:-

"The purpose of this letter is to set forth the understandings reached during the recent discussions in Paris with respect to the procedure to be followed by the Participating Countries and Institutions (hereinafter referred to as "the participants")... " ¹

And the Fund's Executive Board, in Paragraph (1) of 'The Decision' has also defined the 'Participating Countries' and 'Participating Institution' in an elaborate way. It says:-

"... (iii) 'Participant' means a participating member or a participating institution;

1. See Appendix I. Cf. "National Advisory Council on International Monetary and Financial Problems", Special Report to the President and the Congress on Special Borrowing Arrangements of the International Monetary Fund, U.S. Government Printing Office, Washington, January, 1962, p. 11.

(iv) 'participating institution' means an official institution of a member which has entered into a credit arrangement with the Fund with the consent of the member." ¹

(v) "participating member" means a member of the Fund that has entered into a credit arrangement with the Fund...." ²

Therefore, the very envisagement of the Participating Countries and the Participating Institution in both 'The Letter' and in 'The Decision' would serve as a reason for the inference that (a) the participation of e.g. the Deutsche Bundesbank in the Borrowing Scheme was not an unforeseen legal event, and (b) that there exists differences between legal status of the Participating Institutions and that of the Participating Countries.

And as we shall see later, the Deutsche Bundesbank and the Sveriges Riksbank seem to be legal entities independent of central Governments of West Germany

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1. With regard to the contents of this subparagraph (iv) we shall discuss in detail later.
 2. The above terms, that is, the terms "Participant", "Participating Country" and "Participating Institution", will be used in this paper also.

and Sweden.¹ And their legal status seems to be nearer to the legal status of public corporations than any other similar entities.^{2, 3}

1. With regard to the legal status of the Deutsche Bundesbank, under West German internal laws, see, generally, Articles 1 & 12 of the "Law concerning the Deutsche Bundesbank", of 26 July, 1957. As regards the legal status of the Sveriges Riksbank, under internal laws of Sweden, see Articles 72 & 111 of the "Constitution of the Realm", of Kingdom of Sweden; Article 70 of 'The Riksdag Statutes', of 22 June, 1866; and Articles 28, 30, 32 & 33 of 'The Sveriges Riksbank Act', of 30 June 1934. For the discussion of these laws see infra under the Chapter "Internal Laws Governing the Participating Institutions".
2. Cf., however, W. Friedmann, H. Hufnagel; Håkan Strömberg, "The Public Corporation, A Comparative Symposium", op.cit., pp.139, 324 & 325. With regard to the status of public corporations the Editor of the above Symposium has come to the following description:-

"... For the purpose of the inquiry, the "Public Corporation" was broadly defined as an institution operating a service of an economic or social character, on behalf of the government, but as an independent legal entity; largely autonomous in its management, though responsible to the public, through government and parliament, and subject to some direction by the government; equipped on the other hand with independent and separate funds of its own, and the legal and commercial attributes of a commercial enterprise.." See Id.p.541. Cf. also Hans Aufricht "Comparative Survey of Central Bank Law", London, Stevens & Sons, 1965, p.89.
3. With regard to the characteristics of public corporations in English law, O. Hood Phillips has this to say:-

"... their chief characteristics are best expressed negatively, namely, that they are neither Government Departments under the direct control of Ministers responsible to Parliament, nor are they elected by the local electors." See O. Hood Phillips, "Constitutional and Administrative Law", 3rd Edition, London, Sweet and Maxwell, 1962, p.549.

VII - CAN THE RIKSBANK AND THE BUNDESBANK
CONCLUDE INTERNATIONAL AGREEMENTS?

Whether public corporations as such can conclude international agreements is a vexed question. F. A. Mann, in this connection says:-

"It seems likely that 'internationalization' should also be permitted where the contract is concluded not by the international person itself, but by one of its instrumentalities, including a State Corporation"¹ But, other international

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1. See F. A. Mann, "The Proper Law of Contracts Concluded by International Persons", (1959), 35, B.Y.I.L., p.45. Take, however, note of the term 'internationalization' and its presumed meaning, in the above context. Cf. the same writer, "The Law Governing State Contracts", (1944), 21, B.Y.I.L., pp.19-21, esp. p.21, where he says:-

"The Trust Agreement between the Creditor Governments and the Bank for International Settlements... would also have to be regarded as an international contract, although the bank is a Swiss corporation".

Cf. also Suratgar, David, "Considerations Affecting Choice of Law Clauses in Contracts between Governments and Foreign Nationals", op.cit., pp. 303-310, 313, esp. p. 295 where he quotes that:-

"Another view is that in such contracts with individuals, States confer a measure of constitutive recognition upon individuals for their elevation to the status of true subjects of public international law". Cf. further Article 12(c) of the Harvard Draft Convention, in the Lord McNair, "The Law of Treaties", op.cit., p. 148 footnote 6; J.E.S. Fawcett, "The British Commonwealth in International Law", London, Stevens & Sons, 1963. pp.187-194; "Comments by Government the United States of America on Parts, I, II and III of the Draft Articles on the Law of Treaties", (1967), 61, A.J.I.L., pp. 1124-1125.

jurists do not seem, generally, to share the view that public corporations have the capacity to conclude international agreements. J.E.S. Fawcett, for instance, whilst considering the Anglo-Iranian Oil Company, says:-

"public corporations, private companies, cannot be parties to an international agreement. So the International Court of Justice refused to regard the concessionary contract of 1933 between Iran and the Anglo-Persian Oil Company, as it then was, as an international agreement, even though it had been negotiated by way of settlement of a dispute between the United Kingdom and Iran ... and though the British Government was a majority shareholder in the company. The company had not, as a creature of municipal law, the capacity to enter into an international agreement." ¹

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1. See J.E.S. Fawcett, "The Law of Nations", op.cit., p.91. Cf. the same writer, "Legal Aspects of State Trading", (1948), 25, B.Y.I.L., pp. 35 - 37, 42, 44; K. Lipstein, (1945), 22, B.Y.I.L., p. 134; D. W. Bowett, "The Law of International Institutions", op.cit., p. 332. et. seq.

Or, Wilhelm Wengler, while considering the Case of the Port Kehl, seems to argue that the agreements, subject matter of that Case (though potentially an international one) could not reach the stage of internationality; because one of the parties thereto was a French 'public corporation'.¹

The facts of this case, as considered by him, are as follows:-

"... The (West German)² "Land" Baden which is the legal owner of the Port of Kehl ... concluded an agreement with the Port autonome de Strasbourg, a public corporation under French law, whose function is to administer the French port of Strasbourg. An annex to the agreement contains the statute for the port of Kehl, and the statute was drawn up in such a way that the same authority administers the two ports as an economic unit. The Socialist party in the Federal Republic brought an action before the Constitutional Court against this agreement; the action

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1. See Wilhelm Wengler, "Agreements of states with other parties than states in international relations", (1955), 8th year, *Revue Hellénique de Droit International*, pp. 125 - 127.
 2. Parenthesis added.

alleged violation of Article 59 of the Fundamental Law¹ which provides that treaties regulating the political relations of the Federal Republic must be approved by the legislative bodies. But Fundamental Law contains also another provision, namely article 32; this article provides that a "land" may, if the Federal government gives its approval, conclude conventions,^{2,3} with foreign states in matters for which the "Laender" are competent to legislate. Though the agreement on the port of Kehl was not concluded by Baden with the state of France, ... the Federal government had given its approval under Article 32. Before the Constitutional Court, the Federal government ... argued that the agreement did not fall under Article 32, because the other party to it was not a foreign

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1. The Constitutional Law of the F.R. of West Germany, that is.
 2. Take note of the term "conventions" in this context.
 3. Cf. Wabnitz, Der Zwischenstaatliche Zahlungsverkehr, Auf Der Grundlage Internationaler Zahlungsabkommen. Verlag Otto Schwartz & Co. 1955, p. 44 f.f.

public corporation. The Constitutional Court decided against the claimants by means of the same argument ... ¹

Some of the writers even doubt that agreements concluded between Departments of States can be construed as agréments between States. For instance, J.E.S. Fawcett has considered some agreements concluded between Departments of some States. He then questions whether parties to these agreements are States at all. In this respect he says:-

"The Exchange of Notes of 30 April, 1948, between Canada and the United States of America, constituting an Agreement relating to the improvement of certain practices for sanitary control in the Shellfish industry and to the certification of Shellfish shippers, is an Agreements made in effect between the Canadian Department of National Health and Welfare and the United States Public Health Service ... " ²

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1. See Id. p.126. Cf. J. Mervyn Jones, 'International Agreements Other than "Inter-State Treaties", Modern Developments', (1944), 21, B.Y.I.L., pp. 111 - 122 esp. at p. 117.
 2. See J.E.S. Fawcett, 'The Legal Character of International Agreements', op. cit., p.395.

He then adds:-

"... it is indeed doubtful whether in ... the Candaian - United States Agreement the parties are States at all ... " ¹

And, as we may know, the orthodox view is that only states and international organisations can conclude international engagements. For instance, Lord McNair has accepted the following definition for the term 'treaty' :-

"a written agreement by which two or more States or international organisations create or intend² to create a relation between themselves operating within the sphere of international law". ³

1. See Ibid.
2. Take note of the word "intend" in this context. Cf. J.E.S. Fawcett, Id.p.385, Cf. also (1967), 61, A.J.I.L., p.290.
3. See McNair: 'The Law of Treaties', op.cit., pp. 3 and 4. Cf. definition adopted for 'treaty' in the Harvard Draft Convention, Ibid, footnote 2; Article 2, Section 1 (a) and Article 3 of the "Vienna Convention on the Law of Treaties", op.cit., p. 3; (1967), 61, A.J.I.L., p. 293. Cf. also J.E.S. Fawcett, "The Law of Nations", op.cit., pp. 89 - 90 where he says:-

"A treaty ... is a written agreement by which the parties establish international legal relations between them in a particular field or for a particular purpose ... Parties to international agreements may be states or international organizations ... "

Therefore, whether or not the Borrowing Scheme has been an international engagement seems to depend on whether or not the Bundesbank and the Riksbank are representatives of their respective Countries. In other words, due to the fact that all writers do not share the view that public corporations can conclude international engagements, the only possibility in considering the Borrowing Scheme as an international engagement is to see whether the Bundesbank and the Riksbank have been acting as representatives of their respective Countries in the Borrowing Scheme, and the fact that they are public corporations in itself cannot be sufficient enough in considering the Borrowing Scheme as an international engagement.

Here, with a view to considering the status of the Participating Institutions, we could perhaps get some help from the provisions of the Fund's Articles of Agreement, whereupon the Borrowing Scheme has been set up.

The fact is that the Participating Institutions are, at the same time, Central Banks of their respective Countries. Accordingly, they are acting as "fiscal agencies" ¹ of West Germany and Sweden in the I.M.F. This could mean that they may hold some official position within the territories of their respective countries. This could also mean that there may be some legal nexus

1. See Article V (1) of the Fund's Articles of Agreement.

between their activities under the Borrowing Scheme, and that of their position as "fiscal agencies" of their respective Countries. For this reason let us consider what status the Participating Institutions can have under the Fund's Articles of Agreement. Here we would commence with the provisions of Article V (1) of the Fund's Articles of Agreement.

VIII - PARTICIPATING INSTITUTIONS AND
ARTICLE V (1) OF THE F.A.A.

With regard to the status of the Participating Institutions, J.E.S. Fawcett seems to suggest that they are "agents" of their respective Countries. This would, apparently, mean that they are acting on behalf of their respective Countries in the Borrowing Scheme. This would also pave the way for considering the 'The Decision' as an international instrument. He says:-

"This inclusion (of the Sveriges Riksbank and the Deutsche Bundesbank as Participants in 'The Decision'), simply reflects the fact that 'each member shall deal with the Fund only through its Treasury, central bank, stabilisation fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies'".¹

He seems to suggest that since the Deutsche Bundesbank and the Sveriges Riksbank are Central Banks of their respective countries — and Central Banks are one of the agencies enumerated in Article V (1) of the Fund's Articles of Agreement —, thus they are acting in the Borrowing Scheme on behalf of their respective countries.²

This can be supported by the nature of the commitments spoken of in the Paragraphs of the

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1. See J. E. S. Fawcett, 'The International Monetary Fund and International Law', op. cit., p.75. Parenthesis added. His above quotation is from Section 1, of Article V of the Fund's Articles of Agreement.
 2. Cf. Hans Aufrecht, "Comparative Survey of Central Bank Law", op. cit., pp. 209 - 210.

Borrowing Scheme, which commitments are to be undertaken, generally speaking, by member states of the Fund. For instance, the following may lend support to this end.

1. Paragraph 3(b) of 'The Decision' gives any Participant (including the Participating Institutions) the right to veto the adherence of new Participants to the Borrowing Scheme. It says:-

"(b) Any member or institution not specified in the Annex that wishes to become a participant, may at any time, after consultation with the Fund, give notice of its willingness to adhere to this Decision, and, if the Fund shall so agree and no participant object, the member or institution may adhere in accordance with Paragraph 3(c)." ¹

2. Paragraph 3(c) of 'The Decision' speaks of the adherence of any Participant to 'The Decision', "in accordance with its law", which law is, prima facie, the constitutional

1. See Appendix IV.

or other similar Laws of the Country whose nationality the Participant possesses.

Otherwise it would be hard to conceive any other internal rules (governing a Participating Institution) which could guarantee its obligations vis-à-vis the Fund or other Participants.

3. The right conferred on the Participating Institutions (in accordance with which they can vote on a borrowing arrangement) ¹ can be quoted as another reason in support of the above suggestion; because their voting would affect international monetary policy; and a fortiori the monetary policy of their own country. ²

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1. See Paragraph (c) of 'The Letter', Appendix I.
 2. Cf. the notion "nation-wide" character of the duties" in J. E. S. Fawcett, "Legal Aspect of State Trading", op.cit., p.43.

4. The fact that any Participating Institution, which has already accepted a commitment under a stand-by arrangement,¹ can give notice to the Fund that:-

"In the participant's opinion, based on the present and prospective balance of payments and reserve position, calls should no longer be made on the participant or that calls should be for a smaller amount, the Managing Director may propose to other participants that substitute amounts be made available under their

1. As regards the definition of the term "Stand-by Arrangement", J. Keith Horsefield has this to say:-

"Stand-by Arrangement. — An arrangement with the Fund by which a member country obtains assurance that it may draw up to prescribed amounts during a specified period of time ... "

See J. Keith Horsefield, "Introduction to the Fund", op.cit., p.30. For a detailed illustration of this term, see J. Marcus Fleming, "The International Monetary Fund — its Form and Functions", I.M.F., Washington, D.C., 1964, pp.34-35. Cf. J.E.S. Fawcett "International Monetary Fund and International Law", op.cit., pp.73-74. Cf. also J. Gold, "The Law and Practice of the International Monetary Fund with respect to 'Stand-by Arrangements'", (1963), 12, I.C.L.Q., pp. 1 - 30.

credit arrangements .. " ¹

may serve as a further reason in support of the above suggestion; for the balance of payments position of the member States seems to be something within the competency of the member States themselves. And, since Paragraph 7 (d) is authorizing the Participating Institutions to base their argument on the basis of "the present and prospective balance of payments and reserve position", of their respective countries, this could also be indicative of the fact that they are performing the functions of "agents" ² of their respective countries in the Borrowing Scheme.

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1. See Paragraph 7 (d) of 'The Decision'. Take note of the passage "... in the participant's opinion" in the above paragraph 7(d). As regards the meaning of the term "call" and "credit arrangement" used in the above quotation, see Sub-paragraphs (vi) and (vii) of Paragraph 1 of 'The Decision'. Cf. Paragraph (D) of 'The Letter'. Cf. also paragraph 11 (f) of 'The Decision'.
 2. Cf. Hans Aufrecht, "Comparative Survey of Central Bank Law", op. cit., pp. 185 - 187, 189 - 190, 204. Cf. Also C. H. Alexandrowicz, "International Economic Organisations", London, Stevens & Son Limited, 1952, pp. 13 - 16.

5. The fact that the interpretation of parts of the undertakings of the Participating Institutions has been subjected to the interpretative provisions of Article XVIII of the F.A.A., can be added to the four foregoing observations. ¹
 6. To the above may also be added the fact that — so far as repayment of the Fund's indebtedness to the Participating Institutions is concerned — the Fund can use its resources as if it were using them for repayment to its member States. ²
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1. See former part of Paragraph (20) of 'The Decision', in conjunction with Article XVIII of the F.A.A., esp. where it is said:-

"(a) Any question of interpretation of the provisions of this agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Directors for their Decision".

Take notice of the terms "member" and "members", in the above context.

2. Cf. Article V, Section (3) of the Fund's Articles of Agreement.

To put this in a different way, the Fund seems to make no distinction between its holdings of a Participant's currency and its holdings of a member State's currency. For instance Paragraph 11 (b) of 'The Decision', says:-

"(b) Before the date prescribed in Paragraph 11 (a), the Fund, after consultation with a participant, may make repayment to the participant, in part or in full, with any increases in the Fund's holdings of the participant's currency that exceed the Fund's working requirements, and participants shall accept such repayment".¹

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1. See Also Paragraph 11 (f), Paragraph 17 and Paragraph 18 of the same document, Appendix IV. Cf. Article 20 Section 1 (2 - a) of the "Law concerning the Deutsche Bundesbank", of July 26, 1957.

And it is perhaps for the above reasons that the Sveriges Riksbank, in its Instrument of Adherence, points out that: it is adhering to 'The Decision' on behalf of the Kingdom of Sweden. It says:-

"Sir (the Fund's Managing Director, that is) ... we take pleasure in notifying you that the Riksbank, on behalf of Sweden, hereby adheres to the Decision of the Executive Directors of the Fund on General Arrangements to Borrow ... " ¹

Nevertheless, the question under consideration is far from being over; for even assuming that the commitments spoken of in Paragraphs of the Borrowing Scheme are of a nature which demand the Participating Institutions to be "agents" of their respective countries, yet it seems difficult to say that they can be "original parties" to the Borrowing Scheme. Surely it is one thing to say that the Sveriges Riksbank and the Deutsche Bundesbank could be "fiscal agencies" of their respective Countries, under the Borrowing Scheme, and it is another that they can "adhere" to any

1. See Appendix VI. Parenthesis added. See Also Appendix XXVII. Cf. Paragraph 1 (b) of Article 7 of "Vienna Convention on the Law of Treaties", op. cit., p. 4.

agreement like 'The Decision' by virtue of Article V, Section (1) of the Fund's Articles of Agreement.

And the term "deal" used in Article V (1), seems to be indicative of the fact that the agencies enumerated therein can serve as "agents" of their respective Countries only after their principals (that is their respective Countries) have duly adhered to the Fund's Articles of Agreement. In other words, so far as the provisions of the Fund's Agreement (as distinct from the provisions of the borrowing Scheme) are concerned, the Central Bank of a given country can act as the "fiscal agency" of its country only after its country has adhered to the Fund's Articles of Agreement.¹ And this seems to be the rules with the Borrowing Scheme too. That is to say, if a member state of the Fund is interested to participate in the Activities of 'The Decision' (and has intended to

1. See Article XX (2) (a) of the Fund's Articles of Agreement.

leave its ordinary business with its Central Bank), it first must adhere to 'The Decision', in accordance with Paragraph 3 (c) of 'The Decision', and then declare that its Central Bank would be acting in 'The Decision', as its "fiscal agency".¹

Furthermore, if "Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies",² and if this includes the Fund's "deal" under the Borrowing Scheme, then there seems to be no need for specifying the ways in which the Participating Institutions can "adhere" to 'The Decision'; for, if the Sveriges Riksbank and the Deutsche Bundesbank are acting under Article V (1) of the Fund's Articles of Agreement, their principals must of necessity be the Kingdom of Sweden, and the

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1. See Paragraph 3(c) of 'The Decision'. Paragraph 3(c) of 'The Decision' seems to have been inspired by Article XX (2) (a) of the Fund's Articles of Agreement, and no legal similarity can be seen between Paragraph 3(c) of 'The Decision' and Article V (1) of the Fund's Articles of Agreement. Cf. Article V (1), however, with Paragraph (14) of 'The Decision'.
 2. See Article V (1) of the Fund's Articles of Agreement. Take note of the term "only", twice used in the above context. Cf. U.N. Monetary Documents, pp. 27, 288, 321, 773 and 774.

F.R. of West Germany. And it would be for Sweden and West Germany to "adhere" to 'The Decision', and not for their Central Banks to do so.

But, as we may have seen (in the preceding Headings) 'The Letter' and 'The Decision' have both anticipated the "Participating Institutions" as entities who can initially "adhere" to the Borrowing Scheme. And the fact that the Participating Institutions can initially adhere to 'The Decision' can serve as a reason for differences existing between them and the fiscal "agencies" of the Fund's member States.

Furthermore, Paragraph 14, of 'The Decision' seems to be ruling out the possibility that the Participating Institutions are taking part in the activities of the Borrowing Scheme, under Article V (1) of the Fund's Articles of Agreement, and Rules G - 1 of the F.R.R. ¹

Paragraph 14, of 'The Decision', reads as follows:

"Notice to or by a participating member under this Decision shall be in writing or by cable and shall be given to or by the fiscal agency of the participating member designated in accordance with Article V, Section 1, of the Articles and Rule G-1 of the Rules and Regulations of the Fund. Notice to or by a participating institution shall be in writing or by cable and shall be given to or by the participating institution."²

1. Rule G-1 of the Fund's Rules and Regulations is a complementary rule to the provisions of Article V(1) of the Fund's Articles of Agreement. It says:-

"G-1 Each member shall designate a fiscal agency for its transactions with the Fund, in accordance

(continued bottom next page)

Therefore, as such Paragraph 14, of 'The Decision, seems to be breaking off any relationship between the Participating Institutions" and the "fiscal agencies" of the Participating Countries in the Borrowing Scheme.

This may be supported by the fact that according to Rule G - 1, of the Fund's Rules and Regulations, each "Participating Country" can change its "fiscal agency" at any time and without seeking the approval of any authority; and it would not affect the status of the Participating Country in the Borrowing Scheme.¹

But, this is not the same as in the case of "Participating Institutions"; because the General Arrangements to Borrow is a four-yearly arrangement² and within this period of time no Participating institution can be changed unless and until the agreement of the Fund and all other Participants to this effect, has been attained.

(footnotes continued from previous page).

with Article V, Section 1, before its subscription becomes due, and may change the agency after notifying the Fund."

2. Cf. Paragraph (12) of "Exchange of letters between the Ambassador of Switzerland to the United States and the Managing Director of the Fund", concerning the association of Swiss Confederation with the General Arrangements to Borrow. See the Fund's Selected Decisions, p.71.

1. See Rule G - 1, of the Fund's Rules and Regulations.

2. See Paragraph 19(a) of 'The Decision', Appendix IV.

Therefore, the provisions of Paragraph 14 of 'The Decision' on the one hand, and the provisions of Rule (G - 1) of the Fund's Rules and Regulations, in conjunction with Paragraph 16, of 'The Decision', on the other, can also lend support to the fact that the Participating Institutions are not the same as the "fiscal agencies", subject-matter of Article V (1) of the Fund's Articles of Agreement.

So far, under the present Heading, we have been involved with two different sets of issues:

(i) That the nature of commitments, spoken of in the Borrowing Scheme, demands parties to the Borrowing Scheme to be either member States of the Fund or their duly authorised "agencies".

(ii) That, despite the above demand, the Participating Institutions are not participating in the Borrowing Scheme as "fiscal agencies" of their respective Countries, and in application of Article V (1) of the Fund's Articles of Agreement.

IX - PARTICIPATING INSTITUTIONS AND
ARTICLE VII (2) OF THE F.A.A.

To the above second issue may be added the fact that the Paragraphs of the Borrowing Scheme have been set out, under Article VII (2) of the Fund's Articles of Agreement, and with a view to dealing with the so-called "short-term capital movements"; and not with a view to dealing with the day-to-day "transactions" of the Fund.¹ And the Preamble to 'The Decision' is clearly referring to this point where it says:-

"In order to enable the International Monetary Fund to fulfill more effectively its role in the international monetary system in the new conditions of widespread convertibility, including greater freedom for short-term capital movements, the main industrial countries have agreed that they will ..., stand ready to lend their currencies to the Fund ... under Article VII, Section 2, of the Articles of Agreement ... In order to give effect to these intentions, the following

1. See title to the Article V of the Fund's Articles of Agreement.

terms and conditions are adopted under Article VII, Section 2, of the Articles of Agreement".¹

Now, with a view to being quite clear, let us see what the actual provisions of Article VII (2) of the Fund's Articles of Agreement are talking about. We have, of course, in mind to see any space wherein the Participating Institutions can be accommodated.

This Article VII (2), in part, reads:-

"Sec. 2. Measures to replenish the Fund's holdings of scarce currencies. —

The Fund may, if it deems such action appropriate to replenish its holdings of any member's currency, take either or both of the following steps:

(i) Propose to the member that, on terms and conditions agreed between the

1. See Appendix IV.

Fund and the member, the latter lend its currency to the Fund or that, with the approval of the member, the Fund borrow such currency from some other source ... , but no member shall be under any obligation to make such loans to the Fund or to approve the borrowing of its currency by the Fund from any other source ... "

Therefore, the easy way of establishing a legal link between the contents of 'The Decision' and those of Article VII (2) of the Fund's Articles of Agreement, is to construe the contents of 'The Decision' as the "terms and conditions agreed between the Fund and the member, (that) the latter lend its currency to the Fund." ¹

With a view to being clearer, let us put the above question in the following way:

The above Article VII (2) seems to suggest two different sets of sources, from which the Fund can replenish its holdings of scarce currencies, (a) member States of the Fund (former part of Article VII-2),

1. See Article VII (2) of the Fund's Articles of Agreement. Parenthesis added.

and (b) some other unspecified source (latter part of Article VII—2). And the difference between the above two "sources", seems to be that in the case of (a) an agreement should be reached between the Fund and the lending country, under which the Fund can borrow that country's currency; whereas in the case of (b), only the "approval" of that country is required. And in that case, no reference has been made to the "terms and conditions" to be worked out between the Fund and the member State whose currency is to be borrowed from "some other source".

Therefore, our impression here, was that the contents of 'The Decision', were the "terms and conditions" spoken of in former part of Article VII (2), of the Fund's Articles of Agreement.

If it be so, it would then follow that all parties to these "terms and conditions" are to be member States of the Fund. This could be supported by the passage "the main industrial countries have agreed" of the above Preamble to 'The Decision'; and that this Preamble is speaking of the ways and means of dealing with the "short-term capital

movements", whose control is something generally within the competency of the member States, or their duly authorised fiscal agencies. After all, eight out of ten participants in the Borrowing Scheme are member States of the Fund. Nevertheless we preferred to raise this question with the Fund, which has drafted "the terms and conditions" of 'The Decision'. We put the question to the Fund in the following way:-

"... Since, according to Article VII (2) of A.A. ¹ the Fund is assumed to come to agreement regarding the General Arrangements to Borrow, with member States of the Fund, and since Paragraph 14 of the General Arrangements to Borrow is, on the face of it, differentiating between Participating members (by referring to Article V (1) of A.A. Rule G.1 of the R.R. ²), and Participating

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1. The Fund's Articles of Agreement, that is.
 2. The Fund's Rules and Regulations, that is.

institutions (by not referring to the above provisions) And since, on the other hand, the Deutsche Bundesbank has adhered to the General Arrangements to Borrow (as an original party), therefore, kindly let me know of any decision, made by the Fund, under A.A., following which an institution as such can come into an agreement (as an original party) with the Fund, under Article VII (2) of the A.A. of the Fund ... " 1

But the Fund, in its reply of 21st May, 1968, seems to be of the opinion that the participation of the Deutsche Bundesbank, in the General Arrangements to Borrow, is by virtue of the latter part of Article VII (2). And, if, for instance, some money has been borrowed from the Deutsche

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1. See Appendix IX. By the term (as an original party) in the above context we mean that although it seems to create no legal difficulty for the Deutsche Bundesbank to take part in the activities of the Borrowing Scheme as the fiscal agency of West Germany, under Article V (1) and Rules G-1, yet legal complications do arise if the same Bank is adhering to 'The Decision' as an original party.

Fundesbank, it has been borrowed from "some other source" of Article VII (2), and not, on the face of it, from F.R. of West Germany. This reply, in part, reads:-

"... This is with reference to your letter of 8 May, 1968. Article VII (2) of the Articles of Agreement of the Fund permits the Fund to borrow a member's currency, either from the member itself, or, with the approval of the member, from some other source within or outside the territories of the member. It was on the basis of that provision that, with the approval of the German Federal Government, the Deutsche Bundesbank became a participant in the General Arrangements to Borrow. It is a participant in its own name and not as fiscal agency for Germany...." ¹

Nevertheless, one would doubt that the above view could, generally speaking, satisfy the test of Article VII (2) of the Fund's Articles of Agreement; for the Fund's authorities agree on the point that the Sveriges Riksbank and the Deutsche Bundesbank are both Central Banks of their respective Countries. And the definition adopted for Central Banks reads as follows:-

"Although arrangements vary, a central bank is the bank which, typically, within its own country (a) has a monopoly of the banknote issue; (b) holds the gold and other monetary reserves of the country; (c) has the power to regulate the supply of credit; (d) holds part of the reserves of the commercial banking

1. See Appendix X. Cf. Deutsche Bundesbank's letter of August 20, 1969. Appendix XII. See also Appendix XI. See moreover, "International Monetary Fund, 1945 - 1965", op.cit., Volume II., p.35.

system; and (e) acts as fiscal agent for the government." ¹

As such the functions to be performed by a Central Bank seem to be of a nature indivisible from the functions to be performed in the monetary fields of the country whose Central Bank it is. ²

By this we do not intend to say that Central Banks in every State are part of the Government Departments, or otherwise. And this is what we

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1. See J. Keith Horsefield, *op. cit.*, pp. 22-23. So far as the Deutsche Bundesbank in this respect is concerned see Articles, 2, 14, 15, 16, 19, 20 and 21 of the "Law concerning the Deutsche Bundesbank" of 26 July 1957. See also, Article 4 of the Federal Republic of West Germany's "Bretton Woods Agreements Law" of 1952. So far as the Sveriges Riksbank is concerned see Article 72 of the "Constitution of the Realm" of Sweden dated 6 June, 1809, and Articles, 2, 8, 9, 10, 11, 15 and 17 of "The Sveriges Riksbank Act" of 1934 as amended. See Also Article 2 of the Swedish Law of 21 May, 1964, with special regulations on the Riksbank's right to issue notes. Cf. definition adopted by H. Aufricht for Central Banks. See his "Comparative Survey of Central Bank Law", *op. cit.*, p. 26.
 2. Cf. *Id.*: pp. 13 - 16, 25 - 27, 41 - 42, 91 - 94, 112 - 115 and 166 - 168.

shall consider at a later stage. ¹

What we do intend to consider here is that the Sveriges Riksbank and the Deutsche Bundesbank can hardly be considered as something within the meaning of "some other source" of Article VII of the Fund's Articles of Agreement; because Section 2 of this Article begins with:-

"The Fund may, if it deems such action appropriate to replenish its holdings of any member's currency, take either or both of the following steps..." ²

Therefore, the above provision is envisaging circumstances under which the Fund could borrow the currency of a given member State, not only from the government of that State, but also from "some other source" at one and the same time. And a plain construction of the term "some other source" here, seems to be private persons, commercial banks, and other similar bodies, who deal with:

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1. See under the Chapter "Internal Laws Governing the Participating Institutions", infra.
 2. Take note of the term "either or both" in the above context. Cf. Joint Statement III, 4, Alternative A, Section 5, "U.N. Monetary Documents", p.31, Cf. also Id., pp.311, 526.

foreign exchange, and whose exchange transactions can be distinguished from the exchange transactions of their State; ¹ whereas the functions to be performed by Central Banks can hardly be distinguished from the monetary affairs of the States whose Central Banks they are.

And this contention can be supported by the "definition" adopted by the Fund, in Paragraph 1 of 'The Decision', for the "Participating Institutions". Sub-Paragraph (iv) of Paragraph (1) of 'The Decision' in this respect says:-

' (iv) "Participating Institution" means an official institution of a member that has entered into a credit arrangement with the

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1. See Section 5 of "Second Report of Committee 2 on Operations of the Fund to Commission I" of the Bretton Woods Conference, where it is said:-

"According to Paragraph (1) (Article VII (2) of the FAA, that is), the Fund may borrow the currency of a country either from the Government of that country or from a private source ..."

See UN Monetary Documents", p. 311. Parenthesis added.

Fund with the consent of the member." ¹

Otherwise it is hard to conceive of the Fund borrowing a given currency once from a member State (as one source) and again from her official institution (as another source).

Furthermore, it is difficult to assume that in 1944 the authors of Article VII (2) could have foreseen the circumstances under which the Borrowing Scheme should have been arranged, following which one may suggest that by the expression "some other source", they would have meant the Central Banks of member States of the Fund. ² This fact can be supported by the submission of the Fund that the emergence of the "new" conditions of convertibility

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1. See Appendix IV. Cf. Paragraph 12 of "Exchange of letters between the Ambassador of Switzerland to the United States and the Managing Director of the Fund" of 11 June, 1964, concerning the association of Swiss Confederation with the General Arrangements to Borrow. See the Fund's Selected Decisions, p.71.
 2. Cf. J. Gold, "The Law and Practice of the International Monetary Fund with respect to 'Stand-by Arrangements'", *op.cit.*, p.25. Cf. also "Questions and Answers on the International Monetary Fund, International Monetary Fund, 1945-1965", *op.cit.*, pp. 177 - 179.

have necessitated the setting up of the Borrowing Scheme. ¹

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1. See, e.g., Preamble to 'The Decision', where it says:-

"In order to enable the International Monetary Fund to fulfill more effectively its role in the international monetary system in the new conditions of widespread convertibility, including greater freedom for short-term capital movements, the main industrial countries have agreed that"

Emphasis added. The movement of "hot" money seems really to be a new phenomenon in international monetary affairs, something perhaps unthought of at the time of the drafting of the Fund's Articles of Agreement. Cf. statement of E. M. Bernstein to the U.S. Congress, Joint Economic Committee, especially where he says:-

"Some provision must be made to finance capital movements. The International Monetary Fund does not have the resources necessary for this purpose. Professor Zolotas, the governor of the Bank of Greece, has suggested that the Fund could acquire additional resources by entering into standby agreements with the leading creditor countries, using for this the borrowing authority under Article VII, the scarce currency provision of the Fund Agreement. This is an ingenious proposal ..."

Take notice of the term "an ingenious proposal" in the above context. See "Statement of Edward M. Bernstein to the U.S. Congress", E. M. Bernstein, Ltd., International Payments Imbalances and Need for Strengthening International Financial Agreements. Hearing (Washington D.C.), 1961, p. 111. Cf. Id., pp. 129 and 130. Cf. also F. A. Mann, "International Monetary Law", Lucerne Meeting, International Law Association, 1952, pp. 240, 242, 292 - 293; "The Legal Aspects of Money", op. cit.,

Continued footnote 1 from Page 95.

pp. 339 and 340; "International Monetary Fund - Summary Proceedings"; year 1961, pp. 15, 121, year 1962, p. 22.

For a very illuminating description of the background of the above issues see "International Monetary Fund, 1945-1965", op. cit., volume III, pp. 166-168 and 171-180, esp. pp. 166, 178. See also UN Monetary Documents, pp. 29, 40, 140, 314, 324, 452, 525, 668-669, 777-778 and 1213.

For the reasons given to satisfy the above contentions see, "International Monetary Fund - Annual Report", 1962, p. 33; "International Financial News Survey", 1962, p. 111.

Cf. J. Gold, "Interpretation by the Fund", op. cit., pp. 26 - 31; "International Monetary Fund, 1945 - 1965", op. cit., volume I, pp. 503 - 506 and 597; volume II, pp. 410 - 416.

Here it may be useful to raise the following points. These points though not immediately related to the issues under consideration, yet might serve as *causa sine qua non* for them.

