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# Legal Technique in the Creation of a New International Reserve Asset: Special Drawing Rights and the Amendment of the Articles of Agreement of the International Monetary Fund

*Joseph Gold**

ON MAY 31, 1968, the Board of Governors of the International Monetary Fund approved a Proposed Amendment of the Fund's Articles of Agreement, and member states have been asked whether they accept the proposal. The Amendment will enter into force when the Fund informs members that the proposal has been accepted by three-fifths of the members, *i.e.*, 67 of the present 111 members, having four-fifths of the total voting power.[1] The Amendment will be the first in the history of the Fund, but it will represent the most important advance in the development of international monetary law and the organization of the international monetary system since the creation of the Fund itself. This article deals with certain features of the legal technique that has been adopted in order to achieve this advance.

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## I. THE ORIGINAL ARTICLES

The Articles were drafted at the Bretton Woods Conference in July 1944, and they entered into force on December 27, 1945, at which date, therefore, the Fund came into existence as an international organization. The original Articles consisted of an Introductory Article, 20 Articles (I to XX), and five Schedules (A to E).

* The opinions expressed in this article are to be attributed to the author and not necessarily to the International Monetary Fund.

[1] Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, Art. XVII, 60 Stat. 1401, T.I.A.S. No. 1501 (1946) [hereinafter cited by specific Article].

The purposes of the Fund were set forth in Article I, and they refer to the promotion of international monetary cooperation, the expansion and balanced growth of international trade as a contribution to such primary objectives of economic policy as high levels of employment and development, the promotion of exchange stability, the maintenance of orderly exchange arrangements, the avoidance of competitive exchange depreciation, the establishment of a multilateral system of payments in respect of current transactions, the mitigation of disequilibrium in balances of payments, and the provision of resources to assist members to correct balance of payments maladjustments without resorting to measures destructive of national or international prosperity. These purposes are extrapolated in provisions that establish a code of legal obligations for members that still constitutes the heart of the international monetary system and the law by which it is governed. The code includes obligations for members with respect to the establishment of par values for their currencies, directly or indirectly in terms of gold, the rates at which they may permit exchange transactions to be conducted, the prices at which they may buy and sell gold, the harmful exchange practices they must avoid, and the convertibility that they must establish and observe for their currencies, but even this impressive list is not exhaustive.

To assist members to follow policies that are consistent with the purposes of the Fund and enable members to perform their obligations, other provisions in the Articles establish a pool of resources from which members can temporarily augment their reserves. Normally, a member will prevent the depreciation or appreciation of its currency and perform its exchange rate obligations under the Articles by making foreign exchange available to the market or by acquiring foreign exchange from the market. For this purpose, the monetary authorities of a member hold reserves of foreign exchange, most often the United States dollar as the main currency for market intervention, or of gold, with which they can get that currency. If a member feels that its reserves are inadequate to enable it to deal with its international payments difficulties, it can purchase foreign exchange from the Fund in return for its own currency and in this way gain the time in which to pursue policies that will overcome its difficulties, restore its reserves, and enable it to reverse the transaction with the Fund within a period that does not exceed 3 to 5 years.

The Fund's pool of resources consists of gold and the currencies

of all members. These resources are derived in the main from the subscriptions of members. Each member has a quota, which determines many of its privileges and duties in the Fund, including the subscription it must make to the Fund. A member's subscription is paid partly in gold and partly in its own currency. At the moment, the net resources owned by the Fund amount to the equivalent of approximately 21 billion United States dollars. The basic transaction of the Fund is the one already described, the sale to a member of the currencies of other members, but the Fund also engages in other financial operations and transactions that are connected with this basic transaction. For example, it may replenish its currency holdings by selling gold or by borrowing, it requires members to repurchase their own currencies from the Fund for gold or the currencies of other members in order to reverse purchases of exchange from the Fund, and it levies charges.

