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THE WORLD BANK  
Washington, D.C.

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McNamara papers

PLO Observer Status  
1981 (Jan - June)

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PLO Observers Status - Correspondence 03

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International Bank for Reconstruction and Development

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WBG ARCHIVES

EDS/X81-3

FROM: Vice President and Secretary

June 15, 1981

EXECUTIVE DIRECTORS' SPECIAL MEETING - JUNE 12, 1981

Section 4(b) of the By-Laws of the Bank

Statement by Mr. El-Naggar

As requested at the special meeting of the Executive Directors of the Bank in Executive Session held on June 12, 1981, a copy of the text of the statement made by Mr. El-Naggar is being distributed herewith.

Distribution:

Executive Directors and Alternates  
President  
Senior Vice Presidents  
Vice President and General Counsel

# OFFICE MEMORANDUM

\*TO: Mr. Timothy T. Thahane, Vice President & Secretary      DATE: June 12, 1981

FROM: Said El-Naggar, Executive Director      *SEN*

SUBJECT: My Statement in the Board on  
Section 4(b) of the By-Laws

I am attaching herewith a copy of my statement in the Board for circulation to the Executive Directors as requested.

Attachment

Statement by Mr. Said El-Naggar  
at the Meeting of the Executive Board  
on June 12, 1981

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Mr. Chairman:

You may recall that when this matter was discussed in the Board in a special meeting last February, the hope was expressed by this Chair, as well as by many of my colleagues around this table, that postponement should provide the opportunity for consultation and negotiations with a view to reaching a compromise acceptable to all parties concerned. I regret indeed that we are coming soon to the deadline of June 15 with nothing to show for the time that has elapsed since March 1, 1981. Contrary to the wish expressed by practically everyone in this Board, there was no effort whatsoever on the part of those on the other side of the fence to seek and reach a satisfactory resolution of this problem.

Instead of an effort towards a compromise and conciliation, the representative of the U.S. only three days ago came up with a proposal which goes completely in the opposite direction. The U.S. proposal reads as follows:

"Proposed Notification to Governors

1. Considering that the Resolution of the Board of Governors No. 359 called for the Executive Directors to consider the By-Laws pertaining to observers, make such proposals for amendment as they believe necessary and report to the Board of Governors;
2. Considering that the Executive Directors, in their work are to take into account the Report of the Joint Committee of the Board of Governors (Muldoon Committee);

3. Considering that the Executive Directors notified the Board of Governors of their intention to report on the matter not later than June 15, 1981;
4. Considering that the Executive Directors have been consulting on this matter, but that more time is needed for further consultation;
5. Considering that the issues that existed on September 19, 1980 which led to adoption of the Board of Governors Resolution No. 359 remain and that the Resolution No. 359 continues to apply:

The Executive Directors therefore advise the Board of Governors that the Executive Directors shall report to the Board of Governors on the matter at the earliest possible date, pursuant to the Board of Governors Resolution No. 359."

The basic idea underlying the U.S. proposal is the indefinite postponement of the issue coupled with indefinite exclusion of the PLO from the opportunity of ever obtaining observer status in the Bretton Woods Institutions. Quite apart from the legal validity of Resolution 359 which has been called into question by the report of the Muldoon Committee, the U.S. proposal raises many problems.

FIRST: It runs counter to the provisions of Resolution 359. In that resolution the Board of Governors called upon the Executive Directors to report on a given date. The U.S. proposal drops any reference to any specific date and substitutes an open ended period which could run indefinitely without ever going back to the Board of Governors. This is not feasible by way of notification as contemplated in the U.S. proposal and would require a formal amendment of Resolution 359. In fact, the

U.S. proposal in the form of a simple notification involves an amendment of a Board of Governors resolution without going through the proper procedure. If the U.S. wants to substitute an indefinite period for a definite date, the proposal should be forwarded to the Board of Governors in the form of a draft resolution for voting.

SECOND: The U.S. proposal involves a distortion of the purpose and intent underlying Resolution 359. The main purpose of Resolution 359, according to its supporters, was evidently to bring about an amendment of Section 4(b). The freezing of the list of observers was no more than an interim arrangement pending such an amendment which was supposed to come about by March 1, 1981 or, latest, by June 15, 1981. The U.S. proposal turns Resolution 359 upside down. The main purpose of Resolution 359, which is the amendment of Section 4(b), has completely disappeared, and what was envisaged by Resolution 359 as an interim arrangement, became the permanent regulator of observers in the Annual Meetings. The approval by the Executive Directors of the U.S. proposal would thus involve a gross misinterpretation of the true purpose and intent of Resolution 359.

THIRD: The U.S. proposal would create an intolerable legal situation. According to Section 4(b) of the By-Laws of the World Bank, the invitation of observers rests in the hand of the Chairman of the Board of Governors in consultation with the Executive Directors. This provision, as long as it is not actually amended by the Board of Governors, should continue in force and should regulate the invitation of observers to the Annual Meetings. According to the U.S. proposal, the authority to invite Observers would be taken away from the Chairman of the Board

of Governors to be limited only to those who were invited in 1979. Accordingly, Section 4(b) which is still on the books of our institution would be nullified without being amended. Under the U.S. proposal Section 4(b) would be neither applied nor amended. It would be in a state of indefinite suspense.

FOURTH: It may be recalled that the Executive Directors are required by Resolution 363 of the Board of Governors establishing the Muldoon Committee to take into account the findings of that Committee in making proposals under Resolution 359. The U.S. position simply ignores the findings of the Muldoon Committee.

FIFTH: The U.S. proposal limits the list of observers to those who were invited in 1979. It would therefore exclude out of observership any institution, financial or otherwise, which by any criteria would qualify for observership. Thus it would victimize any newcomer for the sake of excluding the PLO.

We are offering a Draft Resolution to be forwarded by the Executive Board to the Board of Governors for voting. Our Draft Resolution is submitted in a spirit of conciliation and compromise and in a sincere desire to end confrontation over this matter so that we can attend to the many pressing issues facing our institution in the months and years to come. Our Draft Resolution reads as follows:

DRAFT RESOLUTION

"THE BOARD OF GOVERNORS

WHEREAS the resolution of the Board of Governors No. 359 called for the Executive Directors to consider the By-Laws pertaining to observers,



make such proposals for amendment as they believe necessary and report to the Board of Governors;

WHEREAS the Executive Directors in considering appropriate action under Resolution 359, are to take into account the report of the Joint Committee of the Boards of Governors (Muldoon Committee);

WHEREAS the Executive Directors notified the Board of Governors of their intention to report on the matter not later than June 15, 1981;

WHEREAS the Executive Directors have been consulting on this matter, but that more time is needed for further consultation;

RESOLVES

1. That the Executive Directors report on the matter at the earliest possible date;
2. That in the meantime invitation to observers to the Annual Meetings of the Boards of Governors shall be subject to the provisions of Section 4(b) of the By-Laws."

Our Draft Resolution accepts the idea that under the present circumstances it may not be possible to act under Resolution 359 the legality of which is contested by this Chair. Therefore, we accept the idea of indefinite postponement as reflected in operative paragraph 1. of our Draft Resolution, provided, of course, that this is accepted in a voting by the Board of Governors as an amendment to the date set in Resolution 359. However, in the interim period and up to the time that the Executive Directors are in a position to agree on a course of action under Resolution 359, the invitation of observers shall be subject to the provisions of Section 4(b) of the By-Laws. This is the natural corollary of indefinite

postponement. If the Executive Directors are not in a position to be bound by a definite date for the amendment of Section 4(b), it follows that Section 4(b) should be applicable up to the time it is amended. This is a simple and straightforward position which is both legally sound and politically desirable from the viewpoint of avoiding confrontation over this issue.

Mr. Chairman, I might conclude by pointing out that what is at issue is not the observership of the PLO. It is once more the principle of legality in the Bretton Woods Institutions. What we are asking for is no more than a simple and self-evident rule that the laws of this institution should be respected and applied up to the time and until they are amended. This is a position which can be supported by all those concerned with the future and integrity of the World Bank.

I request that the text of my statement be circulated to the Executive Directors.

Thank you.

796/7/29

ROUTING SLIP		DATE: November 26, 1980	
NAME		ROOM NO.	
Mr. Lafourcade		E-1227	
APPROPRIATE DISPOSITION		NOTE AND RETURN	
APPROVAL		NOTE AND SEND ON	
CLEARANCE		PER OUR CONVERSATION	
COMMENT		PER YOUR REQUEST	
FOR ACTION		PREPARE REPLY	
INFORMATION		RECOMMENDATION	
INITIAL		SIGNATURE	
NOTE AND FILE		URGENT	
REMARKS:			
<p>Please find attached a briefing book for Mr. McNamara's visit to Switzerland. We want to acknowledge the assistance of Mr. Steckhan, who provided considerable input for the preparation of the briefing paper update.</p>			
FROM: <b>JM</b> for Paul V. Applegarth		ROOM NO.: C-1204	EXTENSION: 75765

OFFICE MEMORANDUM

File No  
716/1/27

TO: Mr. Timothy T. Thahane, Vice President and Secretary      DATE: June 8, 1981

FROM: Matthew P. Hennesey *MPH*

SUBJECT: Board Agenda Item

Attached is the draft notification which we propose to have sent by the Executive Board to the Governors with respect to the Agenda item:

Section 4(b) of the By-Laws of the Bank

Attachment

Proposed Notification to Governors

1. Considering that the Resolution of the Board of Governors No. 359 called for the Executive Directors to consider the By-Laws pertaining to observers, make such proposals for amendment as they believe necessary and report to the Board of Governors;
2. Considering that the Executive Directors, in their work are to take into account the Report of the Joint Committee of the Board of Governors (Muldoon Committee);
3. Considering that the Executive Directors notified the Board of Governors of their intention to report on the matter not later than June 15, 1981;
4. Considering that the Executive Directors have been consulting on this matter, but that more time is needed for further consultation;
5. Considering that the issues that existed on September 19, 1980 which led to adoption of the Board of Governors Resolution No. 359 remain and that the Resolution No. 359 continues to apply:

The Executive Directors therefore advise the Board of Governors that the Executive Directors shall report to the Board of Governors on the matter at the earliest possible date, pursuant to the Board of Governors Resolution No. 359.

Meeting on PLO Issue, February 27, 1981

Present: Messrs. McNamara, Golsong, Qureshi, Stern, Thahane

Mr. Golsong opened the meeting by explaining that the important thing in the proposed resolution to be presented to the Board is the word "notification." Mr. Thahane added that the G-9 had a meeting with Mr. El-Naggar late yesterday. Mr. El-Naggar reported that he would go along with the notification idea. The proposed scenario is that Mr. de Groote will make a general statement, and Mr. Lundstrom will say that the Board ought to send the same notification as the Fund Board and hope that the postponement will be used to resolve the matter. Then Mr. El-Naggar will make a long statement and Mr. Colby King will follow with his statement. Mr. McNamara asked what Mr. El-Naggar will say. Mr. Thahane said that the line of argument used by the Arabs in the Fund is that they say they do not recognize the September Resolution because they claim there was no quorum. It follows that they argue that the August 5 letter from Chairman Jamal is the only valid basis. Therefore, they claim that the PLO is already among the observers. They argue that, if any effort by the end of June 1981 is made to curtail the Chairman's authority, they threaten to go to The Hague Court. For them, the March deadline does not exist since they do not recognize the September Resolution. Mr. Thahane said that Mr. El-Naggar may follow that same line of argument. Mr. Golsong said that the Arabs will present their views, then the opposite view will come from the U.S., and the Board will then agree to send the Notification to the Governors.

OL  
April 8, 1981

OFFICE OF THE PRESIDENT

Meeting on PLO, February 24, 1981

Present: Messrs. McNamara, Qureshi, Stern, Thahane

Mr. Thahane explained that a meeting of the Board is being proposed for Friday. He recalled that the September Resolution says that a report should be sent to the Board of Governors by March 1. According to Mr. Golsong, this requires action by the Board of Directors through a report to the Board of Governors saying that the work is in progress. Mr. Thahane indicated that the Bank and the Fund are working on a draft of a decision to be taken at the Fund's meeting tomorrow, the effect of which would be to delay a decision. Assuming this is agreed by the Fund's Board, the Secretary would then communicate the EDs' decision to the Board of Governors. He added that, as of yesterday, there seemed to have been an agreement among the Arabs, the U.S. and the Europeans. At the last minute, however, there were some difficulties with the final wording. Mr. Thahane further said that he had received a note this morning from Mr. Nicoletopoulos saying that the decision would be for a postponement of the deadline.

Mr. McNamara asked whether the Fund and the Bank could go without a piece of paper before March 1, but still with a decision from the two Boards. Mr. Thahane explained that the legal position is that there must be some piece of paper before March 1. Mr. McNamara then said that such a piece of paper should be drafted. He instructed Mr. Thahane to work with Mr. Golsong in preparing such a piece of paper. He suggested that this paper should say that the Board of Governors is to be informed that more time is needed to resolve the issue. He added that the paper should be out before Friday as if the Bank were acting independently from the Fund. Then, when the Fund Board had met, the same four persons should get together. In the meantime, there should not be a call for a Board meeting. Mr. McNamara added that he believed that there should be a meeting at some point in time but nothing is likely to be gained to call a meeting today. After all, he added, there may be no need for a meeting. At any rate, to call for a special meeting of the Board of Directors tomorrow night would be sufficient. Mr. McNamara then asked what were the opinions of Mr. Golsong and Mr. Thahane with respect to the Resolution. Mr. Thahane said that the failure to meet the March 1 deadline may imply that the Resolution has lapsed. If the Board has taken no action before March 1, the Resolution lapses and there is freezing of the observer status. Mr. Thahane added, however, that the Board can agree or disagree with the Legal Counsel's opinion by a vote.

Mr. Thahane said that Mr. El-Naggar had told him that he had received instructions to oppose the postponement and that he wanted to say that at the Board meeting. Mr. McNamara asked what was Mr. El-Naggar opposed to. Mr. Thahane replied that Mr. El-Naggar is opposed to an open-ended postponement. He is likely to agree if there is a new deadline of, say, June 1. Mr. McNamara asked by when the invitations to observers by the Chairman would have to be sent out. Mr. Thahane replied that this was some time in August. Mr. McNamara said that the Bank ought to say that the Board cannot discuss the substance of the matter before March 1. The maximum that can be done is to tell the Board of Governors that a decision will be made before the Chairman sends the invitation to this year's Annual Meeting. In the meantime, there should be no plans for a meeting of the Board of Directors before what happens in the Fund is known.

OL

April 8, 1981

716/a/25

## OFFICE MEMORANDUM

TO: Executive Directors and Alternates

FROM: T. T. Thahane

SUBJECT: Consideration of Section 5(b) of the By-Laws

DATE: February 9, 1981

1. On September 19, 1980 the Board of Governors adopted Resolution No. 359 which states:

"WHEREAS, the provision on observers to meetings of the Board of Governors contained in Section 5(b) of the By-Laws has given rise to a number of serious questions which cannot be resolved satisfactorily on the basis of the present wording;

WHEREAS, therefore, an amendment to Section 5(b) seems to be justified and even necessary;

HAVING REGARD to Section 23 of the By-Laws;

NOW, THEREFORE, the Board of Governors RESOLVES:

1. THAT the Executive Directors shall consider the exact scope of Section 5(b) and make such proposals for amendment as they believe necessary and that they shall report to the Board of Governors by March 1, 1981; and
2. THAT pending the outcome of action pursuant to paragraph 1 of this Resolution, attendance at the 1980 Annual Meeting or any meeting of the Board of Governors thereafter, shall be limited to those observers who were invited to the 1979 Annual Meeting.

(It is to be noted that following the amendment of the By-Laws effective September 26, 1980, the above mentioned reference to "Section 5(b)" extends to "Section 4(b)" of the By-Laws.)"

2. On October 3, 1980, the Board of Governors adopted Resolution N. 363, by which it stated, inter alia, that:

"The report of the Committee shall be taken into account by the Executive Boards in their work under paragraph 1 of the Resolutions of the Boards of Governors of the International Bank for Reconstruction and Development and the International Monetary Fund on Section 5(b) of the By-Laws approved on September 19, 1980."

The Report of the Joint Committee of Governors was circulated to the Executive Directors on February 2, 1981.

3. Before formally proceeding with the work under paragraph 1 of Resolution No. 359, it seems appropriate to ascertain views of Executive Directors on the following points relating to procedure as well as of substance. As to the procedure, it would be useful to know how the Executive Directors envisage the work under paragraph 1 of Resolution No. 359, being carried out.



February 9, 1981

4. The main point of substance consists of a clarification of the respective powers of the Board of Governors, the Executive Directors and the Chairman of the Annual Meetings in matters of invitation of Observers.

5. It is proposed to hold an Informal Meeting of Executive Directors on these issues as soon as convenient to most Directors.

Meeting on PLO, February 2, 1981

Present: Messrs. McNamara, Stern, Golsong, Thahane

Mr. McNamara asked Mr. Golsong to report on the latest developments regarding the PLO issue. Mr. Golsong said that the final report of the Wellington meeting was sent on Saturday to the Governors. On the draft which had been prepared earlier, the Germans had only editing comments which were taken into account, while the Pakistanis had some substantive points which they wanted to include. Chairman Muldoon over-ruled the Pakistani request. The French and the Germans have now intervened to obtain the signature from the Belgians for a joint letter which would state that Mr. El-Naggar had gone too far in his interventions. The Swedes would not sign such a letter, but there are indications that they will support the position taken in that letter at the Board if necessary. Mr. Golsong indicated that there is a clear stiffening of the French position on that point. Mr. McNamara said that, in his view, there is a great danger that the PLO supporters in the Board could lead to the resolution of Governors established at the last Annual Meeting not being operative. Mr. Golsong agreed and further said that the resolution is clear that the pending action is to freeze the list of observers for the 1981 Annual Meeting and thereafter. Mr. McNamara gave his view that the chances are high that Mr. Arismendi, the new Uruguyan Chairman of the Annual Meeting, will invite the PLO. Mr. Thahane agreed that, if the resolution becomes inoperative, there will be increased pressure from the Arabs. Mr. McNamara reaffirmed his view that, if the resolution is declared invalid, the PLO will be invited to the Annual Meeting. He said that the first step should be to push for the letter to come out from the French and the Germans, and the second step should be that some governments should ask for a Bank opinion on whether the actions of the Muldoon Committee were within the Terms of Reference for the meeting. He emphasized that he did not want a discussion in the Board until there is a request by a government asking for the Legal Counsel's opinion. The question is which governments would be most suitable to place such a request. Mr. Golsong said that the best would undoubtedly be the British. An alternative could be the Canadian Government but Canada is rather lukewarm and uncertain because of their hosting the 1982 Annual Meeting. Mr. McNamara asked who else could be considered. He enquired specifically about Norway or Denmark. He agreed that the UK would be excellent; he asserted that the Dutch Government would not be suitable, but Norway and/or Denmark would be acceptable. He asked Mr. Golsong to enquire speedily into the various alternatives and to let him know quickly.

Mr. Stern enquired whether Chairman Muldoon would not be quite upset in seeing the letter from the French and the Germans, since it would essentially question what happened at the Wellington meeting. Mr. McNamara said that, in his view, this did not matter very much. He then asked what the next steps should be, in particular assuming that there is a legal opinion expressed by the Bank. Mr. Golsong said that the IMF has decided to go ahead and present a document to its Board either this week or next. Mr. McNamara said that the Bank should try its best to obtain a postponement of the IMF Board discussion by one week. Mr. Golsong said that the Fund has prepared a formal paper which he now has for clearance on his desk, which is extremely narrow-looking. It takes back the old questions of the first Muldoon Committee. Mr. Golsong expressed his fears that the discussion at the Fund Board may turn extremely bad. In particular, the Bank should be opposed to the issuance of an interim report. It is

much too early for such a report and the Bank should want to leave things open for the time being. Mr. McNamara reaffirmed that the first objective is to get a postponement of the Board discussion in the IMF. He said that, when the issue goes to both Boards, it should be absolutely certain that there are no definite conclusions. The main objective therefore is first to ensure sufficient opposition in the Board to sending a report to the Governors. He then asked about the long-term prospects. Mr. Golsong said that the Yugoslavs feel that there should be no observers at all. Mr. Thahane said that the Uruguyan, Mr. Arismendi, agrees with that view. Mr. McNamara stated again that his first interest is to ensure 51% votes in the Board opposed to sending a report. Mr. Golsong said that the U.S. Government ought to do something. Mr. McNamara indicated that it certainly will not do anything during the next month or so. He then asked what Bank management should put to its Board. In his view, it should be a very broad statement. Mr. Thahane mentioned that timing is a very important factor, in particular to get the request by a government for Bank opinion some time this week.

## International Bank for Reconstruction and Development

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7/16/1/22

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FROM: Vice President and Secretary

February 2, 1981

REPORT OF THE JOINT COMMITTEE OF THE  
BOARDS OF GOVERNORS (MULDOON COMMITTEE)

There is attached a copy of the report of the Joint Committee of the Boards of Governors of the International Bank for Reconstruction and Development and the International Monetary Fund, established pursuant to the Boards of Governors' Resolutions Nos. 363 and 35-12 of the Bank and the Fund, respectively, which was dispatched to the Members, Governors and Alternate Governors of the Bank and the Fund on January 31, 1981.