1. From the point of view of international monetary policy, the formation of a scheme, like the Borrowing Scheme, was a necessary one; and it had to be set up as soon as possible; ¹
2. If the Swedish Kronor and/or the Deutsche Mark were not amongst currencies to be borrowed under the Borrowing Scheme, the entire activities of the Borrowing Scheme could have been in jeopardy; ²
3. The Fund was interested in having as secure and international, a legal structure for the Borrowing

1. See "Statement of E. M. Bernstein to the U.S. Congress", op. cit., esp. p. 122. See also "International Financial News Survey", 1962, p. 1. Cf. Fritz Machlup "Plans for Reform of the International Monetary System", op. cit., p. 12.

2. See J. Gold, "The Fund and Non-Member States, Some Legal Effects", op. cit., p.33.

Scheme, as feasible, ¹ and;

4. In Sweden and West Germany, it was preferred — from a practical point of view — to send the Sveriges Riksbank and the Deutsche Bundesbank to participate in the activities of the Borrowing Scheme.²

Therefore, the haste for the setting up of the Borrowing Scheme, together with the other above elements, led the interested bodies to formulate the Borrowing Scheme, under Article VII (2) of the Fund's Articles of Agreement, which Article itself caused the foregoing legal difficulties.

Whatever the original meaning of new interpretation of Article VII (2) of the Fund's Articles of Agreement, it is, however, certain that the activities of the Participating Institutions in the Borrowing Scheme have been approved by their respective Countries, and this approval has been given in written documents. This is something which could at last help us in construing 'The Decision' as an international engagement. For the importance attached to this, we asked the Fund as to the nature of the approval of West Germany and Sweden in this respect.³

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1. See supra, under the same Chapter. See also Paragraph 1 (iv) of 'The Decision'.
 2. See infra, under the Chapter "Internal Laws Governing the Participating Institutions".
 3. See Appendix VII.

The Fund, in its reply of January 16, 1969, stated:-

"....With reference to your question on the approval of the Government of the Federal Republic of Germany, regarding the adherence of Deutsche Bundesbank, and the approval of the Government of Sweden regarding the adherence of the Sveriges Riksbank, to the General Arrangements to Borrow, the approvals were given by letters from these two Governments to the Fund. No terms were imposed, that is to say, the instruments of approval simply stated that the respective Governments approved the Borrowing by the Fund from their central banks ... under the terms and conditions set out in the Fund's decision on the General Arrangements to Borrow ('The Decision' that is).¹

And one of the terms and conditions under which West Germany and Sweden approved the participation of their banks, is that the Bundesbank and the Riksbank are participating as the "official institutions"² of West Germany and Sweden.

The submission of these two documents by West Germany and Sweden seems to satisfy the requirements for construing the Bundesbank and the Riksbank as

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1. See Appendix VIII. Parenthesis added. Cf. Appendices VI and XII. Take note of the passage "under the terms and conditions set out in the Fund's decision" in the above quotation.
 2. See Paragraph 1 (iv) of 'The Decision'. Appendix IV.

authorized representatives of their respective Countries in the Borrowing Scheme. These seem also to be strong enough to outweigh contentions made in connection with the status of the Participating Institutions in the Borrowing Scheme.

One further point remains to be considered here, viz., the status of the Fund in respect of 'The Decision'. That is to say, whether the Fund is a party to 'The Decision'. The fact is, that before October 24, 1962, the date of entry into force of 'The Decision', it was simply a decision of the Fund's Executive Directors.

It is, however, beyond doubt that this decision envisaged rights and obligations not only for the Group of Ten, but also for the Fund itself.¹ As to how it should come into effect, it was anticipated that:-

1. Cf. J.E.S. Fawcett, "International Law and the Uses of Outer Space", 1968, Manchester University Press, pp.1-17.
1. E.G. Paragraphs 7(e) and 11 of 'The Decision'. See infra, Chapter "Consultative Arrangements of the Borrowing Scheme" under the "Pre-Repayments Consultative Arrangements of 'The Decision'".

"Paragraph 4. Entry into Force — This Decision shall become effective when it has been adhered to by at least seven of the members or institutions included in the Annex with credit arrangements amounting in all to not less than the equivalent of five and one-half billion United States dollars of the weight and fineness in effect on July 1, 1944." ¹

Whether the Fund is actually a party to 'The Decision' seems to be related to the general question whether international organisations can be parties to international agreements including their own decisions. D. W. Bowett, in this respect says:-

"Treaties to which international organizations are a party, whether they be agreements between different international organizations, between States and international organizations, bilateral or multilateral, are now commonplace ... it is undoubtedly within the United Nations and the specialized agencies that the treaty has become a common form of establishing a relationship, or creating rights and duties, under international law." ²

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1. See Appendix IV.
 2. See D. W. Bowett, "The Law of International Institutions", op.cit., p.306.

This is, however, admitted that to be party to an international agreement is dependent on whether the organization concerned has possessed international personality, and whether (further to that) it has treaty-making capacity.¹ As to the first of the two above requirements, we have seen that the Fund possesses international personality.²

As regards treaty-making capacity of the Fund, it can be construed from reference to its constituent instruments and from reasonable implication for the proper performance of its functions. In other words, the Fund should have either (a) express treaty-making power or (b) it could enter into treaty obligations by the authority of its implied power.

(a) As to the express treaty-making capacity of the Fund, Article IX of the Fund's Articles of Agreement says:-

"Section 2. Status of the Fund. — The Fund shall possess full judicial personality, and, in particular, the capacity: (i) to contract...."

1. See Ibid,

2. See supra, under the same Chapter.

A similar authority has been accorded to the Fund under Article II of the United Nations Convention on the Privileges and Immunities of the Specialized Agencies, Annex V. The Fund has long practised this power. For instance, on June 11, 1964, it entered into an agreement with the Swiss Confederation (not a member of the Fund), under which the Swiss Confederation agreed to replenish the means of international liquidity up to an amount equivalent to \$ 200 million. It took place in the form of an exchange of letters between the Ambassador of Switzerland to the United States and the Managing Director of the Fund. In August 1966, the Fund entered into a similar agreement (this time with Italy), with a view to borrowing an amount equivalent to \$ 250 million of Italian lire.¹ It took effect in the form of exchange of letters between the Acting Managing Director of the Fund and the Ministry of the Treasury of Italy.

To the above may be added the Agreement between the United Nations and the International Monetary Fund, dated November 15, 1947. This agreement has been entered into pursuant to the provisions of Article 63 of the Charter of the U.N., under which there has been envisaged both rights and obligations for the Fund and the United Nations.²

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1. Cf. arrangement between the Fund and the United States of America and Republic of South Africa, concerning the sale of gold to the Fund. See the Fund's new Selected Decision of 1970. pp.56-61.
 2. See, e.g. Articles VI and VIII.

(b) Even assuming that the Fund has not been expressly empowered to enter into international agreements, yet it could do so, under the authority of Article VII (2), so far as setting up of 'The Decision' is concerned. Otherwise it is hard to see how the Fund can perform its functions under Article VII (2), and replenish its holdings of scarce currencies, including the currency of non-member States.¹

Therefore, there seems to be hardly any difficulty considering the Fund as a party to 'The Decision'.²

So far as 'The Letter' is concerned, however, the Fund does not seem to be a party thereto, and it has been entered into between the Group of Ten themselves. The question again is: are the Sveriges Riksbank and the Deutsche Bundesbank representatives of their respective Countries in 'The Letter'? This question can finally be approached as follows:

1. Preamble to 'The Decision' refers to 'The Letter' as an agreement concluded between "the main industrial countries", and thus it indicates that these two banks are acting on behalf of their respective Countries in 'The Letter'. Further, the same Preamble states that the

1. Cf. Reparations Case, where the World Court has said:
 "It is difficult to see how such a convention (Convention on privileges and immunities) could operate, except upon the international plane and as between parties possessing international personality". See (1949) I.C.J. Report, 175.
 Parenthesis added.

2. Cf. J. Gold, "Interpretation By the Fund," op.cit.p.57

terms and conditions of 'The Decision' have been set up with a view to giving effect to the intention of the Group of Ten, as envisaged in 'The Letter', and because the status of these banks in 'The Decision' has been recognized by Sweden and West Germany as their "official institutions", then it is hard to assume that they are acting in 'The Letter' otherwise than the official institutions of Sweden and West Germany, bearing in mind that 'The Letter' and 'The Decision' are two inter-related documents, and they are set up to achieve the same object, that is the replenishment of the Fund's resources of scarce currencies.

2. As in the case of 'The Decision', the nature of functions to be performed by these two institutions in 'The Letter' are indivisible from the functions of Sweden and west Germany in the field of their monetary and lending activities. Therefore, like 'The Decision', 'The Letter' seems to be an international agreement.

X. CONCLUSION

There are doubts as to the status of the Borrowing Scheme, because there are doubts as to whether the Participating Institutions are within "some other source" of Article VII (2) of the Fund's Articles of Agreement.

But due to the fact that the Participating Institutions have been participating in the Borrowing Scheme

as "official institutions" of their respective Countries, and due to the fact that their status as official institutions have been recognized and "approved" by Sweden and West Germany, therefore there seems to be no legal difficulty in construing 'The Letter' and 'The Decision' as international agreements.

This can be supported by the fact that the monetary activities of the Participating Institutions in the Borrowing Scheme cannot be separated from the monetary activities of Sweden and West Germany. The participation of the Riksbank and the Bundesbank in the activities of the Borrowing Scheme seems to be an internal law necessity,¹ and seems to have been devised with a view to avoiding the duplication of procedures to be followed by both them and their Governments for every borrowing arrangement of the Borrowing Scheme.

1. See infra under the Chapter "Internal Laws Governing the Participating Institutions."

CHAPTER TWOInternal Laws Governing the Participating Institutions.I. INTRODUCTION

Under the present Chapter we shall consider internal laws governing the Sveriges Riksbank and the Deutsche Bundesbank. This we shall attempt with a view to finding the reason why the competent authorities in Sweden and West Germany have given way to their Central Banks to participate in the activities of the Borrowing Scheme. The inquiry into the above internal laws seem to be useful in that it reveals the constitutional position they hold in the territories of their respective Countries, and that how far their constitutional responsibilities can satisfy the requirements of the Borrowing Scheme.¹

This study we shall attempt under the Headings "Internal Laws Governing the Sveriges Riksbank" and "Internal Laws Governing the Deutsche Bundesbank".

II. INTERNAL LAWS GOVERNING THE
SVERIGES RIKSBANK(a) LEGAL STATUS.

According to the internal laws governing the Sveriges Riksbank, it is an independent institution within

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1. Cf. Lord McNair, "The Law of Treaties", op.cit., p.36; "Report of the International Law Commission on the work of of the Second Part of its Seventeenth Session", (1967), 61, A.J.I.L., pp.309, 398-400; Article 46 of the "Vienna Convention on the Law of Treaties", op.cit., p.17.

the territories of Sweden. ¹

Article 72 of the "Constitution of the Realm" of the Kingdom of Sweden ² states that the Sveriges Riksbank is not to be administered by a single governor or under the direction of a Cabinet Minister; but it is to be governed by a group of "Directors". It says:-

"The Riksbank remain under the guarantee of the Riksdag ³ and is administered ... by Directors appointed ad hoc ..." ⁴

According to the latter part of the same Article, these Directors are to be elected mainly by the Parliament of Sweden. It says:-

"... The Board of Directors of the Riksbank shall consist of seven Members, of whom the King in Council appoints one ... and the remaining

1. See, generally, M. H. De Kock, "Central Banking", Third Edition, Staples Press Limited, London, 1954, pp. 13 - 14.
2. Dated 6 June, 1809.
3. The Parliament of Sweden, that is.
4. Cf. Article 32, of The Sveriges Riksbank Act of 30 June, 1934.

six ..., are elected by the Riksdag ..." 1,2

Therefore, the Sveriges Riksbank is to be run by the simple majority votes of its Directors and not by the direction of the Swedish Government. 3,4

1. This and other provisions of the Swedish laws governing the Riksbank have been quoted from the Pamphlet kindly supplied to us by the Sveriges Riksbank, (See Sveriges Riksbank, The Svergies Riksbank Act of 30 June, 1934, The Monetary Act of the 30th May, 1873 with Amendments up to the 31st August, 1964). It is necessary to have reference to this here because some differences can be discerned between the English version, of the above quoted Swedish laws and those of the same laws appearing in the Hans Aufrecht's 'Central Banking Legislation; A collection of Central Bank, Monetary and Banking Laws', Vol. II, Europe, which collection has been published by the Fund.
2. See also M. H. De Kock, op. cit., p. 323 footnote 1.
3. Although the Swedish laws governing the Sveriges Riksbank do not directly describe the voting procedure of the Board of Directors of the Sveriges Riksbank, yet "The Riksdag Statutes of 22 June, 1866" can throw enough light on this question. This Statute, in its Article 70, points out:-

"(4) ... The person presiding over the meetings of the Board of Directors of the Riksbank shall have the casting vote in the event of an equality of votes in favour of two divergent opinions ... "

Therefore, it seems clear, from the contents of the above Article, that the decisions of the Board of Directors of the Sveriges Riksbank are to be taken by a simple majority of the votes of its Directors. The above voting procedure seems to be worth mentioning here, in that the undertakings which it produces seem to be distinct from the undertakings of ordinary subjects of international law whose decisions are customarily based on the principle of unanimity and joint cabinet responsibility.

4. Cf. Sections, 2,3 and 4 of "The Bank of England Act of 1946" (9 & 10 Geo. 6 ch. 27). Take especial note

Article 33 of "The Sveriges Riksbank Act of 30 June, 1934" prohibits even the presence of representatives of the Swedish Government at the meetings of the Board of Directors, when any decision is to be taken by that Board. It says:-

"Article 33. ——— If the King in Council, either upon the recommendation of the Board of Directors of the Riksbank or else when it is otherwise deemed necessary to do so, has authorised a Representative to confer with the Board of Directors of the Riksbank on some special matter, the Board may discuss with the Representative of the King in Council, but,

of the following provisions:-

"(2)...(2) The Governor, Deputy Governor and other members of the Court of directors shall be appointed by His Majesty..."

"(4) - (1) The Treasury may from time to time give such directions to the Bank as, after consultation with the Governor of the Bank, they think necessary in the public interests...."

Cf. also "The Bank of England Quarterly Bulletin", 1966, pp. 233 - 245, esp. at p.233. For more material as to varying degree of autonomy (or otherwise) of central banks, see Hans Aufrecht, "Comparative Survey of Central Bank Law", op.cit., pp. 19-19, 29, 31-32, 36-41, 116-120. Unfortunately, his survey does not include the Sveriges Riksbank and the Deutsche Bundesbank. What, however, can be deduced from his survey is that one can see hardly any important similarity between the powers and functions of central banks.

must not take any decision in his presence." ¹

As such, the Sveriges Riksbank is an autonomous institution in the field of its activities, within the territories of Sweden.

(b) POWERS

The Sveriges Riksbank seems to have been entrusted with the functions of State in the field of monetary activities of Sweden. ² Among the rights granted to it has been the right of issuing bank notes. Article 72 of the Constitution of the Realm of Sweden in this respect says:-

"The Riksbank is exclusively authorized to issue notes that shall be legal tender within the Realm. Such notes shall be redeemed by the Riksbank on demand in gold at their face value."¹

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1. As to the differences which could take place between the Central Banks and Governments of States, see Hans Aufricht, "Comparative Survey of Central Bank Law", op.cit., p.89. Cf. Id., pp.116-120.
 2. See Håkan Strömberg, "The Public Corporation in Sweden, A Comparative Symposium", op.cit., p.325, et. seq.

Article 2 of "The Sveriges Riksbank Act", in complement of the above Article 72, states:-

"The Riksbank, which in accordance with special regulations issued thereon is exclusively authorized to issue bank notes, carries on banking in conformity with the present Act." ¹

Amongst other major banking activities to be performed by the Sveriges Riksbank, is the right to deal in gold to control its price. Article 13 of the same Act says:-

"The Riksbank may buy and sell gold...Gold bullion delivered to the Royal Mint for the Riksbank's account shall be paid for by the bank at the value of gold in Swedish currency, i.e. at the rate of two thousand four hundred and eighty kronor per kilogramme of fine gold, less one quarter per cent,... and such other prescribed fees as are payable to the Royal Mint,...." ²

Among other functions to be performed by the Riksbank are grant of credits to foreign Central Banks as well as to

1. For the detailed powers of the Sveriges Riksbank in issuing bank notes, see Articles 8 and 9 of the same Act.
2. Control of price of gold is, according to Article VI(2) of the Fund's Articles of Agreement, one of the responsibilities of member States of the Fund.

International Monetary Fund. Article 15 of the same Act states:

"Article 15. - The Riksbank may raise credits abroad as well as grant credits to foreign central banks and to the International Monetary Fund." ¹

Therefore, the above provisions reasonably indicate that the functions to be performed by the Sveriges Riksbank are indivisible and indistinguishable from the State's function in Sweden. This is perhaps the reason why the Riksbank has been "placed under guarantee of the Riksdag."² This is also perhaps the reason why the Riksbank is performing the functions which are generally entrusted with the Ministry of Finance of the Countries of other Participants.³

III. INTERNAL LAWS GOVERNING THE DEUTSCHE BUNDESBANK.

(a) LEGAL STATUS.

The status of the Deutsche Bundesbank, under internal laws of the Federal Republic of West Germany, is more or less similar to that of the Sveriges Riksbank. For instance, Article 2, of the West German "Law concerning the

1. Cf. Article 16 of the same Act, esp. where it is said:-

"(d)...Further, the Riksbank may acquire shares of the Bank for International Settlements up to an amount decided by the King in Council and the Riksdag."

2. See Article 1 of "The Sveriges Riksbank Act", Cf. first Para. of Article 72 of "Constitution of the Realm of Sweden"

3. Cf. the Sveriges Riksbank's letter of October 29, 1969, especially where it is said:-

"With reference to your letter of October 22, 1969, we wish to inform you that on behalf of Sweden the Sveriges Riksbank is the Participating Institution in the General Arrangements to Borrow, not the Ministry of Finance as is the case regarding most of other member Countries..."

Deutsche Bundesbank" of 26 July, 1957, states that the Deutsche Bundesbank is an autonomous Federal institution.

It says:-

"The Deutsche Bundesbank shall be an autonomous Federal Institution, and a legal person under public law ..."^{1,2}

Article 12 of the same law states that the Deutsche Bundesbank is to be independent of instructions of the Federal Government. It says:-

"Article 12. The Bank's Relationship to the Federal Government — ... In the exercise of the powers conferred on it³ under this law, it shall be independent of instructions of the Federal Government."⁴

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1. This and other provisions of West-German laws governing the Deutsche Bundesbank have been quoted from the "Enclosure to the Monthly Report of the Deutsche Bundesbank", of August 1957. It is necessary to state this here because some differences can be traced between the English version of the above West-German laws and that of the same laws which has appeared in the Hans Aufricht's "Central Banking Legislation", Vol. II, Europe, op. cit.; Cf., e.g., Article 3 of the "Law concerning the Deutsche Bundesbank", appeared in the two papers.
 2. Cf. Hans Aufricht, "Comparative Survey of Central Bank Law", op. cit., p.xi.
 3. The Deutsche Bundesbank, that is.
 4. Take note of the word "shall" in the above context.

method of operation
method of operation

~~The way to run~~ The Deutsche Bundesbank is also similar to that of the Sveriges Riksbank. For instance, the main governing body of the Deutsche Bundesbank (that is, the Central Bank Council), consists of the President and the Vice-President of the Deutsche Bundesbank, and usually eight members of the Bank's Directorate, together with the Presidents of all "Land Central Banks".^{1,2}

With regard to the voting procedure of "the Central Bank Council", Section (3) of Article 6 of the "Laws concerning the Deutsche Bundesbank", states:-

"(3) The Central Bank Council ... shall take its decisions by a simple majority..."³

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1. As regards the appointment and legal status of the President and Vice-President and members of the Deutsche Bundesbank's Directorate, see Article 7 of the above-mentioned Law. Concerning the appointment, status and number of the Presidents of the "Land Central Banks", see Article 8 of the same Law. See further M. H. De Kock, "Central Banking", op.cit., p.320, footnote 3. Cf. Hans Aufrecht, "Comparative Survey of Central Bank Law", op.cit., pp.28-31 and 98-104.
 2. For the historical background and for the reasons why the Allied Forces decided to curb the government control over the Germany's Central Bank as well as regional banks, see "Bank Deutscher Laender", (1949), 20, Department of State Bulletin, pp. 126 - 129.
 3. Cf. 'The Times', November 17, 1970, p. 24; Idem, November 18, 1970, p. 25.

Thus, like the Sveriges Riksbank, the Deutsche Bundesbank is not an institution to be governed by a Cabinet Minister or by a single responsible person.¹

Therefore, according to the above quoted Articles of the West German "Law concerning the Deutsche Bundesbank", the Deutsche Bundesbank has been an autonomous institution and independent from the instructions of the Federal Government.

The only power, however, conferred upon the Federal Government, (concerning the administration of the Deutsche Bundesbank) is the right to defer the decisions of its "Central Bank Council"² for a period of at most two weeks.³ Section (2) of Article 13 of the "Law concerning the Deutsche Bundesbank" in this respect says:-

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1. By quoting the number of persons specified to run the Deutsche Bundesbank (as well as the Sveriges Riksbank), we are trying to bring to notice the apparent intention of the Legislatures of West-Germany and Sweden to accord as autonomous a legal status to these Institutions as is feasible; for it seems more difficult to influence a group of Administrators rather than a single one.
 2. As we have noticed (Article (6) of the "Law concerning the Deutsche Bundesbank") the Central Bank Council is the highest governing body of the Deutsche Bundesbank.
 3. Cf. "The Times", May 21, 1970, p. 32 under the "Power of Bundesbank".

"(2) The members of the Federal Government shall be entitled to take part in the deliberations of the Central Bank Council. They shall have no vote but may bring motions. At their request, the taking of a decision shall be deferred, but for not more than two weeks." ¹

Therefore, it is clear, from the contents of the above Article (13) Section (2), that if the Central Bank Council of the Deutsche Bundesbank wishes to carry out any one of its decisions, it can do so, at most, after the elapse of a period of two weeks, despite the dissatisfaction of the Federal Government of West-Germany. ²

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1. Cf. Hans Aufricht, "Comparative Survey of Central Bank Law", op. cit., p. 35.
 2. Cf. "Report of November 21", cabled by Ian McDougall, the B B C's correspondant in Bonn. Cf. also 'The Times', March 6, 1970, p. 23 where it is said:-

"Some economists and bankers here foresee a major clash at tomorrow's council (the Central Bank Council) meeting between Professor Schiller and the council over the possible proposal to increase Bank rate. A decision to lift interest rates here is seen by some experts as being a heavy embarrassment to the Economics Minister, following his recent call for lower international rates.

However some bankers now believe that Professor Schiller will accept the council's decision to raise the rate ..."

Paranthesis added. See then "The Times", March 7, 1970, p.13, under the "W German Bank rate raised to 7.5 p c", in which it has been reported that the Federal Minister

(b) POWERS.

Like the Sveriges Riksbank, the Deutsche Bundesbank seems to perform the functions of State in the field of monetary activities of West Germany. As regards issuance of bank notes, Article 14 of the "Law concerning the Deutsche Bundesbank", states:-

"(1) The Deutsche Bundesbank shall have the exclusive right to issue bank notes in the area to which this Law applies. Its notes shall be expressed in Deutsche Marks. They shall be the sole unrestricted legal tender...."

Article 3 of the same Act confers to the Deutsche Bundesbank the right to regulate the circulation of money as well as supply of credit to the economy. It says:-

"The Deutsche Bundesbank, making use of the powers in the field of monetary policy conferred upon it under this Law, shall regulate the note and coin circulation and the supply of credit to the economy with the aim of safeguarding the currency and shall ensure the due execution by banks of payments within the country as well as to and from foreign countries."

Amongst other State's functions to be performed by the Deutsche Bundesbank, is the right to influence open market policy in the field of its activities. Article 15 of the same

Footnote 2. continued.

of Economics has finally acceded to the Bank's ruling. See further, "The Sunday Times", December 1, 1968, pp.34-35; "The Guardian", November 18, 1970, p.14; "The Times", May 18, 1971. p.17.

Act in this respect says:-

"For the purpose of influencing the circulation of money and the supply of credit, the Deutsche Bundesbank shall from time to time fix the interest and discount rates to be applied to its transactions and shall determine the principles governing its credit and open market operations"

As we may know, the above operation is one of the fundamental operations to maintain the par value of currency, and is something within the competence of member States of the Fund.

To the above may be added the right accorded to the Deutsche Bundesbank, in accordance with which it can participate in the activities of supra-national institutions such as B.I.S. Article 4 of the same Act in this respect says:-

"The Deutsche Bundesbank shall be authorized to participate in the Bank for International Settlement and... in other institutions serving the purposes of a supra-national currency policy or facilitating international payments and credit transactions..."²

IV. INTERNAL LAWS GOVERNING THE PARTICIPATING INSTITUTIONS - FURTHER CONSIDERATIONS.

So far, under the present Chapter, we observed that the Sveriges Riksbank and the Deutsche Bundesbank are autonomous institutions, performing functions of State in the field of monetary activities. This can be regarded as the main reason why Sweden and West Germany have given way to these Banks to participate in the activities of the Borrowing Scheme.

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1. Cf. Article 21 of the same Act.
 2. Cf. Article 7(3), 19 (1-9) and 22 of the same Act. Cf. also Appendices XI and XII.

The thing which strikes one's mind here is how is it that the Government of Sweden and the Government of West Germany were not faced with any legal or constitutional difficulties when they decided to become member States of the International Monetary Fund; but, in the case of the Borrowing Scheme, they have been faced with legal and constitutional difficulties to the degree that they have given way to their Central Banks to take up the job of becoming the "Participants" in the Borrowing Scheme?

This question may be raised the other way round also. The other way round, that is if, for instance, the Government of Sweden cannot direct the Svergies Riksbank in the field of monetary activities, then how is it that it could serve as her "fiscal agency" under Article V (1) of the Fund's Articles of Agreement? ¹

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1. See, for instance, Article (2) of "The Sveriges Riksbank Act" of 30 June, 1934, where it says:-

"The Riksbank may not take part in or carry on any kind of business other than that expressly permitted to the bank by the present Act."

Take notice of the term "expressly permitted" in the above context. Cf. Swedish "Bretton Woods Agreements Measures", "Excerpts from His Majesty's Bill No. 89/1950" and "Excerpts from Report No. 8/1950 of the Banking Committee of the Riksdag", especially Sections 1 and 2. See Hans Aufricht, "Central Banking Legislation", Vol. II, Europe, op. cit., pp. 699 - 701. Cf. also Article 20, Section 1, No. 2 of the "Law Concerning the Deutsche Bundesbank".

The answer to the above question, however, may be as follows:-

1) Any institution, or bank, can adopt different positions and responsibilities in different spheres of its activities and at different periods of time. And this could happen, in respect of judicial persons under both international law and the municipal law of Countries.¹

Therefore, in so far as the Riksbank and the Bundesbank, are acting as "fiscal agencies" of their respective Countries — under Article V(1) of the Fund's Articles of Agreement — they are nothing more than the "agencies" ²

1. Cf. C. H. Alexandrowicz, "International Economic Organizations", op. cit., p. 87; J. E. S. Fawcett, "Legal Aspects of State Trading," op. cit., p. 35 et seq.; Bin Cheng, (1958), 11, Current Legal Problems, p. 231 et. seq.; F. A. Mann, "The Law Governing State Contracts", op. cit., p. 24, et. seq. The above point seems to be true specifically in the case of the Sveriges Riksbank, because on June 7, 1962, it adhered to 'The Decision' on behalf of Sweden, and it held this position up to August 1, 1962, when "... the commitment of Sweden was ... transferred to the Sveriges Riksbank". See "International Monetary Fund, 1945 - 1965", op. cit., volume I, p. 512, in conjunction with the Instrument of Adherence of June 7, 1962, (Appendix VI) and Annex to 'The Decision', (Appendix IV). See also Appendix VIII. Cf., however, Appendices XXVII and XXIX.
2. Cf. Hans Aufricht, "Comparative Survey of Central Bank Law", op. cit., pp. 106 - 111.

of their respective Countries.

And, naturally, any final decision in this respect would rest with the Government of Sweden and the Government of West Germany, and not with their "fiscal agencies". But in so far as the Riksbank and the Bundesbank are acting as the Participating Institutions, under the Borrowing Scheme, their status and responsibility have no connection with Article V(1) of the Fund's Articles of Agreement, and is to be subject to the provisions of 'The Letter' and 'The Decision', as well as the internal laws governing those Institutions.

2) A second, but rather different answer to the above question may be: in the case of the International Monetary Fund, a member would nearly always approach the Fund with a view to "borrowing" some currency from it (as distinct from lending some currency to it); but, the General Arrangements to Borrow has been formulated, under Article VII (2) of the Fund's Agreement, and with a view to replenishing the Fund's ~~holdings~~ of scarce currencies. This "lending" to the Fund (as distinct from borrowing from it) can be done not only by the member States of the Fund, but

also by some other unspecified "sources".¹

Therefore, the Participating Institutions can only "lend" money to the Fund and cannot borrow any currencies from it.²

1. See Article VII (2) of the Fund's Articles of Agreement, where it says:-

"Section 2. Measures to replenish the Fund's holding of scarce currencies. — The Fund may, if it deems such action appropriate to replenish its holdings of any member's currency, take either or both of the following steps:

(i) Propose to the member that, on terms and conditions agreed between the Fund and the member, the latter lend its currency to the Fund or that, with the approval of the member, the Fund borrow such currency from some other source either within or outside the territories of the member.."

Take notice of the passage "some other source either within or outside the territories of the member" in the above context. Cf. U.N. Monetary Documents, p. 311. Cf. also J. Gold, "The Fund and Non-Member States, Some Legal Effects", op. cit., p. 34.

2. As we shall see later, any Participant who is approaching the Fund's Managing Director for the purpose of "borrowing" currencies under the Borrowing Scheme, should necessarily be a member State of the Fund, and not a Participating Institution. See *infra*, under the Chapter "Consultative Arrangements of the Borrowing Scheme". Cf. Paragraphs 11, 17 and 18 of 'The Decision', Appendix IV.

And this is perhaps the reason why in the case of "lending" of currencies to the Fund, the Fund has not seen it necessary to take too many precautionary measures, and would rather be prepared to borrow the necessary currency from "any source".

The competent authorities in Sweden and West Germany, however, might have looked at this from quite a different angle. That is to say, they might have thought that the "lending" of their currencies to the Fund bears more importance than the "borrowing" of some currencies from it. And this is perhaps the reason why in the case of "borrowing" some currencies they have left it to the discretion of their respective Governments; whereas in the case of "lending" they have preferred it to be dealt with by some institutions immune from the influence of the Government. ¹

V. CONCLUSION.

Participation of the Riksbank and the Bundesbank in the activities of the Borrowing Scheme seems to be required by the internal law and to be due to the constitutional position they hold in the field of monetary activities of Sweden and West Germany.

The fact that any loan from Sweden and West Germany is to attain the acceptance of the Riksbank and the Bundesbank seems to be the main reason why the competent authorities in these two Countries have preferred to leave the participation in the Borrowing Scheme to these

1. Cf. Article 20, of the "Law Concerning the Deutsche Bundesbank" of July, 1957.

Banks altogether. This will prevent the duplication of procedure to be followed for every "borrowing arrangement" (by both these Central Banks and their Governments), which would have been the case had the Governments of Sweden and West Germany been the Participants in the Borrowing Scheme. This is a necessary practical step, because the speculative movement of hot money (subject-matter of the Borrowing Scheme) is a delicate and wide-spread problem, and is something to be dealt with within the shortest period of time and with ^{a minimum of} ~~less~~ procedure. An incidental effect of the above step is, however, that it leaves the issue of loan in these two Countries to the discretion of these autonomous and professional institutions, which institutions are more immune from the influence of politicians.

The position of these two Banks, nevertheless, does not seem to have affected the status of the Borrowing Scheme in international law, because, (as we have seen in the preceeding Chapter) they are participating in the Borrowing Scheme as official institutions of their respective Countries, and their responsibilities in this respect seem to be indivisible from those of the States of Sweden and West Germany.

CHAPTER THREE.STEPS NECESSARY TO CARRY OUT
THE TERMS AND CONDITIONS OF
'THE DECISION.'I. INTRODUCTION.

Paragraph 3 (c) of 'The Decision' in part says:-

"A member or institution shall adhere to this decision by depositing with the Fund an instrument setting forth that it ... has taken all steps necessary to enable it to carry out the terms and conditions of this Decision..."¹

What is meant by the phrase "taken all steps necessary" in the above Paragraph 3 (c)? Does it obligate the participants to take, inter alia , legislative measures for the implementation of the terms and conditions of 'The Decision'?

With a view to ascertaining this, we asked the

1. See Appendix IV.

Participants as to the steps taken by them for the implementation of the terms and conditions of 'The Decision'.¹

A study of the replies that we have received reveals the fact that,^{not} all the Participants have ~~not~~ taken necessary legislative measures for the implementation of the terms and conditions of 'The Decision'. For instance, in the case of the Deutsche Bundesbank, we have received the following reply:-

"Out institution being immediate participant in the General Arrangements to Borrow, Parliamentary action was not required."

On the other hand, we have the Fund's statement, saying that:-

"Ten main industrial countries, after necessary legislative authorizations have been obtained and they formally adhere to the arrangements.² will stand ready to lend their currencies to the Fund...." ³

1. For Belgium, see Appendix XIII; see also Belgian Law of January 4, 1963; cf. "International Financial News Survey", 1963, p.25. For Canada, see Appendix XIV; cf. the same Survey, year 1964, p.25. For the Deutsche Bundesbank, see Appendix XV; cf. the same Survey, year 1962. pp.189-190. For France; see Appendix XVI; cf. the same Survey, year 1962, pp. 189-190. For Italy, see Accordi Generali Di Prestito Tra Il Fondo Monetario Internazionale E 10 Paesi Suoi Membri, Roma, Istituto Poligrafico Dello Stato, 1965; cf. the same Survey, year 1962, p.93. For Japan, we did not receive any reply; See, however, the same
(footnotes cont'd next page)

Under the present Chapter we have investigated the above question to see whether the phrase "Taken all steps necessary" has - from the point of view of international law - obligated the Participants to take legislative measures, for the implementation of the terms and conditions of 'The Decision'. Here we had to lend help from the provisions of the Fund's Agreement;

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1. Survey, page 165. For the Netherlands, see 5 (1945) Nr. 2. Tractatenblad Van Het Koninkrijk Der Nederlanden, Jaargang 1962, Nr. 68; cf. the same Survey, year 1962, p.253. For the Sveriges Riksbank, see Appendix XVII; cf. the same Survey, year 1962, p.245. For the United Kingdom, see "Arrangements for Borrowing by the International Monetary Fund", H.M.S.O., Cmd. 1656, March 1962; cf. the same Survey, year 1962, p.141. For the United States of America, see Appendix XVIII; cf. the same Survey, year 1962. p.341.
 2. 'The Decision', that is.
 3. See International Monetary Fund, Press Release, January 5, 1962. The above requirement, stated by the Fund, seems to be in consideration of the fact that, under the Constitution of some of the Countries, financial commitments of the Executive require legislative authority.

because it is the wording of Article XX (2 - a) of the F.A.A. which has inspired the provision of Paragraph 3 (c), and the above standard phrase.

For the above purpose we have attempted to consider (a) the Fund's Articles of Agreement, and (b) the Fund Governing Bodies' views to see how these could throw light on the meaning and scope of effect of the phrase "taken all steps necessary".

II - THE FUND'S ARTICLES OF AGREEMENT

Article XX (2 - a) of the F.A.A. reads:-

"Section 2. Signature. — (a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it ... has taken all steps necessary to enable it to carry out all of its obligations under this Agreement".