## II. The Need for a New Reserve Asset

In recent years there developed the conviction that a new reserve asset would be needed, in addition to gold and reserve currencies, in order to strengthen the international monetary system. This conviction was based on the thesis that an increasing total of world reserves was necessary as an assurance of growth in national and international economic activity. Monetary authorities feel that they must have adequate resources at their command in order to pursue policies that are consistent with the Articles and other liberal objectives, and if monetary authorities lack this confidence in the size of the reserves that are unconditionally available to them, they may be tempted to pursue restrictive and retrogressive policies in order to conserve their reserves or enlarge them at the expense of other countries. The experience of recent years did not justify the belief that there would be a growth in world reserves sufficient to combat the bias towards deflation. The deficits in the balance of payments of the United States over a long period had made the major contribution to the increase in the reserves of other countries, but the deficit had persisted to the point at which some countries had become reluctant to add more dollars to their reserves. The conversion of dollars for gold by some of these countries diminished the gold stock of the United States and contracted the total of world reserves. At the same time, it was realized that if the United States curbed or eliminated its deficit in conformity with the general view that this was necessary in order to preserve confidence in the international

monetary system, the major source of the increment to world reserves would be largely or wholly dammed.

The forecast for the contribution of newly produced gold to world reserves was equally unpromising. For some time, much of the new production of gold had been devoted to the arts and sciences, and another substantial proportion had gone to satisfy the demands of the private hoarders of and speculators in gold. Indeed, there had been times at which no new gold entered reserves, and gold already in reserves was drained away to meet demand in the gold markets.

The quotas of members in the Fund can be and have been enlarged, both individually and generally, but this was not the solution of the reserve dilemma. Members wanted the assurance of an expanding volume of unconditional liquidity, which means reserves that can be used without an examination of policies or the requirement of undertakings with respect to them. The liquidity that the Fund provides by the sale of exchange to members is largely conditional. The Fund applies policies that are graduated in severity according to the cumulative outstanding use that members seek to make of the Fund's resources.

## III. The New Supplement to Reserves

International debate became more intense as the reserve dilemma became more obvious, but the search for an acceptable solution was lengthy. For some 5 years discussion and then negotiation were conducted in two main arenas. One of these was the Fund and the other was the group of ten members that have joined (either directly or through their central banks) in the General Arrangements to Borrow, a decision of the Fund under which, by adhering, the participants have expressed their willingness to lend their currencies to the Fund to supplement its resources for certain of its exchange transactions.[2] The process of discussion and negotiation, which at one stage involved joint sessions of the Fund's Executive Directors and the Deputies of the Finance Ministers and Central Bank Governors of the group of ten, led to the endorsement by the Board of Governors of the Fund of an "Outline of a Facility Based on Special Drawing Rights in the Fund."[3] At its annual meeting at Rio de

[2] IMF, Selected Decisions of the Executive Directors and Selected Documents 55-56 (Third Issue, Washington, D.C., 1965) [hereinafter cited as Selected Decisions].

[3] *See* Gold, *The Next Stage in the Development of International Monetary Law: The Deliberate Control of Liquidity*, 62 Am. J. Int'l L. 365, 397-402 (1968).

Janeiro in September 1967, the Board of Governors adopted a Resolution requesting the Executive Directors to proceed with their work on the establishment of the facility in the Fund on the basis of the Outline, as well as on improvements in the rules and practices of the Fund that were suggested by international developments and the practice of the Fund, and to report by March 31, 1968, proposing the amendments that would be necessary for both purposes. The completed report proposed the Amendment, consisting of many detailed changes in, or additions to, the provisions of the Articles, that is now before members for their acceptance.[4] The Proposed Amendment includes amendments that will establish the facility and also introduce certain improvements in the original provisions, but that proposal can be accepted only as a whole and without modification.

The Amendment will establish two separate Accounts in the Fund, the General Account and the Special Drawing Account. They are really departments of a single entity, but the word has not been used because it already applies to the "departments" into which the Fund staff is organized. The two Accounts do not enjoy legal personality of their own. The Fund itself is the only international *person*, and it will be the same person as existed before the effective date of the Amendment. All of the original operations and transactions of the Fund will be conducted by the Fund through the General Account, and all operations and transactions in special drawing rights will be conducted through the Special Drawing Account. However, the General Account will be able to receive, hold, and use special drawing rights in or as the result of some operations and transactions, and those operations and transactions will be conducted by the Fund through both Accounts. Nevertheless, the two Accounts will be separate in the sense that any assets or property held in one Account cannot be reached to discharge or meet the liabilities, obligations, or losses of the Fund incurred in conducting its operations and transactions through the other Account. This will not prevent the Fund from meeting the expenses of conducting the business of the Special Drawing Account with the resources of the General Account, but reimbursement will be required. The two Accounts are also insulated from each other for the purpose of settlement agreements between the Fund and a withdrawing member

[4] IMF, ESTABLISHMENT OF A FACILITY BASED ON SPECIAL DRAWING RIGHTS IN THE INTERNATIONAL MONETARY FUND AND MODIFICATIONS IN THE RULES AND PRACTICES OF THE FUND, REPORT BY THE EXECUTIVE DIRECTORS TO THE BOARD OF GOVERNORS PROPOSING AMENDMENT OF THE ARTICLES OF AGREEMENT (Washington, D.C., Apr. 1968).

or a member that terminates its participation in the Special Drawing Account and for the purpose of the liquidation of the Accounts.