Distribution:

Executive Directors and Alternates  
President  
Senior Vice Presidents  
President's Council

THE WORLD BANK  
INTERNATIONAL MONETARY FUND

Washington, D.C. 20431

716/1/21

January 31, 1981

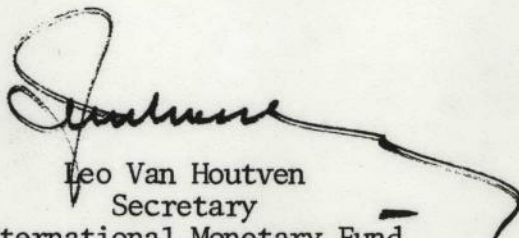
TO ALL MEMBERS, GOVERNORS, AND ALTERNATE GOVERNORS

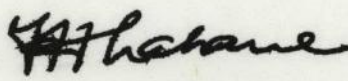
Sir,

The Right Honorable R. D. Muldoon, C. H., Chairman of the Joint Committee of Governors, has directed us to send to you the enclosed copy of the Report of the Joint Committee of the Boards of Governors of the International Bank for Reconstruction and Development and of the International Monetary Fund, established pursuant to the Boards of Governors Resolutions No. 363 and No. 35-12 of the Bank and Fund, respectively.

A copy of Chairman Muldoon's letter of transmittal of the Report to the Chairman of the Boards of Governors of the IBRD and IMF is also enclosed for your information.

Yours truly,

  
Leo Van Houtven  
Secretary  
International Monetary Fund

  
T. T. Thahane  
Vice President and Secretary  
International Bank for  
Reconstruction and Development

THE WORLD BANK  
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Washington, D.C. 20431

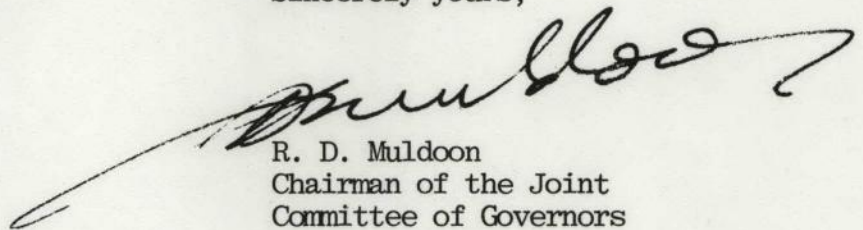
Wellington  
January 23, 1981

Dear Mr. Chairman:

The Joint Committee of the Boards of Governors of the International Bank for Reconstruction and Development and of the International Monetary Fund, established pursuant to Boards of Governors' Resolutions No. 363 and No. 35-12 of the Bank and Fund, respectively, met in Manila, the Philippines, on December 1-3, 1980 and in Wellington, New Zealand, on January 21-23, 1981.

The Joint Committee has agreed to the report that I am pleased to enclose with this letter. In accordance with the Committee's terms of reference, I have also asked the Secretaries of the Bank and Fund to distribute the report to all Governors and to make the report available to the Boards of Executive Directors of the Bank and Fund to be taken into account by them in their work, pursuant to Boards of Governors' Resolutions No. 359 of the Bank and No. 35-9 of the Fund, related to Section 5(b) of the By-Laws.

Sincerely yours,



R. D. Muldoon  
Chairman of the Joint  
Committee of Governors

Enclosure

His Excellency  
Valentin Arismendi  
Minister of Economy and Finance, and  
Chairman of the Boards of Governors  
Of the IBRD and IMF  
Ministry of Economy and Finance  
Montevideo, Uruguay

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**NOV 30 2012**

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WORLD BANK

INTERNATIONAL MONETARY FUND

REPORT TO THE BOARDS OF GOVERNORS OF THE JOINT COMMITTEE  
OF THE BOARDS OF GOVERNORS, ESTABLISHED PURSUANT TO  
BANK RESOLUTION NO. 363 AND FUND RESOLUTION NO. 35-12

January 1981

THE WORLD BANK  
INTERNATIONAL MONETARY FUND

Washington, D.C. 20431

January 23, 1981

REPORT TO THE BOARDS OF GOVERNORS OF THE JOINT COMMITTEE  
OF THE BOARDS OF GOVERNORS, ESTABLISHED PURSUANT TO  
BANK RESOLUTION NO. 363 AND FUND RESOLUTION NO. 35-12

1. Introduction and Terms of Reference

1.1 On October 3, 1980, the Boards of Governors of the International Bank for Reconstruction and Development and the International Monetary Fund adopted Resolutions (the text of which is set forth in Section 1.4 below) establishing a Joint Committee of the Boards of Governors of the two institutions on questions of interpretation of Section 5(b), Section 13 of the respective By-Laws of the two institutions and other related provisions arising out of the decisions taken by the Executive Boards on July 25, July 29, September 9, September 16, and September 18, as well as of the Resolutions adopted by the Boards of Governors on September 19, 1980.

1.2 The Joint Committee (hereinafter termed "Committee") met under the Chairmanship of the Right Honorable R. D. Muldoon, Prime Minister of New Zealand, in Manila, the Philippines, on December 1, 2, and 3, 1980, and in Wellington, New Zealand, on January 21, 22, and 23, 1981. The Governors and members of their delegations who participated in the Committee are listed in Attachment I.

1.3 The Committee had before it, in addition to the Resolutions referred to above, the memorandum of the Arab Executive Directors dated September 28, 1980 entitled "Outline of Legal Issues" (which is set out as Attachment II) referred to in the Resolutions and a detailed chronology of the events starting with the Report of the Informal Working Party of Governors on Observers issued June 7, 1980 through the final review of the voting without meeting of the Boards of Governors on the Resolutions adopted September 19, 1980. In addition, the Governor for Pakistan circulated to the members of the Committee a Position Paper, dated October 30, 1980 (Attachment III), which was a further elaboration of the questions raised by the "Outline of Legal Issues" dated September 28, 1980.



1.4 The terms of reference of the Committee are set forth in:

January 23, 1981  
FUND RESOLUTION NO. 35-12  
BANK RESOLUTION NO. 363

The Application of the  
Palestine Liberation Organization  
for Observer Status

The Board of Governors of the International Monetary Fund and  
the Board of Governors of the International Bank for Reconstruction  
and Development

WHEREAS the Executive Directors of the International Bank for  
Reconstruction and Development approved a decision on July 25, 1980  
recommending to the Board of Governors a draft resolution on  
observers for a vote without meeting,

WHEREAS the Executive Board of the International Monetary Fund  
approved the same decision on July 29, 1980,

WHEREAS the Executive Boards of the International Monetary Fund  
and of the International Bank for Reconstruction and Development took  
decisions on September 9, 1980 extending the deadline for voting on  
the draft resolutions on observers from September 9 to September 19,  
1980,

WHEREAS the Executive Boards of the International Monetary  
Fund and of the International Bank for Reconstruction and Develop-  
ment took decisions on September 17 and September 18, 1980 denying  
member countries the right to withdraw their votes under the  
procedure of voting without meeting,

WHEREAS the Board of Governors of the International Monetary  
Fund and the Board of Governors of the International Bank for  
Reconstruction and Development adopted on September 19, 1980,  
resolutions on observers,

WHEREAS the above mentioned decisions taken by the Executive  
Boards and the resolutions adopted by the Boards of Governors on  
September 19, 1980 raise issues concerning Section 5(b) and  
Section 13 of the By-Laws of the two institutions, 1/

WHEREAS the Boards of Governors took note of the memorandum  
by the Arab Executive Directors in the two institutions dated  
September 28, 1980 and entitled "Outline of Legal Issues," 2/

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1/ As of September 26, 1980, Sections 5(b) and 13 of the By-Laws of  
the International Bank for Reconstruction and Development were  
renumbered 4(b) and 12, respectively.

2/ Joint Procedures Document No. 10.

RESOLVED:

1. There shall be established a Joint Committee of the Boards of Governors of the two institutions on questions of interpretation of Section 5(b), Section 13 of the respective By-Laws of the two institutions 1/ and other related provisions arising out of the decisions taken by the Executive Boards on July 25, July 29, September 9, September 17, and September 18, as well as of the Resolutions adopted by the Boards of Governors on September 19, 1980. In its work the Committee shall take into account the questions formulated in the memorandum by the Arab Executive Directors in the two institutions dated September 28, 1980 and entitled "Outline of Legal Issues." 2/ The Committee shall be entitled to seek and obtain objective and independent legal advice as deemed desirable.

2. (a) The Committee shall consist of the following nine member countries: Belgium, France, Germany, Indonesia, New Zealand, Nigeria, Pakistan, Sweden and Yugoslavia.

(b) Each member of the Committee except the Chairman shall have one vote.

(c) New Zealand shall act as Chairman with Mr. Muldoon in his personal capacity in the Chair. The Chairman will have a vote in case of a tie.

(d) In order to emphasize the technical nonpolitical task of the Committee, each member country may be represented by an eminent jurist.

3. The Committee shall complete its work and report to the Boards of Governors not later than January 31, 1981.

4. The report of the Committee shall be taken into account by the Executive Boards in their work under paragraph 1 of the Resolutions of the Boards of Governors of the International Bank for Reconstruction and Development and the International Monetary Fund on Section 5(b) 1/ of the By-Laws approved on September 19, 1980.

1.5 In considering the scope of the work of the Committee four members took note of the discussions of the Joint Procedures Committee (JPC) from September 29-October 2, during which the Chairman of the JPC had stated that it had been agreed that the validity of the Boards of Governors' Resolutions adopted on September 19, 1980, was not to be called into question by the work of the Committee, and that there should be no attempt to make retroactive application of any changes in the By-Laws.

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1/ As of September 26, 1980, Sections 5(b) and 13 of the By-Laws of the International Bank for Reconstruction and Development were renumbered 4(b) and 12, respectively.

2/ Joint Procedures Committee Document No. 10.

It was noted by the four members that the Resolutions establishing the Committee did not invite it to rule on the validity of any of the Decisions of the Boards of Executive Directors or of the Boards of Governors Resolutions No. 359 (Bank) and 35-9 (Fund), adopted on 10 September 19, 1980 and that a reference to a review of the validity of these Decisions had been specifically deleted from earlier versions of the Resolutions. Four other members of the Committee pointed out that the statement of the other members is factually incorrect in view of the explicit provisions of the resolution establishing the Joint Committee. The statement by the Chairman of the Joint Procedures Committee was only a summary of one point of view, and cannot be invoked against the provisions of the resolution establishing the Joint Committee. In its operative paragraph 1, the resolution establishing the Joint Committee states explicitly: "In its work the Committee shall take into account the questions formulated in the memorandum by the Arab Executive Directors in the two institutions, dated September 28, 1980 and entitled 'Outline of Legal Issues.'" Questions 9 and 10 of the memorandum by the Arab Executive Directors explicitly ask about the impact of the interpretation of Section 13 of the By-Laws with respect to extension of the voting period, and the right of withdrawal on the validity of the Boards of Governors' resolutions of September 19, 1980. Accordingly, the view of those four members is that, in the light of these provisions, the Joint Committee is required by its terms of reference to look into the validity of the Boards of Governors' resolutions of September 19, 1980.

After some discussion, a consensus was reached that the Committee should examine the substantive issues and endeavor to take a forward-looking approach.

1.6 In the consideration of its scope of work in accordance with the Terms of Reference of the Resolutions, the Committee agreed as follows:

- (a) That its task was not to recommend specific amendments to the By-Laws for adoption by the Boards of Governors.
- (b) To identify aspects of the By-Laws under reference which, in the opinion of the Committee, give room for double or misleading interpretation of the By-Laws.
- (c) To bring to the notice of the Boards of Governors such areas of the By-Laws that need further clarification, amendment or expansion.

1.7 The Committee agreed that all members shared a common interest in the integrity of the Bank's and Fund's procedures. The Committee first dealt with questions arising with respect to Section 4(b) of the By-Laws of the Bank and Section 5(b) of the By-Laws of the Fund, after

which it took up matters involving Section 12 of the Bank's and Section 13 of the Fund's By-Laws, and other related provisions. 1/ In its deliberations, the Committee arrived at a Summary of Conclusions on the basis of which the Report of the Committee was prepared. The Summary of Conclusions is annexed to the Committee's Report. In the case of a conflict between the Summary of Conclusions and the Report of the Committee, the language of the Report will prevail.

II. Sections 4(b) and 5(b) of the By-Laws

2.1 The Committee considered, first, Section 4(b) of the By-Laws of the Bank and Section 5(b) of the By-Laws of the Fund, which state that:

The Chairman of the Board of Governors, in consultation with the Executive Directors [Executive Board], may invite observers to attend any meeting of the Board of Governors.

A. The Consultation Process and Powers of the Chairman

2.2 It was agreed that a principal question of interpretation related to the power of the Chairman under the By-Laws. The Committee concluded that Sections 4(b) and 5(b), respectively, of the By-Laws obliged the Chairman to consult, but did not require him to act in accordance with the views of the Boards of Executive Directors of the two institutions. 2/ The Committee agreed to stress the desirability of clarifying the Chairman's rights under these Sections of the respective By-Laws with regard to the consultation process.

2.3 The Committee considered the request of the Chairman of the Boards of Governors, the Honorable Amir H. Jamal, by letter dated July 5, 1980, to invite the PLO as observer to the 1980 Annual Meetings and noted that the letter had been written after he had received the divided report of the Informal Working Party of Governors arising out of the PLO's application to be invited as an observer to the 1979 Annual Meetings. The Committee was of the view that the Chairman's instructions in his letter of July 5 had been given before compliance with the consultation requirements of Section 4(b) and Section 5(b) of the By-Laws.

1/ Effective September 26, 1980, the By-Laws of the Bank were amended by Resolution of the Board of Governors. As a result, the former Section 5, while remaining unchanged, was renumbered Section 4, and the former Section 13 was subdivided into 5 paragraphs and slightly revised [in a way that does not affect this Report] and was renumbered Section 12.

2/ One member of the Committee noted, however, that in the French translation of the By-Laws the words "in consultation" read "en accord avec." On "Amendment of Section 5(b)" it would be desirable to obtain clarification of the circumstances in which the Boards of Governors might wish

2.4 The Committee noted that the Executive Boards of the Bank and the Fund on July 25, and July 29, respectively, submitted to their Boards of Governors for a vote without meeting identical resolutions (Attachment IV) under which the observers to the 1980 Annual Meetings would be limited to those invited in 1979, and that this fact had been communicated to the Chairman as the views of the Executive Boards with respect to invitations to observers for the 1980 Annual Meetings by the President of the Bank and the Managing Director of the Fund, together with the suggestion that, while the matter was before the Governors, invitations be sent to those observers who were invited to the 1979 Annual Meetings. The Committee further noted that, after receipt of this information from the President of the Bank and the Managing Director of the Fund, the Chairman again made a request on August 5, 1980, to the President and the Managing Director that the PLO be invited. The Committee was of the view that the Chairman's instruction of August 5, 1980 to invite the PLO complied with the consultation requirements under Sections 4(b) and 5(b) of the by-Laws of the Bank and the Fund.

2.5 The Committee noted that the President of the Bank and the Acting Managing Director of the Fund sent separate messages on August 8, 1980 to the Chairman suggesting that he might wish to reconsider his position with respect to observers expressed in his message of August 5. The Committee further noted that the Chairman in his cable of August 9, in response to these two messages of August 8, by which he expressed his frustration and stated that the matter was now out of his hands, did not withdraw his request that an invitation be sent to the PLO.

2.6 A majority of the Committee took the view that the President of the Bank and the Acting Managing Director of the Fund acted properly and in accordance with their responsibility as defined in the Articles of Agreement and By-Laws in advising the Chairman by their communications of August 8 that issuing invitations while voting of the Boards of Governors on the draft resolution was in progress could be embarrassing and, in fact, the two managements had a duty on August 8 to bring to the Chairman's attention the possible consequences of persisting in his invitation to the PLO, while there still remained sufficient time to issue the invitations if he did persist. In discussing the propriety of the managements' actions generally, the following contrasting viewpoints were expressed. On the one hand, in connection with the memorandum from the President to the Bank's Executive Directors on July 22 referring to "recently expressed serious doubts" by a number of Executive Directors as to the exact scope of Section 5(b) of the By-Laws, and containing a draft resolution on the subject, some members took the view that the management acted in a partisan manner. On the other hand, some members took the view that the above viewpoint was incorrect because the initiative for the July 22 memorandum came from Executive Directors of the Bank. It was noted that a similar draft resolution was subsequently submitted to the Fund Executive Board by an Executive Director of the Fund.

2.7 Relative to the powers of the Chairman under Sections 4(b) and 5(b) of the By-Laws, the Committee noted that, after the Boards of Governors had adopted the Resolution, first, requesting the Executive Boards to consider the scope of Section 5(b) of the By-Laws and to make proposals for amendments and, second, stating that attendance at the 1980 Annual Meeting was to be limited to those observers who were invited in 1979, Chairman Jamal had cabled to the President of the Bank and the managing Director of the Fund on September 20, 1980 stating:

I do not consider it proper that invitations be issued to any observers for the 1980 meeting if invitation is denied to PLO. I propose, accordingly, that no observers be invited...

2.8 There was no difference of opinion about the propriety of the Chairman's decision of September 20, and the Committee was of the opinion that the Chairman was acting within his legal authority under Sections 4(b) and 5(b) of the respective By-Laws and not in contravention of the Resolutions adopted by the Boards of Governors on September 19, 1980. Some members, however, questioned whether the Chairman could "disinvite" the PLO, in view of his decision of August 5, notwithstanding that this had not been implemented; some observed that at the time of the Chairman's decision of September 20, no invitation had in fact yet been issued; some considered that, while the By-Laws did not specifically empower the Chairman to withdraw an invitation, they did not prohibit him from doing so either; the Resolutions of September 19 having established that observers be limited to the 1979 list, it was within the Chairman's prerogative to limit his invitation to one, all, or none, of the observers on the 1979 list. Some members observed that, when a body has been given competence to take certain decisions, that body would normally be competent to revoke or amend those decisions.

2.9 Reviewing the above sequence of events and the questions arising therefrom in relation to the Chairman's rights under the consultation process, the Committee stressed the desirability of clarifying the Chairman's functions under Sections 4(b) and 5(b) of the respective By-Laws with regard to the consultation process. While it was not within the Committee's mandate to propose the specific changes that might be required, it was noted that it would be helpful to have more specific wording to indicate what constituted consultations.

2.10 The Committee by a majority took the view that the Boards of Governors could take decisions concerning invitations to observers to attend the Annual Meetings which would revoke and nullify any invitations already issued by a Chairman for a meeting. Some members took the view that the Boards of Governors cannot overrule decisions validly taken by the Chairman or other organs of the two institutions.

2.11 The Committee agreed that, for the future, in the light of the situation created by the adoption of Resolutions No. 359 and No. 35-9 on "Amendment of Section 5(b)" it would be desirable to obtain clarification of the circumstances in which the Boards of Governors might wish

to overrule the Chairman and to state the circumstances in which the Boards of Governors should refrain from exercising this power in the future. It was noted that the Resolutions adopted on September 19 raised basic issues concerning the extent and limitations of the function of the chairmanship that future Chairmen would wish to be clearly delineated. Other members held the view that no such clarification was needed.

B. Other Questions

2.12 Most of the questions raised in the Memorandum of the Arab Executive Directors concerning Section 5(b) were taken up by the Committee in the course of the discussions set forth above with the exception of the following questions which, as set forth in the Memorandum of the Arab Executive Directors, were examined by the Committee.

2.13 In response to question No. 5 of the Memorandum--i.e., "Given that the Chairman of the Annual Meetings declared his intention or decision to invite the PLO to the Annual Meetings, is it permissible for the President of the Bank and the Managing Director of the Fund to nullify or frustrate the authority of the Chairman under Section 5(b) by simply declining to hold consultations?"--the Committee answered in the negative, but noted that the situation described in the question had not in fact occurred.

2.14 In response to question No. 6 of the Memorandum--i.e., "In deciding to invite PLO to the 1980 Annual Meetings, the Chairman was acting within his legally constituted authority as laid down in Section 5(b) of the By-Laws, is it permissible to frustrate the Chairman's authority by seeking a resolution from the Boards of Governors excluding the PLO from the list of observers?"--the Committee by a majority answered in the affirmative.

2.15 A majority of the Committee concluded that the question whether the decisions taken by the Executive Boards of the Bank and the Fund on, respectively, July 25, and July 29, were ultra vires did not arise because the Executive Boards were competent to submit resolutions to the Boards of Governors for voting without meeting on any matter on which the Executive Boards believed action should be taken by the Boards of Governors before the next Annual Meeting. A contrary view was submitted on the grounds that the real purpose of the resolution was to countermand a valid decision of the Chairman.