Whether the phrase "taken all steps necessary" of the above article has obligated the Fund's member

States to transform all the provisions of the Fund's Articles of Agreement into their municipal law is a vexed question.¹

What strikes one, however, whilst studying the F.A.A., is the specific form of drafting of Section 10 of Article IX. Section 10 of Article IX speaks of the need for internal legislative measures, for the implementation of terms and conditions of Article IX only. It says:-

"Section 10. Application of Article. —

Each member shall take such action as is necessary in its own territories for the

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1. Here it may be added the above provision of Article XX has been accepted, by the U.N. Secretariat, as one of the standard provisions to be used in international engagements. See "The United Nations' Handbook of Final Clauses", U.N. Secretariat, General, ST/LEG/1. 28 August, 1951, p. 152. As yet, no light has been thrown on the meaning and scope of the effects of the above provision and standard phrase. Therefore, the following considerations may be of some help in clarifying the status of the above provision in international relations as well. Cf., however, Id. p. 151.

purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken." ¹

The inference here is that the drafters of the F.A.A. have, by implication, ruled out the necessity for taking internal legislative measures for the implementation of the terms and conditions of each and every part of the Fund's Articles of Agreement. ²

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1. Cf. U.N. Monetary Documents, pp. 234, 459, 529, 675, esp. Memorandum of the United Kingdom's Delegation to Commission I, at p. 423. Cf. also "The Practice of the United Nations, The Specialized Agencies and the International Atomic Energy Agency Concerning their Status, Privileges and Immunities, Part Two: the Organizations", U.N., General Assembly, A/CN.4/L.118/Add. 1, 5th May, 1967, Chapter VIII, Paragraph 6.
 2. Cf. J. E. S. Fawcett, "The International Monetary Fund and International Law", op. cit., p. 70, footnote (6).

This, at the same time, would mean that the phrase "taken all steps necessary" of Article XX (2 - a); in itself does not obligate the Fund's member States to give internal legal effect to all the provisions of the F.A.A. ¹

Here one may go one step further and even doubt whether the wording of the above Article IX (10) has gone so far as to obligating the Fund's member States to make the provisions of Article IX part of their national law. This doubt springs mainly from the steps taken by member States of the Fund, pursuant to the provision of Section (10) of Article IX. For this reason we will consider (under the following Heading) the steps taken by some of the leading member States of the Fund, for the implementation of the terms and conditions of Article IX; and to see how these members have understood the meaning and scope of effect of above Section (10) of Article IX. This we shall attempt with the understanding of the fact that the practice of States, in their international relations,

1. Cf. U.N. Monetary Documents, pp. 291, 499, 597, 687-688 and 797-798.

constitutes one of the major sources of international law.¹

STEPS TAKEN BY SOME OF THE LEADING
MEMBER STATES OF THE FUND, IN APP-
PLICATION OF ARTICLE IX (10)

Article IX of the Fund's Articles of Agreement contains provisions concerning the Fund's Status, Immunities and Privileges in the territories of its member States: and for our study here, we have chosen mainly the steps taken by the United States of America in application of Section 10 of the above Article IX.^{2 3}

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1. Cf. Article 31 (3 - b) of the "Vienna Convention on the Law of Treaties", op. cit., p.12; (1967), 61, A.J.I.L., pp. 385-386. Cf. also, F. A. Mann, "International Case Law", (1946), 22, 1, International Affairs, p. 104; "The Legal Consequences of Sabbatino", (1965), 51, Virginia Law Review, p. 617.
 2. Cf. Section 46 of Convention on the Privileges and Immunities of the Specialized Agencies, "United Nations". Handbook of Final Clauses," op. cit., p. 154.
 3. Steps taken by the United States of America in this respect are mainly: (i) United States Bretton Wood Agreements Act and Amendments (Public Law, 171, 79th Cong., 1st Sess - 59 Stat. 512 (1945)); (ii) United States International Organisations Act (Public Law, 291, 79th Cong. 1st Sess. 59 Stat., 669 (1945)), and (iii) The United States Executive Order 9751 (3C.F.R. (1943-48 comp.) 558).

This choice has chiefly been due to the fact that:-

(i) The Fund's headquarters have been situated in the territories of the United States, and this adds to the importance attached to the steps taken by the Government of the United States in this respect. In other words, the question of the Fund's Status, Immunities and Privileges is a more current issue in the territories of the United States than in the territories of any other member States of the Fund. ¹

(ii) That the U.S. Government has not acceded to the "United Nations Convention on the Privileges and Immunities of the Specialised Agencies", of November 21, 1947; ² and as such the above Convention cannot be invoked against the United States of America.

1. The following is what the Fund has said in this connection:-

"These Statutes and related executive order (the above-mentioned U.S. Acts and Executive Order, that is) have been selected for inclusion in this reference work (the Fund's Selected Decisions of the Executive Directors, that is) because the Fund's Headquarters are in the United States and the Fund has no headquarters agreement." See the Fund's

Selected Decisions pp. 117, 146-171. Parentheses added.

2. See Hans Aufricht, "International Monetary Fund, Legal Bases, Structures, Functions", op. cit., p. 18, footnote 23. Cf. D. W. Bowett, "The Law of International Institutions", op. cit., p. 318 footnote 83.

For the purpose of above study, we have chosen:

- (i) The Provisions of Section 2 of Article IX of the Fund's Articles of Agreement, and steps taken by the U.S. Government pursuant to that provision; and
- (ii) The provision of Section 8 of Article IX of the Fund's Articles of Agreement, and the steps taken by the U.S. Government pursuant to that provision. ¹

(i) SECTION 2 OF ARTICLE IX OF THE F. A. A.

Section 2, of Article IX of the Fund's Articles of Agreement has conferred full judicial^C personality on the International Monetary Fund. It says:-

"Section 2. Status of the Fund. —
the Fund shall possess full judicial^C
personality " ²

As such, no qualification has been attached to the obligation of the Fund's member States in

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- 1. For the background of the above provisions of Article IX, see U.N. Monetary Documents, pp. 52, 129, 421-23, 426-427, 528, 573 and 674-675.
 - 2. Cf. "The Practice of the United Nations, The Specialized Agencies and the International Atomic Energy Agency Concerning their Status, Privileges and Immunities", op. cit., p. 6.

implementating the terms and conditions of the above Article IX, Section 2.

By way of contrast, Section 1 of Title I of the "United States International Organisations Immunities Act" has left it to the discretion of the United States' Authorities to classify, e.g., the International Monetary Fund, as "an International Organisation" or otherwise.

This Section 1 of Title I, in part, says:-

"For the purposes of this title, the term "international organisation" means a public international organisation in which the United States participates pursuant to any treaty ... and which shall have been designated by the President ... as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorised, in the light of the functions performed by any such international organisation ... to withhold or withdraw from any such organisation ... the privileges, exemptions, and immunities provided for in this title ... or to condition or limit the enjoyment by any such organisation ... of

any such privilege, exemption, or immunity. The President shall be authorised, if in his judgement such action should be justified by reason of the abuse by an international organisation ... of the privileges, exemptions, and immunities herein provided or for any other reason, at any time, to revoke the designation of any international organisation under this section ... " 1

Therefore, what was expected to be accepted by the United States, unconditionally (judicial^c personality of the Fund, that is) has been subjected to: (i) designation of the President of the United States, and (ii) withholding or withdrawal of that designation, by the President of the United States, and (iii) the right to conditioning or to limiting the scope of operation of the above enjoyments, by the President of the United States.

1. Take note of the passage:-

"... or for any reason, at any time, to revoke the designation of any international organisation ... "

As such, the above provisions of Section 1 of Title I of the "United States International Organizations Immunities Act", do not seem to have met the requirements of Section 2 of Article IX of the Fund's Articles of Agreement.

(ii) SECTION 8 OF ARTICLE IX OF THE F. A. A.

Section 8 of Article IX of the Fund's Articles of Agreement also speaks of unconditional privileges and immunities to be accorded to the Fund's officers, and employees. It says:-

"Section 8. Immunities and privileges of officers and employees:- All governors, executive directors, alternates, officers and employees of the Fund.

(i) shall be immune from legal process with respect to acts performed by them in their official capacity.... " 1

By way of contrast, Section 8 of Title I of the "United States International Organisations Immunities Act" has left it to the discretion of the U.S. Secretary of State to accord any Immunities and privileges to the Fund's officers and employees. It says:-

1. Cf. F. A. Mann, "International Monetary Co-operation", op. cit., p. 252.

"Section 8.(a) No person shall be entitled to this title ¹ unless he ... shall have been duly notified to and accepted by the Secretary of State as a representative, officer or employee..." ²

Therefore, the provisions of Section 8 of Title I of the "United States International Organisations Immunities Act", do not seem to have met the requirements of Section 8 of Article IX of the Fund's Articles of Agreement. ³

But, before leaving the present argument we have to bring into picture the provisions of another United States enactment, that is, the provisions of the "United States Bretton Woods Agreements Act and Amendments".

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1. Title I, that is, which Title covers status, immunities and Privileges of International Organisations.
 2. Cf. United States Ex. Rel. Roberto Santiesteban Casanova v. Fitzpatrick, U.S. Dist. Ct. S.D.N.Y., 16 January 1963. 214 Federal Supplement, p. 425, discussed by Michael Hardy in his "Modern Diplomatic Law", 1968, Manchester University Press, pp. 112 - 114. Cf. also Keeney v. United States, U.S. District Court of Columbia, March 17, 1953, and Court of Appeal, District of Columbia, August 26, 1954, International Law Reports, vol. 20, 1953, pp.382 and 384.
 3. Cf., however, The findings of the Federal Communications Commission regarding Section 7 of Article IX of the Fund's Articles of Agreement, in the "International Law Reports", 1955, p, 705.

The fact is that the provisions of the "United States Bretton Woods Agreements Act and Amendments" seems to satisfy the requirements of Section 10 of Article IX of the Fund's Articles of Agreement. It, in its Section 11, states:-

"Section 11. The provisions of Article IX, Sections 2 to 9, both inclusive ... of the Articles of Agreement of the Fund ... shall have full force and effect in the United States and its territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund ... " ¹

Therefore, Section 11 of the above United States' Act ——— despite the provisions of the "United States International Organisations Immunities Act" ——— has accorded full force and effect to the provisions of Article IX of the Fund's Articles of Agreement in the territories and possessions of the United States.

This, on the other hand, may drive us to the conclusion that the provisions of the "United States Bretton Woods Agreement Act and Amendments" can hardly be reconciled with the provisions of the "United States Inter-

1. See the Fund's Selected Decisions, p. 154.

national Organisations Immunities Act." ¹

Here it would perhaps be useful to attempt to find any way out of the possible inconsistencies between the provisions of the two above United States' Acts. In other words, it would be of some value to try to see which one of the two above United States Acts is to prevail ——— should there arise any inconsistency between the provisions of the two. ²

1. As we have seen, the provisions of the "United States International Organisations Immunities Act" seems to fall short of the requirements of Section 10 of Article IX; whereas the provisions of the "United States Bretton Woods Agreements Act" do not.
2. In this connection it may be contended that the above suggested inconsistencies could not make any practical difficulties; because only one of the two above "Acts" should be applicable in the case of the International Monetary Fund's status, immunities and privileges. This contention, however, can be answered by saying that:-
 - (i) Suppose that this contention is to be taken into consideration, it is still necessary to ascertain which one of the two above "Acts" is to be the applicable one.
 - (ii) By the publication of both "Acts" in its Selected Decisions and Documents, the Fund has impliedly accepted that both Acts are mutatis mutandis, applicable in the case of the I.M.F.'s status immunities and privileges. See the Fund's Selected Decisions, pp. 146 - 171. Cf. "The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Concerning their Status, Privileges and Immunities", op. cit., Add.2, pp. 69 - 70.

The thing is if the contents of the "United States Bretton Woods Agreements Act" are to prevail ——— in connection with the status, immunities and privileges of the International Monetary Fund ——— it would then mean that the requirements of Section 10 of Article IX of the Fund's Articles of Agreement has been met by the United States of America. And, if the contents of the "United States International Organisations Immunities Act" is to prevail, it would then mean that the requirements of Section 10 of Article IX of the Fund's Articles of Agreement have not been met by the United States of America.

Now let us turn to the point as to how the above possible conflict could be avoided or resolved.

SUGGESTIONS CONCERNING THIS POSSIBLE CONFLICT

1. One suggestion here is; since the "United States Bretton Woods Agreements Act" has been approved on 31 July, 1945, and since the "United States International Organisations Immunities Act" has been approved on 29 December, 1945,¹ therefore the former Act can be regarded as "lex prior" and the latter one as "lex posterior". And *lex posterior legi priori*

1. See Also U.S. Executive Order 9751 (3 C.F.R. (1943-48 comp.) 558).

derogat.¹

2. The above argument, however, can be contended by saying that the "United States Bretton Woods Agreements Act" is to deal with only fiscal bodies of International Organisations,² as compared with the "United States International Organisations Immunities Act", which is to deal with the International Organisations as a whole. As such the former Act is to be regarded as "lex specialis" as compared with the latter one, which is to be regarded as "lex generalis". And lex specialis derogat generalis.³

3. Another suggestion in this connection is, since the "United States International Organisations Immunities

1. Cf. Article 30 Paragraph 3 of "Vienna Convention on the Law of Treaties", op. cit., p. 12. Cf. also (1967), 61, A.J.I.L., pp. 342 - 342, 346 - 347.
2. That is, originally the International Monetary Fund, and the International Bank for Reconstruction and Development.
3. Cf. Georg Schwarzenberger, "International Law", Vol. I, Third Edition, London, Stevens and Sons Limited, 1957, pp. 508 - 511.

Act" is to deal exclusively with "status, immunities and privileges" of international organisations, as such it is to be regarded as "lex specialis", as compared with the "United States Bretton Woods Agreements Act" which is to deal with "various aspects" of activities of the Bretton Woods Organisations (and which is to be regarded as "lex generalis").¹

4. The above suggestion can also be countered by saying that: Section 11 of the "United States Bretton Woods Agreements Act" (and not that Act as a whole)² is to be regarded as "lex specialis", in comparison with the "United States International Organisations Immunities Act" which is to be regarded as "lex generalis" (so far as status, immunities, and privileges of the I.M.F. and the B.I.R.D. are concerned).³ In

1. As we may know, the "Bretton Woods Organisations" are mainly I.M.F. and I.B.R.D. And, in this third suggestion, the U.S. Act dealing with them is suggested to be regarded as "lex generalis".

2. As we may have noticed, this section 11 of the "United States Bretton Woods Agreements Act" is exclusively dealing with status, immunities and privileges of the International Monetary Fund and the Bank for International Reconstruction and Development.

3. As we have seen, the "United States International Organisations Immunities Act" is dealing with "status, immunities and privileges" of the International Organisations as a whole; and thus, this Act, in this fourth suggestion, is suggested to be regarded as "lex generalis".

other words, since the "United States International Organisations Immunities Act" is to be regarded (in this context) as "lex generalis", thus its contents cannot over-ride the contents of Section 11 of the "United States Bretton Woods Agreements Act."

Now, with regard to the four above suggestions, we could not come to any specific conclusion; because of the uncertainties which were involved. We could not accordingly see how far the provision of Article IX of the Fund's Articles of Agreement have been given the force of law in the territories of the Headquarters Country of the International Monetary Fund.

Nevertheless if the aim here is to construe the "intention" of the two above U.S. Acts, it seems easier to suggest that the real answer to the above possible conflict should be sought from the drafters and sponsors of the two above pieces of legislation. In other words, it seems easier to leave the question of the choice

of prevailing law, in this respect, to the U.S. authorities.¹

This suggestion, however, can hardly satisfy the test of international lawyers; for the provisions of one of the above Acts is to give effect to international obligations of a Headquarters State. And to a publicist, the provisions of the "United States International Organizations Immunities Act" should give way to the provisions of the "United States Bretton Woods Agreements Act"; simply because the latter has been enacted with a view to giving effect

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1. For the discussion as to the applicability of the U.S. laws concerning privileges and immunities, see, generally, M. Hardy, "Modern Diplomatic Law", op.cit., pp.110-114, 117-126. Cf. F. A. Mann, "International Monetary Cooperation", op.cit., p.251. fn.1. Cf. also U.N. Monetary Documents, p.426; "The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Concerning their Status, Privileges and Immunities", op. cit., Add. 2., p.69; D. W. Bowett, "The Law of International Institutions", op.cit., pp. 318 - 319.

to the provisions of an international obligation, that is, the provisions of, inter alia, Article IX of the Fund's Articles of Agreement. ¹

1. Cf. F. A. Mann, "International Delinquencies Before Municipal Courts", (1954), 70, L.Q.R., pp.182, 194; "The Interpretation of Uniform Statutes", op.cit., p.281; "Money in Public International Law", Recueil des Cours, op.cit., p.79. Cf. also J. Gold, "The Cuban Insurance Cases and the Articles of the Fund", International Monetary Fund, Washington, D.C., 1966, pp. 13 and 18. "Interpretation by the Fund", op.cit., pp.32 - 37. "Decision of the Swiss Federal Council on the legal status of permanent delegations of Member States to the European Office of the United Nations and to other international organizations with headquarters in Switzerland", United Nations Secretariat District General, ST/LEG/2, September 1952, pp.219 - 222, at p.221; "Balfour, Guthrie & Co., Limited, et al. v. United States et al." No. 25325, United States District Court, N.D. California, S.D. May 5, 1950, 90 F. Suppl. p.834; "The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their Status, Privileges and Immunities", United Nations, A/C. N.4/L.118, 8th March, 1967, pp. 56 - 59.

III - THE FUND GOVERNING BODIES' VIEWS

Under the present Heading we shall mainly try to see how far the Fund Governing Bodies' pronouncements could throw light on the meaning and scope of the phrase "taken all steps necessary" of Article XX (2 - a) of the Fund's Articles of Agreement.

The main Decision we are going to consider here is the Fund's Decision concerning the contents of Article VIII (2 - b) of the Fund's Articles of Agreement.¹

The fact is that until 1949 the only provisions of the Fund's Articles of Agreement which seemed certain to require internal legislation were the provisions of Article IX. Whether there was any other provision of the Fund's Agreement, requiring internal legislation in the territories of the Fund's member State, was not clear. At this time, due to different conclusions reached by different judicial bodies in connection with Article VIII of the Fund's Agreement, the Fund had to step in and clarify some legal points in this

1. See Unenforceability of Exchange Contracts: Fund's Interpretation of Article VIII, Section 2-b, the Fund's Decision No. 446-4, 10 June, 1949, in the Fund's Selected Decision. pp. 73 - 74.

respect. ¹ The result was the Fund's interpretative Decision No. 446-4.

The Fund Executive Board, in this Decision, pointed out that the Fund's member States, by accepting the Fund's Articles of Agreement, have undertaken to make certain other provisions of the Fund's Articles of Agreement part of their "national law". This Decision, in part, reads:-

"The Board of Executive Directors of the International Monetary Fund has interpreted ... the first sentence of Article VIII, Section 2(b), which provisions reads as follows:

Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement, shall be unenforceable in the territories of any member. The meaning and effect of this provision are as follows:-

1)

1. See Ervin P. Hexner, "Interpretation by Public International Organisations of their Basic Instruments", (1959), 53, A.J.I.L., p. 359.

2. By accepting the Fund Agreement, members have undertaken to make the principle mentioned above effectively part of their national law. This applied to all member ..."¹

Therefore, according to this interpretative Decision, it is not only the provisions of Article IX of the Fund's Articles of Agreement which requires internal legislative measures. And there may well be some other provisions of the Fund's Articles of Agreement, such as the above Article VIII (2-b), which could require necessary internal legislative measures.

The main difficulty, however, concerning the above interpretation is in that its compass can hardly

1. Cf. J. E. S. Fawcett, "The Law of Nations", op. cit., p. 102, et. seq., esp. where he says:-

"Treaties may, for their proper execution and observance, call as we have seen for changes in the domestic law of countries which enter into them: for internationally a country cannot be heard to say that it cannot implement the treaty because its domestic law, including its constitution, prevent it. It must either refuse to accept the treaty, or bring its domestic law into conformity with it ... "

be circumscribed; for if the Fund's member States are obliged to make the principle mentioned in Article VIII (2-b) "part of their national law" then why the same reasoning cannot be extended to cover the principles of other provisions of the Fund's Articles of Agreement; and why one cannot conclude that the phrase "taken all steps necessary" bears the obligation for making all the provisions of the Fund's Articles of Agreement part of national law of the Fund's member States? In other words if by reason of the fact that the Fund's member States have internationally accepted the Fund's Articles of Agreement, they "have undertaken to make the principle of Article VIII (2-b) effectively part of their national law", then why the same reasoning cannot be extended to cover the provision of, say, Article IV, Section 3 of the F.A.A.?

This contention, however, can be answered by saying that by entrusting the power of "interpretation" to the Fund's Executive Directors,¹ the Fund's member States have accepted their interpretative Decisions as author-

1. See Article XVIII (a) of the Fund's Articles of Agreement.

itative and binding. ¹

Therefore, if the Fund's Executive Directors have been asked to deliver a given interpretative ruling, then it has been legally left to them to say that:-

"By accepting the Fund's Agreement, members have undertaken to make the principle mentioned above effectively part of their national law". ^{2,3}

As such, the effects of the ruling of the above passage cannot automatically be stretched to cover all the provisions of the Fund's Articles of Agreement. In other words, it cannot be concluded that the F.E.D. is of the opinion that all the principles mentioned in the Fund's Articles of Agreement should be given the force

1. Cf. however, Ervin P. Hexner, "Interpretation by Public International Organisations of their Basic Instruments", op. cit., pp.353-356. Cf. also F.A. Mann, "The Legal Aspects of Money", op. cit., p. 385, footnote 2.
2. Take note of the phrase "principle mentioned above" of the above passage, whose compass cannot easily be extended to cover all the principles of the Fund's Articles of Agreement. Cf. U N Monetary Documents pp. 54-55, 287-288, 334, 341, 502, 576, 671, 780.
3. Cf. Sarah E. Parker, "The International Monetary Fund: Public and Private International Law Aspects", (1969), 47, Northern Carolina Law Review, pp. 836-861, at p. 856.

of law in the territories of the Fund's member States. And the question as to which of the principles of the Fund's Agreement are to be given the force of law seems to turn on the nature of that very principle. For instance, Professor Nussbaum, with regard to the principle of Article VIII (2-b), of the Fund's Articles of Agreement, has stated that:-

"... The United States, England, Canada, the Philippine Republic and Costa Rica have in their enabling Acts, explicitly conferred the quality of internal law upon Article VIII, Section (2-b) (1). Evidently, it is the theory of the governments of these countries that without such action the provision would be devoid of any actual effect and that therefore its "incorporation" is obligatory under the general rule of Article XX, Section 2(a).¹ That theory seems to be fully justified as otherwise Article VIII Section 2(b) (1) would be a thing of nought; its incorporation is there-

1. Take note of the term "general rule of Article XX, Section 2(a)" in the above context.

for necessary¹ to "carry out" the obligations imposed upon the Government by the Agreement."²

So far, under the present Heading, we observed that ——— to the Fund's Executive Directors ——— the obligation of making provisions of the Fund's Articles of Agreement part of national law of the Fund's member States, is not limited to the principles of Article IX of the Fund's Articles of Agreement. And the principle mentioned in Article VIII(2-b), should also be given the force of law in the territories of the Fund's member States.

The Fund's General Counsel seems to believe that the above obligation transcends even the provisions of Article IX and Article VIII (2-b). He says:-

"The duty to treat certain contracts as unenforceable is not confined to contracts that are contrary to exchange control regulations which deal with current international transactions; it applies equally to regulations that control capital transfers. Again the duty binds all members and not merely the Article VIII group, even though the duty is to be found in

1. Take note also of the word "necessary", in the above context. Cf. the word "necessary" of standard phrase of Article XX (2-a) of the Fund's Articles of Agreement.
2. See Arthur Nussbaum, "Money in the Law — National and International", Columbia University, Brooklyn, The Foundation Press Inc., 1950, pp.544-545. See also Lord McNair, "The Law of Treaties", op.cit., p. 136, footnote 3.

Article VIII. 1

In one instance, the Fund has gone even beyond this stage, that is, in the case of prospective member States of the Fund. In that case, the prospective

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1. See J. Gold, "The International Monetary Fund and Private Business Transactions — Some Legal Effects of the Articles of Agreement", I.M.F., Washington D.C., 1965, p. 24. We have quoted the above passage with a view to conveying the views of one of the Fund's authorities in that the obligation of the Fund's member States to give internal legal effect to the provisions of the Fund's Articles of Agreement transcends the provisions of Article VIII. And the above quotation seems to be self-explanatory, so far as that aspect of our argument goes. We, however, admit that to follow other legal technicalities — involved in the above quotation — require some familiarity with the legal history as well as judicial decisions so far have been made in connection with Article VIII of the Fund's Articles of Agreement. And this subject-matter has been adequately explored by different writers on international monetary law. For this the interested readers are referred to a series of articles written by J. Gold in the I.M.F.'s "Staff Papers" under the heading of "The Fund Agreement in the Courts". For the reference to these and other articles, written by the same writer, in this respect, see the Bibliography attached to this work. See also, A. Nussbaum, "Money in the Law — National and International", op. cit., pp. 540-546; F. A. Mann, "International Monetary Law", Lucerne Meeting, op. cit., pp. 233-290; "Money in Public International Law", Recueil des Cours, op. cit., pp. 47-74; "The Legal Aspect of Money", op. cit., pp. 378-387; C. H. Alexandrowicz, "World Economic Agencies", op. cit., pp. 189-198. The above literature will, at the same time, reveal that the above requirements of Article VIII have not been fully met in the territories of the Fund's member States.

member States are to give "the force of law" to all provisions of the Fund's Articles of Agreement. Otherwise they most probably would lose the chance of becoming member States of the Fund.

The draft of "Memorandum of law" — which is to be signed and submitted to the Fund, by the prospective member States — has this to say in this respect:-

"I. The Government of (country) has decided to adhere to the provisions of the Articles of Agreement of the International Monetary Fund in accordance with the conditions defined by the Board of Governors of the Fund ...

II.

III. The Articles of Agreement of the International Monetary Fund have the force of law in the territory of (country) sign — Minister of Justice, or other similar official of prospective member" ¹

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1. See the Fund's "Information on Filing Application for Membership", op. cit., Appendix E. As to the definition of the "Memorandum of Law" the same Information says:-

"Memorandum of Law signed by an appropriate official of the Government, preferably the Minister of Justice or Minister of Foreign Affairs. The purpose of the Memorandum of Law is to inform the Fund on the law and the

This, yet can hardly bring us to the conclusion that the phrase "taken all steps necessary" of Article XX (2-a) has obligated the Fund's member States to give the force of law to all the provisions of the Fund's Articles of Agreement; because in the case of its "old" member states, the Fund so far has been quite satisfied if it could see only the few above-mentioned provisions had been given the force of law in the territories of its member States. ¹

And the situation in the case of the above draft "Memorandum of Law" seems to be something not much affected by the provisions of Article XX (2-a), but something mostly affected by the bargaining position the Fund holds vis-a-vis its prospective member States.

After all there are some provisions of the F.A.A. which do not require internal legislation for their proper performance

footnote cont'd.

practice of the prospective member in regard to acceptance of international agreements, and to describe the steps taken to enable it to carry out its obligations under the Fund Agreement...Copies of laws, decrees, or specific provisions of laws or decrees referred to in the Memorandum of Law should be forwarded with that document.." See Id.p.4.

1. See F.A.Mann, "The Exchange Control Act, 1947" (1947), 10, Modern Law Review, p.418, Cf. the same author "Legal Aspect of Money", op.cit., p.384, footnote 2. See also J. Gold, "The International Monetary Fund and Private Business Transactions", op.cit., pp.20-31. See esp. views expressed by the U.S. Solicitor-General in connection with the Banco de Brasil, S.A. v. A.C. Israel Commodity Co., Inco.Case, at pp. 29,30 and 31; C.H. Alexandrowicz, "World Economic Agencies" op.cit.pp.193-194, especially footnote 53; "International Law Association" year 1952, p.255. The above literature would also show that how far the above few provisions of the Fund's Articles of Agreement have been respected in the territories of the Fund's member States.
2. See e.g., Article X of the Fund's Articles of Agreement.

CONCLUSION.

To sum up our considerations, under the present Chapter, we can conclude that the phrase "taken all steps necessary" of Article XX (2-a), obligates the Fund's member States to take internal legislative measures for the implementation of only those parts of the Fund's Articles of Agreement which "necessitate" internal legislation.¹ In other words, the above phrase does not obligate the Fund's member States to transform all the provisions of the Fund's Articles of Agreement into their internal law.

This has been supported by the fact that only on two major occasions have all the member States been expected to give internal legal authority to the provisions of the Fund's Articles of Agreement, that is, in the case of (a) Article IX, and (b) Article VIII (2-b).

(a) In the case of Article IX there is an express provision to the effect that "Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article..." Therefore, the nature of commitments of Article IX (privileges and immunities) and the specific drafting of Article IX (10), indicate that the phrase "taken all steps necessary" of Article XX (2-a) does

1. Cf. J. E. S. Fawcett, "The Legal Character of International Agreements", op. cit., p.391.

not obligate the Fund's member States to give indiscriminately internal legal effect to all the provisions of the Fund's Articles of Agreement.

(b) In the case of Article VIII (2-b), also the position seems to be of an exceptional character, that is, the commitments contemplated therein seem to necessitate internal legislation for their proper performance, without which Article VII (2-b) would be a thing of nought. This fact has been confirmed by an authoritative interpretation given under Article XVIII of the Fund's Articles of Agreement. In other words, it is the wording of Article VIII (2-b) which creates the legal obligation to give internal legal effects to its provisions, an obligation underlined by the decision taken under Article XVIII.

Lack of necessity to give internal legal effect to all the provisions of the Fund's Articles of Agreement, however, does not mean that, so far as international law is concerned, the Fund's member States are not under treaty obligation to perform the Fund's Articles of Agreement. ¹

1. Cf. J. W. Bridge, "The Legal Nature of Acts of International Organisations and International Courts and the Legal Status of such acts in Municipal Law", International Academy of Comparative Law, Eighth International Congress of Comparative Law, Section IV. TOPICAL. p.2. et seq.

The same argument can be raised in connection with the phrase "taken of all steps necessary" of Paragraph 3(c) of 'The Decision'. Although all the commitments of the Participants would remain valid in international law, yet the incorporation of the above phrase in their "instrument of adherence" does not seem to have obligated them to transform the provisions of 'The Decision' into their municipal laws. In other words, so far as the Paragraphs of 'The Decision' are concerned, neither has there been contemplated commitments of the nature of commitments of Article IX and Article VIII (2-b), nor are there any special interpretative powers like that of Article XVIII,¹ following which one can claim that some of the Paragraphs of 'The Decision' should have been given the force of law in the territories of the Participants. Therefore, those Participants who have not taken some, or any internal legal steps, following their adherence to 'The Decision', do not seem to have been obligated to do so; and the Fund's statement, contained in the Press Release of January 5, 1962, seems to be an exhortation. Failure in part of some of the Participants in this respect, does not however, seem to have affected their obligations under 'The Decision', so far as international law is concerned.

1. Contra, see Paragraph 20, of 'The Decision', Appendix, IV.

CHAPTER FOURCONSULTATIVE ARRANGEMENTS OF THE
BORROWING SCHEMEI - INTRODUCTION

Under the present Chapter we have first attempted to see how the consultative arrangements of the Borrowing Scheme work in practice; and what sets of objectives are to be achieved thereunder. An examination of the objectives to be achieved (under consultative arrangements of the Borrowing Scheme), on the one hand, and a perusal of what has been developing in the course of time, (in the field of activities of the Group of Ten) on the other, will prove the fact that the scope of activities of the Group of Ten has far transcended the limits of "Consultative Arrangements" of the Borrowing Scheme.

Under the present Chapter, however, we have tried to chart those consultative arrangements of the Group of Ten which are founded in the terms and conditions of 'The Letter' and 'The Decision'. To achieve this, we have considered the consultative arrangements of 'The Letter' and 'The Decision' ——— once separately, and for the second time, in connection with each other.

As referred to earlier, parts of the activities of the Group of Ten have not been anticipated in the Para-

graphs of the Borrowing Scheme; but even those parts of their activities which have been anticipated in the Paragraphs of the Borrowing Scheme do not seem to have been abided by satisfactorily.

For instance, we shall see that some bodies and entities, unknown to the drafters of the Borrowing Scheme, have taken active part in the monetary activities of the Borrowing Scheme. It is in the course of this study that we come across the participation of the representative of Economics Ministry of West-Germany — further to the participation of the Deutsche Bundesbank — in the activities of the Borrowing Scheme. This unfamiliar participation of authorities of the Ministry of Economics of West-Germany has surprisingly some contractual evidence in support of it, and will constitute our last Heading under the present Chapter. Then will come our conclusions and suggestions. Now, let us turn to the details of the first of the above-mentioned issues.

II - PURPOSES AND MECHANISM

Before any "borrowing arrangement" can be worked out, a series of consultative arrangements are to take place. These consultative arrangements are formulated with a view to investigating the merit and magnitude of any "borrowing arrangement". This involves primarily the

question as to whether a given "borrowing arrangement" is necessary "to forestall or cope with an impairment of the International Monetary System."¹ If this necessity can be ascertained, then other questions would be:

(1) the shape of the "borrowing arrangement", and whether it should be in the form of a single "exchange transaction" or in the form of several "exchange transactions".² Several "exchange transactions" usually constitute a "stand-by-arrangement".^{3,4}

1. See Preamble to 'The Decision', Appendix IV. For the first "borrowing arrangement" activated with the help of consultative arrangements of the Borrowing Scheme, see "International Financial News Survey", 1964, p.433.
2. See, e.g., Sub-Paragraphs (a) and (d) of Paragraph 7 of 'The Decision', Appendix IV.
3. As regards the definition of "stand-by-arrangement", see supra, under the Chapter "Participating Institutions and the F.A.A.". With regard to the definition of "exchange transactions" in general, J. Marcus Fleming has this to say:

"transactions between the Fund and its members take the form of an exchange of currency against currency, or an exchange of currency against gold. One of the currencies involved is generally that of the member making the transaction ... Members who wish to use the Fund's resources to make international payments, purchase from the Fund some foreign currency they can use, and pay to the Fund a corresponding amount of their own currency, which the Fund then holds"

See J. Marcus Fleming "The International Monetary Fund — It's Form and Functions", op. cit., p. 28. Cf. J. Gold, "The Fund and Non-Member States — Some Legal Effects", op. cit., p. 25.

4. Here it may be noticed that by the term "borrowing arrangement" in this Chapter, we mean both "an exchange transaction" and "a stand-by-arrangement". Cf. Paragraph 7(a) of 'The Decision'.