Membership in the Fund necessarily means involvement in the General Account, but each member has an option, but is not obligated, to participate in the Special Drawing Account, which is, of course, the "facility" referred to in the Outline approved at Rio de Janeiro. The Special Drawing Account cannot begin its activities until instruments of participation have been deposited by members that have at least 75 percent of the total quotas in the Fund. Once the Special Drawing Account becomes operative, it will be possible for the Fund to make periodic allocations to all participants, in proportion to their quotas, of "special drawing rights," which participants will be able to include in their reserves. The Fund will be able to allocate special drawing rights in order to meet the long-term global need to supplement existing reserve assets if and when the need should arise. Similarly, the Fund will be able to cancel special drawing rights that have been issued if there should be an excessive supply of reserves in the world, although the prospect of this is not very likely. By the exercise of these new powers, the Fund will be able to help avoid economic stagnation and deflation as well as excess demand and inflation in the world. This will be the first time that the international community will be able to affect the volume of liquidity by rational decisions taken in accordance with law instead of leaving it to be determined by such uncoordinated and irrational forces as the deficits in the balances of payments of the reserve currency countries, the volume of gold production and the pattern of its absorption, and the conversion of reserve currencies into gold.

Special drawing rights have been given qualities that will enable each participant to decide to include them in its reserves together with such traditional assets as gold and reserve currencies. The central quality of special drawing rights is that a participant is entitled to use them to obtain currency convertible in fact from a participant that the Fund must designate. The transferor is expected to use its special drawing rights in this way only to meet balance of payments needs or because of unfavorable developments in its other reserves, but transfers are not contingent upon any examination by the Fund of the transferor's position or on any undertakings by the transferor with respect to its policies. A transfer does not decrease the reserves of either party: the transferor parts with special drawing rights but receives foreign exchange with which it can defend its own cur-

rency, while the transferee parts with currency but receives special drawing rights that it will be able to include in its reserves and use when the need arises. The flow of special drawing rights back and forth does not diminish the stock of world reserves.

## IV. Decisions on Special Drawing Rights

Decisions in the Fund are taken by the Board of Governors, in which all powers of the Fund are vested, or by the Executive Directors, to whom all powers can be delegated except those that are reserved to the Board of Governors. The Board consists of one governor and one alternate, appointed by each member. A governor, or his alternate in the governor's absence, casts the number of votes allotted to the member appointing him. The Executive Directors, to whom all but the reserved powers have been delegated, consist at present of 20 executive directors of whom some are appointed by individual members and the rest elected by groups of the remaining members. Each executive director, or his alternate in his absence, casts the number of votes allotted to the member appointing him or the votes allotted to the members whose votes counted towards his election. All of the votes that a governor or executive director is entitled to cast can be cast only as a unit. Each member has 250 votes plus one additional vote for each part of its quota equivalent to $100,000, so that there are very wide variations in voting strength, because quotas range at present from $3 million to $5.16 billion.

Separate organs have not been created for the two Accounts. Decisions will be taken in conducting the business of each Account by the same Board of Governors and Executive Directors. Similarly, the Managing Director and staff of the Fund will serve in that capacity for both Accounts. Nevertheless, there will be a difference, which could be radical, in connection with voting on decisions if the participants in the Special Drawing Account do not include all members of the Fund. In making decisions that pertain to the General Account, all governors and all executive directors will be entitled to vote in the Board of Governors or the Executive Directors respectively. All governors and executive directors will be able to attend meetings of their organ at which matters pertaining exclusively to the Special Drawing Account are on the agenda and will be able to join in the discussion. However, only governors appointed by participants will be entitled to vote on these matters in the Board of Governors. In the Executive Directors, only

executive directors appointed or elected by at least one member that is a participant will be entitled to vote. Such an executive director will be entitled to cast, as a unit, the number of votes allotted to the member which is the participant that appointed him or allotted to the members that are participants whose votes counted towards his election. It follows that some governors or executive directors might have no votes to cast. Similarly, these governors and executive directors would not be able to join in calling meetings or have their presence taken into account in determining whether a quorum is present for the discussion of items pertaining exclusively to special drawing rights.