III. Section 12 of the By-Laws of the Bank and Section 13 of the By-Laws of the Fund

3.1 Section 12 and Section 13 of the By-Laws of the respective institutions establish the procedure for voting by Governors without a meeting of the Boards of Governors. The texts of the sections read as follows:

(Bank) SECTION 12. Voting Without Meeting

- (a) Whenever, in the judgment of the Executive Directors, any action by the Bank must be taken by the Board of Governors which should not be postponed until the next regular meeting of the Board of Governors and does not warrant the calling of a special meeting of the Board of Governors, the Executive Directors shall request the Governors to vote without meeting.
- (b) The Executive Directors shall present to each member by rapid means of communication a motion embodying the proposed action.
- (c) Votes shall be cast during such period as the Executive Directors may prescribe.
- (d) The Executive Directors may provide that no Governor shall vote on a motion during such period after dispatch of the motion as the Executive Directors prescribe.

- (e) At the expiration of the period prescribed for voting, the Executive Directors shall record the results, and the President shall notify all members. If the replies received do not include a majority of the Governors exercising two thirds of the total voting power, which is required for a quorum of the Board of Governors, the motion shall be considered lost.

(Fund) SECTION 13. Voting Without Meeting

- (a) Whenever, in the judgment of the Executive Board, any action by the Fund must be taken by the Board of Governors which should not be postponed until the next meeting of the Board of Governors and does not warrant the calling of a special meeting of the Board of Governors, the Executive Board shall request Governors to vote without meeting.
- (b) The Executive Board shall present to each member by rapid means of communication a motion embodying the proposed action.
- (c) Votes shall be cast during such period as the Executive Board may prescribe.
- (d) The Executive Board may provide that no Governor shall vote on a motion during such period after dispatch of the motion as the Executive Board prescribes.



(e) At the expiration of the period prescribed for voting, the Executive Board shall record the results, and the Managing Director shall notify all members. If the replies received do not include a majority of the Governors exercising two thirds of the total voting power, which is required for a quorum of the Board of Governors, the motion shall be considered lost.

3.2 The Committee considered these Sections in the light of their application in the voting without meeting that was conducted on the Resolutions concerning Section 5(b) of the By-Laws and Observers to Meetings of the Boards of Governors which were submitted to the Boards of Governors on July 31, 1980, following decisions taken, respectively, by the Bank and the Fund Executive Directors on July 25, and July 29, 1980, and which were adopted by the Boards of Governors of the Bank and the Fund on September 19, 1980, and in the light of a summary examination of the record of the communications from the Governors of the Fund. The Committee came to the following conclusions:

A. Withdrawal from Voting Procedure

3.3 The Committee agreed that a Governor is entitled to change his vote before the expiration of the voting period.

3.4 A majority of the Committee was of the opinion, for future reference, that a Governor should have, in principle, the right to withdraw from the voting procedure. Such withdrawal would constitute nonparticipation in the voting procedure and would not form part of the quorum. In this connection it was noted that use of this right could conceivably frustrate the achievement of a quorum that would otherwise have been attained on the basis of replies received. Some members stressed that the purpose of requiring a quorum was to protect the membership from action by a minority that was less than the quorum and counselled against any future change in voting procedures that could endanger this primary purpose or give a minority an unwarranted power to prevent action. Other members stressed that it was illogical to permit a Governor to change a vote already cast and not to permit the Governor to withdraw his vote even though this action might affect the outcome.

3.5 A majority of the Committee believed that, with the By-Laws reading as they do, Governors have the right to withdraw from the voting procedure before the expiration of the voting period. Three members were of the opinion that a Governor does not have the right to withdraw from the voting procedure once his reply was received. They pointed out that there is a specific reference to "replies received" in Sections 12 and 13 of the By-Laws and that the fact that a reply was recorded could not be nullified retroactively. One member abstained from reaching a conclusion on the ground that the By-Laws could be interpreted in two

ways and that valid arguments could be invoked in favor of both interpretations. It was added by that member that in any case there was no ground for challenging the legality of the decisions taken on this issue by the Executive Directors of the Bank and the Executive Board of the Fund.

3.6 According to the interpretation of Sections 12 and 13 adopted by the majority of the Committee, Algeria, Mauritania, Niger and the Yemen Arab Republic had withdrawn from the voting procedure in the case of the IMF and Syria and Sudan had withdrawn from the voting procedure in the case of the World Bank. In the view of four members, with the withdrawal of these countries the number of Governors who participated in voting fell short of the required quorum by two votes in both the Bank and the Fund. Accordingly, in the view of these members the Board of Governors resolutions on observers was not carried for lack of a quorum. Three other members stressed however that such withdrawals could only have been accepted in the hypothetical case that the Executive Board had adopted a different interpretation from the one that actually prevailed. Accordingly, the question of the quorum raised above is irrelevant in the present context. One member stated that, in his opinion, there was no ground for challenging the quorum.

3.7 The Committee agreed that the Fund's Executive Board, on the basis of the present text, had the legal power at its meeting on September 16 and the Bank Executive Directors at their meeting on September 18, 1980, to interpret Sections 12 and 13 of the respective By-Laws to deny the possibility of withdrawal of replies received. This does not imply however that their interpretation, in the view of some members, was necessarily correct. According to the view of four members, the interpretation adopted by the majority of the Committee supporting the right of Governors to withdraw from voting means that the interpretation adopted by the Executive Boards on September 16 and 18, 1980 denying the right of withdrawal was an incorrect interpretation of Sections 12 and 13.

B. Extension of Voting Period

3.8 In the view of a majority of the Committee, the Executive Boards have the legal power to extend the voting period under the present provisions of the By-Laws, taking into account the fact that, because there is room for different interpretations of the text, the guiding consideration must be derived from past practice. In this connection some members felt that a distinction should be made between unanimous extension and contested extension of the voting period. They pointed out that while there were many cases of unanimously approved extension there was not a single precedent of contested extension. Therefore past practice could not support the extension of the voting period in the case under consideration. It was further pointed out that to permit contested extensions would confer upon the majority in the Executive

Board the power to suspend the operation of Sections 12 and 13 by delaying the counting of votes until the next meeting of the Boards of Governors. It was therefore argued that Sections 12 and 13 did not specifically make provision for an extension since there was no limitation on the power of the Executive Directors in fixing the period for voting, and there was a clear provision in the By-Laws that, in the absence of a quorum, the motion shall be considered lost. Another view was that the past practice was based on the interpretation of the majority. One member observed that the Articles and By-Laws of the Bank and the Fund must always take precedence over past practice.

### C. Voting Procedure

3.9 The Committee agreed that the procedures for voting without meeting could usefully be clarified in order to achieve a more precise definition of the term "replies received" as that term is found in subsections (e) of Sections 12 and 13 of the respective By-Laws. In this context some members of the Committee felt that consideration might usefully be given to the merits, or otherwise, of changing the term to "votes received."

3.10 In this connection the Committee also took the view that under the procedure of voting without meeting there should be four options open for any Governor, namely: affirmative vote, negative vote, abstention, and nonparticipation, and Governors' positions should be classified under one or other of these four categories. Some members thought that it would be appropriate for the Secretaries to keep open a fifth option for "other replies."

3.11 It was further agreed that there should be a standing procedure whereby the Secretaries would immediately seek clarification from a Governor if there was any doubt about the meaning of his communication, in particular, if the reply from a Governor states that he abstains from casting a vote or abstains from participating in voting, or uses other words to that effect.

3.12 The Committee also took the view that:

- (a) it was the duty of each Governor casting a vote to ensure that the vote reached the Secretary before the close of the period for voting;
- (b) to be counted, a vote in a specified form must be in the hands of the Secretary before the close of the period for voting; and
- (c) a vote, to be accepted, must be cast by a legally appointed Governor and this fact must be properly indicated if the vote is transmitted on the Governor's behalf by someone other than the Governor.

SUMMARY OF CONCLUSIONS ARRIVED AT BY THE  
JOINT COMMITTEE

I. TERMS OF REFERENCE

1. Consensus was reached that the Committee should examine the substantive issues and endeavor to take a forward-looking approach.

II. SECTION 5(B) OF THE BY-LAWS

2.1 Agreed that, under Section 5(b) of the By-Laws, the Chairman does have to consult, but does not have to act in accordance with the views of the Board of Executive Directors.

2.2 Agreed that the Chairman's communication of July 5 requesting that the PLO be invited as an observer was made before compliance with the requirements on consultation contained in Section 5(b) of the By-Laws.

2.3 Agreed that the Chairman's instructions of August 5 to invite the PLO complied with the consultation requirements under Section 5(b) of the By-Laws.

2.4 Agreed that, in his decision of September 20 not to invite any observers to the 1980 Annual Meetings, the Chairman was acting within his authority under Section 5(b) of the By-Laws and was not in contravention of the Resolution of the Board of Governors adopted on September 19, 1980.

2.5 Agreed to stress the desirability of clarifying the Chairman's rights under Section 5(b) of the By-Laws with regard to the consultation process.

2.6 Agreed that in his cable of August 9 in which he expressed his frustration and stated the matter was now out of his hands, the Chairman did not withdraw his invitation to the PLO.

2.7 Agreed to draw attention to the need for clarification of the circumstances in which the Board of Governors might wish to overrule the Chairman and for stating the circumstances in which the Board of Governors should refrain from exercising this power in the future.

III. SECTION 13 OF THE BY-LAWS

(a) Voting Procedure

3.1 Agreed that the procedure for voting without meeting needed to be clarified and elaborated particularly with respect to the following aspects:

- (i) a more precise definition of "replies received";
- (ii) a standing procedure for the staff to seek immediately clarification from the Governor concerned if there is any doubt about the meaning of a reply received;
- (iii) the duty of the Governor casting the vote to ensure that the vote reaches the Secretary before the close of period for voting;
- (iv) the need for the vote to be in the hands of the Secretariat before the expiry of the voting period;
- (v) the need for a vote, to be accepted, to be cast by a legally appointed Governor or sent by someone duly authorized by him to send the vote of the Governor on his behalf and in the specified form.

- 3.2 (i) Agreed that under the procedure of vote without meeting, Governors' positions should be classified as affirmative vote, negative vote, abstention, and non-participation. Governors should be classified under one or other of these four categories.
- (ii) Agreed that in the event of a reply from a Governor that he abstains from casting a vote or abstains from participating in voting, or other words to that effect, the Secretaries should seek further clarification from the Governor concerned.

3.3 Agreed that the Executive Boards on September 16 and 18 had the right to give an interpretation on "replies received."

(b) Withdrawal from the Voting Procedure

3.4 Agreed that a Governor is entitled to change his vote before the expiry of the voting period.

3.5 Agreed by a majority to state that, in the Committee's opinion, for future reference, a Governor should have the right, in principle, to withdraw from the voting procedure.

3.6 Agreed by a majority that, with the By-Laws reading as they do, Governors have the right to withdraw from the voting procedure before the expiration of the voting period.

3.7 According to the interpretation of Section 13 adopted by the majority of the Committee, Algeria, Mauritania, Niger and the Yemen Arab Republic had withdrawn from the voting procedure in the case of the IMF. Syria and Sudan had withdrawn from the voting procedure in the case of the World Bank. In the view of four members, with the

withdrawal of these countries the number of Governors who participated in voting fell short of the required quorum by two votes in both the Bank and the Fund. Accordingly, in the view of these members the Board of Governors resolution on observers was not carried for lack of a quorum. Three members stressed however that such withdrawals could only have been accepted in the hypothetical case that the Executive Board had adopted a different interpretation from the one that actually prevailed. Accordingly, the question of the quorum raised above is irrelevant in the present context. One member stated that, in its opinion, there was no ground for challenging the quorum.

3.8 Agreed that the Fund's Executive Board, on the basis of the present text, had the legal power at its meeting on September 16 and the Bank Executive Directors at their meeting on September 18, 1980, to interpret Section 13 of the By-Laws to deny the possibility of withdrawal of replies received.

(c) Extension of Voting Period

3.9 Agreed by a majority that the Executive Boards have the legal power to extend the voting period under the present provisions of the By-Laws, taking into account the fact that, since there is room for different interpretations of the text, the guiding consideration must be derived from past practice.

IV. MATTERS ARISING FROM DECISIONS AT THE MEETINGS OF JULY 25 AND 29

4. Agreed that the question whether the decisions taken at the meeting of the Bank and Fund Boards on July 25 and 29 respectively were ultra vires did not arise, because the Executive Boards were competent to submit any resolution to the Boards of Governors for votes without meeting.

V. QUESTIONS ARISING OUT OF THE MEMORANDUM OF THE ARAB EXECUTIVE DIRECTORS IN BANK AND FUND NOT ALREADY ANSWERED IN I - IV

5.1 Agreed that, with the exception of the following, the questions raised in the Memorandum of the Arab Executive Directors have been answered by this Committee in some of the conclusions summarized above.

5.2 Agreed by a majority that the President of the Bank and the Acting Managing Director of the Fund acted properly in accordance with their responsibility as defined in the Articles of Agreement and By-Laws in sending their messages of August 8 to the Chairman of the Board of Governors.

5.3 Considered that on Question 5 of the Memorandum--i.e., that "given that the Chairman of the Annual Meetings declared his intention or decision to invite PLO to the Annual Meetings, is it permissible for the President of the Bank and the Managing Director of the Fund to nullify or frustrate the authority of the Chairman under Section 5(b) by simply declining to hold consultations"--the answer was "No."

5.4 Considered that on Question 6 of the Memorandum--i.e., "In deciding to invite PLO to the 1980 Annual Meetings, the Chairman was acting within his legally constituted authority as laid down in Section 5(b) of the By-Laws, is it permissible to frustrate the Chairman's authority by seeking a resolution from the Board of Governors excluding the PLO from the list of observers"--the answer by a majority was "Yes."

5.5 Agreed by a majority that the Board of Governors could take decisions concerning invitations to observers to attend the Annual Meetings which would revoke and nullify any invitations already issued by the Chairman for a meeting.

Agreed that the question whether the decision taken at the meeting of the Board of Governors on July 12, 1980, was validly taken is a matter for the Board of Governors to decide. The Board of Governors is the only body which has the authority to decide on the validity of its own decisions.

Agreed that the question whether the decision taken at the meeting of the Board of Governors on July 12, 1980, was validly taken is a matter for the Board of Governors to decide. The Board of Governors is the only body which has the authority to decide on the validity of its own decisions.

Agreed that the question whether the decision taken at the meeting of the Board of Governors on July 12, 1980, was validly taken is a matter for the Board of Governors to decide. The Board of Governors is the only body which has the authority to decide on the validity of its own decisions.

Agreed that the question whether the decision taken at the meeting of the Board of Governors on July 12, 1980, was validly taken is a matter for the Board of Governors to decide. The Board of Governors is the only body which has the authority to decide on the validity of its own decisions.

Agreed that the question whether the decision taken at the meeting of the Board of Governors on July 12, 1980, was validly taken is a matter for the Board of Governors to decide. The Board of Governors is the only body which has the authority to decide on the validity of its own decisions.

## JOINT COMMITTEE OF GOVERNORS

(Meetings in Manila, December 1-3, 1980,  
and in Wellington, January 21-23, 1981)

ATTENDANCE**BELGIUM**

Jacques de GROOTE  
Executive Director  
Temporary Alternate Governor

**SWEDEN**

Jan VANORMELINGEN  
Advisor to Minister of Finance  
Ministry of Finance  
Temporary Alternate Governor

Jean-Victor LOUIS  
Head, Legal Department  
National Bank of Belgium  
Temporary Alternate Governor

**YUGOSLAVIA****FRANCE**

Paul MENTRE de LOYE  
Executive Director  
Temporary Alternate Governor

Jean Claude STORA  
Chief of Division of International  
Monetary Affairs  
Ministry of Economy  
Temporary Alternate Governor

**SECRETARIAT****GERMANY**

Gerhard LASKE  
Executive Director  
Temporary Alternate Governor

Juergen OESTERHELT  
Division Chief, Legal Department  
Foreign Office, Bonn  
Temporary Alternate Governor

Wellington meeting only.  
Effective December 12, 1980.  
Manila meeting only.



## INDONESIA

Ali WARDHANA  
 Minister of Finance  
 Governor  
 Byanti KHARMAWAN  
 Executive Director  
 Temporary Alternate Governor

Sri HADI 1/  
 Director for International Financial  
 Relations  
 Ministry of Finance  
 Temporary Alternate Governor

## NEW ZEALAND

Rt. Hon. R. D. MULDOON  
 Prime Minister and Minister of Finance  
 for New Zealand  
 Governor  
 Chairman

J. D. DALGETY  
 Legal Expert  
 Prime Minister's Department

B. V. GALVIN  
 Secretary to the Treasury 2/  
 Governor 2/

S. P. MURDOCH  
 Senior Advisory Officer  
 Prime Minister's Department

## NIGERIA

A. THOMAS  
 Minister of State for Finance  
 Alternate Governor

J. B. AJALA  
 Legal Advisor  
 Federal Ministry of Finance  
 Temporary Alternate Governor

R. O. MOWOE 3/  
 Deputy Secretary  
 Federal Ministry of Finance

E. A. EKERENDU 1/  
 Under Secretary  
 Federal Ministry of Finance

PAKISTAN

A. G. N. KAZI  
 State Bank of Pakistan  
 Governor  
 Said EL-NAGGAR  
 Executive Director  
 Temporary Alternate Governor

W. KAMHAWI 3/  
 Advisor

SWEDEN

Bertil LUND  
 Director for International Affairs, 3, 1980  
 Ministry of Economic Affairs  
 Temporary Alternate Governor

Hans DANELIUS  
 Head, Legal Department  
 Ministry of Foreign Affairs  
 Temporary Alternate Governor

YUGOSLAVIA

Petar KOSTIC  
 Federal Secretary for Finance and  
 Member of the Federal Executive Council  
 Governor

Jovan PAUNOVIC  
 Assistant Federal Secretary for Finance  
 Temporary Alternate Governor

SECRETARIAT

T. T. THAHANE, Vice President and  
 Secretary, IBRD  
 Leo VAN HOUTVEN, Secretary, IMF  
 Heribert GOLSONG, Vice President and  
 General Counsel, IBRD 1/  
 James G. Evans, Jr. Deputy General  
 Counsel, IMF  
 Joseph W. LANG, Jr. Deputy Secretary,  
 IMF  
 Louis FORGET, Senior Counsel, IBRD  
 M. P. SHIVNAN, Special Assistant to the  
 Secretary, IBRD 3/  
 Jai OH, Senior Counsellor, IMF

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1/ Wellington meeting only.  
2/ Effective December 12, 1980.  
3/ Manila meeting only.



INTERNATIONAL MONETARY FUND

ATTACHMENT II

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE CORPORATION

INTERNATIONAL DEVELOPMENT ASSOCIATION

Joint Procedures Committee  
Document No. 10

OUTLINE OF LEGAL ISSUES

October 3, 1980

Memorandum

Attached is a memorandum entitled "Outline of Legal Issues" prepared by the Arab Executive Directors in the World Bank and International Monetary Fund and submitted to the Joint Procedures Committee at its meeting on September 29, 1980, in connection with the agenda item "Application of the Palestine Liberation Organization for Observer Status."

Contents

- Attachment
- I. Legal Issues Related to Section 5(b) of the By-Laws.
  - II. Legal Issues Related to Section 13 of the By-Laws.
  - III. The Interpretation of the By-Laws.

September 28, 1980

C. LEGAL ISSUES RELATED TO SECTION 5(b) OF THE BY-LAWS

THE APPLICATION OF THE  
PALESTINE LIBERATION ORGANIZATION  
FOR OBSERVER STATUS

The Palestine Liberation Organization has raised many legal issues which remain unsettled. Most of these issues are related to the interpretation of Section 5(b) and Section 13 of the By-Laws of the World Bank and the International Monetary Fund. The wording of Section 5(b) on the invitation of observers is plain enough. It reads:

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OUTLINE OF LEGAL ISSUES  
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The Chairman of the Board of Governors, in consultation with the Executive Directors, may invite observers to attend any meeting of the Board of Governors.

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Memorandum

By

The Arab Executive Directors in the World Bank and  
International Monetary Fund

(a) The Report of the Informal Working Party of Governors stating the case for and against the admission of PLO as observer in 1980 Annual Meetings.

Contents

- (b) A resolution unanimously adopted by the Group of Seventy Seven in Belgrade in September 1979 supporting
- I. Legal Issues Related to Section 5(b) of the By-Laws.
  - II. Legal Issues Related to Section 13 of the By-Laws.
  - III. The Interpretation of the By-Laws.

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summer of 1979 in which the majority of votes in the Executive Boards of the two Institutions was against inviting PLO as observer in the 1979 Annual Meetings.