(2) another thing to be hammered out, with the help of these consultative arrangements, is the magnitude and the choice of currencies to be borrowed for a "Borrowing arrangement". In other words, it is within the stage of "consultative arrangements" which the Participants (together with the Fund's authorities) should work out the "magnitude" of the Participants' currencies necessary to meet the monetary problem for which a prospective drawer is seeking a "borrowing arrangement". This would, at the same time, include the "proportion" of the currencies to be contributed by the Participants, under that "borrowing arrangement".¹

(3) The next series of issues to be considered under these consultative arrangements are ways in which these currencies are to be "repurchased" and "repaid"; together with the fixing of the period of time within which these repurchases and repayments can be carried out.²

After all the above series of consultations have been carried out, and after they have resulted in a "borrowing arrangement", then would come the stage of "call". The stage of call has been described by Para-

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1. Cf. "International Monetary Fund - Annual Report", 1962, pp. 37, 39.
 2. See Paragraph 11 of 'The Decision', Appendix IV.

graph 1 (vii) of 'The Decision', as follows:-

'(vii) "call" means a notice by the Fund to a participant to make a transfer under its credit arrangements to the Fund's account; '

After the necessary transfers have been made (by the Participants to the Fund), then would come the stage of "purchase" (by the prospective drawer from the Fund).^{1,2}

These are, generally, stages to be followed before some currencies can be borrowed by a "prospective drawer" under the Borrowing Scheme. There remain, however, two more stages to complete the ring for a series of borrowing arrangements. These two stages are:

(a) The stage of "repurchase" by a "drawer" of the currencies which it has already borrowed under a "borrow-

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1. As regards the definition of "purchase", so far as the Fund's terminology is concerned, see J. Keith Horsefield, "Introduction to the Fund", op. cit., p. 29. Cf. F. A. Mann "Money in Public International Law", Recueil des Cours, op. cit., pp.23 - 25. Cf. also "International Monetary Fund - Summary Proceedings", 1962, p. 21.
 2. Cf., however, "International Monetary Fund - Press Release", No. 695, June 19, 1968.

ing arrangement".¹

(b) The stage of "repayment" under which the Fund's indebtedness, to the lending Participants, should be carried out.²

Here it is necessary to point out that the above consultative arrangements are a rather simplified pattern of consultative arrangements for a single "borrowing arrangement". And, as we may guess the pattern might not always be as simple as this. For instance, in some cases it may not be necessary to follow all the above stages for a single "borrowing arrangement".³

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1. This stage can as well be termed the stage in which a drawer attempts to pay back its indebtedness to the Fund. As to the technical meaning of the word "repurchase", so far as the Fund's terminology is concerned, see Keith Horsefield, "Introduction to the Fund", op. cit., p. 30. Cf. J. Marcus Fleming, "The International Monetary Fund — Its Form and Functions", op. cit., pp. 28-29; F. A. Mann, "Money in Public International Law", *Recueil des Cours*, op. cit., pp. 24-25. So far as this question relates directly to the transactions of the Borrowing Scheme see Presentation of the Seventeenth Annual Report, Per Jacobsson, "International Monetary Fund - Summary Proceedings", 1962, pp. 21-22.
 2. See *infra*, under the Sub-Headings of "Pre-Repayment Consultative Arrangements of 'The Decision'", and "Pre-Repayment Consultative Arrangements of 'The Letter'". Cf. J. Marcus Fleming, "The International Monetary Fund — Its Form and Functions", op. cit., pp. 28-29.
 3. See, e.g., Paragraph 11 (d) of 'The Decision', Appendix IV.

In some other instances, it may be necessary to arrange some extra consultative arrangements in order to meet the legal requirements of the Borrowing Scheme. Amongst these extra consultative arrangements may be cited consultative arrangements for "future calls"; ¹ consultative arrangements for an unexpected "repayment"; ² and consultative arrangements for an unexpected "repurchase". ³

The variety of consultative arrangements of the Borrowing Scheme, taken together with the different requirements to be met for any "borrowing arrangement", would naturally require detailed provisions in this respect. These provisions have been set out by the drafters of 'The Letter' and 'The Decision' separately and under different titles. The drafters of 'The Letter' on one occasion, have gone so far as to suggest that the entire provisions of 'The Letter' are a set of consultative arrangements. The latter part of 'The Letter' in this respect says:-

"These consultative arrangements, ⁴ undertaken in a spirit of international co-operation, are

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1. See Paragraph 7(a) of 'The Decision', Appendix IV.
 2. See, e.g., Paragraph 11 (b) of 'The Decision' Appendix IV.
 3. See, e.g., Paragraph 11 (c) of 'The Decision', Appendix IV.
 4. Take notice of the term "These consultative arrangements", which is, prima facie, referring to the entire provisions of 'The Letter'. Cf. the term "procedure" used in the Preamble to the same document.

designed to ensure the stability of the international payments system".¹

III - EFFECTS OF THE CONSULTATIVE ARRANGEMENTS

However, it cannot be deduced from the above quotation (and from the term "undertaken" therein) that the consultative arrangements of the Borrowing Scheme can in themselves bring about any clear cut legal obligation. And as we shall see later any single "borrowing arrangement" can come into effect only after the acceptance of the Group of Ten and the approval of the Fund.² This is perhaps the reason why J.E.S. Fawcett, with reference to 'The Letter' and 'The Decision' has said:-

"They are rather arrangements in parallel, constituting at most a pactum de contrahendo; for the participants do not bind themselves unconditionally to extend credit to the Fund in the form of currency."³

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1. Take notice of the word "undertaken" in the above context.
 2. See *infra* under the same Chapter. Cf. Paragraphs (C) and (D) of 'The Letter' discussed under the Chapter "Voting Machinery of the Borrowing Scheme", *infra*.
 3. See J.E.S. Fawcett, "International Monetary Fund and International Law", *op. cit.*, p. 75. For the economic

And Fritz Machlup — who has studied different proposals concerning the Borrowing Scheme — agrees that those in favour of "non-automatic cycling" of short-term capital were finally successful in charting the plan for the Borrowing Scheme. In other words, he agrees that the proposals of those in favour of "attainment of acceptance of lending Countries for every borrowing arrangement" (as distinct from the proposals of those in favour of automatic return of outflown capital) were finally chosen and put into the framework of the Borrowing Scheme. He says:-

"Of the many forms which the support action may take — ten alternative forms are shown in T-Account Set 2 — the most favored at the present time calls for loans to the International Monetary Fund by central banks of surplus countries in their own currency, enabling the Fund to sell these currencies to the monetary authority of the deficit country ... This is the kind of action recommended

reasons why a surplus country cannot be expected to extend unconditionally credit to a deficit country see James Edward Meade, "The Theory of International Economic Policy, Volume I, The Balance of Payments", London, Oxford University Press, 1951, pp. 225 - 226. Cf. Fritz Machlup, "Plans for Reform of the International Monetary System", op. cit., pp. 16 and 23-25.

in the proposals made by Xenophon Zolotas, president of the Bank of Greece, Edward M. Bernstein, former director of the Research Division of the I.M.F., and Per Jacobsson, managing director of the I.M.F. ... For example, under the Bernstein plan the central banks in trouble could, with relative certainty count on the availability of International Monetary Fund support, whereas under the Jacobsson plan — which represents a compromise with the more orthodox points of view of central bankers in continental Europe — the lending banks would have to approve of the intended International Monetary Fund action in each case ..."¹

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1. See Id., pp. 17 - 20. See also Statement by the Governor for Greece, Xenophon Zolotas, "International Monetary Fund - Summary Proceedings", 1961, pp. 71-75 at p.73; Statement by Per Jacobsson, the F.M.D., Id. p.28; Franco-American Draft, discussed in "International Monetary Fund, 1945-1965", op.cit., volume I, p. 511; volume II, pp.374 - 375. Cf. Id. Volume I, pp. 508-510. For attempts to bring about automatic cycling of short-term capital, see 'The Guardian', January 20, 1969, p. 10. Cf. 'The Guardian', January 14, 1969, p. 13.

Therefore, it seems more reasonable to suggest that the activities of the Group of Ten were expected to be carried out in a spirit of co-operation and mutual understanding ¹, as distinct from political and economic pressure, ² or legal obligation. ³

Even Article VII (2) of the Fund's Articles of Agreement — in accordance with which the Borrowing Scheme has been set out — does not impose, on the face of it, any obligation on the Fund's member States to lend their currencies to the Fund. It, in its Sub-Section (i) states:-

".... no member shall be under any obligation to make such loans to the Fund or to approve the borrowing of its currency by the Fund from any

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1. Cf. J. E. Meade, "The Balance of Payments", op.cit., pp. 114-124 and 167 - 170.
 2. Cf., however, "The Times", November 22, 1968, p. 21; "The Guardian", January 20, 1969, p. 10; Ossola Rinaldo, "In the Creation of New Reserve Assets: the Report of the Study Group of Ten", op. cit., p. 291. Cf. also "Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties", Cmnd. 4140, p. 37.
 3. See, e.g. Paragraphs (D) and (F) of 'The Letter', under which no clear-cut obligation has been contemplated for automatic cycling of "hot" money. Cf. J. E. S. Fawcett, "The Law of Nations", op. cit., p. 95.

other source".¹

However, one of our interests, is to see whether any obligation can be imposed on the Participants "after" they have undergone the consultative arrangements for a "borrowing arrangement" and "after" they have accepted such a "borrowing arrangement". But first it seems necessary to establish, with precision, the two following:-

- (a) The procedure as well as the "stages" of consultative meetings of the Borrowing Scheme.
- (b) The body or bodies to be consulted at any one stage of these consultative meetings; because

1. As Professor D. H. N. Johnson, in one of his lectures at London University pointed out, the history of international relations has proved the preference of taking a lenient line at the start of any multilateral co-operative engagement, and then, in the course of time, trying to tighten its bearings, if it happened to be necessary. And this is perhaps what has been taking place in the case of the Borrowing Scheme. See, e.g., the F.E.B. Decision, No. 1951-(65/59) of October 15, 1965: Cf., however, "International Monetary Fund - Annual Report", year 1962, p. 36; year 1964 p. 38; year 1968; p. 14; year 1969, p. 155. Cf. also "International Monetary Fund - Summary Proceeding", year 1964, p. 279; year 1968, p. 26.

(1) the exchange speculation and the movement of "hot" money is of a quick and widespread nature, which could result in considerable losses within a short period of time, and therefore it seems vital to have a quick and effective consultative machinery so as to deal with such a situation in the shortest possible period of time; and

(2) any untimely leakage out of the issues raised, or decisions taken, in the consultative meetings of the Group of Ten could again cause serious financial injuries¹ and therefore, it seems necessary also to be able to specify the bodies legally eligible to take part in any one of the above consultative meetings.

For the importance attached to the above issues, we have tried to study the detailed Paragraphs of 'The Letter' and 'The Decision', once separately, and for the second time, in connection with each other. This we have done with a view to sifting those provisions of the Borrowing Scheme which are directly related to its "consultative meetings", and which are unfortunately scattered throughout the Paragraph of 'The Letter' and 'The Decision'.

1. Cf. F. A. Mann "Money in Public International Law", *Recueil des Cours*, op. cit., p. 44.

IV - RECENT DEVELOPMENTS IN THE SCOPE OF
ACTIVITIES OF THE GROUP OF TEN

However, before getting involved in the actual provisions of "consultative arrangements" of the borrowing Scheme, we have to refer, although briefly, to some new developments in the scope of activities of the Group of Ten, something which had not been anticipated in the Paragraphs of 'The Letter' or 'The Decision'.¹ The reference to these new developments seems to be justified here, for one can differentiate between those consultative arrangements of the Group of Ten which are by virtue of the provisions of the Borrowing Scheme, and those which have been developed in the course of time.

The fact is that the Group of Ten industrial Countries have seen it necessary to consult each other, not only on occasions necessary for a "borrowing arrangement", but also for a world-wide range of issues, relating to international monetary relations.² This new development

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1. Cf. J. Gold, in "International Monetary Fund, 1945-1965", op. cit., volume II, pp. 520-521.
 2. See, e.g., Communiqué of the Group of Ten of September 25, 1966, "International Financial News Survey", 1966, p.328; Herbert G. Grubel, "The International Monetary System - Efficiency and Practical Alternatives", Penguin, Harmondworth, Middlesex, 1969, p.55. Cf. James R. Atwood, John H. Borton and Nolan E. Clark, "Legal Problems of International Monetary Reform", in the "Stanford Law Review", Vol. 20, 1967-68, Leland Stanford Junior University, p. 889, where the Borrowing Scheme has been described as "a sort of I M F within the I M F."

is perhaps the by-product of the fact that the Group of Ten possess the majority of the weighted votes of the International Monetary Fund.¹ And, at any given time, this policy-making Group of the International Monetary Fund is faced with many monetary problems, a minor one of which is the question of short-term capital movement, the subject-matter of the Borrowing Scheme.²

Therefore, if one follows the consultative meetings of the Group of Ten, he will witness a sort of constant surveillance by them of the world monetary system, including the shortage of means of liquidity.³

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1. For a critical argument in this respect see Harold Holt, Governor of the Bank and Fund for Australia, "International Monetary Fund - Summary Proceedings", 1965, pp. 78-82. Contra see Statement by the Governor of the Bank and Fund for the United States of America, Henry W. Fowler, Id. pp. 107-108; See also Statement by the Governor for the United Kingdom, Reginald Maudling, in the same periodical year 1964, pp. 166-167. Cf. Closing Remarks of Pierre - Paul Schweitzer, the F M D, in the "International Financial News Survey", 1965, p. 373.
 2. Cf. Hans Aufricht, "The Fund Agreement: Living Law and Emerging Practice", op. cit., p. 59.
 3. See, generally, "Ministerial Statement of the Group of Ten", August 10, 1964; "Communiqué of Ministers and Governors of the Group of Ten", July, 1966. Cf. address by Otman Emminger on "International Monetary Reform" in Montreal on September 11, 1967. See J. Gold, "The Next Stage in the Development of International Monetary Fund Law : The Deliberate Control of Liquidity", (1968), 62, A.J.I.L., p. 377, footnote 36. Cf. also Statement of the Secretary of Treasury of the United States, on behalf of the Group of Ten, October 2, 1963. See "International Monetary Fund - Summary Proceedings", 1963, pp. 285 - 286.

For instance on some occasions one can see that the agenda of these "consultative meetings" has been the question of an increase in the Fund's member States' quotas ¹; or proposals for the amendment of the Fund's Articles of Agreement, ² neither of which is related to the "borrowing arrangements" of the Borrowing Scheme.

On some other occasions he can see that some of these consultative meetings — originally prompted by a "borrowing arrangement" — have then been occupied by questions such as "upvaluation" ³ of currencies and so on. ⁴

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1. See, e.g., 'Communiqué of Ministers and Governors of the "Group of Ten" of Tokyo', September 7, 1964; "The Times Business News", November 1, 1969, p. 13; 'The Times', July 9, 1970, p. 28.
 2. See Mitchell B. Carroll, "Summit of International Monetary Law", International Lawyer, Volume 3, No. 2, pp. 374-375.
 3. By the term "upvaluation" here, we mean: revaluing the par of a currency upwards. It may, however, be noticed that the term "revaluation" alone has sometimes been used for this purpose; and this is perhaps what has been preferred by the Fund's authorities. (footnote: See, e.g., J. Gold, "Maintenance of the Gold Value of the Fund's Assets", I.M.F., Washington, D.C., 1965, p.2.) Yet, since the term "revaluation" has on some other occasions been used by the Fund as meaning the changing of par of a currency both downwards and upwards (footnote: see the Fund's Selected Decisions, p. 10.) which would cover both "devaluation" and "upvaluation", therefore for this reason we have preferred to use the term "upvaluation" as meaning "revaluing the par of a currency upwards".
 4. See, e.g., "Communiqué of the Group of Ten" of November 1968, Appendix XVI.

Which sets of these consultative meetings are carried out by virtue of the provisions of the Borrowing Scheme, and which sets are not, is not quite clear. We assume, however, that all the consultative meetings of the Group of Ten are not carried out by virtue of the provisions of the Borrowing Scheme. This we assume in order to be able to proceed dealing with the questions which we are going to consider under the present Chapter.¹

Therefore, our study here will be limited — as far as possible — to those consultative arrangements of the Group of Ten which are directly related to the "borrowing arrangements" of the Borrowing Scheme. This we would first attempt under the Heading "Consultative Arrangements of 'The Decision'". Then would come the Heading "Consultative Arrangements of 'The Letter'".

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1. This assumption can be inferred from the Paragraphs of 'The Decision' and 'The Letter' also. Yet, if the Participants themselves have come to the conclusion that all their current activities have been by virtue of the provisions of the Borrowing Scheme, that would be another matter. See, for instance, the latter part of 'The Letter', where it says:-

"It is understood that in the event of any proposals for calls under the credit arrangements or if other matters should arise under the Fund decision requiring consultations among participants, a consultative meeting will be held among all the participants."

Take notice of the term "other matters" in the above context and also of the effects of ejusdem generis rule: on that term in this context.

V - CONSULTATIVE ARRANGEMENTS OF 'THE DECISION'

The major consultative arrangements of 'The Decision' are (a) those taking place before the currencies of some Participants can be borrowed for a prospective drawer; and (b) those taking place before the "repayment" of the borrowed currencies. As a matter of convenience, we have termed these two sets of consultative arrangements as 'Pre-Call Consultative Arrangements of 'The Decision'' and 'Pre-Repayment Consultative Arrangements of 'The Decision''. Now, let us turn to the first of these consultative arrangements.

PRE-CALL CONSULTATIVE ARRANGEMENTS OF
'THE DECISION'

The pre-call consultative arrangements of 'The Decision' should themselves be divided into two separate parts:

(i) those taking place with the Fund's Managing Director alone; and (ii) those taking place with the Fund's Executive Directors, the Participants and the Fund's Managing Director (for the second time). These two sets of consultative arrangements are described by the Drafters of 'The Decision' as "Initial Procedure" and "Calls", respectively.¹ For this, we have also named our two next Titles as "(i) Initial Procedure", and "(ii) Calls". Now, let us see the first of these two sets of consultative arrangements of 'The Decision'.

1. See Paragraphs (6) and (7) of 'The Decision', Appendix IV.

(i) INITIAL PROCEDURE

The first step to be taken by a member State of the Fund — which is in need of some currencies — is to approach the Fund and raise the matter with it. Here, the Fund's Managing Director has the task of studying this request in the light of international monetary affairs. He should also take into account the Fund's holdings of the required currencies. It is at this stage that he should be convinced that the proposed borrowing arrangement (a) "is necessary in order to forestall or cope with an impairment of the international monetary system", ¹ and (b) "the Fund's resources need to be supplemented for this purpose". ² Paragraph (6) of 'The Decision', in this respect, says:

"Initial Procedure. — When a participating member or a member whose institution is a participant approached the Fund on an exchange transaction or stand-by-arrangement and the Managing Director, after consultation, considers that the exchange transaction or stand-by-arrangement is necessary in order to forestall or cope with an impairment of the international

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1. Cf. Report of Per Jacobsson, the F M D, to the ECOSOC, "International Financial News Survey", 1963, pp. 111-112.
 2. Cf. "International Financial News Survey", 1964, p. 433.

monetary system, and that the Fund's resources need to be supplemented for this purpose, he shall initiate the procedure for making calls under Paragraph 7".¹

However, what is not clear from the contents of the above Paragraph (6), is the question of who is (or are) that (or those) to be consulted by the Fund's Managing Director at this stage? Is it the prospective drawer, the Fund's Executive Directors, or the Participants (some, several or all of them)? Paragraph (6) simply states "... and the Managing Director, after consultation..." And, as we shall see later, one cannot be quite satisfied that this consultation is to take place between the Fund's Managing Director and the prospective drawer only.²

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1. See Appendix IV.
 2. Here, this at least may be noticed that Paragraph (6) of 'The Decision' is not stating that a prospective drawer must first contact the Fund's Managing Director. It says:

"When a participating member ... approaches the Fund."

Therefore a borrowing request apparently at a later stage would reach the hands of the Fund's Managing Director, and this would reach his hands through the International Monetary Fund and not directly from a prospective drawer. This state of affairs could create room for the suggestion that the Fund's Managing Director "after consultation" with the Fund's Executive Directors, may initiate the procedure for making calls under Paragraph (7) of 'The Decision'. Cf. "International Monetary Fund - Annual Report", 1962, pp. 37 and 39; "National Advisory Council on International Monetary and Financial Problems", op. cit., p.12. Cf. also "International Monetary Fund, 1945-1965" op. cit. volume I, p.569; volume II, pp.455-458.

If, however, the Fund's Managing Director, "after consultation" considers that the requested "borrowing arrangement" is such as to forestall or cope with an impairment of the international monetary system, and further the Fund's own resources cannot meet the demand for such a "borrowing arrangement", then "he shall initiate the procedure for making calls under Paragraph 7".¹

(ii) CALLS

At this stage, the Fund's Managing Director enters into real business; that is he tries, by way of consultation with competent authorities, to work out a formula for the requested "borrowing arrangement". At this stage (despite the previous one) it is clear that the Fund's Managing Director can make a proposal for calls for "an exchange transaction or for future calls for exchange transactions under a stand-by-arrangement", only after such a proposal has been (a) "accepted" by the Participants, and (b) "approved" by the Fund's Executive Directors.

Paragraph 7(a) of 'The Decision', in this respect, says:-

"(a) The Managing Director shall make a proposal for calls for an exchange transaction, or for

1. See Paragraph 6 of 'The Decision', Appendix I. Cf. "International Monetary Fund, 1945-1965", op. cit., volume II, pp. 376-377.

future calls ¹ for exchange transactions under a stand-by-arrangement only after consultation with Executive Directors and participants. A proposal shall become effective only if it is accepted by participants and the proposal is then approved by the Executive Directors ..."²

It is not, however, clear what is meant by the term "participants" in the above part of Paragraph 7(a) of 'The Decision'. In other words, Paragraph 7(a) does not specify which group of Participants are to be consulted in this respect. Is it all of them, or only those which are prepared to contribute money under the requested borrowing arrangement? This question may become more obscure if one tries to read the word "each" (used in the latter part of Paragraph 7(a)) as meaning all the Participants in the Borrowing Scheme; because it reads:-

"Each participant shall notify the Fund of the acceptance of a proposal involving a call under its

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1. Cf. "International Monetary Fund - Annual Report", 1968, p. 108.
 2. The above attempt by the Fund's Managing Director would apparently include the working out of different currencies, as well as their proportion, for every "borrowing arrangement". See Sub Paragraphs (b) and (c) of Paragraph 7 of 'The Decision', Appendix IV.

credit arrangement." ¹

Therefore, here Paragraph 7(a) does not specify that if, for example, one or more of the Participants were not in agreement with the proposed "borrowing arrangement", whether the rest of the Participants could hammer out a new proposal for such a borrowing arrangement; or whether it is intended to mean that all the Participants — irrespective of whether or not they are prepared to contribute money under that borrowing arrangement — should have their say about it. ²

Here it may be pointed out that there has been envisaged another set of consultations in Paragraph (7) of 'The Decision', that is, the consultative arrangements of Sub-Paragraph (d) of Paragraph 7. This set of consultative arrangements has been contemplated with a view to dealing with exceptional cases such as those in which a "lending Participant" requests the reversal of a "borrowing arrangement" which has already undergone the procedure of Paragraph 7(a), and which has been partly carried out by the Participant.

1. Cf. Brian Tew, "International Monetary Co-operation, 1945-63", Hutchinson University Library, London, 1963, p. 187, especially where he says:-

"These supplementary resources would not be available automatically, since use of them would be subject to the approval of the 'Club'".

2. Cf. Paragraphs (c) and (D) of 'The Letter', discussed under the Chapter "Voting Machinery of the Borrowing Scheme", infra.

The consultative arrangements of Paragraph 7(d) do not yet seem to constitute a new set of consultations. In fact, they seem to be the repetition of the consultative arrangements of Paragraphs 6 and 7 (a) of 'The Decision'.

Paragraph 7(d) of 'The Decision', in part, reads:-

"(d) If a participant on which calls may be made pursuant to Paragraph 7(a) for a drawer's purchases under a stand-by arrangement gives notice to the Fund that in the participant's opinion, based on the present and prospective balance of payments and reserve position, calls should no longer be made on the participant or that calls should be for a smaller amount, the Managing Director may propose to other participants that substitute amounts be made available under their credit arrangements, and this proposal shall be subject to the procedure of Paragraph 7(a) ..."

Therefore, the consultative arrangements of Paragraph 7(d) of 'The Decision' do not seem to constitute, in themselves a new and independent set of consultative arrangements.

So far, under the Sub-Heading of "Pre-Call Consultative Arrangements of 'The Decision'", we have seen that no

"borrowing arrangement" can be worked out unless and until it has been duly accepted by the Fund's Managing Director, the Participants, and the Fund's Executive Directors. Now let us turn to our next Sub-Heading and consider the consultative arrangements necessary for the "repayment" of a "borrowing arrangement".

PRE-REPAYMENT CONSULTATIVE ARRANGEMENTS
OF 'THE DECISION'

These next sets of consultative arrangements of 'The Decision' seem to be of a different nature as compared with those of Paragraphs 6, and 7 (a) of 'The Decision'. This is so, partly because (a) those to be consulted with, under these series of consultations are well described, and (b) these consultative arrangements are — in contrast with the previous ones — of a bilateral form. These consultative arrangements can be described as follows:-

(1) After the expiration of at most a five-year period — commencing with the date on which a borrowing arrangement has come into effect — the Fund's indebtedness shall become due. At this time the Fund would "consult" a lending Participant as to the means by which the Fund's indebtedness can be repaid. This repayment of the Fund's indebtedness may be achieved by paying to that Participant, of its own "currency whenever feasible, ¹ or in gold, or,

1. Cf. "International Monetary Fund - Annual Report", year 1968, p. 10; 1969, p. 15.

..., in other currencies that are convertible in fact." ^{1,2}

(2) There has been contemplated another set of consultative arrangements in Paragraph 11 of 'The Decision'. This second set of consultative arrangements has been well described by Sub-Paragraph (b) of the same Paragraph. It says:-

"(b) Before the date prescribed in Paragraph 11(a), the Fund, after consultation with a participant, may make repayment to the participant, in part ³ or in full, with any increases in the Fund's holdings of the participant's currency that exceed the Fund's working requirements, and participants shall accept such repayment." ⁴

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1. See Paragraph 11(a) of 'The Decision' Appendix IV. Cf. "International Monetary Fund - Annual Report", 1968, p. 102.
 2. As to the meaning of "convertible currencies", see Hans Aufricht, "International Monetary Fund; Legal Bases, Structure, Functions," op. cit., pp.25-26. Cf. F. A. Mann, "Money in Public International Law", Recueil des Cours, op. cit., pp. 48-50. As to the meaning of "currencies that are convertible in fact" see J. Gold, "Special Drawing Rights", International Monetary Fund, Washington, D.C., 1969, p. 29. Cf. "International Monetary Fund, 1945-1965", op. cit., volume III, p. 510.
 3. Cf. "International Monetary Fund - Annual Report", 1969, p. 35.
 4. Cf. "International Monetary Fund - Annual Report", 1968, p. 98.

(3) If, before the date prescribed in Paragraph 11(a), a lending Participant notifies the Fund that it is itself faced with a balance of payments and reserve difficulties, and thus asks the Fund for the repayment of all or part of the Fund's indebtedness; the Fund, "after consultation with the participant" ¹ shall make repayment to that Participant "in the currencies of other members" ² that are convertible in fact, or ... in gold... ³

1. The lending Participant, that is.
2. See "International Financial Statistics" , I.M.F., June 1970, pp. 16 - 59 where it is said:-

"Generally speaking, amounts lent to the Fund are repayable when the member whose drawing they financed repurchases its currency from the Fund or when the lending country itself experiences a balance of payments deficit. In the first case repayment would generally be in the currency of the country from whom the Fund had borrowed. In the latter case repayment would be in the currency of other countries."

3. See Paragraph 11(f) of 'The Decision', Appendix IV. Cf. "International Monetary Fund - Annual Report", year 1962, p. 35; year 1968, p. 107; year 1969, pp. 34-35. Cf. also "International Monetary Fund - Summary Proceedings", year 1968, p. 26; "International Monetary Fund, 1945-1965", op. cit., volume I, pp. 515 - 516; "The Times", July 16, 1970, p. 21.

(4) There has been envisaged another set of consultative arrangements which would lead to the "repayment" of the Fund's indebtedness to the lending Participants; that is, where the Fund considers that the problem for which a drawer member has come to a "borrowing arrangement" has been overcome. Paragraph 11(d) of 'The Decision' in this respect says:-

"Whenever the Fund decides in agreement with a drawer that the problem for which the drawer made its purchases has been overcome, the drawer shall complete repurchase, and the Fund shall complete repayment and be entitled to use its holdings of the drawer's currency below 75 per cent of the drawer's quota in order to complete such repayment." ¹

To sum up our considerations under the Sub-Heading of "Pre-Repayment Consultative Arrangements of 'The Decision'", we could say that before the "repayment" of the Fund's indebtedness, there may take place four sets of consultative arrangements; and these four sets of consultative arrangements are to be arranged between the International Monetary Fund, on the one hand, and a lending or a borrowing Participant on the other. But, what we could not clearly see here was what kind of legal consequences all

1. See Appendix IV. Cf. "International Financial News Survey", 1962, p. 341.

the above "consultations" could bring about? ¹ And, if, for instance, some of these "consultations" did not result in a mutual understanding between the Fund and a lending (or borrowing) Participant, what would then be the legal position in this respect? Would the final decision rest with the Fund's Authorities? Or has there taken place a "controversy" over the interpretation of 'The Decision' which interpretation requires the agreement of the Fund as well as the Participants? ²

VI - CONSULTATIVE ARRANGEMENTS OF 'THE LETTER'

With regard to the consultative arrangements of 'The Letter', one would assume that these are more or less in line with those of Paragraphs of 'The Decision' ³. Bearing

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1. Cf. the term "consultation" of Article 54 (b) and Article 57 (b) of the "Vienna Convention on the Law of Treaties", op. cit., p. 19. Cf. U.N. Monetary Documents, p. 824; Hans Aufricht, "Comparative Survey of Central Bank Law", op. cit., p. 116; Articles IV (5-b), VII (3 - b), VIII (3) - (6), XIV (4), XIX (8) - (i - 4) of the Fund's Articles of Agreement. Cf. moreover F. A. Mann, "Reflections on a Commercial Law of Nations", op. cit., p. 32.
 2. See former part of Paragraph 20 of 'The Decision', Appendix IV. Cf. J. Gold, "Interpretation by the Fund", op. cit., p. 55; F. A. Mann "Money in Public International Law", Recueil des Cours, op. cit., pp. 42 - 44; "International Monetary Fund - Annual Report", 1962. p. 37.
 3. Cf. J. E. S. Fawcett, "International Monetary Fund and International Law", op. cit., p. 75.

this assumption in mind, we have attempted to consider these consultative arrangements under the same Sub-Headings as those of Paragraphs of 'The Decision'. As such, we would here also have the Sub-Headings of "Pre-Call Consultative Arrangements of 'The Letter'", and "Pre-Repayment Consultative Arrangements of 'The Letter'".

The thing, however, which commends reference here — even before knowing the status and scope of the consultative arrangements of 'The Letter' — is the following contention:

If the consultative arrangements envisaged in 'The Letter' are so assimilated to those of 'The Decision' that one can hardly differentiate between the two, then one set of these consultative arrangements seems to be superfluous. And, if the two sets of consultative arrangements have been contemplated with a view to achieving the same objective, but because they have been drafted by different drafters, they do not match each other, then their contemporaneous effectiveness seem to be mischievous. Now, let us turn to the actual provisions of the Pre-Call Consultative Arrangements of 'The Letter'.

PRE-CALL CONSULTATIVE ARRANGEMENTS OF
'THE LETTER'

Paragraph (A) of 'The Letter' seems to have envisaged

two sets of consultative arrangements, (a) the consultation between a prospective drawer and the Fund's Managing Director, and (b) the consultation between the prospective drawer and other Participants. It says:

"(A) A participating country which has need to draw currencies from the International Monetary Fund, or to seek a stand-by agreement with the Fund in circumstances indicating that the Supplementary Resources might be used, shall consult with the Managing Director of the Fund first, and then with the other Participants." ¹

Paragraph (B) of the same document also speaks of the consultations between the Participants. But the consultative arrangements of this Paragraph (B) seem to be the extent of the consultative arrangements of the latter part of Paragraph (A), since it says:-

"If the Managing Director makes a proposal for Supplementary Resources to be lent to the Fund, the participants shall consult on this proposal and inform the Managing Director of the amounts of their currencies which they consider appropriate to lend to the Fund, taking into account the recommendations of the Managing Director ... The participants shall aim at reaching unanimous agreement."

1. See Appendix I.

If the consultative arrangements of the above Paragraph (B) is the extent of consultative arrangements of the latter part of Paragraph (A), then it would follow that the provision of Paragraph (C) of 'The Letter' is also the extent of consultative arrangements of the latter part of Paragraph (A). This is so, because Paragraph (C), whilst referring to the last sentence of Paragraph (B), ¹ points out:-

"If it is not possible to reach unanimous agreement, the question whether the participants are prepared to facilitate, by lending, their currencies, an exchange transaction or stand-by arrangement ... in the general order of magnitude proposed by the Managing Director, will be decided by a poll of the participants ..."²

So far, under the Sub-Heading of "Pre-Call Consultative Arrangements of 'The Letter'", we have seen that any member State of the Fund who is in need of some currencies, must first consult the Fund's Managing Director, and then, "the other participants", without whose acceptance no borrowing arrangement can take place.

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1. That is, the sentence "The participants shall aim at reaching unanimous agreement."
 2. See Appendix I.

Here, if one attempts a comparison of the consultative arrangements of 'The Decision' with those of Paragraph (A) of 'The Letter', one might get the impression that the consultative arrangements of Paragraph (A) do match the combination of the consultative arrangements of Paragraphs 6 and 7(a) of 'The Decision'. In other words, one might think that no difference can be traced between the "Pre-Call Consultative Arrangements of 'The Letter'" and the "Pre-Call Consultative Arrangements of 'The Decision'". 1,2

If, however, one of the indispensable factors in the above consultative arrangements is the identity and number of bodies contemplated to take part at any one "stage" of the above consultative arrangements, then the above comparison may be subject to the following considerations.

1. Paragraph 6 of 'The Decision' states that a prospective drawer must first approach the International Monetary Fund; whereas the former part of Paragraph (A) of 'The Letter' specifies that a prospective drawer must

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1. That is to say, one might think that "Initial Procedure" of Paragraph 6 of 'The Decision' could match the first sets of consultations of Paragraph (A) of 'The Letter'; and the stage of "Calls" of Paragraph 7(a) of 'The Decision' could match the second sets of consultative arrangements of Paragraph (A) of 'The Letter'.
 2. Cf. "International Monetary Fund - Summary Proceedings", 1962, pp. 19-20.

first consult the Fund's Managing Director and not the Fund itself. ¹

2. Those taking part in the second sets of consultations of Paragraph (A) are (a) the prospective drawer and (b) the other Participants. And no role has been contemplated therein, to be played by the Fund's Managing Director or the Fund's Executive Directors, whereas under the provision of its counterpart ² any proposal "for calls for an exchange transaction or for future calls for exchange transactions under a stand-by arrangement" shall be made by the Fund's Managing Director, and shall not be of any effect unless and until it has been "approved" by the Fund's Executive Directors. ³

Therefore, in Paragraph 7(a) of 'The Decision', despite the latter part of Paragraph (A) of 'The Letter', a prospective drawer is not only expected to consult "the other participants" but is also expected to consult the

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1. Cf. "International Monetary Fund, 1945-1965", op. cit., volume II, p. 375 in conjunction with Article XII, Section 2 (b) of the Fund's Articles of Agreement, and Section 15 of the F.B.L.
 2. That is Paragraph 7 (a) of 'The Decision'.
 3. See Paragraph 7 (a) of 'The Decision', Appendix IV.

Fund's Managing Director (for a second time); and the result of their consultation must finally be "approved" by the Fund's Executive Directors.

3. At the second stage of consultative arrangements of Paragraph A (illustrated by Paragraphs (B) and (C)) the Participants may see it necessary to vote for a "borrowing arrangement", and this voting is apparently to take place without the presence of any authority from the International Monetary Fund.¹; whereas no such a voting machinery has been contemplated in Paragraph 7(a) of 'The Decision'.²

4. As we have witnessed, the "Pre-Call Consultative Arrangements of 'The Decision'", would end with the consultative arrangements of its Paragraph 7; whereas the "Pre-Call Consultative Arrangements of 'The Letter' " would not, on the face of it, end with the consultative arrangements of its Paragraphs (A), (B) and (C). In fact the drafters of Paragraphs of 'The Letter' have contemplated another set of consultative arrangements which is non-existent in the series of consultations of 'The Decision'. And in this set of consultative arrangements a comparative newcomer would participate, that is, the

1. See Paragraph (B) and Paragraph (C) of 'The Letter' Appendix I.

2. See Paragraph 7(a) of 'The Decision', Appendix IV.

Fund's Managing Director. The former part of Paragraph (D) of 'The Letter', in this respect says:-

"If the decision in Paragraph C is favourable, there shall be further consultations among the participants, and with the Managing Director, concerning the amounts of the currencies of the respective participants which will be loaned to the Fund in order to attain a total in the general order of magnitude agreed under Paragraph C ..."¹

Here one may get the impression that the consultative arrangements spoken of in former part of Paragraph (D) of 'The Letter' is the continuation of consultative arrangements of Paragraph (C) of the same document. In other words, one may get the impression that the second chain of consultative arrangements spoken of in the latter part of Paragraph (A) and illustrated in Paragraphs (B) and (C) and former part of Paragraph (D) of 'The Letter' can match the consultative arrangements of Paragraph 7(a) of 'The Decision'. As such, there exists no fundamental difference between the pre-call consultative arrangements of 'The Letter' and the pre-call consultative arrangements of 'The Decision'.