It is obvious that a logical impasse must be avoided in determining whether a matter pertains exclusively to the Special Drawing Account. It is provided, therefore, that this question shall be decided as if it pertained exclusively to the General Account, which means that all governors or executive directors will be entitled to vote. It is possible, of course, that some matters may relate to both Accounts, and on these matters two decisions will have to be taken, one by the vote of all governors or executive directors and the other by the vote of only those entitled to vote in matters pertaining exclusively to the Special Drawing Account.

## V. Form of Amendment

In the studies of the creation of a new reserve asset, four legal techniques were considered. The first was some development in the Fund's policies and practicies that would not require amendment of its Articles.[5] The advantage of this technique was the very fact that it did not bring into play the complicated procedure of amendment. The disadvantage was that it restricted the flexibility that could be employed in finding a solution to what was possible under the original Articles. The desire for greater flexibility triumphed over the traditional and understandable reluctance to resort to amendment. A second technique was an agreement between the Fund and members under which the Fund could have administered a scheme for the benefit of the other contracting parties.[6] This technique ceased to be a possibility once it became

[5] IMF Annual Report for 1966 at 19. *See also* Report of the Study Group on the Creation of Reserve Assets, Report to the Deputies of the Group of Ten 62-63 (May 31, 1965) [hereinafter cited as Ossola Report].

[6] *Cf.* Social Progress Trust Fund Agreement Between the United States of America and the Inter-American Development Bank, June 19, 1961, T.I.A.S. No. 4763 (1961). *See also* Advisory Opinion Concerning the Interpretation of Article 3, paragraph 2 of

understood that any new reserve asset would be made available to all members. The effective choice, therefore, was narrowed down to the amendment of the Articles and the creation of a new international institution as an affiliate of the Fund.

The special drawing rights facility is to be established in the Fund by an amendment of its Articles which takes the form, substantially, of the addition of 12 Articles (XXI to XXXII) and four Schedules (F to I) to the original Articles. The Introductory Article is changed from the simple statement that the Fund was established and would operate in accordance with the provisions that followed to a more elaborate provision which refers to the fact that the Articles include original provisions and those adopted to establish the facility and effect certain changes, that there are two Accounts, that members have an option to participate in the Special Drawing Account, and that operations and transactions will be conducted through the General Account except that those involving special drawing rights will be conducted through the Special Drawing Account.

Article XX of the original Articles was entitled "Final Provisions" because it was the last Article in the original charter, but under the Amendment it was to be succeeded by 12 more Articles. Although Article XX dealt with somewhat miscellaneous topics (such as signature and entry into force of the Articles, initial organizational arrangements, the initial determination of par values, and the commencement of exchange transactions), they all related to the period before or soon after the Fund came into being or to certain initial events. It was possible, therefore, to change the title from "Final Provisions" to "Inaugural Provisions."

The establishment of the facility by means of the Proposed Amendment in the form that has been described created surprisingly few technical problems. It proved to be unnecessary to mention special drawing rights anywhere in Articles I to XX or in any of the original Schedules. In fact, it was thought desirable to avoid these references for reasons that are discussed below. The change required only minor amendments in the original provisions,[7] and these related to two provisions in which gold and convertible currencies were referred to as the components of members' monetary

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the Treaty of Lausanne, [1925] P.C.I.J. REPORTS, ser. B, No. 12, at 27-28, 30, 31; and OSSOLA REPORT, *supra* note 5, at 30.

[7] This refers only to the consequences of the facility and not to those amendments that are being made as improvements in the original provisions.

reserves.[8] Under the provisions dealing with special drawing rights, members' monetary reserves will include their holdings of special drawing rights as well.[9] Therefore, the references to gold and convertible currencies in two provisions were amended to read "each type of monetary reserve" in one provision and somewhat similar language in the other provision.