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Upon receipt of Chairman Jamali's letter of July 5, both the President of the World Bank and the Managing Director of the Fund announced that they intend to comply with the Executive Directors as required by Section 5(b) of the By-Laws. However, in the week end of July 1980 the Executive Boards of the two Institutions passed, by a majority of votes, a draft resolution for consideration by the Board of Governors. The operative part of the draft resolution is as follows:

I. LEGAL ISSUES RELATED TO SECTION 5(b) OF THE BY-LAWS

The Palestine Liberation Organization's application for observer status in the Bretton Woods Institutions has raised many legal issues which remain unsettled. Most of these issues are related to the interpretation of Section 5(b) and Section 13 of the By-Laws of the World Bank and the International Monetary Fund. The wording of Section 5(b) on the invitation of observers is plain enough. It reads:

The Chairman of the Board of Governors, in consultation with the Executive Directors, may invite observers to attend any meeting of the Board of Governors.

For over 30 years since the birth of the Bretton Woods Institutions, the meaning of this provision was never called into question. Such a completely uneventful history was only matched by the great controversy related to it in the last three months. In a letter dated July 5, 1980 the Chairman of the 1980 Annual Meetings, H. E. Amir Jamal, exercising his authority under Section 5(b), took the decision to invite PLO as observer in 1980 Annual Meetings. It should be realized that Chairman Jamal's decision was only a phase in a long series of events. In particular, he had before him:

- (a) The Report of the Informal Working Party of Governors stating the case for and against the admission of PLO as observer in 1980 Annual Meetings.
- (b) A resolution unanimously adopted by the Group of Seventy Seven in Belgrade in September 1979 supporting the PLO application for observer status.
- (c) Consultations held pursuant to Section 5(b) in the summer of 1979 in which the majority of votes in the Executive Boards of the two Institutions was against inviting PLO as observer in the 1979 Annual Meetings.

Upon receipt of Chairman Jamal's letter of July 5, both the President of the World Bank and the Managing Director of the Fund notified him that they intend to hold consultations with the Executive Directors as required by Section 5(b) of the By-Laws. However, in the last week of July 1980 the Executive Boards of the two Institutions approved, by a majority of votes, a draft resolution for consideration by the Board of Governors. The operative part of the draft resolution reads as follows:

- (a) That the Executive Directors shall consider the exact scope of Section 5(b) and make such proposals for amendment as they believe necessary and that they shall report to the Board of Governors by March 1, 1981; and
- (b) That pending the outcome of action pursuant to paragraph 1 of this Resolution, attendance at the 1980 Annual Meeting or any meeting of the Board of Governors thereafter, shall be limited to those observers who were invited to the 1979 Annual Meetings.

The idea underlying the draft resolution was plainly to frustrate and overrule Chairman Jamal's decision of July 5 to add PLO to the list of observers in 1980 Annual Meetings.

This situation gave rise to a number of legal questions.

#### Question One

Was Chairman Jamal acting within the bounds of his authority in asking the managements of the Bank and the Fund to add PLO to the list of observers before consultations with the Executive Directors in connection with the 1980 Annual Meetings?

In support of Chairman Jamal's decision, it should be pointed out that in this particular case his decision was not taken ab initio, but was preceded by the Report of the Informal Working Party of Governors, the resolution of the Group of 77 and consultations held with Executive Directors under Section 5(b) in connection with the 1979 Annual Meetings. Given these considerations, it is understandable that Chairman Jamal took his decision without further consultation with Executive Directors. He was fully aware of the negative outcome of last year's consultation. A repetition of the process would presumably have produced the same negative result, and, therefore, would not have added a new element in the situation.

#### Question Two

In case the Chairman of the Annual Meetings takes a different view from the Executive Directors as to the advisability of having a certain organization, institution or country as observer, is it his view or that of the Executive Directors which shall prevail under Section 5(b) of the By-Laws?

In the course of the deliberations of the Informal Working Party of Governors, the Legal Counsels of both the Bank and the Fund took the position that "in consultation with" in Section 5(b) did not mean "in agreement with" and that "the ultimate authority to invite observers has been placed in the Chairman." (The Report of the Informal Working Party of Governors, p. 5.)

Question Three

To what extent was the meeting and decision of the Executive Directors in the World Bank on July 25 and in the Fund on July 30 equivalent to "consultation" as envisaged in Section 5(b) of the by-Laws?

It is possible to argue that the meeting and decision of the Executive Board regarding the draft resolution on observers do constitute consultation in the sense of Section 5(b). By limiting the list of observers to those who were invited to the 1979 Annual Meetings, the Executive Directors have implicitly rejected the PLO application for observer status since PLO was not on the list of observers in 1979. Under this interpretation the President of the Bank and the Managing Director of the Fund should have issued the invitation to PLO for the following reasons:

- (a) Consultation in the sense of Section 5(b) was completed.
- (b) The result of consultation was conveyed to Chairman Jamal in a cable dated July 31, 1980 sent by the President of the Bank and the Managing Director of the Fund (Document SecM80-622 dated July 31, 1980) informing him of the draft resolution and quoting its full text.
- (c) Chairman Jamal continued to maintain his position as explicitly stated in his cable of August 5 to both the President of the Bank and the Managing Director of the Fund. Chairman Jamal concludes his cable of August 5 by the statement that:

I therefore request under By-Law 5(b) that the PLO be added to the 1979 list of observers and invitations issued accordingly. (Document SecM80-616 dated August 6, 1980.)

Instead of issuing the invitation to PLO and other observers as directed by Chairman Jamal, the President of the Bank and the Managing Director of the Fund cabled back to the Chairman on August 8, 1980:

I have distributed to the Executive Directors for their information copies of your cable concerning invitations to observers received on August 5 stop Would it not be embarrassing to all parties if an invitation was issued now while voting on the resolution forwarded on July 31 to the Governors for a vote by mail is in progress stop. (Document SecM80-631 dated August 11, 1980.)

(e) That the Executive Directors shall consider the exact

It should be noted that this cable does not invoke the necessity of consultation with the Executive Directors as the reason for not issuing the invitation to PLO. There is an implicit admission that consultation was in fact completed as required by Section 5(b). An entirely different argument was advanced for not acting on the request of the Chairman of the Annual Meetings. According to this cable, the point is made that it may be politically embarrassing to all parties to issue the invitation to PLO while voting on the draft resolution is in progress.

#### Question Four

Given that consultation as required by Section 5(b) was completed and that the Chairman of the Annual Meetings persisted in his position that the invitation to PLO be issued, were the President of the Bank and the Managing Director of the Fund acting in accordance with their responsibility as defined in the Articles of Agreement and the By-Laws in failing to issue the invitation to PLO as requested by the Chairman on the ground of a possible political embarrassment?

However, it is possible to take the position that the meeting and decision of the Executive Boards of the Bank and the Fund on July 25 and July 30 do not constitute consultation in the sense of Section 5(b) and that such consultation never in fact took place. This interpretation gives rise to another question.

#### Question Five

Given that the Chairman of the Annual Meetings declared his intention or decision to invite PLO to the Annual Meetings, is it permissible for the President of the Bank and the Managing Director of the Fund to nullify or frustrate the authority of the Chairman under Section 5(b) by simply declining to hold consultations?

As mentioned earlier, the draft resolution on observers proposes to limit observers in the 1980 Annual Meetings to those who were invited in the 1979 Annual Meetings. In the circumstances of the case such a limitation raises a question regarding the demarcation line between the power of the Chairman under Section 5(b) of the By-Laws and the power of the Board of Governors under the Articles of Agreement.

In the course of the deliberations of the Informal Working Party of Governors, the Legal Councils of both the Bank and the Fund took the position that "in consultation with" in Section 5(b) did not mean "in agreement with" and that "the ultimate authority to invite observers has been placed in the Chairman." (The Report of the Informal Working Party of Governors, p. 3.)



Question Six

In deciding to invite PLO to the 1980 Annual Meetings, the Chairman was acting within his legally constituted authority as laid down in Section 5(b) of the By-Laws, is it permissible to frustrate the Chairman's authority by seeking a resolution from the Board of Governors excluding the PLO from the list of observers?

It is recognized, of course, that according to Article V, Section 2 of the Articles of Agreement "All the powers of the Bank shall be vested in the Board of Governors." It is also recognized that according to the preamble to the By-Laws:

In the event of a conflict between anything in these By-Laws and any provision or requirement of the Articles of Agreement, the Articles of Agreement shall prevail.

However, it is submitted that these provisions refer to the hierarchy of different organs in the decision-making structure, and that they cannot be invoked by revoke a decision duly taken in accordance with the existent provisions. If this interpretation is correct, it follows that Chairman Jamal's decision to invite PLO pursuant to Section 5(b) cannot be revoked by a resolution from the Board of Governors limiting 1980 observers to those invited in 1979 unless and until Section 5(b) is amended by due process.

On September 19, 1980 the Boards of Governors of the Bank and the fund adopted the draft resolution on observers in a vote without a meeting. Thus the Boards of Governors resolved that the observers in 1980 Annual Meetings shall be limited to those invited in 1979.

On September 20 Chairman Jamal sent a cable to the Bank and the Fund which reads as follows:

I do not consider proper that invitation be issued to any observer for the 1980 Meeting if invitation is denied to PLO. I propose accordingly that no observers be invited. Presently, I am visiting Saudi Arabia. Regards. (Document SecM80-735, dated September 24, 1980.)

These developments on September 19 and September 20 created a situation of conflicting injunctions:

- (a) The injunction of Chairman Jamal in his letter of July 5, 1980 and in his cable of August 5, 1980 that PLO be placed on the list of observers. This means that observers in the 1980 Annual Meetings shall be those invited in 1979 plus PLO.

(b) The injunction of the Board of Governors in its resolution of September 19 that observers in 1980 shall be limited to those invited in 1979. This means that PLO is excluded from the list of observers in 1980 Annual Meetings.

(c) The injunction of Chairman Jamal in his cable of September 20 that neither PLO nor other observers in 1979 shall be invited to the 1980 Annual Meetings.

#### Question Seven

Given Chairman Jamal's decision on July 5 to invite PLO along with other observers, the Board of Governors' resolution on September 19 that other observers, but not PLO, be invited and Chairman Jamal's decision on September 20 that neither PLO nor other observers be invited, which of the three conflicting injunctions should be given effect?

The resolution adopted by the Board of Governors on September 19 limiting observers in the 1980 Annual Meetings to those invited in 1979 has no purpose whatsoever except to exclude a single organization; namely, the Palestine Liberation Organization, from the list of observers.

#### Question Eight

Is it proper for the Executive Boards of the Bretton Woods Institutions to propose a resolution, and for the Boards of Governors to adopt it, with no purpose except to exclude PLO from the list of observers, thereby nullifying a decision taken by the Chairman in the exercise of his legally constituted authority under Section 5(b) of the By-Laws? Is this purpose such as to constitute abuse of power vested in the decision-making organs and, for this reason, invalidates the resolution adopted by the Boards of Governors on September 19, 1980?

II. LEGAL ISSUES RELATED TO SECTION 13 OF THE BY-LAWS

As mentioned earlier, the draft resolution on observers was adopted by the Boards of Governors in a vote without meeting. The procedure for voting without meeting is set out in Section 13 of the Bank By-Laws, which reads as follows:

Whenever, in the judgment of the Executive Directors, any action by the Bank must be taken by the Board of Governors which should not be postponed until the next regular meeting of the Board and does not warrant the calling of a special meeting of the Board, the Executive Directors shall present to each member by any rapid means of communication a motion embodying the proposed action with a request for a vote by its Governor. Votes shall be cast during such period as the Executive Directors may prescribe, provided that no Governor shall vote on any such motion until seven days after dispatch of the motion unless he is notified that the Executive Directors have waived this requirement. At the expiration of the period prescribed for voting, the Executive Directors shall record the results and the President shall notify all members. If the replies received do not include a majority of the Governors exercising two-thirds of the total voting power which are usually required for a quorum of the Board of Governors, the motion shall be considered lost. 1/

It may be recalled that the Executive Boards took the decision to propose the draft resolution on observers on July 25 in the Bank and July 30 in the Fund. According to the procedure prescribed in Section 13, the draft resolution was dispatched on July 31, 1980 for a vote by the Governors without meeting during the period from August 8, 1980 to September 9, 1980.

On August 1, i.e. one week before the beginning of the voting period, the Executive Director representing the Arab countries in World Bank sent a memorandum to Mr. McNamara and all the Executive Directors, which read as follows:

I have been instructed by my authorities to communicate to you and the Executive Directors the following statement: "The Governors of Kuwait, the Kingdom of Saudi Arabia and the United Arab Emirates, as well as other Arab Governors of the World Bank, are greatly disturbed by the decision of the Executive Directors on July 25 concerning observers to Annual Meetings. It is their considered view that the draft resolution recommended to the Board of Governors for a vote without meeting represents a serious deviation from the proper consultation procedure as laid down in Section 5(b) of the By-Laws. In their view, the obvious intent of

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1/ The corresponding provisions in Section 13 of IMF By-Laws are substantively similar though spelled out in separate paragraphs.

the draft resolution is to overrule the positive decision of His Excellency A. H. Jamal, Chairman of the 1980 Annual Meetings, and to exclude the Palestine Liberation Organization from the observer-ship in 1980 Annual Meetings and thereafter. As such the draft resolution constitutes, according to them, an abuse of the authority vested in the decision-making organs of the Bretton Woods institutions. This action by the Executive Board, insofar as it circumvents the By-Laws, has no precedent in the history of the World Bank, and, if adopted by the Board of Governors, would compromise its credibility in the future. For these reasons the Arab Governors have decided to ignore it by not participating in voting. They will cast neither an affirmative, nor a negative, nor an abstention vote. They hope that Governors who share the same view will do likewise so that the necessary quorum will not be achieved."

In this Memorandum the Arab Governors made it known to the management of the Bank and all Executive Directors well before the beginning of the voting period that they intend to fight the draft resolution by not participating in voting so that the draft resolution will fail for lack of quorum. They also expressed the hope that Governors who share the same view with respect to the draft resolution will do likewise. The same position was taken by the Arab Executive Director in the Fund.

On September 5, 1980, i.e. four days before the expiry of the voting period, a memorandum was circulated by the Secretary of the Bank enclosing a request from the U.S. Executive Director to extend the voting period from September 9 to September 23, 1980; later changed to September 19, 1980 (Document R80-272 dated September 5, 1980). The American Executive Director gave no reason for the extension request except to state that it was for further consultation. A similar request was made by the American Executive Director in the Fund. The real reason for the extension request was obviously the fact that the number of countries participating in voting were far short of the quorum requirement and that the draft resolution was about to be defeated for lack of quorum. On the request of the U.S. Executive Directors, the Bank and Fund Boards met on September 8 and September 9 and decided, by a majority of votes and in the face of strong objection by the Arab Executive Directors and some others, to extend the voting period to September 19, 1980.

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The corresponding provisions in Section 13 of IMF By-Laws are substantially similar though spelled out in separate paragraphs.

Question Nine

Given the provisions of Section 13 of the By-Laws and the declared intention of the Arab Governors to fight the draft resolution on the basis of quorum requirement, was the decision of the Board to extend the voting period from September 9 to September 19, 1980 consistent with the provisions of Section 13 of the By-Laws?

If the extension of the voting period under these circumstances was inconsistent with Section 13 of the By-Laws, what is the impact of such an interpretation on the validity of the resolution adopted by the Board of Governors on September 19, 1980?

During the voting period some countries, including some Arab countries, participated by mistake in voting on the draft resolution. When they realized that what was expected of them was not to participate at all so that the draft resolution may fail for lack of quorum, they advised the management of the Bank and the Fund, while the voting period was still running, that they wish to withdraw their votes. The Executive Boards of the World Bank and Fund met on September 17 and September 18 to consider the request of these countries. The Executive Boards decided by a majority of votes, against the opposition of the Arab Executive Directors, that while the voting period is still running, member countries are entitled to change their votes from positive to negative, or from negative to positive, or from either to abstention, or vice versa, but they are not allowed to withdraw their votes. In other words, once they are in, they cannot get out.

Question Ten

In the case of voting without meeting, is it consistent with the provisions of Section 13 that once a country casts a vote it cannot withdraw it during the voting period while it can change its vote from positive to negative, from negative to positive, from either to abstention, and vice versa?

If it is ruled that countries are entitled during the voting period to change their votes from one column to another as well as to withdraw their votes altogether, what impact such an interpretation would have on the validity of the resolution adopted by the Boards of Governors on September 19, 1980 in case withdrawal of a certain number of countries would bring down the participating countries to a level below quorum?

### III. THE INTERPRETATION OF THE BY-LAWS

Questions related to the interpretation of the Articles of Agreement are provided for in Article IX of the Articles of Agreement of the World Bank. Paragraphs (a) and (b) of that Article read as follows:

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision...

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board, the Bank may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

The corresponding provisions in IMF are set out in Article XXIX which, in addition to the provisions contained in Article IX of the Bank's Articles of Agreement, calls for setting up a Committee on Interpretation:

Any question referred to the Board of Governors shall be considered by a Committee on Interpretation of the Board of Governors. Each Committee member shall have one vote. The Board of Governors shall establish the membership, procedures, and voting majorities of the Committee. A decision of the Committee shall be the decision of the Board of Governors unless the Board of Governors, by an eighty-five percent majority of the total voting power, decides otherwise. Pending the result of the reference to the Board of Governors the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Board.

Two observations would seem to be in order:

(1) Article IX of the Bank's Articles of Agreement and Article XXIX of the Fund's Articles of Agreement deal with the interpretation of the Articles of Agreement, not that of the By-Laws. It is laid down that "In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final." There is little doubt, however, that questions of interpretation of the By-Laws are subject to the same procedure. Thus, in cases where the decision of the Executive Board gives rise to differences about the proper interpretation of the By-Laws any member may require that the question be referred to the Board of Governors whose decision is final.

(2) Reference to the Board of Governors of interpretation questions is made upon the request of any member countries. It requires neither a majority of member countries nor a majority of votes.

Accordingly, the Arab Governors request that the legal questions raised in this memorandum be referred to the Board of Governors for consideration by a Committee on Interpretation pursuant to Article XXIX of IMF Articles of Agreement and Article IX of the Bank's Articles of Agreement.

It is clear that the legal questions raised in this memorandum have a significance which goes far beyond the specific issue of PLO observership in the Bretton Woods Institutions. What is at issue is simply the principle of legality in the management of the Bank and the Fund. The history of the present case clearly shows that the Executive Boards have been largely influenced in their interpretational decisions by political rather than legal considerations. Consequently, they gave political interpretations of the By-Laws, which could have a damaging effect on the integrity of the Bretton Woods Institutions. It is hoped that in setting up the Committee on Interpretation every safeguard will be taken to ensure the objectivity of interpretation.

Submitted By

The Governor for Pakistan,  
Member of the Joint Committee  
of the Boards of Governors

October 30, 1980

Contents

THE APPLICATION OF

THE PALESTINE LIBERATION ORGANIZATION

FOR OBSERVER STATUS

QUESTIONS OF INTERPRETATION

POSITION PAPER

Submitted By

The Governor for Pakistan,  
Member of the Joint Committee  
of the Boards of Governors

October 30, 1980



Contents

Section I - Terms of Reference

At their Annual Meetings held in Washington, D.C. from September 30 to October 3, 1980, the Boards of Governors of the International Monetary Fund and the World Bank adopted a resolution in paragraph (1) of its operative part as follows:

**Section I - Terms of Reference**

**Section II - Questions of Interpretation Arising out of the Executive Boards' Decisions of July 25, and July 29, 1980**

**Section III - Questions of Interpretation Arising out of the Executive Boards' Decisions on September 9, 1980**

**Section IV - Questions of Interpretation Arising out of the Executive Boards' Decisions on September 17 and September 18, 1980**

**Section V - Questions of Interpretation Arising out of the Boards of Governors' Resolution on September 19, 1980**

**Section VI - Questions of Interpretation Arising out of the Executive Boards' Decisions and the Boards of Governors' Resolution Specified in Sections II, III, IV and V.**

The decisions in question are three adopted by the Executive Board of the World Bank on July 25, September 9 and September 18, 1980, and three identical decisions by the Executive Board of the International Monetary Fund on July 29, September 9 and September 17, 1980. All these decisions as well as the Boards of Governors' Resolution of September 19, 1980 are related to the application by the Palestine Liberation Organization for observer status in the Bretton Woods Institutions.

The Joint Committee of the Boards of Governors is enjoined to take into account the questions formulated in the memorandum by the Arab Executive Directors in the two Institutions dated September 28 and entitled "Outline of Legal Issues." In that memorandum, ten questions of interpretation are raised in connection with the decisions of the Executive Boards and the Resolution of the Boards of Governors. Clearly, however, the Joint Committee need not limit itself to the ten questions of interpretation raised by the Arab Executive Directors. Other questions of interpretation could be considered as long as they arise out of the above mentioned decisions of the Executive Boards and the Resolution of the Boards of Governors of September 19, 1980.

1/ The full text of the Resolution adopted by the Boards of Governors on October 3, 1980 is reproduced in Annex 1.