1. Cf. latter part of Paragraph (D) of 'The Letter', discussed under the Chapter "Voting Machinery of the Borrowing Scheme", infra.

This impression may, however, be subject to the following considerations:

First of all, the former part of Paragraph (D) of 'The Letter', by employment of the expression "further consultations" has differentiated between the consultative arrangements of this Paragraph and that of Paragraph (C) of 'The Letter'.

Secondly, (as we have already made reference to), at the stage of consultative arrangements of the former part of Paragraph (D) of 'The Letter', a comparative newcomer (that is the Fund's Managing Director) comes on to the scene of consultation; whereas at the stage of consultative arrangements of the latter part of Paragraph (A) of 'The Letter' (as illustrated by Paragraphs (B) and (C) of the same document) the Fund's Managing Director has no role to play.

As such, the consultative arrangement of the former part of Paragraph (D) of 'The Letter' is not an extension of consultative arrangements of the latter part of Paragraph (A), and Paragraphs (B) and (C) of the same document; it is, in fact, a different set of consultative arrangement set out with a view to achieving different objects.¹ And its existence, amongst the consultative

1. See *infra*, under the Chapter "Voting Machinery of the Borrowing Scheme".

arrangements of 'The Letter' should be regarded as another sign of the differences existing between those consultative arrangements and the consultative arrangements of 'The Decision', because no such consultative arrangement has been contemplated in the Paragraphs of 'The Decision'.

Even if one overlooks the fact that the consultative arrangements of the former part of Paragraph (D) is not the continuation of consultative arrangements of the latter part of Paragraph (A) and Paragraphs (B) and (C) of 'The Letter', yet this cannot produce the necessary similarity between the consultative arrangements of these Paragraphs and those of Paragraph 7(a) of 'The Decision', because, under Paragraph 7(a) of 'The Decision, one further body, (that is the Fund's Executive Directors) is to be consulted with; whereas no such body has been contemplated to be consulted with under the provision of the former part of Paragraph (D) of 'The Letter'. In fact, — as we may have noticed — , the Fund's Executive Directors have been accorded no role to play under the Paragraphs of 'The Letter'.

5. Another set of consultative arrangements of the "Pre-Call Consultative Arrangements of 'The Letter'" is that of the latter part of Paragraph (D) of 'The Letter'. According to this latter part of Paragraph (D) a Partici-

pant can give notice that in its opinion, based on its present and prospective balance of payments and reserve position, calls should not be made on it, or, calls should be made for a smaller amount than that originally proposed. This would be in the case where a Participant has not yet contributed any money, under the borrowing arrangement in question. The latter part of Paragraph (D) of 'The Letter' reads:-

"... If during the consultations a participant gives notice that in its opinion, based on its present and prospective balance of payments and reserve position, calls should not be made on it, or that calls should be for a smaller amount than that proposed, the participants shall consult among themselves and with the Managing Director as to the additional amounts of their currencies which they could provide so as to reach the general order of magnitude agreed under Paragraph C." 1,2

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1. Take notice of the term "additional amounts" in the above context. Compare it with that of "the amounts" of former part of the same Paragraph. See Appendix I. Cf. "Voting Machinery of the Borrowing Scheme", infra.
 2. Remember that here, under the Sub-Heading of "Pre-Call Consultative Arrangements of 'The Letter'", we are still in the process of comparing the pre-call consultative arrangements of 'The Letter' with those of 'The Decision'. And so far, we have observed four considerations concerning the fact that the pre-call consultative arrangements of these two documents do not match each other. And now, we are in the process of our fifth consideration in this respect.

To the contrary, no such a consultative arrangement has been contemplated in the series of "Pre-Call Consultative Arrangements of 'The Decision'".

It is true that Sub-Paragraph (d) of Paragraph 7 of 'The Decision' speaks of the cases in which no more calls should be made on a Participant, even though those calls have already been accepted by it under Paragraph 7(a) of 'The Decision'. Yet, so far as the wording of Paragraph 7(d) of 'The Decision' indicates, its consultative arrangement has been contemplated with a view to dealing with the cases in which a Participant has partly contributed money under a "borrowing arrangement" and then has itself experienced balance of payments and reserve difficulties, to the extent that it is "no longer" able to contribute money under that borrowing arrangement. ¹

1. Paragraph 7(d) of 'The Decision', in part, reads as follows:-

"(d) If a participant on which calls may be made pursuant to Paragraph 7(a) for a drawer's purchases under a stand-by arrangement, gives notice to the Fund that in the participant's opinion, based on the present and prospective balance of payment and reserve position, calls should no longer be made on the participant or that calls should be made for a smaller amount, the Managing Director may propose to other participants that substitute amounts be made available under their credit arrangements, and this proposal shall be subject to the procedure of Paragraph 7(a) ... "

Take notice of the expression "calls should no longer be made" in the above context, which is indicative of the fact that some calls have already been carried out by that Participant. Compare it with the expression "calls should not be made" of the latter part of Paragraph (D) of 'The Letter', which is indicative of the fact that no call has yet been carried out by that Participant.

As such, the consultative arrangements spoken of in Paragraph 7(d) of 'The Decision' seem to have no similarity with those of the latter part of Paragraph (D) of 'The Letter'. To put it another way the consultative arrangements of the latter part of Paragraph (D) seem to have no counterpart in the consultative arrangements of Paragraphs of 'The Decision'.

Here, therefore, we must admit that we have failed to establish any substantial similarity between the "Pre-Call Consultative Arrangements of 'The Decision'" and the "Pre-Call Consultative Arrangements of 'The Letter'". Rather, it seems more accurate to suggest that the "Consultative Arrangements of 'The Letter' have been on a different line, as compared with the "Consultative Arrangements of 'The Decision'".

This second suggestion can be supported by the facts which we are going to consider under the next Sub-Heading.¹

1. Cf. "International Monetary Fund, 1945-1965", op. cit., volume II, pp. 376-377 esp. where it is said:-

"The question of renewal (of the Borrowing Scheme) was discussed in the Board (of Governors of the Fund) on April 28, 1965 ... Some simplification of the method of activating the Arrangements was ... suggested. As, however, it seemed likely that such changes would not be approved by the participants, the Chairman proposed, and the Board approved, that the Fund should seek a continuation of the Arrangements without amendments". Parentheses added.

Cf. also Id. volume I, p. 570; Report by Per Jacobsson, to the ECOSOC, "International Financial News Survey", 1962, p. 111.

PRE-REPAYMENT CONSULTATIVE ARRANGEMENTS
OF 'THE LETTER'

The authors of 'The Letter' have not apparently touched the question of "repayment" of the Fund's indebtedness. The reason for this may be that the Group of Ten have preferred this issue to be dealt with by the Fund's authorities, and under the Paragraphs of 'The Decision'.

One may, however, refer to Paragraph (F) of 'The Letter' as the provision dealing with the question of "repayment" of the Fund's indebtedness, under 'The Letter'. It all depends on the interpretation of Paragraph (F) and the term "reversal" therein. Paragraph (F) of 'The Letter' reads as follows:-

"F. If a participant which has loaned its currency to the Fund under its credit arrangement with the Fund subsequently requests a reversal of its loan which leads to further loans to the Fund by other participants, the participant seeking such reversal shall consult with the Managing Director and with the other participants."

To us, nevertheless, a preferable construction of the provisions of Paragraph (F) is that it has been formulated with a view to dealing with cases in which a Participant is no longer able to meet "further loans" under a borrowing

arrangement; and thus it does not touch the question of "repayment" of the Fund's indebtedness to the "lending Participants".¹

The reason for this suggestion is that the Paragraph (F) does not speak of the "repayment" of any currency to a lending Participant. It simply speaks of the reversal of a "loan which leads to further loans to the Fund by other participants", which loan is, prima facie, to be paid to a "drawer" member of the Fund and not by a "drawer" to a "lending Participant".²

Moreover, had the drafters of 'The Letter' intended to deal with the question of "repayment" of the Fund's indebtedness, they would have done so in an elaborate way, as has been done by the drafters of Paragraphs of 'The Decision'.³

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1. Cf. latter part of Paragraph (A) of 'The Letter'. This comparison may result in that the Paragraph (F) by itself does not constitute any new set of consultative arrangements.
 2. Take notice of the word "further loans" in the above Paragraph (F).
 3. See Paragraph 11, of 'The Decision', discussed under Sub-Heading of "Pre-Repayment Consultative Arrangements of 'The Decision'".

Therefore, to us, no "Pre-Repayment Consultative Arrangements" have been envisaged in the series of consultative arrangements of 'The Letter'.¹ And, the non-existence of the "Pre-Repayment Consultative Arrangements of 'The Letter'" can be quoted as another reason for the fact that there exists no fundamental similarity between the consultative arrangements of 'The Letter' and those of 'The Decision'.

Now, let us sum up our considerations under the present Chapter. A recall of what we have been considering under the Headings of "Consultative Arrangements of 'The Decision'" and "Consultative Arrangements of 'The Letter'", would reveal more differences than similarities between these series of consultative arrangements, so much so that one might get the impression that each of these series of consultative arrangements has been contemplated with a view to achieving a different object, and thus is to be abided by separately and indispensably. In other words, one might get the impression that every member State of the Fund who is in need of some currencies must follow all the consultative arrangements of 'The Letter' and 'The Decision' in turn.² This impression, however, may

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1. Cf. "International Monetary Fund - Summary Proceedings", 1962, pp. 19 - 20.
 2. Cf. "International Monetary Fund, 1945-1965", op. cit., volume I, pp. 512 - 513.

at first sight offer a sort of temporary satisfaction; but in the long run it cannot resolve all the problems involved.

Rather, if a prospective drawer is supposed to follow all the consultative arrangements of 'The Letter' and 'The Decision' in turn, this itself would create more legal and practical difficulties. For instance:-

1. It could not be clear, from the provisions of 'The Letter' and 'The Decision', which series of these consultative arrangements is to be followed first.

2. As we have already witnessed, amongst the elements necessary to prevent or to stop speculation and movement of "hot" money, is the prompt taking of the steps taken by the Group of Ten. Yet, if a prospective drawer is to go through all the above consultative arrangements in turn, it would then be difficult to forecast the end of these series of consultative activities, and, at the same time, it would be too late to see any result from them.

3. If the consultative arrangements of 'The Letter' and 'The Decision' are to be followed separately, and indispensably, it would then not be consistent with the express provisions of some other Paragraphs of the Borr-

owing Scheme. For the importance, however, attached to this third issue, we have preferred to consider it, inter alia, under the next following Heading.

VII - CONSULTATIVE ARRANGEMENTS OF THE
BORROWING SCHEME — FURTHER CONSIDERATIONS

Under the present Heading, we begin with the study of the provisions of the latter part of 'The Letter', which provisions may have the effect of resolving most of the problems with which we have so far been faced under the present Chapter. According to this provision of 'The Letter' any consultative arrangement of the Borrowing Scheme (for whatever purposes) should have the company of "all" the Participants, as well as the Fund's Managing Director.

It says:-

"It is understood that in the event of any proposals for calls under the credit arrangements or if other matters should arise under the Fund decision ¹ requiring consultations among the participants, a consultative meeting will be held among all the participants ... The Managing Director of the Fund or his representative shall be invited to participate in these consultative

1. 'The Decision', that is.

meetings." 2

The above provisions of the latter part of 'The Letter' may be quoted as a sort of solvent provision; because it suggests that whenever the Participants and/or the Fund's authorities are faced with legal and procedural difficulties concerning the consultative meetings of the Borrowing Scheme, they can, by resorting to this provisions, conclude that the ingredients of any consultative meeting of the Borrowing Scheme are (a) all the Participants and (b) the Fund's Managing Director or his representative.

In this respect, however, one must be cautious in not stressing too much on the wording of provisions of the latter part of 'The Letter'. This we say in view of the fact that the provision itself is not immune from contention. And, at least, the following contentions should be considered in connection therewith:

1. No conclusive evidence can be produced in that:

(A) The provision of the latter part of 'The Letter' should override all other elaborate provisions of 'The

1. See Appendix I. Cf. "International Monetary Fund - Summary Proceedings", 1962, pp. 19 - 20. Cf. also "National Advisory Council on International Monetary and Financial Problems", op. cit., p. 13.

Letter', concerning the consultative arrangements of the same document. And a different, and perhaps preferable construction here is that the provision itself may have been drafted per incuriam.

If the drafters of 'The Letter' had had it in mind to formulate all the consultative arrangements of 'The Letter' in a concise way¹ they would have dropped all other provisions of 'The Letter' concerning its consultative arrangements.

(B) It would be more difficult to assume that the provisions of the latter part of 'The Letter' can override the detailed provisions of constructive arrangements of 'The Decision'. It is true that the provision says that "in the event of any proposals for calls under the credit arrangements or if other matters should arise under the Fund decision² requiring consultations among the participants", those consultations should also be subject to consultative rules of the latter part of 'The Letter', yet one cannot be sure that this statement of the drafters of 'The Letter' should have a prevailing

1. See latter part of 'The Letter'

2. 'The Decision', that is.

effect over all the consultative arrangements of 'The Decision'.¹

And, as we have seen earlier, there are some writers who believe that so far as the provisions of 'The Letter' are concerned the Fund is *res inter alios acta*. And, to them, the consultative rules of the latter part of 'The Letter' cannot have any effect on the consultative rules drawn up in the provisions of 'The Decision'.²

Therefore, here we can reiterate that (a) the consultative arrangements of 'The Decision' cannot be reconciled with those of 'The Letter', (b) the consultative

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1. However, one incidental inference from the expression "in the event of any proposals for calls .. or if other matters should arise under the Fund decision" is that, to the drafters of 'The Letter', there cannot be envisaged any consultative arrangement of both 'The Letter' and 'The Decision' which cannot be embraced by the above provision of the latter part of 'The Letter'. As such, the suggestion that each of the consultative arrangements of 'The Letter' and 'The Decision' is to be followed separately, and in turn, cannot be reconciled with the above provision of the latter part of 'The Letter'. Cf. "International Monetary Fund - Annual Report", 1962, p . 35.
 2. See *supra*, under the Chapter "The Constituent Instruments of the Borrowing Scheme".

arrangements of 'The Letter' and 'The Decision' cannot be undergone separately and in turn; and (c) the latter part of 'The Letter', so far, cannot throw any light on the above legal questions.

Here we may be accused of turning poetry into prose, and prose into jargon ¹; because after the lapse of a long period of time during which the Borrowing Scheme has been in operation, no formidable legal difficulty has arisen out of its consultative arrangements so much so that so far not a single formal interpretation has been seen necessary in this respect. ²

This challenge, however, may be answered as follows:

(i). It seems reasonable to believe that up to now all the controversies which have arisen out of the consultative arrangements of the Borrowing Scheme have been resolved "in a flexible and practical manner ... and by

1. See remarks made by Lord Keynes in the Closing Plenary Session of the United Nations Monetary and Financial Conference of 22 July, 1944, where he said:-

".... I have to confess that, generally speaking, I do not like lawyers ... Too often lawyers are men who turn poetry into prose, and prose into jargon..."

See U.N. Monetary Documents, pp. 1109 - 1110.

2. See Appendix XXI. Cf. J. Gold, "Interpretation by the Fund", op. cit., p. 56.

more informal procedures than those established by Paragraph 20." ¹, yet the very text of the above statement reveals the fact that (a) so far, there have arisen controversies over the consultative arrangements of the Borrowing Scheme; and (b) due to the fact that no official steps have been taken to remove those controversies — either by way of formal interpretation under Paragraph 20, or by way of amendment under Paragraph 15 of 'The Decision' — therefore they are legally still in existence; and every now and then they may be resorted to, not only for their own sake, but also for the sake of achieving some other related objectives. ²

(ii) By reason of the fact that no judicial body outside the Group of Ten has been seen necessary to exert authoritative control over their activities, under the Borrowing Scheme, ³ therefore they might have developed, in the course of time, practices which were unknown

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1. See Ibid.
 2. Cf. statement quoted from Herr Franz Josef Strauss, the West-German Finance Minister, in "The Guardian", January 20, 1969, p. 10. Cf. also (1967), 61, A.J. I.L., p. 392.
 3. Cf. F. A. Mann, "International Monetary Co-operation", op. cit., p. 255.

to the drafters of the Borrowing Scheme.¹ Yet the fact of non-appearance of any "formal controversy" over the activities of the Group of Ten cannot be quoted as a proof of the fact that all their activities are being kept within the framework of the Borrowing Scheme.²

2. If one could have followed some of the recently held consultative meetings of the Group of Ten, one would have seen that some of these consultative arrangements have not met the requirements of the provision of the latter part of 'The Letter' either.³ For instance, one would have seen that some of these consultative meetings took place without the presence of the Fund's Managing Director or his representative;⁴ whereas his presence in any one of the consultative meetings of the Group of Ten has been one of the rules set out in the provision of the latter part of 'The Letter'.

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1. The occurrence of such a development constitutes our next consideration under the present Chapter.
 2. Cf. J.E.S. Fawcett, "The Law of Nations", op. cit., pp. 95 - 96.
 3. Remember that under the present Heading, we are still in the process of examining the effects of the provision of the latter part of 'The Letter' on the consultative arrangements of the Borrowing Scheme.
 4. See the process of the recent consultative meetings of the Group of Ten, held in Bonn, in November, 1968. See, for instance, "The Times", 22 November, 1968, p. 21. Cf. "Communiqué of the Ministerial Meeting of the Group of Ten", of July 1966, in the Hague.

It is true that, according to the provisions of some other Paragraphs of the Borrowing Scheme, certain consultative meetings of the Borrowing Scheme can be held without the presence of the Fund's Managing Director; but, here we are trying to see whether the provisions of the latter part of 'The Letter' have had (in practice)¹ any power to prevail over other provisions for consultative meetings of the Borrowing Scheme.

Now, in view of the facts considered under the present Heading there seems to be no specific justification for believing that the provisions of the latter part of 'The Letter' should have a prevailing effect over all other provisions of consultative meetings of the Borrowing Scheme.

The thing, however, which should not be overlooked in this connection is the undermining effect of this provision in the entire consultative machinery of the Borrowing Scheme. The reason for this is that this provision is providing that any one of the consultative meetings of the Group of Ten should have the ingredients of (a) the Fund's Managing Director and (b) all the Participants; whereas the provisions of other consultative arrangements

1. Cf. Article 31 (3 - b) of the "Vienna Convention on the Law of Treaties", *op. cit.*, p. 12. Cf. also (1967), 61, A.J.I.L., pp. 379, 385 - 386.

of the Borrowing Scheme are providing (a) different "stages" before a borrowing arrangement can be worked out and (b) different bodies to take part at any one of these "stages". As such, the provision of the latter part of 'The Letter' (a) undermines the concept of "stages" of consultative arrangements of the Borrowing Scheme and (b) mixes up the ingredients of bodies supposed to take part at any one of these different "stages", so much so that this provision makes it superfluous to chart the "stages" necessary before a borrowing arrangement can be sorted out.

For this and for some other reasons (which will come later) it seems preferable to give up attempts for charting (a) various stages necessary before a "borrowing arrangement" can be worked out, and (b) the bodies supposed to take part in any one of these various stages. Instead, it would be easier to try for the identification of the bodies supposed to take part in the consultative arrangements of the Borrowing Scheme as a whole, and ignore the "stages" contemplated therein. This constitutes our consideration under the next following Heading.

VIII - ATTENDANTS AT THE CONSULTATIVE
MEETINGS OF THE BORROWING SCHEME

Here again, due to the differences existing between

the rules of consultative arrangements of 'The Letter' and 'The Decision', it is not easy to discover the bodies authorised to take part in the consultative arrangements of the Borrowing Scheme. For instance, according to the provision of Paragraph 7(a) of 'The Decision', the Fund's Executive Directors are amongst the bodies to be consulted before a "borrowing arrangement" can be worked out; whereas they apparently have no role to play so far as the consultative arrangements of 'The Letter' are concerned.

However, by reason of the fact that the actual sponsors for any "borrowing arrangement" have been the Fund's Executive Directors¹ therefore it is difficult to think of any "borrowing arrangement" which could be worked out without the consultation and "approval" of the Fund's Executive Directors.²

With regard to other bodies auth-

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1. In a sense, scarce currencies are to be borrowed first by the Fund (Paragraph 1(vii) of 'The Decision'); and then lent to a prospective drawer. Cf. Article VII (2) of the Fund's Articles of Agreement. For the construction of the term "Fund" used in Paragraph 1(vii) of 'The Decision' see Article XII of the F.A.A. and Section 15 of the Fund's By-Laws.
 2. Cf. however, "International Monetary Fund, 1945-1965", op. cit., volume II, pp. 457 - 458.

orised to participate in the consultative meetings of the Borrowing Scheme, there seems to be no difficulty in identifying them. And the provisions of both 'The Letter' and 'The Decision' in this respect have been the same. These bodies are (a) The Fund's Managing Director and (b) the Participants.

As a result, we can consider that the bodies authorised to take part in the consultative arrangements of the Borrowing Scheme are (a) the Fund's Managing Director, (b) the Participants in the Borrowing Scheme, and (c) the Fund's Executive Directors. And no other body is legally authorised to take part in these consultative arrangements. This makes the risk of any "leakage" out of these consultative arrangements less probable.

However, an examination of one of the recent communiques of the Group of Ten, reveals that many other bodies and entities have taken an active part in the consultative meetings of the Borrowing Scheme. If one follows the reports concerning the November 1968's consultative meetings of the Group of Ten, he will observe the participation of countries and entities such as Switzerland and the Commission of the European Communities in these consultative meetings. At the end, one will read that the \$ 2,000 m. stand-by arrangement (negotiated for the benefit of France) is to be provisionally shared by countries and entities like Scandinavian countries and the Bank for International Settlements. For instance, in respect of provisional sharing of the above \$ 2,000 m. stand-by arrangement, it was reported in the press that:-

"...Germany, \$ 600 m; the United States Federal Reserve, \$ 500 m; Italy, \$ 200 m....."

Switzerland and the Scandinavian countries,
 \$ 100 m.¹ and the Bank for International
 Settlements, \$ 50 m."²

The Communiqué itself, in part reads:

"1. The Ministers and central bank governors of the 10 countries participating in the General Arrangements to Borrow met in Bonn on November 20-22, 1968, under the Chairmanship of Karl Schiller, Minister of Economics, Federal Republic of Germany.

Pierre-Paul Schweitzer, Managing Director of International Monetary Fund took part in the meeting, which was also attended by the President of the Swiss National Bank, the Deputy Secretary-General of the O.E.C.D., the General Manager of the B.I.S., and the Vice-President of the Commission of the European Communities.

2. The meeting was called by its Chairman, Minister Schiller, on the proposal of several member countries..."^{3.4.}

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1. Take notice of the term "Scandinavian countries" in the above context, which should be distinct from the "Sveriges Riksbank" the actual Participant in the Borrowing Scheme.
 2. See "The Times Business News", November 23, 1968, p.11.
 3. It is not clear whether by the expression "The proposal of several member countries" in the above context it is meant (several) proposal(s) for (several) borrowing arrangement(s), put forward by (several) Participants? Cf. Paragraphs 6 and 7(a) of 'The Decision'. Cf. also Paragraphs (A), (B) and (C) of 'The Letter'.
 4. For the complete text of the above communiqué, see Appendix XIX.

As to the participation of some other bodies such as O.E.C.D., also one may quote the provision of the latter part of 'The Letter', where it says:-

"It is understood that in order to further the consultations envisaged, participants should, to the fullest extent practicable, use the facilities of the international organisations to which they belong in keeping each other informed of the developments in their balance of payments that could give rise to the use of the Supplementary Resources....." ¹

The above provision, however, seems to recommend the use of only "facilities" of the above international organisations (like information and data), which could well inform the Group of Ten of the balance of payments position of each other.

As such, the wording of the above provision does.

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1. See Appendix I. Cf. Report of Per Jacobsson to the ECOSOC, "International Financial News Survey", 1962, p.111. Cf. The same survey, year 1961, p.154; year 1964, pp. 316 and 401.

not go so far as to authorise these bodies to take part in the consultative meetings of the Borrowing Scheme. This legalistic approach to the above provision, however, does not seem to be of practical importance; because the co-operation of these institutions with the Group of Ten seems to be of vital importance, something which cannot be dispensed with. ¹

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1. Cf. "National Advisory Council on International Monetary and Financial Problems", op.cit., p.13; "Ministerial Statement of the Group of Ten and Annex Prepared by Deputies", Paris, August 10, 1964, pp. 1, 5, 6, and 11. "Report of the Study Group on the Creation of Reserve Assets, Report to the Deputies of the Group of Ten", 1 August, 1965, pp.45 and 74-75; "Communique of Ministers and Governors of the Group of Ten", September 28, 1965; "International Monetary Fund — Summary Proceedings", 1965, pp.279-281; "Communique of the Group of Ten", the Hague, 25 July 1966, Paragraph 2, "Report to the Ministers and Governors, by the Group of Deputies", the Group of Ten, 17 July, 1966, p.16. Cf. also F.A. Mann, "Money in Public International Law, Recueil des Cours, op.cit., pp.28-31.

The following points, in connection with the above communique, seem to be noteworthy:-

1. It is not clear from the context of the above communique, whether any one of the rules which we have considered under the headings of "Pre-Call Consultative Arrangements of 'The Decision'" and "Pre-Call Consultative Arrangements of 'The Letter'" have been observed in the above series of consultative meetings. ¹

2. The above contention can be extended to cover the bodies and entities participated in the above consultative meetings. ² One of the authorities referred to in the above communique, however, is the President of the National Bank of Switzerland. His participation in the above consultative meetings is, however, justified on the grounds that the Swiss Confederation has become, since 1964, an Associate Member to the General Arrangements to Borrow. ³

1. Take notice of the term "meeting" used in the above communique in a singular form.

2. Cf. "International Monetary Fund, 1945-1965", op.cit., Vol. II, p.35.

3. The Association of Swiss Confederation with the General Arrangements to Borrow took effect by virtue of the "Exchange of Letters between the Ambassador of Switzerland to the United States and the Managing Director of the Fund" on 11 June, 1964. See the Fund's Selected Decisions, pp.69-72. The question of association of Swiss Confederation with the General Arrangements to Borrow itself merits a treatise. However, for a brief explanation as to how this association has been working in practice, see Appendix XXII. Appendix XXII contains valuable explanatory notes with which the Swiss National Bank has kindly furnished us. Cf. "International Financial News Survey", year 1961, p.225; year 1962, p.381; year 1963, p.89; 111; year 1964, p.189. "International Monetary Fund - Annual Report", year 1964, pp.9-10, 138-140; year 1968 p.108, J.Gold, "The Fund and Non-Member States, Some Legal Effects", op.cit., pp.33-37. "The International Monetary Fund and International Law - An Introduction", International Monetary Fund, Washington D.C., 1965, p.26; "International monetary Fund, 1945-1965", op.cit., pp.514-515.

3. For the importance attached to the question, we have preferred to consider it under the following independent Heading.

IX - RESERVATIONS AND CONSULTATIVE ARRANGEMENTS
OF THE BORROWING SCHEME

The contents of the above communiqué (as well as the reports released in the Press), reveal the fact that recent consultative meetings of the Group of Ten were presided over by Karl Schiller, Economics Minister of the Federal Republic of West Germany. This first took us by surprise. Then we tried to re-examine some of the "basic instruments" of 'The Letter', with a view to finding any evidence in support of the participation of the Economics Minister of West German in the above consultative meetings.¹

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1. By the "basic instruments" of 'The Letter' in this context, we mean:
- (a) A series of identical letters signed and sent by M. Baumgartner, Minister of Finance France, on 15 December, 1961, to the prospective Participants in the Borrowing Scheme.
 - (b) Letters of Confirmation sent by the prospective Participants to M. Baumgartner, confirming the receipt of the above identical letters and stating that they are in agreement with the contents thereof, and finally;
 - (c) Another series of identical letters sent by M. Baumgartner on 9 January, 1962, to the prospective Participants, announcing the final stage of the exchange of 'The Letter' and adding that 'The Letter' has thus come into effect. (footnote: For the details of procedure as to how 'The Letter' came into effect, see supra under the Chapter "Constituent Instruments of the Borrowing Scheme".)

After the re-examination of "some samples" of the "basic instruments" of 'The Letter', we argued that there seemed to be no provisions under the Paragraphs of 'The Letter' to the effect that any official of the Economics Ministry of West-Germany (as distinct from the Deutsche Bundesbank) can take part in the consultative meetings of the Borrowing Scheme. ¹ Later on, however, we were by chance availed of the English version of the Deutsche Bundesbank's "Letter of Confirmation". And it was, after the receiving of the copy of this Letter of Confirmation, that we saw that the Deutsche Bundesbank has referred to some reservations concerning

1. Due to the fact that the "basic instruments" of 'The Letter' constitute more than thirty instruments, therefore we were confined to the study of only those "samples" of these instruments which were available to us. And we must admit that amongst those samples were not those related to West Germany. We could not, however, see any difficulty in assuming that all the instruments exchange at any one of the three above stages must have been the verbatim of each other. This assumption was chiefly based on the fact that the most important of these three sets of letters (that is 'The Letter') has been published by the International Monetary Fund as one of the Fund's Selected Documents (footnote: See the Fund's Selected Decisions, pp. 67-68). And in the Fund's Selected Decisions no reference has been made to any reservation under which any official from the Ministry of Economics of West-Germany could preside over the consultative meetings of the Borrowing Scheme.

the consultative procedures of 'The Letter'; which reservations could justify the participation of the West-German Minister of Economics in the consultative meetings of the Borrowing Scheme. The Deutsche Bundesbank's "Letter of Confirmation", in part, says:-

"... Dear Mr. Minister: (M. W. Baumgartner)
 On behalf of the Deutsche Bundesbank, we are pleased to confirm .. that we are in agreement with the statement of understandings as set forth in your letter of December 15th, 1961 ('The Letter', that is). As concerns the consultative procedures set out in your letter on Page 3, third and following paragraphs, we understand that the German Government wants to reserve for itself the right to designate, besides the representative designated by the Deutsche Bundesbank, a representative of its own.

We are attaching, in accordance with your suggestion, this English text of our letter of confirmation" 1,2 ,

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1. For the complete text of the above "Letter of Confirmation" see Appendix XXVI. Parentheses added.
 2. Here we may point out that we did not see it necessary to re-examine the "basic instruments" of 'The Decision'. This was mainly due to the fact that the most important of the "basic instruments" of 'The Decision' is the Fund's Decision No. 1289(62/1) as amended. And

As such, despite our previous assumption, the participation of West-German Minister of Economics in the consultative meetings of the Borrowing Scheme is not (at least to the West German authorities) without any contractual justification. By this we do not intend to suggest that the reservations referred to by the Deutsche Bundesbank are immune from argument; because so long as such reservations are unknown to other interested parties, they can hardly be of any legal significance.

It is true that the Deutsche Bundesbank in its "Letter of Confirmation" of 27 December 1961, has clearly referred to these reservations. Yet M.

any eligible body that was interested in adhering to this decision could have done so by depositing with the Fund an instrument (known as Instrument of Adherence) "setting forth that it has adhered in accordance with its law and has taken all steps necessary to carry out the terms and conditions of 'The Decision' (footnote: See Paragraph 3(c) of 'The Decision'). And the Deutsche Bundesbank, like any other prospective Participant, has deposited such an "Instrument of Adherence" with the Fund without making any reservations as to the contents of 'The Decision'. (footnote: See Appendix V. Cf. "International Financial News Survey", 1962, pp. 189-190). Therefore, there seems to be no evidence, amongst the "basic instruments" of 'The Decision' to support the participation of any official from Ministry of Economics of West-Germany in the consultative meetings of the Borrowing Scheme. Cf. (1967), 61, A.J.I.L., p. 327. Cf. also Article 20(3) of the "Vienna Convention on the Law of Treaties", op. cit., p. 8.

Baumgartner, in his identical letters of 9 January, 1962, (sent to all the Participants, including the Deutsche Bundesbank) has made no acknowledgement of these reservations. ¹

1. Cf. "Report of the International Law Commission on the Second part of its Seventeenth Session, and on its Eighteenth Session", (1967), 61, A.J.I.L., pp. 320 - 321, especially where it is said:-

"With regard to all other future multi-lateral conventions concluded under the auspices of the United Nations of which he is the depository, it (the U.N. General Assembly, that is) requested the Secretary General:

- (i) to continue to act as depository in connection with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and
- (ii) to communicate the text of such documents relating to reservations or objections to all states concerned, leaving it to each state to draw legal consequences from such communications".
Parenthesis added.

Cf. also Section (2) of Article 76, and Section 1 (e) of Article 77 of the "Vienna Convention on the Law of Treaties", op. cit., p. 26; Article XIII (b) of "Agreement Establishing Interim Arrangements For a Global Commercial Communications Satellite System", Cmnd. 2436, p. 16.

He simply has stated:-

"You (The prospective Participant) ¹ have been kind enough to confirm to me your agreement regarding the procedure to be followed in connection with borrowing by the International Monetary Fund of Supplementary Resources from the Participating Countries and Institutions.

I have the honour to inform you that I have received similar confirmations ² from the Minister of Finance of Belgium, the Minister of Finance of Canada, ... the President of German Federal Bank ... the Governor of the National Bank of Sweden ...

I am notifying the other participants, as well as the International Monetary Fund, of the general agreement thus realised with respect to the understandings reached during the recent discussions in Paris." ³

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1. Parenthesis added.
 2. Take notice of the expression "similar confirmations" in the above context.
 3. See Appendix III.

To this may be added the fact that the authors of 'The Letter' have drafted it in a form as if it was a final arrangement awaiting only formalities for its coming into effect. For instance, the latter part of 'The Letter' clearly states that:-

"I¹ shall appreciate a reply confirming that the foregoing represents the understandings which have been reached² with respect to the procedure to be followed in connection with borrowings by the International Monetary Fund under the credit arrangements ... " ³

Therefore, it was perhaps due to the above facts — particularly the fact that the contents of 'The Letter' was something already agreed upon — that M. Baumgartner

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1. M. W. Baumgartner, as the depository authority, that is.
 2. Take notice of the expression "the understandings which have been reached" in the above part of 'The Letter'. Cf. Preamble to 'The Letter'. Cf. also the similar expression used in the above letters of M. W. Baumgartner, of 9 January, 1962. See Appendix III. Cf., however, (1967), 61, A.J.I.L., p. 320. Cf. also (1968), 62, A.J.I.L., pp. 568-569; I. M. Sinclair, "Vienna Conference on the Law of Treaties", op. cit., pp. 56 - 58.
 3. See Appendix I. Cf. the standard clauses compiled and published by the United Nations for the insertion of reservations in international engagements. See, the "U.N. Handbook of Final Clauses", op. cit., pp.40-42.

did not see it necessary to refer (in his letter of January 9, 1962) ¹ to the reservations stated by the Deutsche Bundesbank.

The non-acknowledgement of the above reservations, by him, may also be due to the fact that the number of parties to 'The Letter' are so limited that no reservation can be expected to be made in connection therewith.²

And finally his non-acknowledgement of the above reservations may have been due to the fact that the contents of those reservations would have been incompatible with "the objects and purposes of 'The Letter'".³

1. See Appendix III.

2. Cf. I. L. Sinclair, "Vienna Conference on the Law of Treaties", op. cit., pp. 56, 60 esp. where, in connection with the rules on reservations of "Vienna Convention on the Law of Treaties", says:-

"The traditional unanimity rule is acknowledged for the category of restricted multilateral treaties, that is to say, treaties concluded between a limited number of States."

Cf. also (1967), 61, A.J.I.L., pp. 323, 325 - 327; Section (2) of Article 20 of the "Vienna Convention on the Law of Treaties", op. cit., p. 8.