It must not be assumed, because only the new provisions refer specifically to special drawing rights, that the original provisions have no impact on special drawing rights. The effects of the original provisions will be diverse. Some of them will apply to the exercise by the Fund of functions that do not involve the conduct of operations and transactions through either the General Account or the Special Drawing Account. Article II dealing with the adjustment of quotas and Article XVII dealing with amendment of the Articles are examples of this category of provisions. It is apparent, however, that actions taken under these provisions may affect special drawing rights. Another category of provisions will apply solely to the conduct by the Fund of operations and transactions through the General Account, but even so they may affect special drawing rights because these provisions determine indirectly the operations and transactions in special drawing rights in which the Fund may engage through the General Account by dealing in special drawing rights instead of gold or currency.[10] These are only a few examples of the interrelationships between the original provisions and the new special drawing rights. The interrelationships are too complex to be compressed into one simple formula.

It would not have been impossible to adopt a radically different technique in amending the Articles. It would have been possible to integrate the original provisions and the new provisions dealing with special drawing rights. Certain provisions could obviously have been integrated. For example, a new immunity with respect to special drawing rights[11] could have been included in the original provisions dealing with the privileges and immunities of the Fund;[12] new definitions affecting special drawing rights[13] could have been included in the provision setting forth the explanation of

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[8] Art. V, § 7(b); and Sched. B, ¶ 1.

[9] Art. XXV, § 7(a).

[10] Art. XXV, § 7(b)-(f).

[11] Art. XXVII(b).

[12] Art. IX.

[13] Art. XXXII.

terms in the original Articles;[14] and the provisions dealing with decisions on matters pertaining to special drawing rights[15] could have been incorporated in the original Article that dealt with organization and management.[16] Integration might possibly have been carried much further, but no drafts of this character were prepared, so that it cannot be said how the Articles would have looked if this approach had been followed.

Once it was decided not to attempt an integration of the two sets of provisions, the segregation of those dealing specifically with special drawing rights was rigorously observed. It was felt that there should be no integration even when, as in the examples in the preceding paragraph, integration would have been technically easy to achieve and would have been clearly justified because of the content of the provisions. This policy was pursued because of the difficulty of determining the point at which partial integration would stop, and this difficulty might have led to the complete overhaul of the original Articles. This could have been an arduous and lengthy task that would have required more time than was available under the Resolution of the Board of Governors. It must not be assumed, however, that segregation was a *pis aller*. The decision to adopt this technique was reinforced by the widespread conviction that it had two major advantages. The first was that it involved only microscopic changes in the original Articles, with which members had become familiar in the more than 22 years of the Fund's existence. It is true that a certain number of changes were being made as improvements in the Fund, but this did not lead anyone to believe that amendments should be made for some less compelling reason. The second advantage was the reverse of the first: the provisions dealing with special drawing rights were new, and it was thought that members could familiarize themselves with the novel provisions more readily if they were collected into what would be, in effect, an identifiable chapter of the Articles.

## VI. Amendment vs. Affiliate

A more fundamental question of technique was not how the Articles should be amended in order to establish the facility but whether that should be done by amendment at all. It has been

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[14] Art. XIX.

[15] Art. XXVII(a).

[16] Art. XII.

said already that the only alternative to amendment that was considered at all seriously was the creation of a new international organization as an *affiliate* of the Fund. There is no legal definition of an "affiliate" in international law and organization. The word implies a close connection with another and presumably dominant organization, but there are various ways in which that relationship can be arranged. The alternative of an affiliate was much in the minds of those who were working on the creation of a new reserve asset because the International Bank for Reconstruction and Development, the Fund's sister institution, has twice chosen the technique of an affiliate in drafting legal instruments for the performance of new tasks. Moreover, certain organizational features of the two affiliates have been found appropriate for the special drawing rights facility.

The first of the two affiliates, the International Finance Corporation (IFC), came into being on July 20, 1956, in order to supplement the activities of the Bank by collaborating with private investors in promoting private enterprise, without governmental guarantees, when that would contribute to development in circumstances in which sufficient private capital was not available on reasonable terms. IFC is an entity separate from the Bank, with a legal personality of its own. Its funds are kept separate and apart from those of the Bank, and neither institution is liable for the acts or obligations of the other.