Section I - Terms of Reference

At their Annual Meetings held in Washington, D.C. from September 30 to October 3, 1980, the Boards of Governors of the International Monetary Fund and the World Bank adopted a resolution on October 3, 1980, which reads in paragraph (1) of its operative part as follows:

"There shall be established a Joint Committee of the Boards of Governors of the two institutions on questions of interpretation of Section 5(b), Section 13 of the respective By-Laws of the two Institutions and other related provisions arising out of the decisions taken by the Executive Boards on July 25, July 29, September 9, September 17 and September 18, as well as of the resolution adopted by the Boards of Governors on September 19, 1980. In its work the Committee shall take into account the questions formulated in the memorandum by the Arab Executive Directors in the two Institutions dated September 28 and entitled 'Outline of Legal Issues.' The Committee shall be entitled to seek and obtain objective and independent legal advice as deemed desirable." 1/

According to this resolution, the Joint Committee of Governors is empowered to consider questions of interpretation of Section 5(b), Section 13 of the By-Laws of the two Institutions and other related provisions arising out of certain decisions by the Executive Boards of the Bank and the Fund, as well as those arising out of the Resolution adopted by the Boards of Governors of the two Institutions on September 19, 1980.

The decisions in question are three adopted by the Executive Board of the World Bank on July 25, September 9 and September 18, 1980, and three identical decisions by the Executive Board of the International Monetary Fund on July 29, September 9 and September 17, 1980. All these decisions as well as the Boards of Governors' Resolution of September 19, 1980 are related to the application by the Palestine Liberation Organization for observer status in the Bretton Woods Institutions.

The Joint Committee of the Boards of Governors is enjoined to take into account the questions formulated in the memorandum by the Arab Executive Directors in the two Institutions dated September 28 and entitled "Outline of Legal Issues." In that memorandum, ten questions of interpretation are raised in connection with the decisions of the Executive Boards and the Resolution of the Boards of Governors. Clearly, however, the Joint Committee need not limit itself to the ten questions of interpretation raised by the Arab Executive Directors. Other questions of interpretation could be considered as long as they arise out of the above mentioned decisions of the Executive Boards and the Resolution of the Boards of Governors of September 19, 1980.

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1/ The full text of the Resolution adopted by the Boards of Governors on October 3, 1980 is reproduced in Annex 1.

Moreover, the Joint Committee of the Boards of Governors is entitled to seek and obtain objective and independent legal advice as deemed desirable. Discussions in the Joint Procedures Committee showed that certain member countries were not prepared to accept the legal advice from the Legal Departments of the Bank and the Fund. It was pointed out that with all due respect to the professional integrity and competence of the Legal Counsels of the two Institutions they have taken positions on many of the legal questions raised in the memorandum by the Arab Executive Directors. Under these circumstances, it was felt that to seek legal advice from the Legal Departments of the Bank and the Fund would be prejudicial to the position held by certain member countries. For this reason the Resolution establishing the Joint Committee of the Boards of Governors provides for seeking and obtaining "objective and independent legal advice as deemed desirable." This means that whenever the Joint Committee feels the need for legal advice on any point, such advice should be sought and obtained from outside sources. The importance of this provision is underscored by the fact that it is included in the Joint Committee's terms of reference, and not in operative paragraph (2) dealing with the composition, nature and voting procedure of the Joint Committee.

Furthermore, it is relevant to mention that the Articles of Agreement of the IBRD and IMF confer upon the Executive Boards and the Boards of Governors the power of interpretation of the Articles of Agreement. This is a unique feature which has no parallel in most other international organizations. The power of interpretation is set out in Article IX of IBRD Articles of Agreement and Article XXIX of the IMF Articles of Agreement.<sup>1/</sup> Under both Articles:

"(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund (Bank) or between any members of the Fund (Bank) shall be submitted to the Executive Board for its decision .....

"(b) In any case where the Executive Board has given a decision under (a) above, any member may require ... that the question be referred to the Board of Governors, whose decision shall be final."

Thus, questions of interpretation of the Articles of Agreement are decided by the Executive Board as a first instance. The decision of the Executive Board on interpretation can be appealed to the Board of Governors "whose decision shall be final."

According to Article XXIX of the Fund's Articles of Agreement, questions of interpretation referred to the Board of Governors are considered by a Committee on Interpretation of the Board of Governors.

The representatives of the Arab countries in the Joint Procedures Committee requested the establishment of a Committee on

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<sup>1/</sup> Joseph Gold: Interpretation by the Fund, IMF Pamphlet Series No. 11, 1968.

Interpretations pursuant to Article XXIX of the IMF Articles of Agreement. However, the Joint Procedures Committee was reluctant to deal with the issues raised in the memorandum by the Arab Executive Directors through a Committee on Interpretation. Two reasons were cited in support of that position:

- (a) That the IBRD Articles of Agreement, unlike the Fund's, do not provide for a Committee on Interpretation.
- (b) A Committee on Interpretation is limited to questions of interpretation of the Articles of Agreement whereas the issues under review involve mostly the By-Laws.

For these reasons the Joint Committee of the Boards of Governors was established in lieu of the Committee on Interpretation so as to act for both the Bank and the Fund with power to interpret both the Articles of Agreement and the By-Laws without being subject to the procedure prescribed in IBRD Article IX and IMF Article XXIX.

RESOLUTIONS

The Informal Working Party of Governors...  
 proper to determine...  
 the Board of Governors...  
 paragraph 1 of this Resolution...  
 Annual Meetings or any meeting of the Board of Governors...  
 it is important to know the facts of the case.  
 On July 21, 1981 the President...  
 In June 1979, by letters to the Secretaries...  
 the Bank and to the Chairman of the Boards of Governors...  
 of the Palestine National Fund...  
 Organization (PNO)...  
 the Board of Governors...  
 Directors in July 1979, which showed that a majority of Executive...  
 Directors was not in favor of extending an invitation to PLO. In...  
 September 1979, the President of the Palestine National Fund was...  
 informed that the Chairman of the 1979 Annual Meetings, at that time...  
 The Right Honorable R.D. Mabooc, Prime Minister of New Zealand...  
 not in a position to issue an invitation to the Palestine Liberation...  
 Organization to attend the meeting...

Section II - Questions of Interpretation Arising out of the Executive Boards' Decisions of July 25 and July 29, 1980

The Facts

The decision of the Bank's Executive Board on July 25, 1980 and the parallel decision by the Fund's Executive Board on July 29, 1980 approved a draft resolution for voting by the Board of Governors without meeting, which calls for the amendment of Section 5(b) of the By-Laws and limits observers in 1980 Annual Meetings to those who were invited in 1979 Annual Meetings. The draft resolution reads as follows:

"Whereas, the provision on observers to meetings of the Board of Governors contained in Section 5(b) of the By-Laws has given rise to a number of serious questions which cannot be resolved satisfactorily on the basis of the present wording;

"Whereas, therefore, an amendment to Section 5(b) seems to be justified and even necessary

"Having regard to Section 23 of the By-Laws,

Furthermore, it is relevant to mention that the Articles of Agreement of the Boards of Governors the power of interpretation of the Articles of Agreement. **RESOLVES**

"1. That the Executive Directors shall consider the exact scope of Section 5(b) and make such proposals for amendment as they believe necessary and that they shall report to the Board of Governors by March 1, 1981; and

"2. That pending the outcome of action pursuant to paragraph 1 of this Resolution, attendance at the 1980 Annual Meetings or any meeting of the Board of Governors thereafter shall be limited to those observers who were invited to the 1979 Annual Meetings."

To understand the meaning and implication of this draft resolution, it is important to know the facts of the case.

Thus, questions of interpretation of the Articles of Agreement are decided. In June 1979, by letters to the Secretaries of the Fund and the Bank and to the Chairman of the Boards of Governors, the President of the Palestine National Fund requested that the Palestine Liberation Organization (PLO) be granted observer status in the Annual Meetings of the Bretton Woods Institutions. Pursuant to Section 5(b) of the By-Laws of the Bank and the Fund, consultations were initiated with the Executive Directors in July 1979, which showed that a majority of Executive Directors was not in favor of extending an invitation to PLO. In September 1979, the President of the Palestine National Fund was informed that the Chairman of the 1979 Annual Meetings, at that time The Right Honorable R.D. Muldoon, Prime Minister of New Zealand, was not in a position to issue an invitation to the Palestine Liberation Organization to attend the meetings as an observer.

(a) However, during the 1979 Annual Meetings which took place in Belgrade, Yugoslavia, the Group of 77 unanimously approved a resolution 1/ supporting the application of the Palestine Liberation Organization for observer status in the Annual Meetings of the Bank and the Fund. The resolution of the Group of 77 was brought to the attention of Chairman Muldoon, who referred it to the Joint Procedures Committee of the Boards of Governors for its advice. The members of the Joint Procedures Committee, after reviewing the matter, adopted a proposal that the Chairman should establish an informal working party of Governors. This conclusion was set forth in the statement of the Chairman, which outlined the terms of reference of the informal working party, as follows:

"The Joint Procedures Committee met on October 1, 1979 to consider the questions raised by the letter from the Chairman of the Meeting of the Group of Seventy-Seven and the accompanying resolution supporting the application of the Palestine Liberation Organization for observer status at the Annual Meetings. The Committee concluded that the Chairman should establish an informal working party of Governors to consider all aspects of the matter. The working party would report to the Chairman for next year's Annual Meetings in approximately three months' time. The Chairman would then make his decision taking into account this report and in accordance with the By-Laws."

The Informal Working Party of Governors duly completed its report on June 2, 1980. The report did not reach any definite conclusion either for or against observer status for PLO. It simply stated the arguments of the four members of the Working Party who were in favor and those of the other four members who were against. The report was transmitted to the Chairman of the 1980 Annual Meeting, The Honorable Amir H. Jamal for his consideration as required by the terms of reference of the Working Party.

On July 5, 1980 Chairman Jamal sent a letter to the President of the World Bank and the Managing Director of the International Monetary Fund, requesting them to issue an invitation to PLO to attend the 1980 Annual Meetings as observer, and stating the reasons for the decision.2/

On July 21, 1980 the President of the Bank sent Chairman Jamal a cable which reads as follows: 3/

"Thank you for your letter of July 5, 1980. As you know, Section 5(b) of the By-Laws of the Bank provides that invitations to observers to attend a meeting of the Board of Governors are to be sent by the Chairman of that Board,

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- 1/ Annex 2. IBRD document R80-217, July 21, 1980.
  - 2/ Annex 3.
  - 3/ IBRD document R80-217, July 21, 1980.

in consultation with the Executive Directors. I am, therefore, bringing your letter to the attention of the Executive Directors that they may consider the matter and express their views in accordance with the procedure laid down in the By-Laws before the invitations are issued. The Executive Directors are scheduled to consider that matter at an early date and I will immediately thereupon communicate to you their views. Kind regards, McNamara"

An almost identical cable was sent by the Managing Director of the Fund on the same date

Mr. Jamal's letter of July 5, and the cables to him by the President of the Bank and the Managing Director of the Fund were circulated to the Executive Directors on July 21, 1980. The covering note by the Management informed the Executive Directors that:

"The General Counsel has advised that the consultation procedure contemplated by the By-Laws must be followed in connection with the attendance of each meeting of the Board of Governors. The establishment at last year's Annual Meetings of the Informal Working Party of Governors on the invitation of the PLO and the Report of that Working Party have not affected that requirement.

"It is intended to put the matter on the agenda of the Executive Directors at an early date." 1/

On July 24, 1980, Chairman Jamal sent a cable to both the President of the Bank and the Managing Director of the Fund questioning the need for fresh consultations with the Executive Directors in view of the history of the case. His cable of July 24, 1980 reads as follows: 2/

"Reference your message of 21st July, I suggest careful thought be given to the fact that the 1979 Chairman went through Section 5(b) procedures and upon receiving request from Group of Seventy-Seven Governors, he sought assistance of Joint Procedures Committee which led to the involvement of the 1980 Chairman. Can a repeat performance be now contemplated. Amir Jamal, Minister of Finance"

However, on July 25 the matter was brought to the Executive Board of the World Bank, which was convened for a special meeting in Executive Session to consider a single agenda item; namely, "Observers at 1980 Annual Meetings." Three documents 3/ were submitted for consideration by the Executive Directors:

- 1/ IBRD document R80-217, July 21, 1980. IMF document EBS/80/163, July 21, 1980.
- 2/ IMF document: EBS/80/163, Supplement I, Attachment I, July 25, 1980.
- 3/ IBRD document R80-218, July 22, 1980.

- (a) A President's memorandum entitled "Observers at Meetings of the Board of Governors - Section 5(b) of the IBRD By-Laws"
- (b) Draft list of observers to be invited to the 1980 Annual Meetings.
- (c) Draft letter to the Chairman of the Board of Governors regarding invitations to observers for the 1980 Annual Meetings.

The content and purpose of the President's memorandum were summed up at its introduction in the following words:

"A number of Executive Directors have recently expressed serious doubts as to the exact scope of the wording of Section 5(b) of the By-Laws of the Bank concerning the question of invitation of observers to meetings of the Board of Governors. Questions were raised as to the present wording of this provision which is considered lacking in clarity and thus insufficient to meet the requirements of the Bank, both with regard to issues of substance as well as of procedure.

"There seems to be therefore a case for review and possible redrafting of Section 5(b) of the By-Laws. Pending the outcome of this review, observers to be invited to attend Annual Meetings would be limited to those who attended the 1979 Annual Meetings.

"In response to this concern, the Management of the Bank has prepared an outline of questions arising out of the present wording of the provision under review together with a formulation of possible action."

The President's memorandum proceeded to state the issues of procedure and the issues of substance which are supposedly raised by the wording of Section 5(b). It concluded by outlining the "possible action" that the Executive Directors might wish to take in order to deal with the situation:

"The conclusion of the Executive Directors," says the President's memorandum, "would most probably lead to proposals for amending Section 5(b) and would thus need formal endorsement by the Governors, as prescribed by Section 23 of the By-Laws. Work on these issues could be finalized by the Executive Directors by March 1981, so as to allow the implementation of the amended rule on observers in time for the 1981 Annual Meeting.

"In the meantime, and because of the great measure of uncertainty arising out of the present wording of Section 5(b), observers to be invited to meetings of the Board of



Governors would be limited to those who attended the 1979 Annual Meetings.

"Should the Executive Directors wish to move in this direction, the attached draft resolution would give expression to the foregoing.

(signed)

Robert S. McNamara"

Attached to the President's memorandum was the text of the draft resolution according to which the Board of Governors is to resolve that the Executive Directors make proposals for the amendment of Section 5(b) of the By-Laws and report to the Board of Governors by March 1, 1981; in the meantime, observers at 1980 Annual Meetings are to be limited to those who attended the 1979 Annual Meetings.

The Executive Board approved by a majority the "Possible Action" proposed by Bank management, which included:

- (a) The draft resolution to be forwarded to the Board of Governors for voting without meeting.
- (b) The list of observers in 1980 Annual Meetings which was identical with that of 1979, thereby excluding PLO.
- (c) The draft letter to be sent by the Secretaries of the Bank and the Fund to Chairman Jamal communicating to him the list of observers to be invited in 1980 and advising him that it was identical with that of 1979.

The following observations would seem to be in order:

- (a) The documentation submitted to the Bank's Executive Directors at their meeting on July 25, included no reference whatsoever to Chairman Jamal's letter of July 5 requesting that PLO be invited to 1980 Annual Meeting, nor to PLO application for observership, nor to the Report of the Informal Working Party of Governors on the merits and demerits of admitting PLO as observer in the Annual Meetings. All these were totally ignored. The Executive Directors were simply asked to approve a draft resolution calling for the amendment of Section 5(b) of the By-Laws and limiting observers in 1980 Annual Meetings to those invited in 1979, and authorizing the Secretaries of the Bank and the Fund to advise Chairman Jamal accordingly.
- (b) The reasons cited in the President's Memorandum for the amendment of Section 5(b) of the By-Laws reflected the views expressed by those opposed to the admission of PLO as observer in the Annual Meetings. There was no reference to the fact that the vast majority of member countries under a resolution by the Group of Seventy-Seven held different position, nor to the view that the alleged uncertainty about the scope of Section 5(b) was groundless and was never mentioned prior to Chairman Jamal's decision to invite PLO.

(c) All documentation was submitted to the Executive Directors in the name and under the signature of the President of the Bank. The President's Memorandum seems to leave no room for doubt that "Possible Action," which included the draft resolution on the amendment of Section 5(b) and the freezing of the list of observers at 1979 level, was the Bank Management proposal in response to the concern expressed by some Executive Directors regarding the scope of Section 5(b). This is explicitly stated in the "Introduction" and the conclusion of the President's Memorandum quoted above. Nevertheless, the President of the Bank contended in the meeting of the Executive Board on July 25, that:

"the record (of the meeting) should clearly indicate that there was no specific action proposed by the Management and that the paper, as stated therein, was prepared at the request of a number of Executive Directors." 1/

In the Board meeting of July 25, 1980 the Arab Executive Director requested the circulation of his statement to other Executive Directors in accordance with the established practice of the Executive Board. However, the President of the Bank refused, despite repeated requests, to release the statement for three weeks after the Board meeting.2/ When it was decided to release the statement, the President of the Bank issued a note to the effect that the proposal presented to the Board on July 25, 1980 was not a Bank Management proposal.3/

On the IMF side the issue of observers in 1980 Annual Meeting was handled in a different way. The matter was scheduled for consideration by the Executive Board at a meeting on July 29, 1980. Although the Fund's Executive Board adopted the same draft resolution as that approved by the Bank's Executive Board on July 25, 1980, there were two significant differences between the two institutions:

- (a) On the Bank side the draft resolution was introduced by Bank management. On the Fund side it was introduced by the U.S. Executive Director.
- (b) On the Bank side documentation submitted to the meeting of Executive Directors completely ignored the letter of Chairman Jamal of July 5, 1980, the application of PLO for observer status as well as the Report of the Informal Working Party of Governors. On the Fund side documentation submitted to the Executive Board included all the above in addition to the proposal by the U.S. Executive Director of the draft resolution calling for the amendment of Section 5(b) of the By-Laws and limiting 1980 observers to those invited in 1979.

1/ IBRD document XM80-23/1, September 3, 1980  
 "Draft Minutes of Executive Session of July 25, 1980," paragraph 11.

2/ IBRD document SecM80-647, August 15, 1980.

3/ IBRD document SecM80-615, August 6, 1980.

However, on July 31, 1980 both the President of the Bank and the Managing Director of the Fund sent an identical cable to Chairman Jamal conveying to him the text of the draft resolution approved by the Executive Boards on July 25 and July 29, 1980. In addition, they proposed to the Chairman that:

"While the matter of the draft resolution is before the Boards of Governors, the Executive Directors would recommend that invitations to 1980 Meetings be issued to those observers who were invited to the 1979 meetings. Accordingly, the Secretaries seek your approval to issue invitations to the list of observers invited to the 1979 Annual Meetings set forth in Annex II (IV-A) of the Report to you of the Informal Working Party of Governors dated June 2, 1980. The Secretaries would appreciate receiving by cable an indication of your agreement." 1/

On August 5, 1980 Chairman Jamal cabled the President of the Bank and the Managing Director of the Fund:

"I have immense difficulty in comprehending the position of the Boards of Directors. Evidently, no serious questions are encountered in seeking Chairman's approval under By-Law 5(b) for issuing invitation to 1979 observers. By-Law 5(b) says "the Chairman may in consultation with Executive Directors...." and not "the Executive Directors will recommend to Chairman for approval ...." You yourself observed that Governors' Joint Procedures Committee specifically required that By-Law 5(b) be followed. I, therefore, request under By-Law 5(b) that the PLO be added to the 1979 list of observers and invitations issued accordingly. Regards Amir Jamal, Chairman, Board of Governors." 2/

On the same date Chairman Jamal sent a letter to the heads of the two Institutions explaining his position and insisting on his right as Chairman of the Board of Governors to invite PLO irrespective of the position taken by the Executive Directors.3/

To the Chairman's request that PLO be added to the list of observers in 1980 Annual Meetings, the President of the Bank cabled back on August 8, 1980:

"I have distributed to the Executive Directors copies of your cable concerning invitations to observers received

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- 1/ IBRD document SecM80-622, August 7, 1980. IMF document EBS/80/163, Supplement 2, August 7, 1980.
  - 2/ IBRD document SecM80-616, August 6, 1980. IMF document EBS/80/163, Supplement 2, August 7, 1980.
  - 3/ Annex 4.

on August 5. Would it not be embarrassing to all parties if an invitation was issued now while voting on the resolution forwarded on July 31 to the Governors for a vote by mail is in progress. Warm regards. Robert S. McNamara, President, INTBAFRAD" 1/

On the same date the Acting Managing Director of the Fund cabled Chairman Jamal as follows:

"1. In the absence from the headquarters of the Fund of Mr. de Larosière, I reply with the present message to your telex of August 5 on the matter of observership for the PLO at the 1980 Annual Meetings.