3. Cf. Lord McNair, "The Law of Treaties", op. cit., pp. 166 - 168. Cf. also, (1967), 61, A.J.I.L., p. 320, et. seq.; (1968), 62, A.J.I.L., p. 569, et. seq.; Section (2) of Article 20 of the "Vienna Convention on the Law of Treaties", op. cit., p. 8.

The inference here is that if no reservation was expected to be made to the contents of 'The Letter' ¹ and if the reservations made by the competent authorities of West-Germany have not been conveyed to the other Participants in the Borrowing Scheme, then those reservations can hardly be of any legal effect. ²

However, the above inference bring us face to face with another legal issue, viz., whether there has been any other means by which the above reservations have been conveyed to the other Participants; since it arouses one's curiosity to see a consultative meeting of the Borrowing Scheme being presided over by the Economics Minister of West-Germany, and at the same time, no ^{objection} ~~attention~~ has been made by the interested bodies in this respect. ³

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1. Cf. however, Advisory Opinion of I.C.J. on the questions concerning Convention on the Prevention and Punishment of the Crime and Genocide, 1951, discussed by Lord McNair in his "The Law of Treaties", op. cit., pp. 163 - 173. For the bearing this Advisory Opinion would have had on the question of reservations see "U.N. Handbook of Final Clauses", op. cit., pp. vi-vii.
 2. See Lord McNair, "The Law of Treaties", op. cit., pp. 159-160.
 3. See the communiqué of November, 1968 of the Group of Ten, Appendix XIX.

And these interested bodies must have been assumed of being aware of the effects of their attitude in this respect. In other words, they must have been aware of the fact that their attitude in this respect could have had the effect of acquiescence in the question of "supposed" reservations entered by West-German authorities.¹

Therefore, by reason of the above facts, the question of reservations here seems to deserve more investigation.

1. Cf. Section (5) of Article (20) of the "Vienna Convention on the law of Treaties", op. cit., p. 8. Cf. also (1967), 61, A.J.I.L., p. 328. The attitude of the Participants, in this respect, seems to have passed the stage of acquiescence; because, in their communiqué of 22 November, 1968, there has twice been reference to Professor Karl Schiller, in his capacity as the Chairman of the consultative meetings of the Borrowing Scheme. (footnote: see Appendix XIX. Cf. "The Times", 23 November 1968, p. 15). And the Chairman of the consultative meetings of the Borrowing Scheme is someone to be chosen by the voting of the Participants; for the latter part of 'The Letter' states:-

"... The representative of France shall be responsible for calling the first meeting, and at that time the participants will determine who shall be the Chairman ... "

Therefore, here, the Participants must have known the status of Professor Schiller, so far as the consultative arrangements of 'The Letter' are concerned, and they must have voted for his Chairmanship with the knowledge of the implications of such a vote. See further Paragraph 4 of the Communiqué of the Group of Ten of September 25, 1966.

And there must have been some other evidence justifying the entering of the above reservations by the Federal Government of West Germany.

The existence and the contents of such evidence, however, constitute our next consideration under the present Heading. But before this can be done we must recall some of the events leading to the coming into effect of the contents of 'The Letter'. Otherwise it would, perhaps, be difficult to follow our line of argument in this respect.

As we have seen earlier, there is a sharp similarity between the status of the Sveriges Riksbank and that of the Deutsche Bundesbank ——— so far as the Paragraphs of the Borrowing Scheme are concerned. But, despite this similarity, only one identical copy of M. Baumgartner's letter of 15 December, 1961 ('The Letter', that is), has been sent to the Sveriges Riks bank,¹; whereas in the

Deutsche Bundesbank. Cf. "International Financial News Survey", 1962, p.1.

1. See Appendix XXVII.

case of the Deutsche Bundesbank, two identical copies of 'The Letter' have been sent — one to the President of the Deutsche Bundesbank, and another to the Minister of Economics, of the Federal Republic of Germany.¹

The question which strikes one in this connection is: what was the reason prompting M. Baumgartner to sign an identical copy of 'The Letter' and send it to the Minister of Economics of the Federal Republic of West Germany?² Would this not account for the fact that the Federal Republic of West Germany has had some locus standi for the coming into effect of the contents of 'The Letter'? The answer to this question seems to lie in the travaux préparatoires and some other related instruments kept in the French Ministry of Finance.³

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1. See Deutsche Bundesbank, Mitteilung Nr. 7002/62. (4 Forts.- Blatt) Aussenwirtschaft Auslandszahlungsvverkehr.
 2. As we may have noticed, M. Baumgartner, the then Minister of Finance, France, served as the depository authority for the exchange of the copies of 'The Letter' and its related instruments. See last paragraph of 'The Letter', Appendix I.
 3. As to how far travaux préparatoires can stand against the text of an international engagement, see (1967), 61, A.J.I.L., pp. 358-361; Articles 31 and 32 of the "Vienna Convention on the Law of Treaties", op. cit., pp. 12-13. Cf. S. Rosenne, "The International Court of Justice", 1957, Leyden, A. W. Sijthoff's uitgeversmaatschappij, V.N., p. 223; I. M. Sinclair, "Vienna Conference on the Law of Treaties", op. cit., pp. 61-66.

We tried, therefore, to obtain access to some of these instruments; with a view to finding any reason for this state of affairs ¹, but we were unfortunately told that these documents are not available to the public. ²

One thing is, however, clear, viz., one day after the Deutsche Bundesbank sent its "Letter of Confirmation" to M. Baumgartner, another letter was sent to him — this time from the Economics Ministry of West Germany. ³ And it is this letter (it is believed) which has been hinted in the Deutsche Bundesbank's "Letter of Confirmation" ⁴ and which contains the assumed reservations made by the Federal Government of West Germany. For this reason,

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1. See Appendix XXIV.
 2. See Appendix XXV.
 3. See letter of Ministry of Economics of the Federal Republic of West Germany sent on 28 December, 1961 to M. Baumgartner. See Deutsche Bundesbank, Mitteilung Nr. 7002/62 (5. Forts.-Blatt), Aussenwirtschaft Auslandszahlungsverkehr. This letter is apparently in reply to the above-mentioned copy of 'The Letter' sent by M. Baumgartner to Ministry of Economics of Federal Republic of West Germany.
 4. See the Deutsche Bundesbank's "Letter of Confirmation", Appendix XXVI.

this time, we tried to get the copy of this letter from the Ministry of Economics of the Federal Republic of West Germany. But, as expected, in this case also we were told that the letter is an unpublished one.¹ Therefore, in this way, we failed to find out the nature and scope of reservations entered by the Ministry of Economics of the Federal Republic of West Germany in respect of the consultative arrangements of 'The Letter'. It is true that there exists some reference in the Deutsche Bundesbank's "Letter of Confirmation", as to the extent of these reservations; but this reference does not seem to be very rewarding; because it, in an uncircumscribed way, states:-

"As concerns the consultative procedures² set out in your letter³ on page 3, third and following paragraphs, we understand that the German Government wants to reserve for itself the right to designate ... a representative of its own..."⁴

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1. See Appendix XXVIII.
 2. Take notice of the term "procedures" in plural in the above context.
 3. 'The Letter', that is.
 4. See The Deutsche Bundesbank's "Letter of Confirmation" Appendix XXVI.

Therefore, it is not clear, from the contents of the above "Letter of Confirmation", that what is meant by the expression "page 3, third and following paragraphs". And, to understand this reference required access to the very copy of 'The Letter' to which the Deutsche Bundesbank is referring.

However, the only photostat of one of the copies of 'The Letter' with which we have been furnished, is the one kindly supplied to us by the Economics Ministry of the Federal Republic of West-Germany, and which bears the signature of ~~His Honourable~~ M. Wilfred Baumgartner, Minister of Finance, France. Therefore, if the copy of 'The Letter' sent to the Deutsche Bundesbank is as above, and if the expression "following paragraphs" therein is intended to mean the rest of provisions of 'The Letter' after "third paragraph on page 3," then the above "reservations" would embrace, inter alia, the following provisions of 'The Letter':-

"It is understood that in the event of any proposals for calls under the credit arrangements or if other matters should arise under the Fund decision ¹ requiring consultations among the participants, a consultative meeting will be held..."²

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1. 'The Decision', that is.
 2. See Appendix I.

And, if the reservations supposed to have been entered by West-German Government are to the contents of the above provisions of 'The Letter', it would then be difficult to see what else could remain in the consultative arrangements of 'The Letter', which is not subject to the above reservations; because as we have seen earlier ¹ the entire consultative arrangements of 'The Letter' seem to have been compressed in the above provision of the latter part of 'The Letter'.

However, the question of reservations, made by the Federal Government of West Germany (and its extent) is another instance, for which an authoritative clarification seems to be necessary.

X - CONCLUSION

Before any "borrowing arrangement" can be hammered out, a series of consultative arrangements, between the Group of Ten and the Fund's authorities, must take place. These consultative arrangements are mainly contemplated with a view to investigating the merit of every "borrowing arrangement"; the amount of currencies to be borrowed; and the proportion of contribution of every Participant.

1. See under the Heading "Consultative arrangements of the Borrowing Scheme — Further Considerations", supra, under the same Chapter.

Due to the fact that (a) the movement of short-term capital is of a quickly widespread nature and (b) any untimely leakage of the consultative meetings of the Borrowing Scheme could cause serious damage, therefore it seems necessary to establish (i) different "stages" of consultative meetings of the Borrowing Scheme, and (ii) the bodies authorised to participate in any one "stage" of these consultative meetings.

But, by reason of the fact that the consultative arrangements of the Borrowing Scheme have been dealt with under both 'The Letter' and 'The Decision', it has become extremely difficult to establish different stages of consultative meetings of the Borrowing Scheme.

For this reason, it is suggested that attempts should be made to simplify, and even to consolidate the terms and conditions of the consultative arrangements of the Borrowing Scheme.

CHAPTER FIVEVOTING MACHINERY OF THE BORROWING SCHEMEI - INTRODUCTION

Under the present Chapter we shall study the voting procedure of the Borrowing Scheme. This study would be limited to the provisions of Paragraphs of 'The Letter', since no voting procedure has been envisaged in the Paragraphs of 'The Decision'. The main provisions to be considered are Paragraphs (B), (C) and (D) of 'The Letter', which are related to the questions of "unanimous voting" and "qualified majority", and which raise many points of legal interest.

Further, due to the fact that the above Paragraphs authorize Participants who have experienced balance of payments and reserve difficulties to abstain from voting, we shall next consider how balance of payments and reserve position of the Participants can be ascertained and what are the legal implications involved.

Now, let us turn to the first of the above issues.

II - UNANIMOUS AGREEMENT

As referred to earlier ¹, the prime aim of the Group of Ten is to reach mutual understanding for the working

1. See supra, under the Chapter, "Consultative Arrangements of the Borrowing Scheme".

out of any "borrowing arrangement". Paragraph B of 'The Letter', with regard to this principle, states:-

"B. If the Managing Director makes a proposal for Supplementary Resources to be lent to the Fund, the Participants shall consult on this proposal and inform the Managing Director of the amounts of their currencies which they consider appropriate to lend to the Fund, taking into account the recommendations of the Managing Director... The Participants shall aim at reaching unanimous agreement." ¹

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1. Cf. Section II of the Fund's By-Laws and Paragraph C (10) of the Fund's Rules and Regulations. Cf. also J. Gold, "International Monetary fund, 1945-1965", op.cit., Vol.II, p.520. For the politico-economic implications of adoption of the principle of unanimity, see Rinaldo Ossola, "On the Creation of New Reserve Assets" : The Report on the Study Group of Ten", op. cit., pp.285 and 286, especially where it is said:-

"Supporters (amongst the Group of Ten) of unanimity consider that this method offers a sure guarantee against international inflations; the opposite view is that the conflict of interests between countries with different economic policy objectives, different degrees of development and different employment levels, a system based on unanimity would not allow of any decision being taken. Others believe that the choice of voting method cannot be made in the abstract ,,, if outside the Fund and with participation limited to a small group of countries, then unanimity would not be so ill-contrived an arrangement as it might be in another institutional framework and with different participation." Parenthesis added. For a more detailed study of this question, see "Report of the Deputies of the Group of Ten", op.cit., pp.64-66 and 77. Cf. Article V of "Agreement Establishing Interim Arrangements for a Global Communications Satellite System", Cmnd. 2436, p.11.

The above Paragraph (B), however, does not suggest whether or not a prospective drawer's view should also be taken into account, for the purpose of the above unanimity. ¹ This is, perhaps, due to the fact that (a) a prospective drawer is assumed to have been in agreement with the "borrowing arrangement"; it itself requested; and/or (b) the question could be linked with the principle *Nemo debet esse iudex in propria causa*. ²

1. See Hans Aufricht, "International Monetary Fund; Legal Bases, Structure, Functions", op.cit., p.68. Cf. the same writer, "The Fund Agreement: Living Law and Emerging Practice", op.cit., p.58.
2. See Bin Cheng, "General Principles of Law as Applied by International Courts and Tribunals", London, Stevens and Sons., 1953, pp. 279 - 280. Cf. however, Paragraph (C) of 'The Letter', discussed under the following Heading.

III - QUALIFIED MAJORITY

If, however, the unanimous agreement cannot be reached under Paragraph (B), the question whether a "borrowing arrangement" is to take place, will be decided by the votes of a two-thirds majority of the Participants, having a three-fifths majority of the weighted votes, Paragraph (C) of 'The Letter' in this respect, says:-

"C. If it is not possible to reach unanimous agreement, the question whether the participants are prepared to facilitate, by lending their currencies, an exchange transaction or stand-by arrangement of the kind covered by the special borrowing arrangements..., will be decided by a poll of the participants ... A favourable decision shall require the following majorities of the participants which take part in the vote...

(1) a two-thirds majority of the number of participants voting; and

(2) a three-fifths majority of the weighted votes of the participants voting, weighted on the basis of the commitments to the Supplementary Resources." ¹

In the above way, therefore, the drafters of 'The Letter' have broken the deadlock which could have taken place had there been applied the principle of unanimity for each and every "borrowing arrangement".

1. See Appendix I. For the amount of credit arrangements of the Participants, see Annex to 'The Decision', Appendix IV.

Here it is noteworthy that in the case of Paragraph (C), (despite the case of Paragraph (B)), a prospective drawer has been expressly exempted from voting for the "borrowing arrangement" it has put forward. The latter part of Paragraph (C) in this respect says:-

"The prospective drawer will not be entitled to vote....." ¹

The question here, is: under what circumstances are some of the Participants authorized to abstain from voting, and what is the legal implication thereof? (i) Would those not abstaining be automatically obliged to

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1. See Appendix I. Cf. Paragraph 7(a) of 'The Decision', Appendix IV. Cf. also, "International Monetary Fund, 1945-1965", op.cit., Vol. II, p.456.

contribute money, and (ii) What is the legal criterion for abstention?

(i) ABSTENTION AND ITS LEGAL IMPLICATIONS

The latter part of Paragraph C of 'The Letter', authorizes the Participants faced with balance of payments and reserve difficulties, to abstain from voting. It says:-

"... it being understood that abstentions may be justified only for balance of payments reasons..."¹

The inference here is that there has been envisaged no absolute right for the Participants to abstain from voting or contribution under a "borrowing arrangement" suggested by the Fund's Managing Director. In other words, the wording of the above part of Paragraph C, seems to suggest that the Participants are, generally, obliged to contribute under a "borrowing arrangement" suggested by the Fund's Managing Director.² And the only exception to this rule is where a Participant itself has been faced with balance of payments and reserve difficulties in which case it can abstain from voting (or

1. See Appendix I.

2. Cf. "National Advisory Council on International Monetary and Financial Problems", op. cit., p. 13; "International Monetary Fund - Press Release", No. 695, 19 June, 1968. Cf. also J. Gold, "The Reform of the Fund", op.cit.,p.15;"International Monetary Fund,1945-65",op. cit., vol.II,p.587.

contribution).¹

It would also follow that those who have not been authorized to abstain are to contribute under that "borrowing arrangement", if, of course, it has attained the necessary majority, spoken of in the latter part of Paragraph C. To put it in another way, if the required majority for a given "borrowing arrangement" has been attained, then the Participants (even those who have voted against it), have to contribute thereunder.²

1. The reason for the above exemption seems to be an economic one, because the currency of countries which are not in a strong balance of payments and reserve position, would not be of much help to a "prospective drawer". See, e.g., "International Monetary Fund - Annual Report", year 1962, pp.37-39; year 1963 p. 19; year 1969, p.154. Cf. "International Financial Statistics", I.M.F., June 1970, pp.16,59; "International Monetary Fund, 1945-1965", op. cit., Vol.I, pp.508, 517-519; Vol.II,p.456.
2. The very contemplation of voting procedure of Paragraph C could have been quoted in support of the above argument. Otherwise, if it could be claimed that those who have voted against a "borrowing arrangement" are no longer expected to contribute thereunder, it would have undermined the *raison d'être* of the voting machinery of Paragraph C. Cf. J. Gold, "Interpretation by the Fund", op. cit., p. 57, where he says:-

"Nothing is said in the letters ('The Letter', that is) about interpretation. Presumably, the rule of unanimity would apply by implication. If this is correct, the implied rule for interpreting the letter (!) is more severe than the rule in the letter according to which the participants may be bound to lend. Under that rule, if certain prescribed majority are attained, even dissenting participants will be bound to lend."

Parentheses added.

This, at any rate, may be inferred that those who have voted for a "borrowing arrangement" are to contribute thereunder. Albeit the following may be noticed regarding the above inference.

As we may have noticed, although the authority for abstention has been given in Paragraph C (that is, before a voting could take place), yet its actual description has been relegated to the provision of the latter part of Paragraph D (that is, after the voting for a "borrowing arrangement" has already taken place). This state of affairs might create room for contending that after a Participant has voted for a "borrowing arrangement" it still can avoid contributing thereunder.

With a view to studying this contention, let us first consider the provision of the latter part of Paragraph D of 'The Letter'. It says:-

"If during the consultations a participant gives notice that in its opinion,¹ based on its present and prospective balance of payments and

1. Take notice of the expression "in its opinion" in the above context.

reserve position, calls should not be made on it ... the participants shall consult among themselves and with the Managing Director as to the additional amounts of their currencies ¹ which they could provide so as to reach the general order of magnitude agreed under Paragraph C." ²

Here a study of the provision of the above part of Paragraph D, in conjunction with the provision of the former part of the same Paragraph, where it says:-

"If the decision in Paragraph C is favourable, there shall be further consultations ³ among the participants, and with the Managing Director, concerning the amounts of the currencies of the respective participants which will be loaned to the Fund in order to attain a total in the general order of magnitude agreed under Paragraph C..." ⁴

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1. Take notice of the expression "additional amounts..." in the above provision.
 2. See Appendix I.
 3. Take notice of the term "further consultations" in the above context.
 4. See Appendix I.

seems to suggest that a Participant, though he has taken part in the voting of Paragraph C, and though he has agreed for a "borrowing arrangement", can yet avoid contributing thereunder. ¹

With a view to illustrating this, let us bring the following hypothesis. Here, as a matter of convenience, we will call the ten Participants in the Borrowing Scheme as Participants (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j). Now, let us assume that Participant (a) is faced with balance of payments and reserve difficulties, and thus is approaching the Fund (and the Participants) for a "borrowing arrangement" of \$ 200 million.

In such a case, if the unanimous agreement could not be reached under Paragraph B, resort is to be made to the provisions of Paragraph C of 'The Letter'. The first step is to ascertain who are the Participants in a strong balance of payments and reserve position, which enables them to contribute under that "borrowing arrangement". Therefore, at this stage it might be realised that, e.g., Participants (b), (c) and (d) are themselves faced with balance of payments and reserve difficulties,

1. Cf. Hans Aufrecht, "International Monetary Fund Legal Bases, Structure, Functions", op. cit., p.69.

and thus their currencies would not be of any real help for the Participant (a).¹

As such, these three Participants would not take part in the voting of Paragraph C. The next step, however, is to ascertain the mood of the rest of the Participants (that is Participants (e), (f), (g), (h), (i) and (j) for the above \$ 200 m. "borrowing arrangement", by putting it to their vote.

If the necessary majority has been attained, then would come the stage of the former part of Paragraph D; and it is, prima facie, at this stage that the actual contribution of the voting Participants is to be hammered out, and the borrowing arrangement in question is to come into effect.²

So far there seems to have appeared no legal difficulty as to the nature of the procedure envisaged in

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1. Cf. "International Monetary Fund - Press Release", No. 743, June 27, 1969, in which it has been released that for the \$ 200 m. "borrowing arrangement", for the benefit of the United Kingdom, only five Participants took part. Cf. also, "International Monetary Fund - Press Release", No. 695, 19 June, 1968; "International Financial News Survey", 1970, p. 37.
 2. See former part of Paragraph D, of 'The Letter', Appendix I. Cf. "International Monetary Fund, 1945-1965", op. cit., Vol. I, p. 513; Vol. II, pp. 456-458.

Paragraph C, and the former part of Paragraph D.

Problems, however, seem to start with the provisions of the latter part of Paragraph D, where it is suggested that, after undergoing all the above stages, a Participant can still give "notice that in its opinion, based on its present and prospective balance of payments and reserve position, calls should not be made on it."

One explanation for this state of affairs could be that, in the above hypothesis, when the voting of Paragraph C was taking place, all the Participants (e), (f), (g), (h), (i) and (j) were in a balance of payments and reserve position, enabling them to contribute under the § 200 m. "borrowing arrangement". But, after the voting took place, one of the voting Participants, (say Participant (e)), experienced some balance of payments and reserve difficulties, to the extent that it could no longer stand ready to contribute under that "borrowing arrangement".¹ Therefore, as such, the Participant (e) had no

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1. See latter part of Paragraph D. Take especial notice of the expressions "further consultations", and "If during consultations", in conjunction with the expression "additional amounts" of Paragraph D of 'The Letter' which are all indicative of the fact that the Participant (e), in the above hypothesis, has already taken part in the voting of Paragraph C. Take notice also of the term "calls" in the above Paragraph D, which also confirms that the "borrowing arrangement" in question has already been approved by the Participant (e). Cf. Paragraphs 1 (vii), 6, 7(a) and 7(d) of 'The Decision', discussed under the Chapter "Consultative Arrangements of the Borrowing Scheme".

other alternative but to bring the matter to the notice of the other Participants, and ask them to substitute its expected contribution, even though it has already voted for that "borrowing arrangement".

Here, even assuming that the above had been the intention of the drafters of 'The Letter', yet it cannot resolve all the difficulties involved; because Paragraph D does not say, e.g., how long a period of time could elapse between the voting procedure of Paragraph C, and the procedure of the latter part of Paragraph D, which could justify the above claim by the Participant (e).

1. Would it take place at one and the same series of consultations for the above \$ 200 m. "borrowing arrangement"? ¹ If so, there seems to be no justification for the Participant (e) claiming balance of payments and reserve difficulties within such a short period of time. And, if the balance of payments and reserve difficulties of Participant (e) ^{were} ~~was~~ already existing, it should have abstained from voting, as did Participants (b), (c) and (d).

2. Would it then take place within such a long period of time which, from an economic point of view, its occurrence could be conceivable?

1. Cf. Paragraphs (E) and (F) of 'The Letter'.

This second suggestion is also highly unlikely; because if it had been the intention of the drafters of Paragraph D, they would have expressly stated so; and they would also have anticipated the marginal cases in which had the Participant (e) not voted for the \$ 200 m. "borrowing arrangement", it could not have attained the required majority. In other words, they should have also anticipated that, would the above "borrowing arrangement" (in such a marginal case), be still an obligatory one, or there must take place a new set of consultative arrangements; because the previous "borrowing arrangement" has lost its required majority.

So far, under the above hypothesis, we observed that the Participant (e), though voting for a "borrowing arrangement", can avoid ~~from~~ contributing thereunder. By this we do not intend to suggest that this had necessarily been the intention of the drafters of 'The Letter'. Yet, as the provisions of Paragraphs C and D now stand, there has been left room for such a manoeuvring by some of the Participants. ¹

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1. Cf. "National Advisory Council on International Monetary and Financial Problems", op. cit., p. 13, esp. where it has been reported to the U.S. Congress that:-

"... in order to provide assurance that a decision will be reached promptly, a voting procedure has been established... The prospective drawer on the Fund will not participate in the vote ... A participant may give notice that, in its opinion based on its present and

SUGGESTIONS CONCERNING PARAGRAPHS C AND D OF
'THE LETTER'

The following, however, may help us in finding some way out of legal difficulties concerning the drafting of Paragraphs C and D of 'The Letter'.

(A) The first suggestion is that the term "abstentions" in the following passage of Paragraph C, "... it being understood that abstentions may be justified only for balance of payments reason..." be construed as abstentions from "contribution" and not abstentions from "voting". The difference this (A) suggestion can make is in that all the Participants would have the right to vote for a "borrowing arrangement" irrespective of whether or not they themselves can contribute thereunder. In support of this (A) suggestion, it can be argued that, under the new conditions of "convertibility", the surplus in balance of payments and reserve position of one or some of the member States of the Fund is inter-related with the deficit in balance of payments and reserve position of

prospective balance-of-payments and reserve position, calls should not be made on it ... In this event the Managing Director and the other participants will consult further to determine how the total agreed amount can be provided... there should seldom be occasion for any participant subsequently to withdraw itself from the list of lenders."

of some other member States of the Fund.¹ Therefore, as such, it could have been the intention of the drafters of 'The Letter' that:

(i) The first question, whether a "prospective drawer" should be helped, be put to the vote of the Participants, irrespective of whether or not they are all prepared to help that "prospective drawer", because it would, in any case, affect their balance of payments and reserve

1. Cf. "Ministerial Statement of the Group of Ten", August 1, 1964, esp. where it is said:-

"There has, at the same time been increasing recognition of the fact that the way in which balance of payments deficits and surplus are financed has implications for countries other than those directly concerned."

Cf. also Paragraph 3, of the Communiqué of the Group of Ten, of Bonn, November 22, 1968. Appendix XIX; "International Financial News Survey", 1965, pp. 351-352. Cf. further, "Questions and Answers on the International Monetary Fund - 10 June 1944", "International Monetary Fund, 1945-1965", op. cit., Vol. III, pp. 173 - 174; C. H. Alexandrowicz, "International Economic Organisations", op. cit., p. 89; Address by the President of the United States of America, J. F. Kennedy, "International Monetary Fund - Summary Proceedings", 1964, pp. 4 - 5.

position; ¹

(ii) If it were voted for that the balance of payments position of a "prospective drawer" is in a shape requiring a "borrowing arrangement", then there should come the stage of "proportioning" of currencies necessary for that "borrowing arrangement". And it is at this stage that some of the Participants can "abstain" from contribution if, of course, they themselves were faced with balance of payments and reserve difficulties. And this is perhaps the reason why the question of abstention from contribution has been relegated to the provisions of Paragraph D, that is, where the voting of Paragraph C has already taken place. ²

1. Cf. the provision of the latter part of 'The Letter' where it says:-

"It is understood that in the event of any proposals for calls under the credit arrangements or if other matters should arise under the Fund decision requiring consultations among the participants, a consultative meeting will be held among all the Participants ..."

discussed under the Heading of "Consultative Arrangements of the Borrowing Scheme — Further Considerations".

Cf. also "International Monetary Fund - Annual Report", 1962, p. 37.

2. Cf. "International Monetary Fund - Summary Proceedings", 1961, p. 117.

The main difficulty, however, concerning the above (A) suggestion, is that it has little support from the sequence of phrases and the wording of individual phrases of Paragraph C. And ex antecedentibus et consequentibus fit optima interpretatio.¹ Likewise, it could hardly reconcile with the evidence so far which we have considered under the present Chapter.

(B) The other alternative here is to continue with the understanding reached under the previous Heading, that is, to consider the "abstention" of Paragraph C as abstention from "voting". As such, in the above hypothesis, only Participants (b), (c) and (d), which from the outset abstained from voting, should be exempted from contribution under § 200 m. "Borrowing Arrangement". And, the rest of the Participants (including Participant (e)) which have taken part in the voting, must contribute, whether or not they have

1. See Broom, "Legal Maxims", Tenth Edition, by R. H. Kersley, Sweet and Maxwell, 1939, p. 389.

voted for or against it. ¹

If this (B) understanding had been the intention of the drafters of Paragraphs C and D of 'The Letter', then some alterations in the provisions of these two Paragraphs would seem to be necessary. That is to say, if the intention of the drafters of 'The Letter' had been first to ascertain the mood of the Participants for a "borrowing arrangement", by putting it to the vote of only those Participants in a strong balance of payments and reserve position; and if also their intention had been to leave the question of "proportioning" of currencies for a later stage, then they should have put

1. See "International Monetary Fund, 1945-1965", op. cit., Vol. II, p. 456, where, in connection with the U.K.'s "borrowing arrangement" of December, 1964, it is said:-

"The signatories of the G A B, however, preferred that the Fund should borrow from each participant except the United Kingdom itself, even if only a token sum were borrowed. The reason for this was partly ... a doubt whether the terms of the agreement between the participants which was embodied in Mr. Baumgartner's letters ('The Letter' that is,) would permit a member of the Group of Ten to vote on the proposal to activate the G A B if its currency was not borrowed".

Parenthesis added.

these ideas in the same logical order, viz., they should have consolidated the provisions of Paragraph C and the latter part of Paragraph D in one and the same Paragraph C; and then left the question of the "proportioning" of currencies to the provision of the former part of Paragraph D, with, of course, any necessary alterations in the wording of these two Paragraphs. Otherwise, the existing provision of Paragraph C seems to suggest that those who have experienced balance of payments difficulties should abstain from voting; yet it relegates the investigation into these difficulties to the stage of Paragraph D, that is, after they have already used their voting right.

QUESTION OF CONTRIBUTION LESS THAN EXPECTED

One thing, however, should be mentioned here, which is this, that the above suggestion (B) does not remove all the discrepancies involved. We have particularly in mind another aspect of the latter part of Paragraph D, in accordance with which a Participant (though taking part in the voting of Paragraph C), can request that "calls" should be made on it "for a smaller amount than that proposed".¹

The point is that, the above suggestion (B) seems to be of some help only in the case of those Participants

1. See Appendix I.

who can in no way contribute under a given "borrowing Arrangement"; and for this reason they have been exempted from voting thereunder. But it would not be of much help in the case of those Participants who could contribute, but not to the extent of that proposed by the Fund's Managing Director. And the drafters of 'The Letter' do not seem to have anticipated the position of those Participants who have voted for a "borrowing arrangement", but who could frustrate the objects of Paragraph C by reducing their actual contribution to an insignificant amount. ¹ And it is doubted whether the above suggestion (B) would be of any help either.

The following suggestion may, however, be considered in this respect. This, although not very appealing, might serve a useful purpose, if, of course, accompanied by "a spirit of international co-operation". ²

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1. Cf. "International Monetary Fund, 1945-1965", op. cit., Vol. II, p. 456, in which it has been suggested that even "a token sum" would authorize a Participant to take part in the voting.
 2. See the provision of the latter part of 'The Letter', Appendix I. Cf. Preamble to 'The Decision', Appendix IV. Cf. also "The Guardian", January 14, 1969, p.35.

The fact of this suggestion lies in differentiating between (a) cases in which a Participant is in no way able to contribute under a given "borrowing arrangement"; and (b) cases in which a Participant would contribute, but "for a smaller amount than that proposed". Under this latest suggestion, the above (a) cases are to be dealt with under the proposed Paragraph C,¹ and the (b) cases are to be considered as a fraction of the question of "proportion of currencies", and thus to be dealt with under the former part of Paragraph D.

The advantage of this latest suggestion is that it keeps alive the idea that there must be some nexus between the voting and the contribution under a "borrowing arrangement".²

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1. Thus the Participants faced with severe balance of payments and reserve difficulties would still not take part in the voting of Paragraph C.
 2. Cf. Article VII (2) of the Fund's Articles of Agreement. Cf. also "Questions and Answers on the International Monetary Fund - June 10, 1944", "International Monetary Fund, 1945-1965", op. cit., Vol. III, p. 172.

(ii) HOW BALANCE OF PAYMENTS POSITION OF THE PARTICIPANTS CAN BE ASCERTAINED

As we referred to earlier, the whole idea of the setting up of the Borrowing Scheme, had been to replenish the Fund's holdings of "hard" currencies. And the very employment of the term "credit arrangements" for the commitments of the Participants ¹ lends support to the fact that the Fund can, at any given time, count on the commitments of the Participants. ²

The only exception, however, under which a Participant can be released from its commitments is where it itself has been faced with balance of payments and reserve difficulties.

The question we are going to consider, under the present Heading is, how the balance of payments and reserve position of the Participants can be ascertained; because if it can be ascertained that a given Participant has been in a strong balance of payments and reserve position, it would mean that it has to replenish

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1. See Paragraph 2 of 'The Decision', Appendix IV.
 2. Cf. "International Monetary Fund - Summary Proceedings", 1961, p. 54.

the Fund's holdings of its currency. ¹

The question of ascertaining the balance of payments ² and reserve position of the Participants ³ at

1. Cf. Keynes Plan for Clearing Union under which a country in balance of payments surplus is not only expected to extend loans to deficit countries but is also to be penalized if its surplus exceeds the degree envisaged in the Plan. See F. Machlup, "Plans for Reform of the International Monetary System", op. cit., pp. 26 - 28. See also R. G. Hawtrey, "Bretton Woods for Better or Worse", Longmans, London, 1946, p. 28.

2. The term "balance of payments" has been briefly described by Høst-Madsen Poul as follows:-

"... a record of a country's money receipts from and payments to abroad, the difference between receipts and payments being the surplus or deficit".

See Høst-Madsen Poul, "Balance of Payments - Its Meaning and Uses", International Monetary Fund, Washington, D.C., 1967, p. 1. For a more elaborate definition of the term see "Balance of Payments Concepts and Definitions", International Monetary Fund, Washington, D.C., 1968, pp. 14-15, Cf. Id. p. 4. Cf. also F. A. Mann, "Money in Public International Law", Recueil des Cours, op. cit., p. 48. For an excellent description of the term see J. E. Meade, "The Balance of Payments", op. cit., pp. 3 - 28.

3. As regards the description of the monetary reserve, E. M. Bernstein has this to say:-

"The concept of what constitutes international monetary reserves is not a simple one. Clearly, monetary reserves include the gold holdings of official institutions — treasuries, central banks, and exchange stabilization funds. They also include official holdings of U.S. dollars, sterling, and other convertible currencies — that is, claims on reserve centers.."

See "Statement of E. M. Bernstein to the U.S. Congress" op. cit., p. 108. For the detailed description in this respect, see "Report of the Study Group on the Creation of Reserve Assets", Group of Ten, 31 May, 1965.

first sight seems to be a straightforward one; yet a further study thereof would prove that it is not always as straightforward as it appears.

Here, for the sake of simplicity, let us accept the hypothesis that the bulk of convertible currencies and other means of liquidity are controlled by the Group of Ten.¹ Let us also accept that the amount of existing means of international liquidity is reasonably estimatable and known to the Group of Ten.² Therefore, under these circumstances, it would not be too difficult for the Group of Ten to trace the movement of means of liquidity and to ascertain their whereabouts. In other words, it would seem to be easy to distinguish (a) those members of the Group of Ten in balance of payments and reserve surplus, (b) those in balance of payments and

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1. See "International Monetary Fund — Summary Proceedings", year 1962, p. 21; year 1963 p. 64; year 1965, p. 81. Cf. "International Monetary Fund — Annual Report", year 1963, pp.46, 48 in which Switzerland has also been added to the Group of Ten for the purpose of the above control. Cf. also "Statement of E. M. Bernstein to the U.S. Congress", op. cit., pp. 115, 121; Ossola, Rinaldo "On the Creation of New Reserve Assets : the Report of the Study Group of Ten", op. cit., p. 291.
 2. See F. Machlup, "Plans for Reform of the International Monetary System", op. cit., p. 3; "Statement of E.M. Bernstein to the U.S. Congress", op. cit., p.108. Cf. "Guidelines for Improving the International Monetary System", Report of the Sub-Committee on International Exchange and Payments of the Joint Economic Committee, Congress of the United States, U.S. Government Printing Office, Washington, 1965, p. 3.

reserve deficit, and (c) those in a reasonable balance of payments and reserve position.¹ Likewise, it would not be too difficult to work out the magnitude of a loan requested by a "prospective drawer", because (i) the degree of its deficit can be assessed, and (ii) the Participants which should stand ready to contribute under the "borrowing arrangement" could be distinguished.