Membership in IFC is open to members of the Bank. The Governors and Alternate Governors of the Bank are *ex officio* Governors and Alternate Governors of IFC if the appointing country is a member of both institutions. An Executive Director of the Bank is *ex officio* a Director of IFC if he was appointed by a country that is a member of both institutions or if he was elected in an election in which the votes of at least one member of the Bank which is also a member of IFC counted towards his election. A Director of IFC who is an appointed Executive Director of the Bank is entitled to cast the number of votes that the member that appointed him is entitled to cast in IFC. A Director of IFC who is an elected Executive Director of the Bank is entitled to cast the number of votes which the members of IFC whose votes counted towards his election in the Bank are entitled to cast in IFC. The President of the Bank is *ex officio* the Chairman of the Board of Directors of IFC. The President of IFC, who acts under the direction of the Board of Directors and the general supervision of the Chairman, is

appointed by the Board of Directors on the Chairman's recommendation.

The International Development Association (IDA), the second of the two affiliates, came into being on September 24, 1960, in order to provide financing to meet the developmental requirements of members on terms that are more flexible and bear less heavily on the balance of payments than those of conventional loans. IDA also is intended to supplement the activities of the Bank. The legal structure of IDA and its relationship with the Bank strongly resemble those of IFC. There are certain differences, however, that are designed to create a closer relationship of IDA with the Bank. For example, whereas the President of IFC acts under the supervision of the Chairman, the President of IDA is also its Chairman. Therefore, the President of the Bank, who has the office of Chairman in IFC, has both offices in IDA.[17] There are also somewhat closer legal ties between IDA and the Bank than between IFC and the Bank in connection with the Chairman of the Board of Governors and the staff. Generally, the closer relationship in the case of IDA is attributable to the greater similarity of its task to that of the Bank.

Enough has been said of the legal structures of IFC and IDA to show their resemblance to the special drawing rights facility, but further parallels could be cited. Why, then, were the two precedents not followed? The Fund's Annual Reports for 1965[18] and 1966[19] refer to the creation of a new institution as one course that might be followed, and the Report for 1967 shows that this was contemplated as late as July 1967 when it spoke of "a scheme for deliberate reserve creation in the form of drawing rights which would be operated in, or in close association with, the Fund."[20] Between July and September 1967, the choice was made, so that the Outline could declare unequivocally that the facility "is to be established within the framework of the Fund and, therefore, by an Amendment of the Fund's Articles." Although the problem arose many times before it was settled by the Outline, there was no systematic or sustained discussion of it in the Fund, in the group of ten, or in the joint sessions. It was resolved by a general and largely tacit understanding that amendment was to be preferred. It

[17] In practice, the President of the Bank has been the President of all three organizations.

[18] IMF ANNUAL REPORT FOR 1965 at 18.

[19] IMF ANNUAL REPORT FOR 1966 at 19.

[20] IMF ANNUAL REPORT FOR 1967 at 10.

follows that the records of the long debates do not include any agreed reasons why the choice was made, and there may have been diverse reasons in the minds of those who participated in the debates.

## VII. The Choice of Amendment

The choice in favor of amendment and against an affiliate was not made because it was the more effective technique for the creation of a new reserve asset. It was realized at an early stage that the substance of the scheme that was being discussed could be given effect by either technique. At least eight reasons may be suggested for the decision to amend the Articles and reject an affiliate.

(1) It is apt to begin by recalling the wisdom of William of Ockham: *entia non sunt multiplicanda praeter necessitatem.* There was no disposition to create another international organization unless there was a balance of legal, economic, or political advantage in favor of it, and this could not be demonstrated.[21]

(2) One of the most fundamental and most difficult issues that had to be settled was the nature of the new resource. At one extreme was the view that the characteristics of the new resource should leave not the slightest doubt that it was a reserve asset that members could use as freely as they could use the gold or currencies in their reserves. This view was often expressed in the proposal that the new reserve asset should be a "unit." At the other extreme was the view that safeguards and limitations were necessary, for example in order to avoid the danger that the issuance of the new resource would encourage the prolongation of balance of payments deficits. This view favored a solution that could be subsumed under the heading of "credit." Its supporters looked with approval to the Fund and the purchases of exchange from it that had to be reversed within a moderate period.

After prolonged and intense debate, it was agreed that the problem should be solved not by agreeing on an a priori concept but by agreeing on the individual characteristics with which the new resource should be endowed. The result was a compromise, although one in which the agreed characteristics still gave the new resource the quality of a reserve asset if members wished to regard it in that way.