"2. I believe it is incumbent on me to request that you consider the issue further, bearing in mind the belief that it would be most inadvisable to pursue the matter during the period while the resolution is before the Board of Governors for its vote. The view is that otherwise there would be serious risk of embarrassment to the Fund as an institution. Highest regards, William B. Dale, Acting Managing Director, INTERFUND" 2/

In view of the adamant refusal of Bank and Fund managements to comply with his request, Chairman Jamal cabled both on August 9, 1980:

"Re your cable eighth it is the whole office of the Chairman of Governors which is being humiliated by Executive Directors. Also respect for law being eroded rapidly. Kindly appreciate matters now beyond me. Warmest regards. Amir Jamal, Chairman Boards of Governors." 3/

#### Questions of Interpretation

By virtue of Section 5(b) of the By-Laws of the Bank and the Fund, the authority to invite observers is vested in the Chairman of the Board of Governors in consultation with the Executive Directors. The wording of Section 5(b) is plain enough. It reads:

"The Chairman of the Board of Governors, in consultation with the Executive Board, may invite observers to attend any meeting of the Board of Governors."

1/ IBRD document SecM80-631, August 11, 1980.

2/ IMF document EBS/80/163, Supplement 3, Attachment I, August 11, 1980.

3/ IMF document. Loc. Cit., Attachment II. IBRD document SecM80-631, August 11, 1980.

For over 30 years since the birth of the Bretton Woods Institutions, the meaning of this provision was never called into question. Such a completely uneventful history was only matched by the great controversy it raised following Chairman Jamal's letter of July 5, 1980 in which he requested the President of the Bank and the Managing Director of the Fund to add PLO to the list of observers in 1980 Annual Meetings.

To put Section 5(b) in proper perspective, it is important to bear in mind two considerations:

- (a) Observership in the IBRD and IMF is strictly limited to the Meetings of the Board of Governors. In the absence of special meetings of the Board of Governors as provided for under Section 3(b) of the By-Laws, observership would be limited to the regular meetings which take place at annual intervals for a duration of less than one working week. Accordingly, observers invited under Section 5(b) have no access to any meeting held or sponsored by the Bretton Woods Institutions except the meeting of the Board of Governors. Such a restricted nature of observership has no parallel in other international organizations where it usually means attendance at more than one meeting and for more than one week a year.
- (b) Except for the authority to invite observers to the meetings of the Board of Governors, the Chairman of the Board of Governors has very little authority indeed. A survey of the Articles of Agreement and the By-Laws lends support to this conclusion. The Chairman has no say in determining the time or the place of the meeting of the Board of Governors. He has no competence with respect to the preparation of the agenda for the meeting of the Board of Governors or the placing of additional agenda items. The authority on all these questions rests with the Executive Directors, or the President of the Bank (the Managing Director of the Fund) or members of the Board of Governors.

Apart from inviting observers, the Chairman is limited to two principal functions:

- (a) According to Section 6(d) of the By-Laws:

"the Chairman of the Board of Governors jointly with the President of the Bank (Managing Director of the Fund) shall have charge of all arrangements for the holding of meetings of the Board of Governors."

- (b) According to Section 11 of the By-Laws:

"at any meeting [of the Board of Governors] the Chairman may ascertain the sense of the meeting in lieu of formal vote but he shall require a formal vote upon the request of any Governor."

Given the very restricted nature of observership in the Bretton Woods Institutions, and the very little authority held by the Chairman of the Board of Governors under the Articles of Agreement and the By-Laws, it would seem appropriate to interpret rather liberally the limited functions of the Chairman; the most notable of which is the invitation of observers for the duration of the meeting of the Board of Governors.

#### Question One

Was Chairman Jamal acting within the limits of his authority pursuant to Section 5(b) of the By-Laws in asking the Managements of the Bank and the Fund to add PLO to the list of observers in the 1980 Annual Meetings?

Section 5(b) clearly states that the Chairman of the Board of Governors invites observers to the meetings of the Board of Governors. It is equally clear that the Chairman is required under the same provision to consult with the Executive Boards.

With respect to the decision of Chairman Jamal, a distinction should be made between his request to invite PLO stated in the letter of July 5, 1980, and the same request he made in his letter of August 5, 1980.

The request contained in his letter of July 5, 1980 was made before any consultation was held with the Executive Boards of the two institutions in connection with observers in 1980 Annual Meetings. Therefore, both the President of the Bank and the Managing Director of the Fund were right in drawing the attention of Chairman Jamal to the requirement under Section 5(b) that consultation with Executive Boards is necessary in connection with each meeting of the Board of Governors, that this requirement was not obviated by the establishment of the Informal Working Party of Governors or by its Report, and that they intend to bring the matter before the Executive Boards as required by the By-Laws.

It may be recalled that Chairman Jamal argued in his cable of July 24, 1980 that his decision to invite PLO should be understood in the context of the fact that the Chairman of 1980 Annual Meetings was involved in this matter on the request of the Chairman of the 1979 Annual Meetings and as a result of the establishment of the Informal Working Party of Governors on PLO application. In other words, his decision to add PLO to the list of observers was not made ab initio. He was aware of the negative outcome of last year's consultation with the Executive Directors. A repetition of the process in connection with the 1980 Annual Meetings would have produced the same negative result, and, therefore, would not have added a new element to the situation. For this consideration, he queried in his cable of July 24, 1980:

"Can a repeat performance be now contemplated?"

The argument of Chairman Jamal would probably have been accepted had there been a willingness on the part of the Executive Boards to go along with his decision. Aware that such was not the case, the President of the Bank and the Managing Director of the Fund were no doubt right to insist on the involvement of the Executive Boards as required by the By-Laws. Under these circumstances, the request of Chairman Jamal in his letter of July 5, 1980 should be construed as a declaration of intention rather than a decision with which Bank and Fund managements have to comply.

The case is totally different with respect to Chairman Jamal's request contained in his letter of August 5, 1980. At that time all requirements of Section 5(b) were presumably satisfied. The matter was brought before the Executive Boards in their meetings of July 25, and July 29, 1980. The Executive Boards approved a draft resolution which, by limiting observers in 1980 Annual Meetings to those invited in 1979, was an implicit rejection of Chairman Jamal's request of July 5, 1980. The decisions of the Executive Boards on July 25 and July 29 were conveyed to Chairman Jamal by The President of the Bank and the Managing Director of the Fund in their cables of July 31, 1980 in which he was advised that:

"The Executive Directors would recommend that invitations to 1980 Meetings be issued to those observers who were invited to the 1979 Meetings."

Chairman Jamal, in his cable of August 5, 1980 (and letter on the same date), rejected the recommendation of the Executive Directors and reiterated his request that:

"the PLO be added to the 1979 list of observers and invitations issued accordingly."

Given these facts, there can be little doubt that the request of Chairman Jamal on August 5, 1980, unlike that of July 5, 1980, constituted a decision taken in conformity with his authority under Section 5(b), and that, thenceforth, the President of the Bank and the Managing Director of the Fund were under statutory obligation to act in accordance with the request of the Chairman of the Board of Governors.

#### Question Two

In case the Chairman of the Annual Meetings takes a different view from the Executive Directors as to the advisability of having a certain organization, institution or country as observer, is it his view or that of the Executive Directors which shall prevail under Section 5(b) of the By-Laws?

According to Section 5(b) of the By-Laws, the Chairman invites observers "in consultation with" the Executive Board. The question arises as to whether or not the Chairman is bound by the view expressed

by the Executive Directors. It is almost universally agreed that the final authority in the invitation of observers rests with the Chairman of the Board of Governors and that, while he should consult with the Executive Directors, he is not bound by their view. This interpretation of Section 5(b) of the By-Laws is supported by the Legal Counsels of both the Bank and the Fund, and is reflected in the Report of the Informal Working Party of Governors:

"It was the common view of the staff representatives of the two institutions that 'in consultation with' did not mean 'in agreement with' and that the ultimate authority to invite observers had been placed in the Chairman." 1/

However, it is sometimes argued that there is a difference between the wording of Section 5(b) in the English text and the wording of the French text. 2/ According to the English text, the Chairman invites observers "in consultation with" the Executive Board. In the French text the Chairman invites observers "en accord avec le Conseil d'Administration", i.e. "in agreement with" the Executive Boards. It should be recognized, however, that the English text of the By-Laws is the official one, and that the text in any other language is no more than an unofficial translation which cannot be invoked if the wording of any provision happens to be at variance with the English text. According to Rule C-13 of the Rules and Regulations of the International Monetary Fund:

"The working language of the Fund shall be English. The discussion, documents, and reports of meetings shall ordinarily be in English. Speeches or papers presented in other languages shall be translated into English."

It is noteworthy that the Spanish text of Section 5(b) is the same as the English text in that the Chairman invites observer "en consulta con el Directorio Ejecutivo" and not "in agreement with" as rendered in the French translation. Thus, to invoke the wording of Section 5(b) in the French translation would seem to be simple polemics.

1/ "Report of the Informal Working Party of Governors," IBRD document SecM80-545, July 7, 1980, p. 5.

2/ IBRD document R80-218, July 22, 1980, Attachment A, p. 2.



Question Three

To what extent did the meeting of IBRD Executive Board on July 25, and of the IMF Executive Board on July 29, 1980 constitute "consultation" in the sense of Section 5(b) of the By-Laws?

Both the President of the Bank and the Managing Director of the Fund, on receipt of Chairman Jamal's letter of July 5, 1980, declared, in their communication to Chairman Jamal on July 21 and to the Executive Directors on the same date, that:

"It is intended to put the matter on the Agenda of the Executive Directors at an early date."

The matter that was to be put on the Agenda must have meant, under the circumstance, consultation with the Executive Directors on the specific question of Chairman Jamal's request to invite PLO as observer in 1980 Annual Meetings.

As mentioned earlier the matter that was actually placed before the Executive Boards on July 25 as July 29 was not the same. In the case of the Bank's Executive Board, Chairman Jamal's letter of July 5, 1980, the application of PLO for observership and the Report of the Informal Working Party of Governors were treated as if they never existed. The Executive Board was presented with a President's Memorandum stating the concern of some Executive Directors as to the scope of Section 5(b) and enclosing the draft resolution calling for the amendment of Section 5(b) and limiting observers in 1980 to those invited in 1979, together with the list of observers in 1979 Annual Meetings and a draft letter to be sent by the Secretaries of the Bank and the Fund to Chairman Jamal requesting his approval of the 1979 list of observers.

To what extent does this action by the Bank management and the meeting and decision of the Board on July 25, 1980 constitute "consultation" in the sense of Section 5(b)? It is possible to argue that they could not possibly be regarded as "consultation" under Section 5(b). By ignoring the proper elements of the case, the Board could be said to have failed to hold consultation. Moreover, consultation is part and parcel of the process envisaged in Section 5(b). To qualify for being regarded as consultation, any action must be in implementation of that provision. Far from implementing Section 5(b), the action of Bank management was aiming at suspending it in preparation for future amendment. It is hard to see how this could be construed as consultation in the sense of Section 5(b). It is significant that during the meeting of the Executive Board on July 25, one Executive Director put the question to Mr. McNamara whether the meeting constituted "consultation" in the

sense of Section 5(b):

"In response to a Director's query on whether this discussion constituted consultation with Executive Directors referred to in the President's reply to Chairman Jamal, the Chairman [i.e. Mr. McNamara] stated that it was the view of the supporters of the draft resolution that the discussion substituted for or took precedence over it." 1/

This answer makes it clear that Mr. McNamara was not prepared to state whether the Board meeting of July 25, 1980 did or did not constitute "consultation" in the sense of Section 5(b). He simply referred to the view of the supporters of the draft resolution.

In the case of the Fund the situation would seem to be somewhat less complicated. As mentioned earlier, the Fund management submitted to the Executive Board at its meeting of July 29, 1980, Chairman Jamal's letter of July 5, 1980, the Report of the Informal Working Party of Governors as well as the proposal of the United States Executive Director to adopt the same draft resolution as was adopted by the Bank's Executive Board four days earlier. Under these circumstances it is plausible to argue that the meeting of the Fund's Executive Board on July 29, 1980 had before it all the relevant elements of the case and therefore could be construed as constituting "consultation" in the sense of Section 5(b).

#### Question Four

Is it legally permissible for the Executive Boards of the Bretton Woods Institutions to take a decision the real purpose of which is no other than to nullify the authority vested in the Chairman by virtue of Section 5(b) of the By-Laws?

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The Bretton Woods Institutions have a number of decision-making organs. The decision-making structure was carefully regulated by the Articles of Agreement and the By-Laws with a clear-cut division of power between the Board of Governors, the Executive Boards, the President or the Managing Director and the Chairman of the Board of Governors.

Under Article V Section 2 of IBRD Articles of Agreement:

"All the powers of the Bank shall be vested in the Board of Governors."

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1/ IBRD document XM80-23-1, September 3, 1980: Draft Minutes of the Executive Session of July 25, 1980, paragraphs 15 and 22.

According to the same provision, the Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board except seven powers specifically excluded from delegation to the Executive Directors.

Under Article V, Section 4 of the Bank's Articles of Agreement:

"The Executive Directors shall be responsible for the conduct of the general operations of the Bank, and for this purpose, shall exercise all the powers delegated to them by the Board of Governors."

According to Article V, Section 5, of the same:

"The President shall be chief of the operating staff of the Bank and shall conduct, under the Direction of the Executive Directors, the ordinary business of the Bank. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff."

According to Section 5(b) of the By-Laws the Chairman of the Board of Governors, in consultation with the Executive Directors, may invite observers to attend any meeting of the Board of Governors. Although the authority of the Chairman rests on the By-Laws, not the Article of Agreement, this difference is of no significance in the present context. According to the preamble of the By-Laws:

"These By-Laws are adopted under the authority of, and are intended to be complementary to, the Articles of Agreement of the International Bank for Reconstruction and Development, and they shall be construed accordingly."

Similar provisions are made in Articles XII of the Fund's Articles of Agreement and Section 5(b) of its By-Laws.

The fact that there is a clear-cut division of power between the different organs of the Bretton Woods Institutions does not preclude the possibility that any one of them may take actions or decisions which exceed the limits of authority as defined under the Articles of Agreement and the By-Laws.

The following examples illustrate the point:

(a) The Executive Board takes a decision suspending a member country without reference to the Board of Governors. Under the Articles of Agreement the suspension of any member country is one of the powers not delegated to the Executive Board and is retained by the Board of Governors.

(b) The Executive Board takes a decision appointing officers and staff without reference to the President or the Managing Director as required by Article V of the Bank's Articles of Agreement and Article XII of the Fund's Articles of Agreement.

(c) The Executive Board takes a decision fixing the observers to be invited to the Annual Meeting of the Board of Governors without reference to the Chairman of the Board of Governors who has that authority under Section 5(b) of the By-Laws.

In all three cases the Executive Board takes a decision arrogating to itself an authority which belongs to the Board of Governors [Example (a)] or to the Chief Executive Officer [Example (b)] or to the Chairman of the Board of Governors [Example (c)]. There can be little doubt that under a procedure of Judicial Review all three decisions would be declared null and void for being ultra vires.

The rule of ultra vires is firmly established in the legal systems of most countries. <sup>1/</sup> However its applicability to international organizations has been called into question. In an Advisory Opinion rendered by the International Court of Justice in the Certain Expenses Case, 1962, it was ruled that:

"In the legal systems of States, there is often some procedure for determining the validity of even a legislative or governmental act, but no analogous procedure is to be found in the structure of the United Nations. Proposals made during the drafting of the charter to place the ultimate authority to interpret the charter in the International Court of Justice were not accepted." <sup>2/</sup>

It is evident, however, that doubts about the applicability of the rule of ultra vires to international organizations stem from the fact that most international organizations have no procedure of review of decisions taken by their statutory bodies such as the Security Council and the General Assembly of the United Nations, the Governing Council of ILO or the Council of the International Civil Aviation Organization. <sup>2/</sup> As mentioned in Section I on "The Terms of Reference", this is not the case in the Bretton Woods Institutions where a specific procedure for the interpretation of the Articles of Agreement exists.

<sup>1/</sup> E.C.S. Wade and G. Godfery Phillips: "Constitutional Law," Eighth Edition by E.C.S. Wade and A.W. Bradley, 1970, pp. 639-646. O. Hood Phillips' Constitutional and Administrative Law, Sixth Edition by O. Hood Phillips and Paul Jackson, 1978 pp. 596-602. S.A. de Smith: Constitutional and Administrative Law; Third edition, Penguin Books, 1977, pp. 550-554 and "Judicial Review of Administrative Action," 1973, pp. 82-3.

<sup>2/</sup> Ebere Osieke: "Ultra Vires Acts in International Organizations - The Experience of ILO," The British Yearbook of International Law, 1976-77, p. 259. The same author: "Unconstitutional Acts in International Organizations: The Law and Practice of the ICAO," The International and Comparative Law Quarterly, January 1979.

Whether the Executive Board in a specific decision has or has not exceeded its power is a matter which involves the interpretation of the provisions of the Articles of Agreement related to the distribution of power among the different organs of the Bretton Woods Institutions. The matter could be referred to the Board of Governors under Article IX(b) of the IBRD Articles of Agreement and Article XXIX(b) of the Fund's Articles of Agreement. In such a case the Board of Governors or the Fund's Committee on Interpretation is certainly empowered to declare the contested decision of the Executive Board ultra vires. The best definition of this rule was provided by Lord M.R. Green in Carltona Ltd. v. Commissioners of Works (1943):

"The acts of a competent authority must fall within the four corners of the powers given by the legislature."1/

In Commissioners of Customs and Excise v. Cure and Deeley Ltd. (1962) it was ruled that:

"The court must examine the nature, objects and scheme of the legislation, and in the light of that examination must consider what is the exact area over which powers are given by the section under which the competent authority purports to act." 1/

By virtue of the Board of Governors' Resolution of October 3, 1980, the Joint Committee of the Board of Governors is vested with the power to determine whether the decisions of the Executive Boards on July 25 and July 29 "fall within the four corners of the powers given by the legislature." It should examine "the nature, objects and scheme of the legislation" in order to determine whether or not these decisions are ultra vires.

It may be recalled that the decision of the Executive Boards on July 25, and July 29, 1980 approved a draft resolution for voting by the Board of Governors without meeting, which reads in its operative part as follows.

"1. That the Executive Directors shall consider the exact scope of Section 5(b) and make such proposals for amendment as they

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1/ O. Hood Phillips' "Constitutional and Administrative Laws," p. 596 and footnotes.

believe necessary and that they shall report to the Board of Governors by March 1, 1981; and

"2. That pending the outcome of action pursuant to paragraph (1) of this Resolution, attendance at the 1980 Annual Meetings or any meeting of the Board of Governors thereafter shall be limited to those observers who were invited to the 1979 Annual Meeting."

This decision could be interpreted in one of two ways. It could be regarded as a bona fide proposal from the Executive Board to the Board of Governors for the amendment of Section 5(b) of the By-Laws as suggested in its preamble and operative paragraph (1). In this case there can be no doubt about the validity of the decision. The Executive Board is certainly empowered to make proposals to the The Board of Governors for the amendment of the By-Laws.

It could be regarded, however, as an attempt to impose on the Chairman of the 1980 Annual Meetings the list of observers to be invited to the 1980 Annual Meetings. In this case there can be no doubt that it would be null and void for being ultra vires as indicated in example (c) above. The invitation of observers falls within the competence of the Chairman of the Board of Governors. To impose a given list of observers on him falls outside the four corners of the powers given by the legislature to the Executive Board.

It is submitted that the decisions of the Executive Boards on July 25, and July 29 belong to the category of acts falling outside their competence. This follows from the following propositions:

First Proposition: That the decision of the Executive Boards, is not consistent with the purpose of amending the By-Laws. It should be noted that the decision is not a proposal to amend the By-Laws. It is a proposal requesting from the Board of Governors to authorize the Executive Directors to make proposals for the amendment of the By-Laws by March 1, 1981. Obviously, the Executive Board needs no authorization from the Board of Governors to suggest an amendment of the By-Laws. It can go right ahead suggesting whatever amendment it deems necessary. It is noteworthy that this is not the first time in the history of the Bank and the Fund that an amendment of the By-Laws is made. Such amendments took place on several occasions before. In no case however was there a request from the Executive Board to the Board of Governors for a prior authorization. Nor could it be argued that Section 5(b) is so complex that its amendment requires careful consideration for eight months' time from July 1980 to March 1981. In fact the case is so simple that several alternative proposals could be made almost instantly. Here are three possible proposals which could have been readily submitted to the Board of Governors:

Alternative 1:

"The Chairman of the Board of Governors, in agreement with the Executive Board, may invite observers to attend any meeting of the Board of Governors."

Alternative 2:

"The Executive Board, in consultation with the Chairman of the Board of Governors, may invite observers to attend any meeting of the Board of Governors."

Alternative 3:

"The Chairman of the Board of Governors, in consultation with the Executive Board, may invite observers to attend any meeting of the Board. Observers shall be either international organizations or countries which have applied for membership of IMF (IBRD)."

The majority of votes that supported the draft resolution could have just as well supported any of these variants or others still without the need to wait with "doubts and uncertainties" until March 1, 1981. That the majority saw fit to shun this straightforward course of action in favour of a proposal to the Board of Governors that it makes a proposal to the Executive Directors that they make a proposal to the Board of Governors to amend Section 5(b), should call into question the real purpose of the decision.