To ascertain the balance of payments and reserve position of the Participants in practice, however, is not always as simple as that; chiefly because it would entail claims and counter-claims in this respect. And if it could be ascertained that a given Participant is in balance of payments and reserve surplus, it could mean that it should return its surplus to the deficit

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1. In the case of this (c) group it would mean that, although they are not in need of financial help, yet they cannot extend the loan to other Participants.

countries. ¹

To show how difficult it is, in practice, to ascertain the surpluses and deficits, let us bring a specific example.

The world monetary crisis of 1968, which led to the Bonn consultative meetings of the Group of Ten, and the "borrowing arrangement" of \$ 2,000 m. for the benefit of France, ² was said to be the result of

1. See Reginald Maudling, "International Monetary Fund - Summary Proceedings", 1963, p. 67, where he says:- "one nation's reserves is another nation's debit..." Cf. Id. p. 285; "International Monetary Fund - Annual Report", 1962, p. 39; Poul Høst-Madsen, "Balance of Payments — its meaning and Uses", op.cit., p. 16, 23-24; Anthony Harris, "The Guardian", January 14, 1969, p. 13. For the importance attached to the regular adjustment of the means of liquidity among surplus and deficit countries, see "International Monetary Fund — Summary Proceedings", year 1963, p. 68; year 1964, p. 2; "Report of the Study Group on the Creation of Reserve Assets", op. cit., pp. 75-78; "Guidelines for Improving the International Monetary Law", op. cit., p. 17; "International Monetary Fund — Annual Report", 1963, p.48; "Statement of E. M. Bernstein to the U.S. Congress", op. cit., p.112; "International Monetary Fund, 1945-1965", op. cit., Vol. I, p. 544. The above literature would, at the same time, reveal the conflicting views existing among the surplus and deficit countries in connection with the adjustment of means of liquidity.
2. See Communiqué of the Group of Ten, of November 1968, in Appendix XIX.

deficit in balance of payments of some of the Participants, and surplus in balance of payments of some other participants, chiefly the Federal Republic of West Germany. ¹ And it was certain, from the point of view of the Participants in deficit, that the balance of payments and reserve position of West-Germany, had been in a condition which caused the movement of hot money to West Germany, and which could have threatened world monetary stability. ² And as regard the degree of West German surplus, it was reported that:-

"Germany's current balance of payments surplus remains obstinately large. At the beginning of 1968 when the German Government projected a growth rate of 6.2 per cent in money terms and 4 per cent in real terms, official forecasters were expecting imports to rise by about 10 per cent, exports by 6½ per cent. The surplus on visible and invisible trade was expected to come down by more than DM₂

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1. See Robert Roosa, the former Under-Secretary for Monetary Affairs of the U.S. Treasury, 'The Times', 22 November, 1968, p. 21.
 2. Cf. F. A. Mann, "Money in Public International Law", *Réveil des Cours*, op. cit., pp.44-47.

billion to DM 14 billion. Instead, according to recent forecasts, this year's imports will be put up by just over 11 per cent and exports by almost 10 per cent, even though the internal growth rate of the economy will have been over 8 per cent (6½ per cent real). By the end of this year Germany should thus have imported DM 2 billion more than expected earlier this year, but it looks as if it will also have exported a good DM 4 billion more than expected ..."¹

Yet, from the point of view of West-Germany, it was not ^{always} ~~all along~~ the same, so much so that on some occasions it was said that West-Germany, for some time in 1968, was in "slight deficit". For instance, it was reported that:-

"Dr. Schiller (the West German Economics Minister) in fact, played rather an enigmatic role at the Conference (of Basle) ... in the first half of this year the basic balance, on the German definition of such things, was in slight deficit and he intimated that the third quarter showed much the same picture ..."²

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1. See "The Economist", November 23, 1968, p. 91. Cf. "The Times", 23 January, 1969, p. 17.
 2. See "The Economist" October 5, 1968, p. 74. Parentheses added.

One thing, however, should be referred to here, viz., the above different statements, and indeed any other similar ones, should not be taken with too much surprise. And most of the complexity of the matter lies in the very nature of the balance of payments. To chart the balance of payments and reserve position of every individual member of the Group of Ten, and assess its impact on the balance of payments and reserve position of other members of the Group, is not an easy job, even for the experts in balance of payments and reserve. 1,2

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1. As to the difficulties for ascertaining the balance of payments and reserve position of member States of the Fund, esp. the Group of Ten, see Poul Høst-Madsen, "Balance of Payments — Its Meaning and Uses", op. cit., p.2-3, 14-22; "Balance of Payments Concepts and Definitions", op. cit., pp.3-14, 23-40; (footnote: In pages 32 and 36 it is shown that in some instances only estimate is possible.); "Annex Prepared by Deputies of the Group of Ten", June 1964, pp.4-14, esp.pp.5 and 6; "Report of the Study Group on the Creation of Reserve Assets", May, 1965, pp.18,19 and 78; "Communiqué of the Ministers and Governors of the Group of Ten", September 28, 1965; "International Monetary Fund - Summary Proceedings", 1965, p. 281; "Report to Ministers and Governors by the Group of Deputies of the Group of Ten", July, 1966, pp.4 and 5. See also Rule I-6 of the Fund's Rules and Regulations.
 2. For considering the effects of "price adjustments" on the balance of payments, Meade has simplified the division of the countries of the world into two. And after detailed preparation and explanation in this respect, he says:-

"We cannot examine in detail all the possible combinations of policy which would arise if in each case we distinguished between monetary policy and fiscal policy

The apparent discrepancies which may be seen, from time to time, are not only the result of conflict of interest of the leading member States of the Fund,¹ but are also the result of variety of "concepts" adopted by different Countries for the calculation of their balance of payments;² as well as depending upon the

as separate forms of financial policy we should have no less than sixty-four possible combinations of ... price adjustment for our two countries in ways which would preserve internal and external balance for both countries."

See J. E. Meade "The Balance of Payments", op. cit., pp.151-162 at p. 161. The "price adjustments" is, of course, one of several major elements affecting the balance of payments position of countries. Cf. Id.pp. 290-291.

1. See Statements of M. W. Holtrop, the Governor for Netherlands, "International Monetary Fund - Summary Proceedings", 1961, pp.111-118, esp. p.116; Statement of M. W. Baumgartner, Governor of Bank for France, Id., pp.63-64; "International Monetary Fund, 1945-1965", op. cit., Vol.I, p.542; "Economic Review of the Berliner Handelsbank", cited in "The Guardian" 14 January, 1969, p.13; "Views of Professor Schiller the German Minister of Economics", quoted in 'The Economist', 23 November 1968, p.11.
2. See J.E. Meade, "The Balance of Payments", op.cit., pp.22-24; Zoran, Hodjera, "Basic Balance, Short-Term Capital Flow, and International Reserves of Industrial Countries", I.M.F., Staff Papers, volume XVI, 1969, pp.585-586; Fritz Machlup, "Plans for Reform of the International Monetary System", op. cit.,p.2; Poul Høst-Madsen, "Balance of Payments - Its Meaning and Uses", op. cit., pp.12,17-19 and 23. For the concepts accepted by some of the members and not accepted by the Fund, see Id., p.11. See also "Balance of Payments Concepts and Definitions", op. cit., pp.9, 10, 12, 24-27, 32 and 39-44. For the concepts accepted by the Fund and not by all its member States, See Id., pp.24-25.

skills of statisticians ¹ and how these statisticians are instructed to formulate the balance of payments and reserve position of their Countries.² For instance, the way in which the existing gold of a given Country can be calculated as 'monetary' or 'non-monetary', ³ or whether and to what extent the foreign exchange held by non-governmental banks and institutions can be included in the calculation of balance of payments ⁴; or how far

1. See Poul Høst-Madsen, op. cit., p. 14. Cf. 'The Times', 28 July, 1970, p. 17.
2. In an interview with R. Alford, in London School of Economists, he seemed to suggest that, whenever the question of balance of payments arises, everybody seems to have his own methods and calculations.
3. See "Balance of Payments Concepts and Definitions", op. cit., pp.12,27-29. Cf. Poul Høst-Madsen, op. cit., p.7; J. E. Meade, "The Balance of Payments", op. cit., pp.19, 294-295. For legal pronouncements on the issue, see F. A. Mann, "Money in Public International Law", Recueil des Cours, op.cit.,pp. 15-18, Cf. Id.p.14.
4. See Article XIX, Sections, a,b,c,d,e,f,g,h and Schedule B, Paragraph 6 of the Fund's Articles of Agreement; U.N. Monetary Documents, pp.25,628,653-655,665-666,686,698-700,796-797 and 809. See also "Statement of E.M. Bernstein to the U.S. Congress", op.cit., p.108, esp. where he says:-

"Holdings of foreign exchange of commercial banks are not regarded as part of official reserves, although it is possible for the monetary authorities to acquire such balances in time of need".

The legal justification for this inclusion is that States can ask their individuals to hand over, in time of need, their foreign exchange to the Government. Cf. "Questions and Answers on the International Monetary Fund, 10 June, 1944", op. cit., p.180.

the inflow and outflow of "hot" money can be estimated and taken into account for that purpose,¹ can produce fundamental differences in balances of payments and reserve position of one Country as compared with another.²

1. See Poul Høst-Madsen, "Balance of Payments — Its Meaning and Uses", op. cit., p.19.
2. See Cecil King, the Director of the Bank of England, in *The Daily Mirror*, 9 May, 1968, where he has said:-

"We are now threatened with the greatest financial crisis in our history. It is not to be removed by lies about our reserves, but only by a fresh start..."

Cf. then 'The Times', May 10, 1968, where it is said:-

'Mr. King's reference to "lies about our reserves" presumably alludes to the fact that it is usually open to the Bank of England to arrange a number of "window-dressing" transactions in the final hours of the monthly accounting period. By swapping sterling for foreign currencies, either with other central banks or with foreign exchange market dealers, the Bank can produce almost any desired figure for publication. These well-known conventions do not literally involve falsifying the reserve figures, although they do entail some element of *supressio veri*. For Mr. King, who is a... director of the Bank of England to describe these time-honoured practices followed under all recent Governments in the terms he chose is unlikely to be accepted in official circles as either constructive or legitimate comment.'

See also Poul Høst-Madsen, op. cit., pp.20-22. Cf. "The Sunday Times", November 22, 1970, p.46.

And to estimate the movement of "hot" money is said to be in no way easier than to estimate other necessary items for calculation of balance of payments.¹ Although the Fund's Authorities, on one occasion, have gone so far as to suggesting that:-

"In connection with large drawings, in particular when they are associated with short-term capital movements, it is usually fairly easy to single out the countries whose reserves have benefited from an inflow of capital and to direct drawings more particularly towards the currencies of these countries...."²

Yet, it is generally accepted that:-

"Private short-term capital movements are, in general, inadequately reported in the Yearbook, because of the statistical difficulties of estimating them. They may, however, be an important item in a country's balance of payments, especially in a period of capital flight or of large changes in trade financed by short-term credits. Lack of information on these movements is believed to

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1. As we may have noticed, the movement of "hot" money is the principal concern of the Borrowing Scheme.
 2. See "International Monetary Fund - Annual Report", 1962, p. 39.

be a substantial source of errors and omissions".¹

To sum up our considerations under the present Heading, we could say that it seems easy to produce, at any given time, data against a Participant that it is in a balance of payments and reserve surplus. It seems also easy for that Participant to deny this and produce counter-data that it is not in a balance of payments and reserve surplus, or else it is in a balance of payments and reserve surplus, but not to the extent which enables it to contribute under a given "borrowing

1. See, "Balance of Payments Concepts and Definitions", I.M.F., op. cit., p. 40. Take notice of the terms "errors" and "omissions" in the above context. For the technical description of these two terms, and for their effects on accuracy of the balance of payments items, see Id. p.23, See also Poul Høst-Madsen, op. cit., p.14, esp. where he says:-

"The entry for net errors and omissions often reflects flows of private capital, although the conclusions to be drawn from them vary a great deal from country to country, and even in the same country from time to time, depending on the reliability of the reported information".

Cf. Id. p.19. Cf. also "National Advisory Council on International Monetary and Financial Problems", op. cit., p.5; Zoran, H., "Basic Balance, Short-Term Capital Flows, and International Reserves of Industrial Countries", op. cit., p.583 et seq. p.585 footnote 5; "International Monetary Fund - Annual Report", 1963, p.21; "International Financial News Survey", 1970, pp. 15, 257.

arrangement".¹

And the very contemplation of the provisions of Paragraphs C and D of 'The Letter' can support the fact that whether or not a given Participant has been faced with the balance of payments and reserve difficulties, is not a straight-forward question. Further, the fact that the balance of payments and reserve position of the Group of Ten has been subjected to the so-called "multilateral surveillance" of the Participants, can be regarded as another evidence in support of the

1. Cf. Poul Høst-Madsen, op. cit., pp. 16-17, where he says:-

"It is not surprising, therefore, that the definition of surplus or deficit is by far the most controversial question in balance of payments methodology. This has been evident at meetings of balance of payments experts which the Fund has held. When these meetings have taken up the concept of a surplus or a deficit, the discussion has become livelier or even emotional. At the same time, it has usually been inconclusive, being concerned with something about which reasonable men can forever hold different views. The failure of experts to agree on the definition of a surplus or a deficit, therefore, is understandable.

Høst-Madsen was a member of the Fund's Statistics Department.

above argument. ¹

At this stage it seems appropriate to revert to the provisions of the latter part of Paragraph D of 'The Letter', where it says:-

"If during the consultations a participant gives notice that in its opinion, based on its present and prospective balance of payments and reserve position, calls should not be made on it,.... the participants shall consult among themselves and with the Managing Director as to the additional amounts of their currencies which they could provide..." ²

1. See, generally, "International Monetary Fund - Summary Proceedings", year 1964, pp. 166-167; year 1965, p. 280; "Report of the Deputies of the Group of Ten", June 1964, p. 11; "Report of the Study Group on the Creation of Reserve Assets", op. cit., pp. 18-19, 33-34, 74-78; "Report to Ministers and Governors by the Group of Deputies", op. cit., pp. 5-6, 17-18; "International Financial News Survey", 1965, p. 351.
2. See Appendix I. Take notice of the expression "in its opinion" in the above context. Cf. Paragraph 7(d) of 'The Decision', where it says:-

"(d) If a participant on which calls may be made pursuant to Paragraph 7(a) for a drawer's purchases under a stand-by arrangement gives notice to the Fund that in the participant's opinion, based on the present and prospective balance of payments and reserve position, calls should no longer be made on the participant ..."

Here, if effect is to be given to the wording of the above Paragraph D, it can hardly serve any useful purpose; because it has subjected the judgement of balance of payments to the sole discretion of the Participants.¹

In other words, one can hardly construe any real undertaking from the above provision of Paragraph D in that it has virtually subjected the choice of contribution under a "borrowing arrangements", to the discretion of each individual Participant. And at any needed time, a Participant can evade its commitments, under the Borrowing Scheme, by producing some data to the effect that it has been faced with balance of payments difficulties.

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1. The wording of the above Paragraph D seemed to have been supported by the Fund's Managing Director, in the early days of the work of the Borrowing Scheme, where he stated that:-

"On a number of occasions its (the Fund's, that is) own assistance has been supplemented by credits made available from other sources, and this has certainly been welcome. But, however, useful the Fund's initiative may be, each contributor must form its own judgement of the adequacy of the measures proposed by the country concerned, and determine what credit facilities it is willing to extend".

See "International Monetary Fund - Summary Proceedings", 1962, pp. 17-18. Parenthesis added.

Here, one could perhaps go one step further and suggest that the difficulty does not lie in only the flexibility of the definition of balance of payments equilibrium, but also in the question of amount of the "reserves" needed to defend the balance of payments equilibrium. ¹

And, as we may have noticed, the above provision of Paragraph D speaks not only of the "present balance of payments", but also of the "prospective balance of payments" as well as "present and prospective reserve" position of the Participants. ²

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1. Cf. Isaiah Frank, "The European Common Market", London, Stevens & Sons., 1961, p. 281, where he quotes J. E. Meade that:-

"Meade points out that the maintenance of overall balance of payments equilibrium is not a precise criterion. Even if account is taken of both current and capital transactions, the aim should not necessarily be an exact equality between receipts and payments, since there may be a need to build up reserves. The general principle therefore is for each member to "avoid a continuing deficit or surplus on its overall balance-of-payments which threatens to result in the unreasonable accumulation or loss of its reserves".

Cf. also "International Financial News Survey", 1966, p. 245; F. A . Mann, "Money in Public International Law", Recueil des Cours, op. cit., pp.66-67.

2. Cf. Paragraph B of 'The Letter' and Paragraph 7(b) and (d) and Paragraph 11(f) and (g) of 'The Decision'. Cf. also "International Monetary Fund, 1945-1965", op. cit., Vol. II. pp.413-414; "International Monetary Fund — Summary Proceedings", 1961, pp.54-55.

To what extent a given Participant is in need of reserves to defend its "present and prospective balance of payments" as well as its "prospective reserves", is dependent upon many economic factors, some of which are quite indeterminate and unresolved.¹ And it is these circumstances which somehow justify the surplus countries in taking a precautionary line and in having as large a reserve position as they can.² As such, the question of "reserves" would subject the above provision of Paragraph D more to the discretion of the "prospective

1. Cf. Fritz Machlup, "Plans for Reform of the International Monetary System", op. cit., p. 8, where he says:-

"The size and growth of foreign reserves relative to the needs of domestic liquidity ... is only one of the possible criteria for judging the adequacy of the ... reserves. Many experts prefer to rely on an indicator which "measures" the reserve position of the world as a whole, to wit, the numerical ratio between aggregate reserves and imports ... "

He himself, however, seems to disagree with such a proposition; because he then adds:-

"... there is absolutely no evidence for the contention that the need for reserves rises proportionately with foreign trade .."

See Id. p.9. Cf. Keynes Plan for Clearing Union, discussed by R. G. Hawtrey. See R. G. Hawtrey, "Bretton Woods for Better or Worse", op. cit., p. 27.

2. Cf. however, "International Monetary Fund — Annual Report", 1963, p. 48. Cf. also "The Times", November 9, 1970, p. 17.

lends", or otherwise could bring about frequent controversy as to whether or not some of the Participants could contribute under a given "borrowing arrangements", and if they could, to what extent. ¹

A more practicable solution here seems to be the mediation of some international body such as the International Monetary Fund itself.² This is what actually appears to have taken place: The Fund has been forced to step in and interfere in this respect. The authority for the Fund's interference has, apparently, been the so-called "informal interpretative understanding" of Paragraph 7(d) of the General Arrangements to Borrow.

The fact is, that we, for some other purposes, asked the Fund's Authorities, whether any authoritative interpretation had so far taken place in connection with the General Arrangements to Borrow.³ The Fund in its reply of 23 September, 1969, stated:-

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1. As we shall see, within the next few lines, there has been a prima facie case that there has been some controversy in this connection.
 2. Cf. "International Monetary Fund - Summary Proceedings", 1962, p. 17.
 3. See Appendix XX.

"... The informal "interpretative understandings" referred to on page 56 of Pamphlet No. 11, are of an operational or procedural nature. An example of such an understanding is the following:

Paragraph 7(d) has been understood to apply not only when a participant on which calls may be made is of the opinion that calls should no longer be made on the participant, but also when the Managing Director is of that opinion." ¹

Now, if the above "interpretative understanding" can be construed as being of a binding nature, and if its compass can be extended to cover the point at issue, then the question of ascertaining the balance of payments and reserve position of the Participants seems to have finally been resolved in a spirit of co-operation and mutual understanding. The contents of the above interpretative provision would, in the long run, secure the practicability of the voting machinery of the Borrowing Scheme, and would indeed strengthen the obligations of surplus countries to help the deficit countries in time of need.

1. See Appendix XXI. The very contents of the above "interpretative understanding" are indicative of difficulties which have arisen, in the course of time, for ascertaining the balance of payments and reserve position of the prospective lenders. Cf. "International Monetary Fund, 1945-1965", op. cit., Vol. I. p. 511.

GENERAL CONCLUSION

The necessity for setting up of the Borrowing Scheme was an economic one; something had to be done to cope with the movement of "hot money". The deficit Countries, on the one hand, were desperate to get sufficient assurance for the return of hot money from other members of the Group of Ten. The surplus Countries, on the other, seemed to be reluctant to go so far as the deficit Countries were expecting. The result was the setting up of the Borrowing Scheme in its existing form.

Under some Paragraphs of the Borrowing Scheme, the Participants have accepted certain commitments to replenish the Fund's holdings of scarce currencies; there has yet been envisaged parallel provisions to the effect that the Participants have committed themselves to nothing more than pactum de contrahendo.

One thing, however, seems to be clear, viz., the surplus Countries feel that they have given what they would; and the deficit Countries seem to have taken what they could. We admit that a law student is not in a position to suggest that what the nature of "economic" commitments of the Participants should be. All he is expected to do is to see what these commitments have been. This is what we have attempted to do in this paper. For instance, we ventured to say that the deficit Countries in need of Currencies could mostly count on good will of the surplus Countries, and not on the provisions of the Borrowing Scheme.

Another thing which we could see in the course of activities of the Group of Ten, was that the procedure contemplated for "borrowing arrangements" could not be followed properly in practice. This was partly due to the fact that the movement of "hot money" is of a widespread nature; and the steps necessary to be taken should be prompt, secret and with the minimum of procedure.

Yet, so long as the lengthy "consultative arrangements" of the Borrowing Scheme have not been consolidated in a single document, they do not seem to be satisfactory. There might come a time when their wasteful procedures would be invoked, not because of any binding effect, but perhaps for the sake of achieving some other purposes. For this reason, the "consultative arrangements" of 'The Letter' and 'The Decision' seem to require simplification, and even consolidation.

Furthermore, some of the provisions of the Borrowing Scheme (especially those of the voting machinery of the Borrowing Scheme) seem to require alteration or authoritative interpretation. This, we may add, should include the very provision of interpretative machinery of the Borrowing Scheme, that is, the provision of Paragraph 20 of 'The Decision'.

APPENDIX I

'The Letter'

December 15, 1961

The Right Honourable
SELWYN LLOYD,
Chancellor of the Exchequer,
The Treasury,
London.

Dear Mr. Chancellor,

The purpose of this letter is to set forth the understandings reached during the recent discussions in Paris with respect to the procedure to be followed by the Participating Countries and Institutions (hereinafter referred to as "the participants") in connection with borrowings by the International Monetary Fund of Supplementary Resources under credit arrangements which we expect will be established pursuant to a decision of the Executive Directors of the Fund.

This procedure, which would apply after the entry into force of that decision with respect to the participants which adhere to it in accordance with their laws, and which would remain in effect during the period of the decision, is as follows:

A. A participating country which has need to draw currencies from the International Monetary Fund or to seek a stand-by agreement with the Fund in circumstances indicating that the Supplementary Resources might be used, shall consult with the Managing Director of the Fund first and then with the other participants.

B. If the Managing Director makes a proposal for Supplementary Resources to be lent to the Fund, the participants shall consult on this proposal and inform the Managing Director of the amounts of their currencies which they consider appropriate to lend to the Fund, taking into account the recommendations of the Managing Director and their present and prospective balance of payments and reserve positions. The participants shall aim at reaching unanimous agreement.

C. If it is not possible to reach unanimous agreement, the question whether the participants are prepared to facilitate, by lending their currencies, an exchange transaction or stand-by arrangement of the kind covered by the special borrowing arrangements and requiring the Fund's resources to be supplemented in the general order of magnitude proposed by the Managing Director, will be decided by a poll of the participants.

The prospective drawer will not be entitled to vote. A favorable decision shall require the following majorities of the participants which take part in the vote, it being understood that abstentions may be justified only for balance of payments reasons as stated in paragraph D:

- (1) a two-thirds majority of the number of participants voting; and
- (2) a three-fifths majority of the weighted votes of the participants voting, weighted on the basis of the commitments to the Supplementary Resources.

D. If the decision in paragraph C is favorable, there shall be further consultations among the participants, and

with the Managing Director, concerning the amounts of the currencies of the respective participants which will be loaned to the Fund in order to attain a total in the general order of magnitude agreed under paragraph C. If during the consultations a participant gives notice that in its opinion, based on its present and prospective balance of payments and reserve position, calls should not be made on it, or that calls should be for a smaller amount than that proposed, the participants shall consult among themselves and with the Managing Director as to the additional amounts of their currencies which they could provide so as to reach the general order of magnitude agreed under paragraph C.

E. When agreement is reached under paragraph D, each participant shall inform the Managing Director of the calls which it is prepared to meet under its credit arrangement with the Fund.

F. If a participant which has loaned its currency to the Fund under its credit arrangement with the Fund subsequently requests a reversal of its loan which leads to further loans to the Fund by other participants, the participant seeking such reversal shall consult with the Managing Director and with the other participants.

For the purpose of the consultative procedures described above, participants will designate representatives who shall be empowered to act with respect to proposals for use of the Supplementary Resources.

It is understood that in the event of any proposals for calls under the credit arrangements or if other matters should arise under the Fund decision requiring consultations among the participants, a consultative meeting will be held among all the participants. The representative of France shall be responsible for calling the first meeting, and at that time the participants will determine who shall be the Chairman. The Managing Director of the Fund or his representative shall be invited to participate in these consultative meetings.

It is understood that in order to further the consultations envisaged, participants should, to the fullest extent practicable, use the facilities of the international organizations to which they belong in keeping each other informed of the developments in their balances of payments that could give rise to the use of the Supplementary Resources.

These consultative arrangements, undertaken in a spirit of international cooperation, are designed to insure the stability of the international payments system.

I shall appreciate a reply confirming that the foregoing represents the understandings which have been reached with respect to the procedure to be followed in connection with borrowings by the International Monetary Fund under the credit arrangements to which I have referred.

I am sending identical letters to the other participants - that is, Belgium, Canada, Germany, Italy, Japan, the Netherlands, Sweden, the United States. Attached is a verbatim text of this letter in English. The French and English texts and the replies of the participants in both languages shall be equally authentic. I shall notify all of the participants of the confirmations received in response to this letter.

W. BAUMGARTNER.

APPENDIX II.

Chief Secretary to the Treasury and Paymaster General to
the French Minister of Finance.

Chief Secretary
to the Treasury

Treasury Chambers,
Great George Street,
S.W.1.

2nd January, 1962.

Dear Mr. Minister,

This is in reply to your letter of 15th December, 1961 to Mr. Selwyn Lloyd setting forth the understandings reached during the recent discussions in Paris with respect to the procedure to be followed by the Participating Countries and Institutions in connection with the Borrowings by the International Monetary Fund of Supplementary Resources under credit arrangements which we expect will be established.

On behalf of the United Kingdom, I am pleased to confirm that we are in agreement with the statement of understandings as set forth in your letter of 15th December, 1961. I am attaching, in accordance with your suggestion, the French text of this letter of confirmation.

Yours sincerely,

HENRY BROOKE.

Monsieur Baumgartner,
Ministre des Finances,
Paris.

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APPENDIX III.

Dear Mr. Chancellor,

You have been kind enough to confirm to me your agreement regarding the procedure to be followed in connection with Borrowing by the International Monetary Fund of Supplementary Resources from the Participating Countries and Institutions.

I have the honour to inform you that I have received similar confirmations from the Minister of Finance of Belgium, the Minister of Finance of Canada, the President of the German Federal Bank, the Minister of the Treasury of Italy, the Minister of Finance of Japan, the Minister of Finance of the Netherlands, the Governor of the National Bank of Sweden, and the Secretary of the Treasury of the United States.

I should also like to confirm to you the agreement of the French Government regarding the terms of my letter of December 15, 1961.

I am notifying the other participants, as well as the International Monetary Fund, of the general agreement thus realized with respect to the understandings reached during the recent discussions in Paris.

W. BAUMGARTNER.

The Honourable Selwyn Lloyd
C.B.E., T.D., Q.C., M.P.
Chancellor of the Exchequer
The Treasury
London, S.W.1.

APPENDIX IV.

'The Decision'

ARTICLE VII, SECTION 2

General Arrangements to Borrow

Preamble

In order to enable the International Monetary Fund to fulfill more effectively its role in the international monetary system in the new conditions of widespread convertibility, including greater freedom for short-term capital movements, the main industrial countries have agreed that they will, in spirit of broad and willing cooperation, strengthen the Fund by general arrangements under which they will stand ready to lend their currencies to the Fund up to specified amounts under Article VII, Section 2 of the Articles of Agreement when supplementary resources are needed to forestall or cope with an impairment of the international monetary system in the aforesaid conditions. In order to give effect to these intentions, the following terms and conditions are adopted under Article VII, Section 2, of the Articles of Agreement.

Paragraph 1. Definitions

As used in this Decision the term:

- (i) "Articles" means the Articles of Agreement of the International Monetary Fund;
- (ii) "credit arrangements" means an undertaking to lend to the Fund on the terms and conditions of this Decision;

- (iii) "participant" means a participating member of a participating institution;
- (iv) "participating institution" means an official institution of a member that has entered into a credit arrangement with the Fund with the consent of the member;
- (v) "participating member" means a member of the Fund that has entered into a credit arrangement with the Fund;
- (vi) "amount of a credit arrangement" means the maximum amount expressed in units of its currency that a participant undertakes to lend to the Fund under a credit arrangement;
- (vii) "call" means a notice by the Fund to a participant to make a transfer under its credit arrangement to the Fund's account;
- (viii) "borrowed currency" means currency transferred to the Fund's account under a credit arrangement;
- (ix) "drawer" means a member that purchases borrowed currency from the Fund in an exchange transaction or in an exchange transaction under a stand-by arrangement;
- (x) "Indebtedness" of the Fund means the amount it is committed to repay under a credit arrangement.

Paragraph 2. Credit Arrangements

A member or institution that adheres to this Decision undertakes to lend its currency to the Fund on the terms and conditions of this Decision up to the amount in units of its currency set forth in the Annex to this Decision or established in accordance with Paragraph 3 (b).

Paragraph 3. Adherence

(a) Any member or institution specified in the Annex may adhere to this Decision in accordance with Paragraph 3(c).

(b) Any member or institution not specified in the Annex that wishes to become a participant may at any time, after consultation with the Fund, give notice of its willingness to adhere to this Decision, and, if the Fund shall so agree and no participant object, the member or institution may adhere in accordance with Paragraph 3(c). When giving notice of its willingness to adhere under this Paragraph 3(b), a member or institution shall specify the amount, expressed in terms of its currency, of the credit arrangement which it is willing to enter into, provided that the amount shall not be less than the equivalent at the date of adherence of one hundred million United States dollars of the weight and fineness in effect on July 1, 1944.

(c) A member or institution shall adhere to this Decision by depositing with the Fund an instrument setting forth that it has adhered in accordance with its law and has taken all steps necessary to enable it to carry out the terms and conditions of this Decision. On the deposit of the instrument, the member or institution shall be a participant as of the date of the deposit or of the effective date of this Decision, whichever shall be later.

Paragraph 4. Entry into Force.

This Decision shall become effective when it has been adhered to by at least seven of the members or institutions included in the Annex with credit arrangements amounting in all to not less than the equivalent of five and one-half billion United States dollars of the weight and fineness of in effect on July 1, 1944.

Paragraph 5. Changes in Amounts of Credit Arrangements

The amounts of participants' credit arrangements may be reviewed from time to time in the light of developing circumstances and changed with the agreement of the Fund and all participants.

Paragraph 6. Initial Procedure

When a participating member or a member whose institution is a participant approaches the Fund on an exchange transaction or stand-by arrangement and the Managing Director, after consultation, considers that the exchange transaction or stand-by arrangement is necessary in order to forestall or cope with an impairment of the international monetary system, and that the Fund's resources need to be supplemented for this purpose, he shall initiate the procedure for making calls under Paragraph 7.

Paragraph 7. Calls

(a) The Managing Director shall make a proposal for calls for an exchange transaction or for future calls for exchange transactions under a stand-by arrangement only after consultation with Executive Directors and participants. A proposal shall

become effective only if it is accepted by participants and the proposal is then approved by the Executive Directors. Each participant shall notify the Fund of the acceptance of a proposal involving a call under its credit arrangement.

(b) The currencies and amounts to be called under one or more of the credit arrangements shall be based on the present and prospective balance of payments and reserve positions of participating members or members whose institutions are participants and on the Fund's holdings of currencies.

(c) Unless otherwise provided in a proposal for future calls approved under Paragraph 7(a), purchases of borrowed currency under a stand-by arrangement shall be made in the currencies of participants in proportion to the amounts in the proposal.

(d) If a participant on which calls may be made pursuant to Paragraph 7(a) for a drawer's purchases under a stand-by arrangement gives notice to the Fund that in the participant's opinion, based on the present and prospective balance of payments and reserve position, calls should no longer be made on the participant or that calls should be for a smaller amount, the Managing Director may propose to other participants that substitute amounts be made available under their credit arrangements, and this proposal shall be subject to the procedure of Paragraph 7(a). The proposal as originally approved under Paragraph 7(a) shall remain effective unless and until a proposal for substitute amounts is approved in accordance with Paragraph 7(a).

(e) When the Fund makes a call pursuant to this Paragraph 7, the participant shall promptly make the transfer in accordance with the call.

Paragraph 8. Evidence of Indebtedness

(a) The Fund shall issue to a participant, on its request, non-negotiable instruments evidencing the Fund's indebtedness to the participant. The form of the instruments shall be agreed between the Fund and the participant.

(b) Upon repayment of the amount of any instrument issued under Paragraph 8(a) and all accrued interest, the instrument shall be returned to the Fund for cancellation. If less than the amount of any such instrument is repaid, the instrument shall be returned to the Fund, and a new instrument for the remainder of the amount shall be substituted with the same maturity date as in the old instrument.

Paragraph 9. Interest and Charges

(a) The Fund shall pay a charge of one-half of one per cent on transfers made in accordance with Paragraph 7(e).

(b) The Fund shall pay interest on its indebtedness at the rate of one and one-half per cent per annum. In the event that this becomes different from a basic rate determined as follows:

the charge levied by the Fund pursuant to Article V, Section 8(a), plus the charge levied by the Fund pursuant to Article V, Section 8(c)(i), as changed from time to time under Article V, Section 8(e), during the first year

after a purchase of exchange from the Fund, minus one-half of one per cent,

the interest payable by the Fund shall be changed by the same amount as from the date when the difference in the basic rate takes effect. Interest shall be paid as soon as possible after July 31, October 31, January 31, and April 30.

(c) Interest and charges shall be paid in gold to the extent that this can be effected in bars. Any balance not so paid shall be paid in United States dollars.

(d) Gold payable to a participant in accordance with Paragraph 9(b) or Paragraph 11 shall be delivered at any gold depository of the Fund chosen by the participant at which the Fund has sufficient gold for making the payment. Such delivery shall be free of any charges or costs for the participant.

Paragraph 10. Use of Borrowed Currency

The Fund's policies and practices on the use of its resources and stand-by arrangements, including those relating to the period of use, shall apply to purchases of currency borrowed by the Fund.

Paragraph 11. Repayment by the Fund

(a) Subject to the other provisions of this Paragraph 11, the Fund, five years after a transfer by a participant, shall repay the participant an amount equivalent to the transfer calculated in accordance with Paragraph 12. If the drawer for whose purchase participants make transfers is committed to repurchase at a fixed date earlier than five years after

its purchase, the Fund shall repay the participants at that date. Repayment under this Paragraph 11(a) or under Paragraph 11 (c) shall be, as determined by the Fund, in the participant's currency whenever feasible, or in gold, or, after consultation with the participant, in other currencies that are convertible in fact. Repayments to a participant under the subsequent provisions of this Paragraph 11 shall be credited against transfers by the participant for a drawer's purchases in the order in which repayment must be made under this Paragraph 11 (a).

(b) Before the date prescribed in Paragraph 11(a), the Fund, after consultation with a participant, may ^amake repayment to the participant, in part or in full, with any increases in the Fund's holdings of the participant's currency that exceed the Fund's working requirements, and participants shall accept such repayment.