Terminology did not cease to be important and it was part of

[21] *Cf. Hearings on S. Res. 264 Before a Subcommittee of the Senate Committee on Banking and Currency*, 85th Cong., 2d Sess., at 54 (1958).

the compromise. The new supplements to reserve assets are called "special drawing rights" in deference to the view that they should resemble credit. This does not mean that a use of them gives rise to an obligation to reverse that use such as there is in the case of purchases from the General Account. There is, however, an obligation on a participant to "reconstitute" its holdings of special drawing rights so that it maintains over time an average balance of 30 percent of the allocations that it has received, but even this limited obligation may be altered or abrogated without the need to amend the Articles. Even though the reconstitution obligation is related only distantly to the obligation to reverse purchases from the General Account, the term "special drawing rights" was helpful in resolving difficulties because it carried a certain connotation of those transactions of the General Account. The language of the original Articles consistently refers to the transactions in terms of purchase and sale, and the words "drawings" or "drawing rights" are never employed. Nevertheless, these terms, although not terms of art, have become established as operating parlance, perhaps because they imply that there are limits on the amounts of exchange that a member can purchase from the Fund. To convey the idea that transactions in the new rights were in the same family as the transactions of the General Account, it was decided to employ, and for the first time give legal recognition to, the term "drawing rights." To distinguish them from the old drawing rights, however, and to emphasize that they were new and different, it was decided to call them "*special* drawing rights." This compromise involved the almost inevitable implication that special drawing rights should coexist with the original drawing rights in the same institution under an amended charter that would permit coexistence.

(3) The purposes of the Fund are set out in Article I. The purposes are impressive in their breadth, and no change in them has been found necessary in order to accommodate the new facility. The Fund is instructed to take its decisions on the allocation and cancellation of special drawing rights "in such manner as will promote the attainment of its purposes."[22] If the allocation and cancellation of special drawing rights were to be governed by the purposes of the Fund, the natural place for the facility through which they would be allocated or cancelled was the Fund and not some other international organization which, if created, would have purposes that presumably overlapped those of the Fund.

[22] Art. XXIV, § 1(a).

(4) It is not impossible for an international organization to operate with two sets of resources that are kept distinct and used for different objectives. The Fund for Special Operations established in the Inter-American Development Bank is an example of resources held by an institution that are segregated from its other resources. Therefore, if it had been decided that special drawing rights should be backed by special resources, it would have been possible to place those resources in the Fund and keep them separate from the resources held in the General Account. If there are to be separate resources for a new international activity, it is at least arguable, however, that they should be placed in a new international organization. This has been the experience with IFC and IDA, which have resources of their own.

One of the most interesting features of the new facility is that special drawing rights are not backed by any resources of gold or currency held by the Fund. The participating members which receive allocations of special drawing rights do not deposit any counterpart in the Special Drawing Account. On a transfer of special drawing rights, the *quid pro quo* for them will be provided to the transferor by the transferee and not by the Special Drawing Account. The only time that the Account will hold resources, and then briefly, will be when it is helping to carry out the terms of a settlement agreement with a country that terminates its participation in the Special Drawing Account or when it is carrying out the liquidation of the facility. It follows that in practice the Account may never hold resources. Special drawing rights are wholly fiduciary. They are backed not by resources of gold and currency but by the legal obligations of participants to receive them in return for currency and to provide the necessary means of settlement on the termination of a country's participation or on the liquidation of the facility. This sophisticated system made it unnecessary to decide that the facility should take the form of an affiliate for the purpose of keeping its resources distinct from those of the Fund.

(5) Most of the liquidity that the Fund provides through the General Account is conditional liquidity. The Fund can increase and has increased the volume of conditional liquidity which it can supply by increasing the quotas of members. The world needs both conditional and unconditional liquidity, and although no precise optimum relationship between them has been demonstrated so far, it is apprehended that there may be such a relationship. In any event, it is unlikely that anyone would disagree that the need for

both kinds will grow over time. With this in mind, the Executive Directors expressed the following opinion in the Fund's 1965 Annual Report:

> It can reasonably be argued that a matter which is of concern to all countries should be handled in an institution that has been organized as an instrument of financial cooperation on a world-wide basis. This would, moreover, be one way of ensuring coordination between the function of providing individual countries with short-to-medium term balance of payments assistance on a conditional basis and any new function of influencing the aggregate supply of world reserves or unconditional liquidity.[23]