Second Proposition: That the decision of the Executive Board is consistent with the purpose of frustrating the decision of Chairman Jamal to invite PLO to the 1980 Annual Meetings. In support of this proposition one might point to operative paragraph (2) of the draft resolution that limits attendance at the 1980 Annual Meetings or any meeting of the Board of Governors thereafter to those who were invited to the 1979 Annual Meeting. The question arises as to the merits of the 1979 list of observers that elevate it to the level of scriptures for the purpose of attendance at the 1980 Annual Meetings as well as any meeting of the Board of Governors thereafter.

In the eyes of the supporters of the draft resolution the only merit of the 1979 list of observers is the fact that PLO is not on it. Had PLO been on that list, operative paragraph (2) would certainly have been formulated differently. Moreover, if Chairman Jamal has not decided to invite PLO to 1980 Annual Meetings neither operative paragraph (2) nor for that matter operative paragraph (1) would have seen the light. This is evidenced by the fact that only one year earlier when Chairman Muldoon decided against the invitation of PLO to 1979 Annual Meetings neither "serious doubts were expressed by some Executive Directors", nor was there "a great measure of uncertainty" as to the scope of Section 5(b)."

These considerations suggest that the purpose of the Executive Boards' decision of July 25 and July 29 was not to amend Section 5(b) of the By-Laws, but to frustrate the decision of Chairman Jamal to invite PLO to the 1980 Annual Meetings by imposing on him a list of observers which does not include PLO.

This analysis leaves one point unanswered. Since the sponsors of the draft resolution had a majority in the Executive Board to get through either the draft resolution as formulated or a variant proposing a specific amendment, it is not clear why they decided in favour of the first rather than the second option. Seemingly; the second option would have served even more effectively the objective of frustrating Chairman Jamal's decision to invite PLO. The answer to this point becomes clear when the possible alternatives referred to above are considered. Alternative (1) aims at making the decision of the Chairman subject to the approval of the Executive Board. Alternative (2) is designed to take away the authority of inviting observers from the Chairman and place in the Executive Board. Alternative (3) is clearly directed against PLO. Thus, any specific amendment that effectively serves to frustrate the decision of Chairman Jamal would unavoidably have to be directed against his authority to invite observers at all, or his authority to invite PLO. If a draft resolution of that nature were to be forwarded for voting to the Board of Governors the chance that it would be rejected would have been great. It is most unlikely that the Board of Governors would have sanctioned a resolution aiming unequivocally at its own Chairman simply because he exercised the authority vested in him under the By-Laws. In this eventuality there would have been no way around the decision of Chairman Jamal to invite PLO to the 1980 Annual Meetings.

Such a risk from the viewpoint of those intent on frustrating the decision of Chairman Jamal brings out the advantage of the draft resolution as formulated. The proposal to request the Board of Governors to make a proposal to the Executive Directors that they make a proposal for the amendment of Section 5(b) is sufficiently innocuous to be supported by the Board of Governors. At the same time it is sufficiently involved to justify fixing the deadline for the amendment proposed by March 1, 1981, i.e. after the 1980 Annual Meetings. Thus the draft resolution as formulated would seem to have a better chance of acceptance at the same time that it prolongs the period for consideration beyond 1980, thereby by-passing Chairman Jamal and his decision to invite PLO.

In the light of this analysis a distinction should be made between the real nature of the draft resolution and what it appears to be. On the face of it the draft resolution looks like a bona fide proposal for the amendment of Section 5(b). In reality it is an attempt by the Executive Board to impose on Chairman Jamal the 1979 list of observers, thereby frustrating his decision to invite PLO to 1980 Annual Meetings.



The dichotomy between appearance and reality of any act does not involve speculation about the motives of the actor. It is an analysis of the circumstances under which the act occurs with a view to determining its true nature. It goes without saying that the legal characterization of the act depends on its real nature, not on what it appears or claims to be.

The Joint Committee of the Board of Governors is empowered to consider questions of interpretation arising out of the decisions of July 25 and July 29. One question of interpretation is to determine the extent to which the decisions in question fall within the competence of the Executive Boards as defined in the Articles of Agreement. If it is established that their real purpose is to frustrate the authority of the Chairman under Section 5(b), they should be voided for being ultra vires. Such a ruling would have far reaching implications for the Bretton Woods Institutions. It would mean that there are legal limits to what the majority can do. This is particularly important in the case of international organizations based on the principle of weighted voting where a handful of countries could command a majority of votes.

Second Proposition: That the Board of Governors is empowered to consider questions of interpretation arising out of the decisions of July 25 and July 29. One question of interpretation is to determine the extent to which the decisions in question fall within the competence of the Executive Boards as defined in the Articles of Agreement. If it is established that their real purpose is to frustrate the authority of the Chairman under Section 5(b), they should be voided for being ultra vires. Such a ruling would have far reaching implications for the Bretton Woods Institutions. It would mean that there are legal limits to what the majority can do. This is particularly important in the case of international organizations based on the principle of weighted voting where a handful of countries could command a majority of votes.

**Section III. - Questions of Interpretation Arising out of the Executive Boards' Decisions of September 9, 1980.**

**The Facts**

The draft resolution on observers was despatched on July 31, 1980 to the members of the Board of Governors for voting without meeting in accordance with Section 13 of the By-Laws.

The voting period was prescribed to run from August 8, 1980 to September 9, 1980.

On August 1, 1980, i.e. one week before the beginning of the voting period, the Executive Director representing a number of the Arab countries in the World Bank, sent a memorandum to the President of the Bank and the Executive Directors stating the strong opposition of the Arab Governors to the draft resolution submitted for voting without meeting, and announcing that:

"the Arab Governors have decided to ignore it by not participating in voting. They will cast neither an affirmative, nor a negative, nor an abstention vote. They hope that Governors who share the same view will do likewise so that the necessary quorum will not be achieved."

It was thus made clear to all members of the Board as well as to Bank management, well before the beginning of the voting period, that the Arab Governors intend to fight the draft resolution by not participating in voting so that the draft resolution fails for lack of quorum. They also expressed the hope that Governors who share the same view with respect to the draft resolution will do likewise. The same position was taken by the Arab Executive Directors in the International Monetary Fund.

As the voting proceeded it became clear that the appeal of the Arab Governors was favourably received by most member countries. Towards the end of the voting period the number of Governors who participated in voting was known to fall far short of the quorum requirement, which was 68 countries in the Bank and 71 countries in the Fund.

On September 5, 1980, i.e. four days before the expiry of the voting period, the U.S. Executive Director requested the extension of the deadline for voting from September 9, 1980 to September 19, 1980.

At the time the request for extension was made it was known that the number of countries which participated in voting was less than 40 countries and that there was no hope of reaching the required quorum of 68 countries in the remaining four days before the expiry deadline.

In response to the request of the United States Executive Director, Bank management proposed to extend the voting period as requested on no objection basis. In case of objection, the Executive Directors were advised, a meeting of the Board would be held on September 9, 1980.<sup>1/</sup>

On the Fund side an identical request was made on September 4, 1980 by the United States Executive Directors. On that date it was also known that the number of countries which participated in voting was far short of the required quorum of 71, and that in the absence of extension, the draft resolution was certain to fail for lack of quorum.

However, the reaction of the Fund management to the request of U.S. Executive Director was different from that of the Bank management. In the case of the Fund there was no question of proposing an extension as requested on a lapse of time basis. The IMF management simply transmitted the request of the U.S. Executive Director to the Board for consideration at its meeting on September 9, 1980.<sup>2/</sup>

Realizing that any extension of the voting period is prejudicial to the interests of the Arab countries, the Arab Executive Director in the Bank sent a memorandum to the Executive Directors and Bank management stating the objection of his constituency to the U.S. request for extension.<sup>3/</sup> As a result of this objection the matter was brought to the Bank's Executive Board on September 9, 1980.

On September 9, 1980 the Executive Boards of both the Bank and the Fund decided, by a majority of votes and in the face of strong objection from the Arab and some other Executive Directors, to extend the voting period to September 19, 1980.

The date of the Executive Board's decision - i.e. September 9, 1980 - was the last day of the voting period. On that date the draft resolution was still far short of the required quorum in both the Bank and the Fund. As a consequence, the extension of the voting period made it possible for the United States, the leading protagonist of the draft resolution, to escape a failed draft resolution for lack of quorum. By the same token, the extension of the voting period was prejudicial to the Arab Governors and their supporters who, in the absence of extension on September 9, 1980, would have won their case.

<sup>1/</sup> IBRD document R80-272, September 5, 1980.

<sup>2/</sup> IMF document EBS/80/168, Supplement 1, September 4, 1980.

<sup>3/</sup> IBRD document R80-274, September 8, 1980.

On September 19, 1980, i.e. the last day of the extended voting period, it turned out that the necessary quorum was still missing despite intense pressure on member countries to participate in voting.

On the same date the U.S. Executive Director made a request for a second extension of the voting period from September 19, to September 24, 1980. <sup>1/</sup> The memorandum of the U.S. Executive Director was distributed about 3 p.m. on September 19, 1980, i.e. only three hours before the expiration time.

A notice was circulated by the Secretary of the Bank at about 3:30 p.m. on September 19, announcing that there will be a special meeting of the Executive Board on the same day at 5 p.m., i.e. one hour before the deadline, to consider the request of the U.S. Executive Director for another extension of the voting period to September 24, 1980. <sup>1/</sup>

The Arab Executive Directors in the Bank sent the President and the Executive Directors a memorandum taking strong exception to calling a special meeting of the Board without the minimum 24 hours' advance notice required by Section 2(b) of the Bank's Rules of Procedure.

At 5 p.m. the Executive Directors convened as scheduled. They were informed that, pending the arrival of the President, the meeting should be considered informal.

A few minutes before 6 p.m. the Executive Directors were advised that the special meeting of the Board was called off.

It was understood that at about that time the missing 68th vote necessary for a quorum was secured.

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<sup>1/</sup> IBRD document XA80-31, September 19, 1980.

Questions of InterpretationQuestion Five

Given the declared intention of the Arab Governors to fight the draft resolution on the basis of quorum requirement and the fact that on September 9, 1980, the last day of the prescribed period for voting, the number of Governors who participated in voting was far short of quorum requirement in both the Bank and the Fund, was the decision of the Executive Boards to extend the deadline for voting from September 9, to September 19, 1980 in the face of opposition by some Executive Directors, consistent with the provision of Section 13 of the By-Laws?

If the extension of the voting period under these circumstances is held to be inconsistent with Section 13 of the By-Laws, what is the impact such an interpretation would have on the resolution adopted by the Boards of Governors on September 19, 1980?

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According to Section 13 of the By-Laws, the period for voting without meeting is prescribed by the Executive Directors. Section 13 does not provide for the extension of the voting period. The relevant portions of Section 13 read as follows:

"Votes shall be cast during such period as the Executive Directors may prescribe.

"At the expiration of the period prescribed for voting, the Executive Board (Executive Directors in the case of IBRD) shall record the results, and the Managing Director shall notify all members. If the replies received do not include a majority of the Governors exercising two thirds of the total power, which is required for a quorum of the Board of Governors, the motion shall be considered lost."

This provision categorically states that if by the end of the voting period no quorum is achieved "the motion shall be considered lost." Yet, it has been the practice of both the Bank and the Fund to extend the voting period on motions submitted to the Board of Governors for voting without meeting. In all cases the extension of the voting period is done through the procedure known as "no objection" or "lapse of time" procedure. The Secretary of the Bank or the Fund circulates a note to the Executive Directors advising them that in the absence of objection, which should be communicated to the Bank or Fund management by a specified date, the voting period would be extended from the original deadline to a new specified one. If no objection is received the extension is deemed approved. How to reconcile

this long-standing practice in the Bretton Woods Institutions with the fact that there is no provision for extension in the By-Laws?

Some may argue that extension of the voting period is permissible without an explicit provision in the By-Laws. In this view extension is justifiable on the basis of the general principle of law according to which the body that has the power to fix the voting period in the first place should have the power to extend it. The Executive Board is empowered to prescribe the voting period. It should have the power of extension. There is no need, according to this view, for an explicit provision in the By-Laws.

In our view, however, this is a spurious interpretation of Section 13 of the By-Laws. A distinction should be made between motions submitted for voting without meeting on the basis of a unanimous decision of the Executive Board, and a motion which is submitted on the basis of a decision taken by a majority of votes. Typical of the first category of motions is the recent general increase in Bank capital which was unanimously approved by the Executive Board. However, the increase of Bank capital is a matter which, according to Article V, Section 2 of IBRD Articles of Agreement, falls within the competence of the Board of Governors. Thus, the draft resolution authorizing a certain increase in Bank capital, which had the unanimous approval of the Executive Board, was forwarded to the Board of Governors for voting without meeting during a prescribed period. In a case like that the period prescribed for voting is only indicative of the time which, in the judgment of the Executive Directors, should be adequate to secure both the quorum and the special voting majority. If by the end of the period it turns out that the number of countries participating in voting is less than the required quorum, or the number of votes falls short of the necessary majority, the Executive Directors may approve an extension, and yet another extension and so on until such time as both the quorum and the necessary majority are attained.

In such cases the extension of the voting period is in no way prejudicial to the interest of any member country. On the contrary, it serves the interest of all member countries and reflects their unanimous view. For this reason the extension is approved by the Executive Directors on no objection or lapse of time basis, i.e. by the tacit agreement of all Executive Directors.

The situation is totally different in case the motion is submitted for voting without meeting by the Board of Governors on the basis of an Executive Board's decision approved by majority of votes in the face of objection of one or more Executive Directors. In such cases, the prescribed period for voting has more than an indicative significance. Those who are opposed to the motion have an interest in having the motion defeated at the level of the Board of Governors. Defeat of the motion could be for lack of quorum or for lack of voting majority. If by the end of the voting period the motion fails to have the quorum or the necessary majority or both "the motion shall be considered lost"; to use the language of Section 13 of the By-Laws.

Obviously, any extension of the voting period under the circumstances would be prejudicial to the interest of those opposed to the motion. At the same time it would give undue advantage to those supporting the motion. In effect it would mean that if the supporters have lost at the end of the voting period, they should be granted an extension so that they may win. Similarly; it would mean that if the opponents to the motion have won at the end of the voting period, an extension should be made so that they may lose. Such an interpretation would evidently be contrary to the purpose for which the procedure of voting without meeting was established.

To argue otherwise would be untenable. The case under consideration is a case in point. Suppose the draft resolution failed to secure the necessary quorum on September 19, 1980 -- the deadline for the extended voting period -- would it have been in order for the Executive Board to authorize a second extension to September 24, 1980 as requested by the United States Executive Director? Suppose further that on September 24, 1980 there was still no quorum -- would it have been in order to authorize a third, fourth and fifth extension so as to enable the majority supporting the draft resolution to carry the motion?

These questions serve to illustrate the unacceptable implications of the argument that the majority that prescribes the voting period in the first place, may have the authority to extend it ad infinitum. Apart from the discrimination it involves against one party to the contested motion, it would mean that the majority of votes in the Executive Board could keep indefinitely the draft resolution under voting until the earlier of two dates: either the adoption of the draft resolution by the Board of Governors as the majority wants or a meeting of the Board of Governors in which the draft resolution would be voted on in the presence of Governors. Clearly; this is equivalent to the abrogation of Section 13 of the By-Laws by a decision of the Executive Board. This is not permissible. The By-Laws were established by the Board of Governors, and could only be abrogated or amended by the Board of Governors as stipulated in Section 23 of the IBRD By-Laws corresponding to Section 24 of IMF's.

This analysis leads to the following conclusion. In the case of a unanimously approved motion, it is permissible under Section 13 to extend the voting period any number of times until the motion is carried. Extension in such cases rests on the tacit agreement of all member countries. For this reason it could be done on no objection basis. In the case of a contested motion supported by the majority of votes in the Executive Board, the majority may fix the voting period in the first place for such a duration as they deem fit. However, once the voting period is fixed, it could not be extended by a majority of votes of the Executive Directors. At the expiration date, if the motion fails to have a quorum or a majority of votes of the Board of Governors or both, "the motion shall be considered lost." It goes without saying that it would be improper in such cases to resort to "no objection" procedures.

If this interpretation is correct, it follows that the decisions of the Executive Boards extending the deadline for voting from September 9, 1980 to September 19, 1980 were based on incorrect interpretation of Section 13 of the By-Laws. Moreover, if it is established that at 6 p.m. on September 9, 1980 the draft resolution had no quorum or no majority of votes or both, the motion should be declared lost. In this case, the resolution adopted by the Board of Governors on September 19, 1980 would be null and void for lack of quorum. The establishment of the number of governors participating in voting at any point in time as well as the number of votes is a matter of fact which the Bank and Fund managements could be required to supply on request from the Joint Committee of the Boards of Governors.

On September 12, 1980, the Executive Board of the International Monetary Fund held a special meeting to consider whether members, under Section 13 of the By-Laws, are allowed to withdraw their vote if they so desire while the voting period is still running. A meeting for the same purpose was held in the Bank on September 10, 1980. The procedure adopted and their no-  
 The issue was considered by the two boards on the basis of papers prepared by the respective Legal Departments of the two institutions.

On September 17, 1980, the Executive Board of the International Monetary Fund held a special meeting to consider whether members, under Section 13 of the By-Laws, are allowed to withdraw their vote if they so desire while the voting period is still running. A meeting for the same purpose was held in the Bank on September 10, 1980. The procedure adopted and their no-

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Section IV. - Questions of Interpretation Arising out of the Executive Boards' Decisions on September 17 and September 18, 1980.

The Facts

As mentioned above, the voting period on the draft resolution on observers was prescribed by the Executive Directors to run from August 8 to September 9, 1980, which was later extended to September 19, 1980.

During the voting period some countries participated by mistake in voting on the draft resolution. On the Bank side the voting result, announced on September 22, 1980, shows that only 68 Governors participated in voting by casting either an affirmative or a negative or an abstention vote. This is just equal to the quorum requirement. However, of these 68 countries, there are five Arab Governors who were supposed not to participate: Egypt, Mauritania, Sudan and Syria cast a negative vote, and Somalia cast an abstention vote. 1/ Of these, it is certain that both Syria and Sudan have requested the Secretary of the Bank, while the voting period was still running, to withdraw their votes.

On the Fund side the voting result shows that 73 countries participated in voting. This is just two countries above the quorum requirement. However, of these 73 countries there are five Arab Governors who were supposed not to participate: Djibouti and Mauritania are recorded as having voted in favor of the resolution. Algeria, Egypt and Syria are recorded as having voted against the resolution. 2/

On September 17 the Executive Board of the International Monetary Fund held a special meeting to consider whether members, under Section 13 of the By-Laws, are allowed to withdraw their vote if they so decide while the voting period is still running. A meeting for the same purpose was held in the Bank on September 18, 1980.

The issue was considered by the two Boards on the basis of papers prepared by the respective Legal Departments of the two Institutions. 3/

On September 17, 1980, the Executive Board of the Fund decided, by a majority of votes, in the face of opposition by the Arab Executive Directors and some other Executive Directors, that while the voting period is running, member countries are entitled to change their votes from positive to negative, or from negative to positive, or from either to abstention,

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1/ IBRD document R80-291, September 22, 1980.

2/ IMF document EBS/80/207, September 22, 1980.

3/ IBRD document SecM80-711, September 16, 1980. IMF document EBS/80/201, September 15, 1980

or vice versa, but they are not allowed to withdraw their votes. In other words, once they are in they cannot get out.

On September 18, 1980 the IBRD Executive Board approved, by a majority of votes with the same opposition, an identical decision.

### Questions of Interpretation

#### Question Six

In the case of voting without meeting, is it consistent with the provisions of Section 13 of the By-Laws that once a country casts a vote it cannot withdraw it during the voting period while it can change its vote from positive to negative, from negative to positive, from either to abstention, and vice versa?

If it is held that countries are entitled during the voting period to change their votes from one column to another as well as to withdraw their votes altogether, what impact such an interpretation would have on the validity of the Resolution adopted by the Board of Governors on September 19, 1980?

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The procedure of voting without meeting is highly exceptional. The rule in virtually all deliberative bodies, both national and international, is that voting takes place in a meeting. In some instances, notably private corporations, voting by proxy is allowed. This, however, does not mean that voting takes place without meeting. It simply means that some persons authorize others who are present in the meeting to vote on their behalf. The procedure provided for in Section 13 of the By-Laws is almost unique to the Bretton Woods Institutions with the exception of the Regional Development Banks whose By-Laws were modeled after the World Bank's.

The exceptional character of the procedure of voting without meeting is highly relevant to the proper interpretation of Section 13. Under this procedure each member country is required to vote on motions while it is in physical isolation from other member countries. It cannot avail itself of the usual benefits attendant upon voting in a meeting where face-to-face contacts, group meetings, caucuses and, no less important, social functions serve to inform and enlighten participants about the meaning, implications and ramifications of motions submitted for voting.

The framers of the By-Laws were no doubt aware of these considerations. A careful reading of Section 13 shows that they meant to protect member countries against the pitfalls inherent in such a peculiar procedure. A distinction was thus made between three phases:

2/ Loc. Cit. paragraph 7.

3/ Loc. Cit. paragraph 7.