(c) Whenever a drawer repurchases, the Fund shall promptly repay an equivalent amount, except in any of the following cases:

(i) The repurchase is under Article V, Section 7(b) and can be identified as being in respect of a purchase of currency other than borrowed currency.

(ii) The repurchase is in discharge of a commitment entered into on a purchase of currency other than borrowed currency.

(iii) The repurchase entitles the drawer to augment rights under a stand-by arrangement pursuant to Section II of Decision No.876-(59/15) of the Executive Directors, provided that, to the extent that the drawer does not exercise such augmented rights, the Fund shall promptly repay an equivalent amount on the expiration of the stand-by arrangement.

(d) Whenever the Fund decides in agreement with a drawer that the problem for which the drawer made its purchases has been overcome, the drawer shall complete repurchase, and the Fund shall complete repayment and be entitled to use its holdings of the drawer's currency below 75 per cent of the drawer's quota in order to complete such repayment.

(e) Repayment under Paragraph 11 (c) and (d) shall be made in the order established under Paragraph 11 (a) and in proportion to the Fund's indebtedness to the participants that made transfers in respect of which repayment is being made.

(f) Before the date prescribed in Paragraph 11(a) a participant may give notice representing that there is a balance of payments need for repayment of part or all of the Fund's indebtedness and requesting such repayment. The Fund shall give the overwhelming benefit of any doubt to the participant's representation. Repayment shall be made after consultation with the participant in the currencies of other members that are convertible in fact, or made in gold, as determined by the

Fund. If the Fund's holdings of currencies in which repayment should be made are not wholly adequate, individual participants shall be requested, and will be expected, to provide the necessary balance under their credit arrangements. If, notwithstanding the expectation that the participants will provide the necessary balance they fail to do so, repayment shall be made to the extent necessary in the currency of the drawer for whose purchases the participant requesting repayment made transfers. For all of the purposes of this Paragraph 11, transfers under this Paragraph 11(f) shall be deemed to have been made at the same time and for the same purchases as the transfers by the participant obtaining repayment under this Paragraph 11(f).

(g) All repayments to a participant in a currency other than its own shall be guided, to the maximum extent practicable, by the present and prospective balance of payments and reserve positions of the members whose currencies are to be used in repayment.

(h) The Fund shall at no time reduce its holdings of a drawer's currency below an amount equal to the Fund's indebtedness to the participants resulting from transfers for the drawer's purchases.

(i) When any repayment is made to a participant, the amount that can be called for under its credit arrangement in accordance with this Decision shall be restored pro tanto but not beyond the amount of the credit arrangement.

Paragraph 12. Rates of Exchange

(a) The value of any transfer shall be calculated as of the date of the transfer in terms of a stated number of fine ounces of gold or of the United States dollar of the weight and fineness in effect on July 1, 1944, and the Fund shall be obliged to repay an equivalent value.

(b) For all of the purposes of this Decision, the equivalent in currency of any number of fine ounces of gold or of the United States dollar of the weight and fineness in effect on July 1, 1944, or vice versa, shall be calculated at the rate of exchange at which the Fund holds such currency at the date as of which the calculation is made; provided however that the provisions of Decision No. 321-(54/32) of the Executive Directors on Transactions and Computations Involving Fluctuating Currencies, as amended by Decision No. 1245-(61/45) and Decision No. 1283-(61/56), shall determine the rate of exchange for any currency to which that decision, as amended, has been applied.

Paragraph 13. Transferability

A participant may not transfer all or part of its claim to repayment under a credit arrangement except with the prior consent of the Fund and on such terms and conditions as the Fund may approve.

Paragraph 14. Notices

Notice to or by a participating member under this Decision shall be in writing or by cable and shall be given to or by the fiscal agency of the participating member designated in

accordance with Article V, Section 1 of the Articles and Rule G-1 of the Rules and Regulations of the Fund. Notice to or by a participating institution shall be in writing or by cable and shall be given to or by the participating institution.

Paragraph 15. Amendment

This Decision may be amended during the period prescribed in Paragraph 19(a) only by a decision of the Fund and with the concurrence of all participants. Such concurrence shall not be necessary for the modification of the Decision on its renewal pursuant to Paragraph 19(b).

Paragraph 16. Withdrawal of Adherence

A participant may withdraw its adherence to this Decision in accordance with Paragraph 19(b) but may not withdraw within the period prescribed in Paragraph 19(a) except with the agreement of the Fund and all participants.

Paragraph 17. Withdrawal from Membership.

If a participating member or a member whose institution is a participant withdraws from membership in the Fund, the participant's credit arrangement shall cease at the same time as the withdrawal takes effect. The Fund's indebtedness under the credit arrangement shall be treated as an amount due from the Fund for the purpose of Article XV, Section 3, and Schedule D of the Articles.

Paragraph 18. Suspension of Exchange Transactions and
Liquidation

(a) The right of the Fund to make calls under Paragraph 7 and the obligation to make repayments under Paragraph 11 shall be suspended during any suspension of exchange transactions under Article XVI of the Articles.

(b) In the event of liquidation of the Fund, credit arrangements shall cease and the Fund's indebtedness shall constitute liabilities under Schedule E of the Articles. For the purpose of Paragraph 1 (a) of Schedule E, the currency in which the liability of the Fund shall be payable shall be first the participant's currency and then the currency of the drawer for whose purchases transfers were made by the participant.

Paragraph 19. Period and Renewal

(a) This Decision shall continue in existence for four years from its effective date.

(b) This Decision may be renewed for such period or periods and with such modifications, subject to Paragraph 5, as the Fund may decide. The Fund shall adopt a decision on renewal and modification, if any, not later than twelve months before the end of the period prescribed in Paragraph 19(a). Any participant may advise the Fund not less than six months before the end of the period prescribed in Paragraph 19 (a) that it will withdraw its adherence to the Decision as renewed.

In the absence of such notice, a participant shall be deemed to continue to adhere to the Decision as renewed. Withdrawal of adherence in accordance with this Paragraph 19(b) by a participant, whether or not included in the Annex, shall not preclude its subsequent adherence in accordance with Paragraph 3(b).

(c) If this Decision is terminated or not renewed, Paragraphs 8 through 14, 17 and 18(b) shall nevertheless continue to apply in connection with any indebtedness of the Fund under credit arrangements in existence at the date of the termination or expiration of the Decision until repayment is completed. If a participant withdraws its adherence to this Decision in accordance with Paragraph 16 or Paragraph 19(b), it shall cease to be a participant under the Decision, but Paragraphs 8 through 14, 17 and 18(b) of the Decision as of the date of the withdrawal shall nevertheless continue to apply to any indebtedness of the Fund under the former credit arrangement until repayment has been completed.

Paragraph 20. Interpretation

Any question of interpretation raised in connection with this Decision which does not fall within the purview of Article XVIII of the Articles shall be settled to the mutual satisfaction of the Fund, the participant raising the question, and all other participants. For the purpose of this Paragraph 20 participants shall be deemed to include those former participants to which Paragraph 8 through 14, 17 and 18(b) continue to apply pursuant to Paragraph 19(c) to the extent

that any such former participant is affected by a question of interpretation that is raised.

ANNEX

Participants and Amounts of Credit Arrangements

		Units of Participant's Currency
1. United States of America	US\$	2,000,000,000
2. Deutsche Bundesbank	DM	4,000,000,000
3. United Kingdom	£	357,142,857
4. France	NF	2,715,381,428
5. Italy	Lit	343,750,000,000
6. Japan	Yen	90,000,000,000
7. Canada	Can \$	216,216,000
8. Netherlands	f.	724,000,000
9. Belgium	BF	7,500,000,000
10. Sveriges Riksbank	Skr	517,320,000

Decision No.1289-(62/1)*

January 5, 1962

* As amended, effective August 1, 1962, (Decision No.1362-(62/32), July 9, 1962) and, effective October 12, 1962 (Decision No. 1415-(62/47), September 19, 1962).

The General Arrangements to Borrow entered into force on October 24, 1962.

APPENDIX V.

COPYLuftpost! Einschreiben!

The Managing Director
International Monetary Fund
19th and H Streets N.W.
Washington 25, D.C.

U.S.A.

J 110

Frankfurt, June 15th, 1962.

Ref.: Instrument of Adherence

Dear Mr. Jacobsson:

We beg to notify you that the Deutsche Bundesbank, in accordance with the law concerning the Deutsche Bundesbank of July 26, 1957, hereby adheres to Decision No.1289 (62/1) of January 5, 1962 of the Fund's Executive Directors on General Arrangements to Borrow and that the Deutsche Bundesbank has taken all steps necessary to enable it to carry out the terms and conditions of that Decision.

Very truly yours,

DEUTSCHE BUNDESBANK

sgd. Karl Blessing

President

Dr. Troeger

Vice-President

APPENDIX VI.

COPY

Stockholm, June 7, 1962.

Sir,

Pursuant to the authorization granted the Sveriges Riksbank by the Riksdag by its decision announced in letter No.178 of 3rd May, 1962, we take pleasure in notifying you that the Riksbank on behalf of Sweden hereby adheres to the Decision of the Executive Directors of the Fund on General Arrangements to Borrow (E.B. Decision n. 1289-(62/1) of 5th January, 1962) and that all steps necessary have been taken to carry out the terms and conditions of that Decision.

Yours faithfully,

SVERIGES RIKSBANK

Signed Per Åsbrink

E. Bergman

The Managing Director
International Monetary Fund
19th and H Streets
Washington 25, D.C.

APPENDIX VII.

H. Abdulbaqi,
University of Durham
.....

G. Nicoletopoulos, Esq.,
The Deputy General Counsel,
I.M.F., Washington D.C.,
U.S.A.

Dear Sir,

This is to acknowledge with thanks the receipt of your letters of May 21, 1968 and Nov. 19, 1968.

1. As regards the contents of letter of May 21, 1968 I shall be very grateful if you could kindly let me know as to how and on what terms the approval of German Federal Government, in respect of participation of the Deutsche Bundesbank to the G.A.B., has been conveyed to the Fund. The same information regarding Sveriges Riksbank also will be appreciated.

2. The Fund Executive Board's Decision No.1362-(62/32), adopted on July 9, 1962 was not published in the Fund's Summary Proceedings of 1962, I shall be grateful if you could kindly furnish me with a copy of the consents of this Decision

Yours sincerely,
(sd.) H. Abdulbaqi

APPENDIX VIII.

INTERNATIONAL MONETARY FUND

WASHINGTON, D.C. 20431

Jan. 16 1969

Dear Mr. Abdulbaqri:

This is in response to your letter of December 3, 1968.

With respect to your question on the approval of the Government of the Federal Republic of Germany regarding the adherence of Deutsche Bundesbank, and the approval of the Government of Sweden regarding the adherence of Sveriges Riksbank, to the G.A.B., the approvals were given by letters from these two Governments to the Fund. No terms were imposed, that is to say, the instruments of approval simply stated that the respective Governments approved the borrowing by the Fund from their central banks up to the amounts and under the terms and conditions set out in the Fund's decision on the G.A.B.

The Fund's Decision No.1362-(62/32), adopted July 9, 1962, to which reference is made in the footnote at page 66 of Selected Decisions (Third Issue) stated that in the Annex to Decision No.1289-(62/1) "Sveriges Riksbank" shall be substituted for "Sweden" and that this amendment shall become effective when the consent of all the prospective participants to the amendment is given.

.....
Mr. H. Abdulbaqri
.....

Sincerely yours,
(sd.) G. Nicoletopoulos
Deputy General Counsel

APPENDIX IX.

H. Abdulbaqi,
University of Durham.
.....

G. Nicoletopoulos,
Deputy General Counsel,
International Monetary Fund.

8th May, 1968.

Dear Sir,

..... I shall be grateful if you could kindly clarify the position of the Fund on the following point.

Since, according to Article VII 2 of I.A.A., the Fund is assumed to come to agreement, regarding the General Arrangements to Borrow, with member States of the Fund, and since Para. 14 of the General Arrangements to Borrow is, on the face of it, differentiating between Participating members (by referring to Art. VI. of I.A.A. and Rule G.1. of the RR) and Participating Institutions (by not referring to the above provisions) to the General Arrangements to Borrow. And since, on the other hand, the Deutsche Bundesbank has adhered to the General Arrangements to Borrow (as an original party), therefore kindly let me know of any decision, made by the Fund under the I.A.A. following which an institution as such can come into an agreement (as an original party) with the Fund, under Article VII, 2.....

Thanking you,

Yours sincerely,

(sd.)

H. Abdulbaqi.

APPENDIX. X.

INTERNATIONAL MONETARY FUND

WASHINGTON, D.C. 20431

May 21, 1968

Dear Mr. Abdulbaqri:

This is with reference to your letter of May 8, 1968.

Article VII, Section 2 of the Articles of Agreement of the Fund permits the Fund to borrow a member's currency either from the member itself or, with the approval of the member, from some other source within or outside the territories of the member. It was on the basis of that provision that, with the approval of the German Federal Government, the Deutsche Bundesbank became a participant in the General Arrangements to Borrow. It is a participant in its own name and not a fiscal agency for Germany.

Paragraph 14 of the G.A.B. does not contain a substantive rule but simply sets forth a procedural rule dealing with the channels of communication regarding G.A.B. matters.

I trust that the foregoing gives you the answer to your question.

Sincerely yours,

(sd.) G. Nicoletopoulos

Deputy General Counsel

Mr. H. Abdulbaqri
The Graduate Society
University of Durham
.....

APPENDIX XI.

Your Ref. J 111,14624,68

H. Abdolbaqi,
The Graduate Society,
University of Durham
.....

The Deutsche Bundesbank,
6 Frankfurt 1, F.R. of Germany.

10th August, 1969.

Dear Sir,

.....

1. Art. 7(1) of the "Law concerning the Deutsche Bundesbank" of June 26, 57 states:

"(1) ... More particularly, the following business shall be reserved to the Directorate: ... 3. Foreign exchange transactions and transactions with foreign countries: ..."

I shall be grateful if you could kindly let me know whether the Deutsche Bundesbank has been empowered with the treaty-making power - under the Constitution of the F.R. of Germany. Any other information concerning the legal status of the Deutsche Bundesbank, under the Constitution of F.R. of Germany would be appreciated.

2..... And is there any Parliamentary authorization concerning DM 4,000m. the Deutsche Bundesbank's "credit arrangement" under the G.A.B.?

.....

Yours sincerely,

(sd.) H. Abdolbaqi

APPENDIX XII.

DEUTSCHE BUNDESBANK

Deutsche Bundesbank. 6 Frankfurt 1. Postfach 3611

Mr. H. Abdulbaqi
The Graduate Society,
University of Durham

.....

Frankfurt am Main

J 11/8060/69

26.8.845

20 August 1969

Ref.: Your letter dated Aug. 11, 1969.

Sir,

We should like to answer your questions as follows:

1. Article 88 of the Basic Law (Constitution) of the Federal Republic of Germany provides that the Federation shall set up a Federal Bank with the functions of a monetary authority and a bank of issue. Accordingly, the "Law concerning the Deutsche Bundesbank" established the Federal Bank as an autonomous federal institution and as a legal entity under public law (Art. 2).

2.

3. As the Federal Bank may engage in all transactions involving banking business with foreign countries (Art.19 Sec.1 No.9 and Art.22) it was entitled to join the GAB as a participant with the approval of the Federal Government (Article VII Sec. 2 (i), Articles of Agreement of the IMF). Consequently, no parliamentary authorization was necessary.

Sincerely Yours,
Deutsche Bundesbank

LOIS, ARRETES ROYAUX ET ACTES DU GOUVERNEMENT

MINISTERE DES FINANCES

19 Juin 1962. - Arrêté royal. - Adhésion de la Belgique à la décision du Fonds monétaire international en date du 5 janvier 1962, relative au renforcement des ressources dudit Fonds.

BAUDOUIN, Roi des Belges,

A tous, présents et à venir, Salut.

Vu l'article 68 de la Constitution,

Vu la loi du 26 décembre 1945 approuvant l'Accord international consacré par l'Acte final de la Conférence monétaire et financière de Bretton Woods créant le Fonds monétaire international,

Vu l'avis de Nos Ministres qui en ont délibéré en Conseil;

Sur la proposition de Notre Ministre des Finances,

Nous avons arrêté et arrêtons:

Article 1. Notre Ministre des Finances est autorisé à notifier au Fonds monétaire international l'adhésion de la Belgique à la décision du Conseil d'administration dudit Fonds, en date du 5 janvier 1962, relative au renforcement des ressources du Fonds monétaire international.

Art.2. L'acte d'adhésion de la Belgique à la décision visée à l'article précédent ne sortira son plein et entier effet qu'après ratifications par les Chambres législatives.

Art. 3. Notre Ministre des Finances est chargé de l'exécution du présent arrêté.

Donné à Bruxelles, le 19 juin 1962.

BAUDOUIN

Par le Roi:

Le Ministre des Finances,

A. Dequae

APPENDIX XIV.

FILE NO. 612707
FINANCE CENTRAL FILES.

MINISTER OF FINANCE - PRESS RELEASE

The Honourable Walter L. Gordon, Minister of Finance, announced today that on January 21, 1964, he informed Mr. Pierre-Paul Schweitzer, the Managing Director of the International Monetary Fund, that Canada now adheres to the decision of the Executive Directors of the International Monetary Fund on the General Arrangements to Borrow and, in accordance with its law, has taken all steps necessary to enable it to carry out the terms and conditions of the decision.

By this action Canada joined nine other leading industrial countries (Belgium, Germany, France, Italy, Japan, Netherlands, Sweden, United Kingdom, United States) in undertaking to provide stand-by credits totalling U.S. \$ 6 billion to the International Monetary Fund.

.....

Canada has agreed to a maximum commitment of U.S. \$ 200 million.

Canada completed the legislative steps necessary for full participation in the last session of Parliament with the amendment of the Currency Mint and Exchange Fund Act to allow the Minister of Finance to purchase, out of the Exchange Fund Account, securities of the International Monetary Fund maturing not later than five years from date of issue.

Such securities would be issued when a country provided loans under the General Arrangements to borrow.....

DEUTSCHE BUNDESBANK

Deutsche Bundesbank, 6 Frankfurt 1, Postfach 3611

Mr. H. Abdulbaqui
The Graduate Society,
University of Durham,
38, Old Elvet,
Durham
U.K.

J110/3889/68

Frankfurt am Main
April 10, 1968

Your letter dated March 28, 1968

Sir:

The enclosure is a copy of the instrument of adherence to the General Arrangements to Borrow, sent to the I.M.F. with the approval of our Government on June 15, 1962.

Our institution being immediate participant in the General Arrangements to Borrow, parliamentary action was not required.

Yours sincerely,

DEUTSCHE BUNDESBANK

APPENDIX XVI

BLT/NL

Paris Le 25 June 1970

Ministère de l'économie et des Finances

Direction du Trésor

Service des Affaires Internationales
Sous-Direction des Affaires Multilatérales
Bureau E.2.

No.14684

Monsieur,

En réponse à votre lettre du 4 juin 1970 dans laquelle vous me demandiez de vous communiquer divers documents relatifs aux Accords Généraux d'Emprunt, j'ai l'honneur de vous faire savoir qu'il ne m'est malheureusement pas possible de satisfaire votre requête, en raison du caractère confidentiel des documents en question.

Je le regrette et vous prie d'agréer, Monsieur, l'assurance de ma considération distinguée.

Pour le Ministre et par autorisation:
Le Directeur du Trésor,
Pour le Directeur
L'Inspecteur des Finances
chargé de Mission.

Signé Bloch-Laine.

H. Abdolbaqi ...

.....

SVERIGES RIKSBANK

Utr. sekr.

Stockholm, 4th April, 1968

SB/Spr

Mr. H. Abdulbaqi
The Graduate Society
University of Durham
38 Old Elvet
Durham
England.

Dear Sir,

.....

We may add that for the implementation of the agreement two amendments were made in the Sveriges Riksbank Act of 30th June 1934 (furnished you with our letter of 22nd January, 1968). Paragraph g) was included in Art. 10 and Art.15 was amended to the effect that the Riksbank may grant credits to the International Monetary Fund.

Yours faithfully,

SVERIGES RIKSBANK

(sd.)

E. Bergman

(sd.)

S. Brinck

APPENDIX XVIII

Public Law 87 - 490

87th Congress, H.R.10162

June 19, 1962

An Act.

76 STAT.105.

To amend the Bretton Woods Agreements Act to authorize the United States to participate in loans to the International Monetary Fund to strengthen the international monetary system.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Bretton Woods Agreements Act, as amended (22 U.S.C. 286-286 k-1), is amended by adding at the end thereof the following new sections:

Bretton Woods Agreements Act, amendment.

59 Stat. 512;
73 Stat. 80.

"Sec. 17. (a) In order to carry out the purposes of the decision of January 5, 1962, of the Executive Directors of the International Monetary Fund, the Secretary of the Treasury is authorized to make loans, not to exceed \$2,000,000,000 outstanding at any one time, to the Fund under article VII, section 2(i), of the Articles of Agreement of the Fund. Any loan under the authority granted in this subsection shall be made with due regard to the

present and prospective balance of payments and reserve position of the United States.

"(b) For the purpose of making loans to the International Monetary Fund pursuant to this section, there is hereby authorized to be appropriated \$ 2,000,000,000, to remain available until expended to meet calls by the International Monetary Fund. Any payments made to the United States by the International Monetary Fund as a repayment on account of the principal of a loan made under this section shall continue to be available for loans to the International Monetary Fund. Appropriation.

"(c) Payments of interest and charges to the United States on account of any loan to the International Monetary Fund shall be covered into the Treasury as miscellaneous receipts. In addition to the amount authorized in subsection (b), there is hereby authorized to be appropriated such amounts as may be necessary for the payment of charges in connection with any purchases of currencies or gold by the United States from the International Monetary Fund.

"SEC.18. Any purchases of currencies or gold by the United States from the International Monetary Fund may be transferred to and administered by the fund established by section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C.822a), for use in accordance with the provisions of that section. The Secretary of the Treasury is authorized to utilize the resources of that fund for the purpose of any repayments in connection with such transactions."

Currencies
or gold
purchases,
transfer.

48 Stat.34.

SEC.2. The last sentence of section 7 (c) of the Bretton Woods Agreements Act (22 U.S.C. 286e) is amended to read as follows: "The face amount of special notes issued to the Fund under the authority of this subsection and outstanding at any one time shall not exceed in the aggregate the amount of the subscription of the United States actually paid to the Fund and the dollar equivalent of currencies and gold which the United States shall have purchased from the Fund in accordance with the Articles of Agreement, and the face amount of such notes issued to the Bank and outstanding at any one time shall not exceed in the aggregate the amount of the subscription of the United States actually paid to the Bank under article II, section 7 (i), of the Articles of Agreement of the Bank".

Special
notes.

59 Stat.
514.

GROUP OF TEN COMMUNIQUÉ

.....

1. The Ministers and central bank governors of the 10 countries participating in the General Arrangements to Borrow met in Bonn on November 20-22, 1968, under the chairmanship of Karl Schiller, Minister of Economics, Federal Republic of Germany.

Pierre-Paul Schweitzer, managing director of the International Monetary Fund, took part in the meeting, which was also attended by the President of the Swiss National Bank, the Deputy Secretary-General of the O.E.C.D., the general manager of the B.I.S. and the Vice-president of the Commission of the European Communities.

2. The meeting was called by its chairman, Minister Schiller, on the proposal of several member countries. The ministers and governors had a comprehensive and thorough exchange of views on the basic problems of balance-of-payments disequilibria and on the recent speculative capital movements.

3. The participants agreed that international monetary stability is the joint responsibility of all countries in the international economic community. Both deficit and surplus countries expressed their willingness to contribute effectively to the stability of the international monetary system through appropriate and concerted economic policies. They agreed on measures to counter speculative capital movements.

4. Minister Schiller explained the decision of the Federal Government of Germany to introduce immediately tax relief on imports of 4 per cent of their value and a tax burden on exports of 4 per cent of their value.

These measures will substantially reduce the German trade surplus. The German Government also intends to restrict certain short-term transactions of German banks with non-residents; and the Federal Bank has decided yesterday to raise to 100 per cent the reserve requirements on additions to banks' liabilities to foreigners.

5. After thorough discussion of the German measures the ministers and governors agreed that these measures would make a significant contribution to the stability of the monetary system and the adjustment process. In the light of those measures, they endorsed the decision by the Federal Government to maintain the parity of the Deutsche Mark.

6. The French Economic and Finance Minister explained the situation of the French currency, the measures already taken towards a restoration of internal and external equilibrium, and the problems still to be solved.

7. It was decided to set up a new central bank credit facility for France in the amount of $\text{¥}2,000\text{m}$ ($\text{£}833\text{m}$.) This is in addition to France's substantial drawing facilities in the I.M.F.

8. The decision on the above mentioned credit facility underlines the determination of monetary authorities to counter speculation and to offset the effect on reserves of destabilising short-term capital flows. For the same purpose the governors, together with the B.I.S., will examine new central bank arrangements to alleviate the impact on reserves of speculative movements.

9. The participants welcomed the measures taken which will make a major contribution to the restoration of international payments equilibrium.

H. Abdolbaqi
University of Durham,
.....

3rd September, 1969

G. N. Nicoletopoulos, Esq.,
IMF, Washington D.C., U.S.A.

Dear Sir,

..... I shall be grateful if you could kindly send me copies of 'implementing agreements' concluded between Switzerland, U.S.A. and U.K., under paragraph (2) of M. A. Zehnder's Letter of June 11, 1964.

If the sending of copies of the 'implementing agreements' is not possible, could you kindly throw light on their status and scope of operation.

Further, in your Pamphlet series No.11, at page 11 it is said:

"... there have been ... occasions on which interpretative understandings of the General Arrangements have been necessary."

I shall be grateful if you could also send me the contents or reference to the contents of those 'interpretative understandings'.

Thank you again and I shall look forward to the pleasure of hearing from you.

Yours sincerely,

(signed).

H. Abdolbaqi.

APPENDIX XXI.

INTERNATIONAL MONETARY FUND

WASHINGTON, D.C. 20431

Sept. 23 1969

Dear Mr. Abdolbaqri:

.....

I regret that we cannot make available to you copies or inform you of the content of the "Implementing Agreements" between Switzerland, on the one hand, and the United States and the United Kingdom, on the other. However, you may wish to request copies of these agreements directly from the parties to them.

The informal "interpretative understandings" referred to on page 56 of Pamphlet No.11 are of an operational or procedural nature. An example of such an understanding is the following: Paragraph 7(d) has been understood to apply not only when a participant on which calls may be made is of the opinion that calls should no longer be made on the participant, but also when the Managing Director is of that opinion.

Sincerely yours

(sd.) G. Nicoletopoulos

Deputy General Counsel

Mr. H. Abdolbaqri

University of Durham, The Graduate Society
38 Old Ewet Durham, England.

APPENDIX XXII

SCHWEIZERISCHE NATIONALBANK - BANQUE NATIONALE SUISSE

ZÜRICH - BERN

8022 Zurich,

November 14, 1968.

Mr. H. Adbulbaqi
University of Durham
The Graduate Society
38 Old Elvet
Durham, U.K.

Dear Sir,

We are in receipt of your letter of the 29th October requesting information on our Bank and on the implementation of the Federal Decree of the 4th October, 1963 on Switzerland's participation in international monetary measures. Before entering into particulars, we wish to make just one preliminary remark: The quotations contained in your letter reveal that the relevant texts, insofar as they have been published, are in your possession or at least available to you in the French language. For this reason we abstain from enclosing these texts (e.g. the "Message du Conseil fédéral à l'Assemblée fédérale concernant la collaboration de la Suisse aux mesures monétaires internationales"), but are of course quite prepared to let you have these upon special

request.

Now let us turn to your specific questions:

(1) The Swiss National Bank is a joint-stock company with a share capital of Sw.fcs. 50 000 000, of which half is paid-up. Roughly 42 % of the shares are owned by private individuals or private companies, 58 % by cantons, cantonal banks (State banks of the cantons) and other public law corporations and institutions. The Confederation does not own any part of the Bank's capital. The Bank is a separate and distinct entity, but on account of its public tasks it is administered "under cooperation and supervision of the Confederation". In particular, the Federal Council (the government of the Confederation) appoints the members of the Board of General Management and the majority of the members of the Bank Council. The organisation and the field of activities of the National Bank are defined in a special Federal Law dated 23rd December, 1953, a copy of which (in French) is attached.

(2) All relevant points concerning Switzerland's participation in the General Arrangements to Borrow are contained in the arrangements known to you as well as in the "Message du Conseil fédéral à l'Assemblée fédérale concernant la collaboration de la Suisse aux mesures monétaires internationales". The contents of Mr. Jacobsson's letter of the 14th December, 1961 to the President of the Swiss Confederation

are reproduced in the "Message du Conseil fédéral" on page 360 at the top. This letter merely served as a formal basis to start official negotiations.

(3) So far, there are only two countries - viz. the United States of America and Great Britain - with whom Switzerland has concluded implementing agreements, and this for a fixed period of four years. The agreements lay down the principle of reciprocity, i.e. each of the two contracting parties may invoke the agreement in case of need and request assistance from its contracting partner. Borrowing facilities are granted by each country in its own currency on a swap basis, i.e. Switzerland makes Swiss francs available to its partner country and receives from it US dollars, or sterling. Each swap contract runs for a period of three months; it may however be renewed by mutual agreement. Repayment is to be effected *pari passu* in conjunction with any repayments made by the Monetary Fund to the members of the Group of Ten. Monetary assistance within the framework of the implementing agreements may also be granted in some other form, if this is mutually agreed upon. - The implementing agreements are being dealt with as confidential by all parties concerned (by the Federal Reserve Bank of New York, the Bank of England and by us), which is why we regret that we are not in a position to make the text available to you. The same applies to

the individual transactions concluded by virtue of the implementing agreements.

We hope that this information will be of some use to you, even though we were unable to meet all your wishes.

Yours faithfully,

BANQUE NATIONALE SUISSE

Enclosures:

- Federal Law on the Swiss National Bank
- Annual Report for 1967

326
APPENDIX XXIII.

SCHWEIZERISCHE NATIONALBANK - BANQUE NATIONALE SUISSE
BANCA NAZIONALE SVIZZERA
ZÜRICH - BERN

8022 Zurich,
December 17, 1968

Mr. H. Abdulbaqi,
University of Durham
The Graduate Society
38 Old Elvet
Durham, U.K.

Dear Sir,

This is in reply to your letter of December 9,
1968.

.....

The short-term assistance granted by our Institution to the Banque de France is not based on the exchange of letters of June 11, 1964, between the Swiss Confederation and the International Monetary Fund, but is an autonomous operation by our bank pursuant to Art. 14, Section 3, of the Law on the Swiss National Bank.

Yours faithfully
BANQUE NATIONALE SUISSE

APPENDIX XXIV.

The Honourable Secretary,
Ministry of Finance,
France.

H. Abdolbaghi,

.....

20th August, 1969.

Dear Sir,

.....

The letter of January 9, 1962 of M. Wilfrid Baumgartner, Minister of Finance, France, to Mr. Douglas Dillon, Secretary of the Treasury, U.S.A. reads as follows:

"... I have the honour to inform you that I have received similar confirmations from ... the President of the German Federal Bank ... the Minister of Finance of Japan, ... the Governor of the National Bank of Sweden I am notifying the other participants, as well as the International Monetary Fund, of the general agreement thus realized with respect to the understanding reached during the recent discussion in Paris...."

I shall be grateful if you could kindly furnish me with copies of English version of M. Wilfrid Baumgartner's letter of December 15, 1961 to Germany, Sweden and Japan and the confirmations His Excellency received thereof and the notifications sent to them thereafter together with copies of any correspondence in this respect, between your Ministry and the I.M.F. and Participants - before the Fund's Decision

No.1289 (62-1) was taken - and also copies of travaux préparatoires of the Paris arrangements of 1961 in respect of the G.A.B.

.....

Yours sincerely,
signed H. Abdolbaghi

BLT/NP

Ministère de L'Economie Et
Des Finances

Paris, le 24 Oct., 1969

Direction Du Trésor

Service des Affaires Internationales

Sous-Direction des Affaires Multilatérales

Beureau E.2.

No.21038

Monsieur,

Par lettre du 20 août 1969, vous avez bien voulu
me demander de vous communiquer divers documents relatifs
aux Accords Généraux d'Emprunt.

Il ne m'est malheureusement pas possible de satis-
faire votre requête, en raison du caractère confidentiel
des documents dont il s'agit.

Je le regrette et vous prie d'agréer, Monsieur,
l'assurance de ma considération distinguée.

Pour le Ministre et par autorisation:

Le DIRECTEUR du TRÉSOR,

Pour le Directeur

L'Inspecteur des Finances

chargé de MISSION

(singé) BLOCH-LAINE

Monsieur H. Abdalbaghi,
The Graduate Society, University of Durham,
Durhama, U.K.

APPENDIX XXVI.

DEUTSCHE BUNDESBANK

Frankfurt am Main, December 27th, 1961

Mr. W. Baumgartner
Minister of Finance
Paris
Rue de Rivoli

Dear Mr. Minister:

This is in reply to your letter of December 15th, 1961, setting forth the understandings reached during the recent discussions in Paris with respect to the procedure to be followed by the Participating Countries and Institutions in connection with the borrowings by the International Monetary Fund of Supplementary Resources under credit arrangements which we expect will be established.

On behalf of the Deutsche Bundesbank, we are pleased to confirm - with the approval of the Government of the Federal Republic - that we are in agreement with the statement of understandings as set forth in your letter of December 15th, 1961. As concerns the consultative procedures set out in your letter on page 3, third and following paragraphs, we understand that the German Government wants to reserve for itself the right to designate, besides the representative designated by the Deutsche Bundesbank, a representative of its own.

We are attaching, in accordance with your suggestion,
this English text of our letter of confirmation.

Deutsche Bundesbank

sgd. Blessing sgd. Dr. Troeger

SVERIGES RIKSBANK

Stockholm, October 29, 1969.

Utr. sekr.

Sb/Kj

Mr. H. Abdolbaqi,
University of Durham
The Graduate Society
Durham

Dear Sir,

With reference to your letter of October 22, 1969 we wish to inform you that on behalf of Sweden the Sveriges Riksbank is the participating institution in the G.A.B., not the Ministry of Finance as is the case regarding most of the other member countries. Consequently there has been no exchange of letters between Mr. M.W. Baumgartner and the Swedish Ministry of Finance.

.....

Yours sincerely,
SVERIGES RIKSBANK

DER BUNDESMINISTER FÜR WIRTSCHAFT

BONN, den 18 Dezember

Gesch.-Z.: VI B 6 - 63 00 00/2

1969

Fernsprecher: 76 4173

Der Bundesminister für Wirtschaft, 53 Bonn, Postfach

Mr. H. Abdulbaqui

The Graduate Society

University of Durham

38 Old Elvet

Durham - Grossbritannien

Sehr geehrter Mr. Abdulbaqui,

Ihrem Wunsche entsprechend übersende ich Ihnen als Anlage die Antwort der Deutschen Bundesbank auf das Schreiben des französischen Finanzministers Baumgartner vom 15.12.1961. Das Schreiben der Bundesregierung ist nicht veröffentlicht worden.

Hochachtungsvoll

Im Auftrag

(Dr. Franzke)

APPENDIX XXIX.Kungl. Maj:ts proposition nr 102 ar 1962

W. Baumgartner

Stockholm, 22nd December, 1961

Dear Mr. Minister,

This is in reply to your letter of 15th December, 1961, setting forth the understandings reached during the recent discussions in Paris with respect to the procedure to be followed by the Participating Countries and Institutions in connection with borrowings by the International Monetary Fund of Supplementary Resources under credit arrangements which we expect will be established pursuant to a decision of the Executive Directors of the Fund.

On behalf of the Sveriges Riksbank, I am pleased to confirm that we are in agreement with the statement of understandings as set forth in your letter of 15th December, 1961. I am attaching, in accordance with your suggestion, the French text of this letter of confirmation.

I am, Dear Mr. Minister,

Yours sincerely,

Per Åsbrink

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