This view prevailed, and although once again it would have been possible to ensure the coordination to which it referred through an affiliate, the more obvious technique for giving expression to it was one that provided for coordination through a single institution. The extent to which the idea of coordination has been accepted can be seen in the new provisions dealing with the basic periods for which the Fund takes decisions on the allocation or cancellation of special drawing rights. These periods are 5 years in duration.[24] This is the same length of time within which the Fund must make a review of the quotas of all members in order to propose an adjustment of them if it deems such a proposal appropriate.[25] Although there is no requirement that decisions on the allocation or cancellation of special drawing rights be taken at the same time as decisions on the general adjustment of quotas, the drafters of the new provisions intended to make it possible for the Fund to arrive at these decisions contemporaneously.

(6) A number of important features of the facility have been derived from the experience of the Fund in its original operations and transactions, and this experience is a continuing process. For example, the Fund has developed, and continues to adapt, a policy, based on economic and financial considerations, that indicates to members the currencies which are appropriate for them to request when making purchases from the Fund.[26] This policy has influenced the general principles incorporated in the Amendment by which the Fund will designate the appropriate transferees of special drawing rights when a participant wishes to transfer them, and the Fund is empowered to supplement these principles from time to

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[23] IMF ANNUAL REPORT FOR 1965 at 18.

[24] Art. XXIV, § 2(a).

[25] Art. III, § 2.

[26] SELECTED DECISIONS, *supra* note 2, at 33-39.

time.[27] There would be no likelihood of greater harmony in the future between the policy on the selection of currencies for sale by the Fund through the General Account and the principles for the designation of transferees of special drawing rights if the function of ensuring harmony were given to two institutions.

(7) At one stage in the debate that led to the facility the view was advanced by some that, whatever the full plan that emerged for taking care of the liquidity needs of the world, one part of it should consist of the creation of reserve units for a limited group of Fund members. The advocates of this idea thought that it should be part of the solution because of the particular responsibilities that some countries bore in the international monetary system. When this view was advanced in July 1966, it was suggested that the creation of this asset "should take place in close association with the I.M.F."[28] in contrast to the formula "in, or in close association with, the Fund." It is not surprising that some technique other than the amendment of the Articles would be thought appropriate for a plan that was limited to less than the full membership of the Fund. Once it was concluded that any plan should be unitary and open to all Fund members, one argument in favor of some technique other than amendment disappeared.

(8) A consideration that might have carried much weight in favor of an affiliate involved the process by which decisions were to be taken on the allocation or cancellation of special drawing rights. One of the most remarkable phenomena since the Bretton Woods Conference has been the growth in the economic and financial strength of the Common Market powers. They have among them approximately 16 percent of the total voting strength in the Fund as compared with the approximately 22 percent of the United States. The problem was to assure the Common Market that it would have an appropriate voice in arriving at decisions. Most decisions of the Fund are taken by a majority of votes cast, but a few are taken by special majorities such as 75 or 80 percent of total voting power. In order that the Common Market might have an influence comparable to that of the United States it was necessary to establish a special majority that did not appear in the original Articles. Had a problem of such sensitivity persisted it might have been easier to resolve it within a new international organization. Ultimately, how-

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[27] Art. XXV, § 5.

[28] REPORT TO MINISTERS AND GOVERNORS [OF THE GROUP OF TEN] BY THE GROUP OF DEPUTIES ¶ 99 (July 7, 1966).

ever, it became possible to reach agreement on a special majority of 85 percent as part of a much broader compromise. Once again, therefore, it became unnecessary to establish an affiliate in order to achieve an objective that in the end members were willing to see achieved through the Fund by the amendment of its Articles.

## CONCLUSION

The amendment of a major international charter is a rare event, and the agreed purpose for which the Articles of the Fund are being amended represents an immense step forward in the development of the international monetary system. The Proposed Amendment emerged from labyrinthine debates, in which the last stage was the 74 sessions that the Executive Directors of the Fund devoted to the review of 4 successive drafts. Even at this early date after the completion of the task it is becoming difficult to recall all of the reasons why the legal technique that prevailed was adopted in preference to others. It is submitted that the correct choice was made if only because it was the simplest technique in a world in which inevitably international organization becomes increasingly complex. The defense of that submission must be the remark of Dr. Johnson who once said that false modesty was the worst form of boasting because it showed how much one felt one could afford to throw away.