The first phase may be characterized as the information phase. It is laid down that a certain period must elapse before any Governor is permitted to cast a vote. According to Section 13 of the IBRD By-Laws:

"Votes shall be cast during such period as the Executive Directors may prescribe, provided that no Governor shall vote on any such motion until 7 days after despatch of the motion unless he is notified that the Executive Directors have waived this requirement."

The same requirement is provided for in Section 13(d) of IMF By-Laws except that it does not specify a seven-day period, but leaves the determination to the Executive Board.

This phase serves the purpose of despatching the motion by mail or any other rapid means of communication so that Governors could and should see the text in writing before their eyes prior to casting a vote.

The second phase may be characterized as the consultation and voting phase, which is the period prescribed by the Executive Board for voting on the motion. The length of this phase is left open for the discretion of the Executive Board. During this period Governors have the opportunity to contact each other, acquaint themselves with the position of other fellow Governors, and understand the implications of voting one way or another.

The third and final phase may be characterized as the counting phase. This is a point of time rather than a period. At the expiration of the period prescribed for voting, replies and votes are counted so as to determine whether a quorum is obtained and whether the motion is carried or rejected by the number of votes cast.

The procedure in the first and third phase raises no problems of interpretation. In the first, no Governor may cast a vote; in the third, votes and number of participating Governors are counted. It is during the intermediate phase of consultation and voting that the precise rights of member countries need to be determined. The practice of the Bank and the Fund has been consistently, and rightly so, in favor of allowing member countries during this period to change their votes as they see fit. They may cast an affirmative vote and then change it to negative or abstention vote or vice versa. Such a flexibility in interpretation would seem to be eminently in line with the purpose for which this phase of the process is envisaged.

Are member countries equally entitled to withdraw their votes while the voting period is still running? We are told there is no precedence in either the Bank or the Fund or Regional Development Banks except one precedent in the African Development Bank in which the Governor was allowed to withdraw his vote. However, common sense as well as the purpose

of the consultation and voting phase would seem to counsel flexibility in this case as in the case of changing votes from one column to another. Not so; say the Executive Boards of the Fund and the Bank in their meetings of September 17 and September 18, 1980. The majority of votes in the Executive Boards see nothing wrong in making a distinction between changing votes from one extreme to another, which is permissible, and withdrawing one's vote, which is not.

Three arguments could be gleaned from the Fund and Bank staff papers in support of this distinction:

- (a) That Section 13 of the By-Laws refers to "replies received." "There is no indication in Section 13," argues the IMF staff paper, 1/ "that the fact that a reply had been received could be disregarded, even if so requested by a Governor who wishes to withdraw his reply." By the same token, however, one could equally well argue that there is no indication in Section 13 that a Governor who cast an affirmative could change it to negative or vice versa. To invoke the wording of Section 13 to justify the distinction is therefore inconclusive.
- (b) "That there is no inconsistency between the acceptance of changes in votes cast and the view that replies received cannot be withdrawn. The withdrawal of a reply would not simply be a change in the reply but would involve the elimination from the records... of the fact that the Governor has replied." 2/ This is hardly a tenable argument since the change of vote from one column to another implies the admissibility of withdrawal. The process of changing a vote from positive to negative for instance consists in fact of two steps: withdrawal of the positive vote and then recasting a negative one.
- (c) "That permitting Governors to withdraw their votes up to the end of the period prescribed for voting and thus defeat a quorum raises the possibility that this device would be used by those who feared that a resolution they opposed and had voted against would otherwise be adopted." 3/ The implication of this argument is that there is nothing wrong if a country like, say, the United States, disposing of over 20% of total voting power, changes the outcome of voting on any motion by swinging its enormous weight from one side to another. But it is wrong, according to the logic of the argument, for a country like, say, Chad, with a tiny fraction of one percent of voting power to change the outcome of voting by withdrawing its vote in the not-so-common situation where the number of participating governors is marginally above quorum.

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1/ Loc. Cit. paragraph 6.

2/ Loc. Cit. paragraph 7.

3/ Loc. Cit. paragraph 7.

There is no point in flogging a dead horse. The fact of the matter is that a distinction between a change of vote and its withdrawal during the voting period has no basis in logic or in text. There is every reason to believe that the decision of the Executive Boards on this issue was influenced by political rather than legal considerations; in particular by the fact that to permit the withdrawal of even a single vote would have resulted in the defeat of the draft resolution for lack of quorum. Had there been a good number of participating countries above quorum it is almost certain the interpretation given by the Executive Boards would have been different.

There is little doubt that considerations which justify changing votes during the voting period would equally justify withdrawing them. Similarly; arguments against withdrawal during the voting period would apply with equal force to changing votes. The same rule should thus apply to both types of change during the voting period.

It is possible to take the position that neither change should be allowed. Several considerations could be cited against this position:

- (a) Such an interpretation would be contrary to the long-standing practice of the Bank and the Fund.
- (b) The act of voting during the voting period does not constitute a contractual relationship between the voters and the Institutions nor between the voters themselves. It is a unilateral act by a sovereign State which it is entitled to change in the light of its national interest any time before the expiration of the voting period.
- (c) It is universally recognized that any Governor should be allowed to withdraw his vote if it is established that it was cast by an unqualified person or in error as to the nature of the motion under voting. Lack of qualification is perhaps easy to establish; but error in voting could only be established from a practical standpoint by accepting the word of the Governor concerned. Once a Governor states, while voting is still in progress, that he cast his vote by mistake, he should be authorized to withdraw it if he so desires. Both Djibouti and Mauritania, for instance, are recorded in IMF as having voted in favor of the resolution. Being members of the Arab League, the two countries could not possibly have meant to vote for the draft resolution. Their votes were obviously cast by mistake and they should have been allowed to withdraw them.
- (d) In meetings of deliberative bodies, the quorum is determined at the beginning of the meeting. This is not, however, a once for all determination. At any point in the progress of the meeting the quorum could be challenged. This is particularly so at the time a vote is taken. Thus a meeting which starts with a quorum could

lose it by the departure of some members before the Chairman calls for voting on the motion. According to "Robert's Rules of Order":

"When the chair has called a meeting to order after finding that a quorum is present, the continued presence of a quorum is presumed unless the chair or a member notices that a quorum is no longer present. If the chair notices the absence of a quorum, it is his duty to declare the fact, at least before taking any vote or stating the question on any new motion... Any member noticing the apparent absence of a quorum can make a point of order to that effect at any time so long as he does not interrupt a person who is speaking." 1/

Applying this rule to the procedure of voting without meeting would clearly support the right of any Governor to withdraw his vote while the voting period is still running. According to Section 13, the quorum is counted only at the expiration of the voting period. At any time before that any Governor should have the right to withdraw his vote. It would be untenable to argue that in an actual meeting the quorum could fail at any moment by the departure of one participant, but in a voting without meeting, once a vote is cast it cannot be withdrawn. The withdrawal of votes under the procedure of voting without meeting is equivalent to the departure of a participant in a meeting. In both cases departure and withdrawal are permissible; in both cases they could affect the quorum at the time of voting.

If it is held that Governors have the right to withdraw their votes while the voting period is still running it follows that the decisions of the Executive Boards on September 17 and September 18, 1980 were based on incorrect interpretation of Section 13 of the By-Laws.

Given that the number of IBRD Governors participating in voting was 68 which is just equal to the required quorum, and given that two countries at least, namely, Sudan and Syria, requested the withdrawal of their votes while voting was still in progress, it follows that not more than 66 countries, if not less, participated in voting up to and including September 19, 1980. Accordingly, the Resolution adopted by IBRD Board of Governors on September 19, 1980 should be declared null and void for lack of quorum.

A similar conclusion would follow on the IMF side if it can be shown that more than two participating Governors declared their wish to withdraw their votes while voting was still in progress. In this case the number of participating Governors who should be counted towards the quorum would fall from 73 to less than 71, which is the quorum requirement. Accordingly, the Resolution adopted by the Fund's Board of Governors on September 19, 1980 should be declared null and void for lack of quorum.

1/ General Henry M. Robert: "Robert's Rules of Order, Newly Revised," Scott, Foresman and Company. p. 296

Section V. - Questions of Interpretation Arising out of the Resolution Adopted by the Boards of Governors on September 19, 1980.

The Facts

On September 19, 1980 the Boards of Governors adopted the draft resolution on observers by vote without meeting. Thus the Boards of Governors have resolved that observers in 1980 Annual Meetings shall be only those invited to 1979. Since the Palestine Liberation Organization was not on the 1979 list of observers, the Resolution of the Boards of Governors meant the exclusion of the PLO from the list of observers in 1980 Annual Meetings.

Needless to say that the Resolution of the Boards of Governors was in contradiction with Chairman Jamal's decision of August 5, 1980 according to which observers in 1980 Annual Meetings should include both the PLO and those who were invited in 1979.

On September 20, i.e., one day after the adoption of the Resolution on observers by the Boards of Governors, Chairman Jamal sent the following cable to both the President of the Bank and the Managing Director of the Fund:

"I do not consider proper that invitation be issued to any observer for the 1980 Meeting if invitation is denied to PLO. I propose accordingly that no observers be invited. Presently, I am visiting Saudi Arabia. Regards." 1/

Clearly, Chairman Jamal's proposal in this cable that neither PLO nor other observers be invited to 1980 Annual Meetings stands in contradiction with both the Boards of Governors' Resolution of September 19, 1980 and the Chairman's own decision of August 5, 1980.

Thus, on the eve of Sunday, September 21, 1980 the Bank and Fund managements were confronted with three conflicting injunctions:

- (a) The injunction of Chairman Jamal in his letters and cables of August 5, 1980 that both PLO and observers in the 1979 Annual Meetings be invited to 1980 Annual Meetings.
- (b) The injunction of Chairman Jamal in his cable of September 20, 1980 that neither PLO nor observers in the 1979 Annual Meetings be invited to 1980 Annual Meetings.
- (c) The injunction of the Boards of Governors in their Resolution of September 19, 1980 that only observers in 1979, not the PLO, be invited to 1980 Annual Meetings.

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1/ IBRD document SecM80-726, September 22, 1980 and SecM80-735, September 24, 1980. IMF document EBS/80/209, September 22, 1980

On September 22, 1980 the Secretary of the International Monetary Fund circulated the following communication to the members of the Executive Board:

"There is attached a communication from the Honorable Amir Jamal, Chairman of the Board of Governors, to the Managing Director proposing that no observers be invited to the 1980 Annual Meeting. A similar message has been received by the President of the Bank. The Secretary will act in accordance with the communication of the Chairman of the Board of Governors." 1/

On the Bank side, the Executive Directors were informally convened in Mr. McNamara's office on September 22, 1980 to be informed of Chairman Jamal's recent cable and his (i.e. Mr. McNamara's) intention to act accordingly.

#### Questions of Interpretation

##### Question Seven

Given the conflicting injunctions regarding the observers in 1980 Annual Meetings, which of the three injunctions should have been given effect?

The conflicting injunctions give rise to three relationships:

- (a) The relationship between Chairman Jamal's decision of August 5, 1980 and the Resolution of the Boards of Governors of September 19, 1980.
- (b) The relationship between the Resolution of the Boards of Governors of September 19, 1980 and the proposal contained in Chairman Jamal's cable of September 20, 1980.
- (c) The relationship between Chairman Jamal's proposal of September 20, 1980 and his earlier decision of August 5, 1980.

With respect to the first relationship it may be recalled that the Bank and Fund managements refused to comply with Chairman Jamal's decision of August 5 invoking possible political embarrassment if the invitation to PLO was issued while voting on the draft resolution was in progress. It was implied that if the Boards of Governors adopt the draft resolution approved by the Executive Boards in their meetings of July 25 and July 29, 1980, the Resolution of the Boards of Governors would overrule the decision of the Chairman. In fact this interpretation was given by the Legal



Counsel of the Bank in the Board meeting of July 25 in response to a question by an Executive Director.

It is recognized that according to Article V, Section 2 of IBRD Articles of Agreement:

"All the powers of the Bank shall be vested in the Board of Governors...."

Moreover, according to the preamble of the By-Laws of the two institutions:

"In the event of a conflict between anything in these By-Laws and any provision or requirement of the Articles of Agreement, the Articles of Agreement shall prevail."

Since the power of the Chairman is derived from Section 5(b) of the By-Laws, and since the powers of the Board of Governors rest on the Articles of Agreement, it is tempting to conclude that a resolution of the Board of Governors on observers would, in the case of conflict, overrule a decision from the Chairman.

It is submitted that this is an incorrect interpretation of the superiority of the Articles of Agreement in relation to the By-Laws. The hierarchy between the two categories of provisions means:

- (a) That in the case of a conflict between any provision in the Articles of Agreement and a provision in the By-Laws, the former shall prevail. Obviously, however, there is no conflict between Section 5(b) of the By-Laws and any provision in the Articles of Agreement.
- (b) That the Board of Governors has the power to amend the By-Laws or the Articles of Agreement. Obviously, however, the power to amend does not mean the power to revoke a decision duly taken in accordance with the existent By-Laws or Articles of Agreement.

The decision of Chairman Jamal on August 5, 1980 was taken pursuant to his authority under Section 5(b) of the By-Laws. Therefore, it cannot be revoked by a resolution from the Board of Governors. Surely; the Board of Governors may amend the By-Laws so as to take away from the Chairman the authority to invite observers. But as long as Section 5(b) stands the Board of Governors cannot overrule a decision taken by the Chairman in accordance with his authority under the By-Laws. In case the Board of Governors does amend Section 5(b) in a way that abrogates the authority of the Chairman in inviting observers, such an amendment would not affect decisions taken by the Chairman prior to it. This is a self-evident corollary of the fundamental canon of non-retroactivity of law.

If this interpretation is correct it follows that the decision of Chairman Jamal of August 5, 1980 inviting PLO to 1980 Annual Meetings was not affected by the Resolution of the Boards of Governors on September 19, 1980 limiting 1980 observers to those invited in 1979.

The second relationship is that between the Boards of Governors' resolution of September 19, 1980 and Chairman Jamal's decision (or proposal) in his cable of September 20, 1980. As mentioned earlier, there is a conflict between the two decisions since the Boards of Governors' resolution of September 19 admits the 1979 observers and excludes PLO, while Chairman Jamal's decision of September 20 excludes both PLO and 1979 observers. Doubt might arise about the validity of Chairman Jamal's decision in this case since it occurred subsequent to the Board of Governors' resolution. This is an arguable point. The Board of Governors' resolution might be construed as an implicit "suspension" of Section 5(b), in which case the Chairman of the Board of Governors would have no power to invite observers after the resolution was adopted. It could also be argued that neither the Articles of Agreement nor the By-Laws know the "suspension" of provisions, and that as long as Section 5(b) is on the statute book the Chairman is within his authority to invite observers in consultation with Executive Directors.

The final relationship is that between Chairman Jamal's decision of September 20 and his earlier decision of August 5, 1980. His earlier decision, as we know, invites both the PLO and 1979 observers. His September decision, on the other hand, invites neither. Section 5(b) gives the Chairman the authority to invite observers. Once this authority is duly exercised in favor of a given organization, person or country, a situation is created under which the invitee is granted a certain privilege. It is highly doubtful that Section 5(b) authorizes the Chairman to withdraw such a privilege. In other words, Section 5(b) gives the Chairman authority to invite observers, but it does not give him the authority to "dis-invite" them. Under this interpretation Chairman Jamal has no authority to go back on his earlier decision inviting PLO along with 1979 observers.

According to this analysis the conflict between the three injunctions should have been resolved in favor of Chairman Jamal's decision of August 5, 1980. This decision is in no way affected by the Boards of Governors' resolution of September 19 since the Board of Governors has no power to revoke a decision duly taken prior to it in accordance with the existent By-Laws. Nor is it affected by Chairman Jamal's decision of September 20, since Section 5(b) gives the Chairman the authority to invite observers, but it does not give him the authority to dis-invite them.

Section VI. - Questions of Interpretation Arising out of the Executive Boards' Decisions and the Boards of Governors' Resolution Specified in Sections II, III, IV and V.

Question Eight

The President of the Bank and the Managing Director of the Fund had taken certain actions and/or decisions in connection with the Executive Boards' Decisions and the Boards of Governors' Resolution specified in Sections II, III, IV and V above. To what extent are those actions and decisions consistent with their duties under the Articles of Agreement and the By-Laws?

A distinction should be made at the outset between the legality of any act and the motive behind it. There can be no doubt that both the President of the Bank and the Managing Director of the Fund, in taking those actions and decisions, were acting in accordance with what they believed to be the best interest of their institutions. A good motive, however, does not validate an act which is objectively invalid. It should be emphasized that what is at issue is not the motives of Bank and Fund managements, but the legal character of the actions and decisions that were taken.

A perusal of the Articles of Agreement and the By-Laws indicates that, in the performance of their functions, the President of the Bank and the Managing Director of the Fund are required to observe three basic principles:

- (a) The principle of impartiality between member countries. This is implicit in the international character of their duties enshrined in Article V, Section 5(c), of IBRD Articles of Agreement and Article XII, Section 4(c), of IMF Articles of Agreement.
- (b) The principle of upholding the laws of the institutions. This is implicit in their capacity as Chiefs of the operating staff and Chairmen of the Executive Boards as laid down in Article V, Section 5(a) and (b) of the IBRD Articles of Agreement, and Article XII, Section 4(a) and (b) of IMF Articles of Agreement. This could be christened the stewardship principle.
- (c) The principle of cooperation with the Chairman of the Board of Governors in all arrangements related to the meetings of the Board of Governors as provided for in Section 6(d) of the By-Laws of the Bank and the Fund.

These three principles -- impartiality, stewardship and cooperation -- constitute the standards by which the actions and decisions of Bank and Fund managements should be judged.

The Joint Committee of the Boards of Governors is requested to review the following actions and decisions with a view to determining the extent to which they are in keeping with the duties of the President of the Bank and the Managing Director of the Fund as laid down in the Articles of Agreement and the By-Laws:

- 1 - The President of the Bank proposed to the Executive Board at its meeting on July 25, 1980 a draft resolution under which observers at the 1980 Annual Meetings would be limited to those invited in 1979. The draft resolution had the purpose and effect of frustrating the request of Chairman Jamal, in his letter of July 5, 1980, to put PLO on the list of observers in 1980 Annual Meetings. The reasons cited in the President's memorandum of July 22, 1980 explaining and justifying the draft resolution reflected the views of those opposed to the admission of PLO as observer with no reference whatsoever to the views of the vast majority of member countries supporting the PLO application for observer status. (Page 7-8 above)

To what extent is this action consistent with the principle of impartiality and the principle of cooperation with the Chairman of the Board of Governors?

- 2 - In his letter of August 5, 1980 to the President of the Bank and the Managing Director of the Fund, Chairman Jamal requested that the PLO be added to the list of observers. At that time all requirements of Section 5(b) were presumably satisfied. (Page 14 above) Consultations were held with the Executive Boards of the two institutions. The decisions of the Executive Boards on July 25 and July 29 were conveyed to Chairman Jamal with a recommendation that invitations to 1980 Annual Meetings be limited to those observers who were invited in 1979. The recommendation was rejected by Chairman Jamal who reiterated his previous request of July 5, 1980 that PLO be added to the list of observers in 1980 Annual Meetings. Nonetheless; Bank and Fund managements refused to issue the invitation to PLO invoking political embarrassment if invitation to PLO was issued while voting on the draft resolution was in progress.

To what extent is this position by Bank and Fund managements consistent with the principles of impartiality, stewardship and cooperation?

If it is held that the meetings of the Executive Boards on July 25 and July 29, 1980 did not constitute consultation in the sense of Section 5(b), is it permissible for Bank and Fund managements to nullify the authority of the Chairman by simply declining to hold consultations?

3 - According to Section 2(b) of IBRD Rules of Procedure:

"A special meeting of the Board may be called at any time by the President of the Bank. The President shall call a special meeting of the Board at any time at the request of any Executive Director. Notice of each special meeting of the Board shall be given to each Executive Director not less than one day prior to the date fixed for such meeting."

This provision is clear in making it mandatory on the President to call a special meeting of the Board at the request of any Executive Director. It is equally clear that an advance notice of at least one day shall be given to each Executive Director before this special meeting takes place.

On September 19, 1980 the United States Executive Director made a request for a second extension of the voting period from September 19 to September 24, 1980. The memorandum of the U.S. Executive Director was distributed about 3 p.m. on September 19, 1980, i.e. only three hours before the expiration deadline. The President of the Bank called a special meeting of the Board to be held at 5 p.m. of the same day. The Arab Executive Directors objected to holding a special meeting without the necessary advance notice of at least one day. The Executive Directors convened at 5 p.m. as scheduled. They were advised that, pending the arrival of the President, the meeting should be considered informal. A few minutes before 6 p.m. the meeting was called off.

Given the fact that the Arab Executive Director expressed strong objection to the first request made by the U.S. Executive Director on September 9, 1980 and the fact that they would have certainly objected to the second request, was the decision of the President consistent with the requirements of Section 2(b) of the Rules of Procedure in calling a special meeting of the Board at two hours' notice? If it is established that at the time the special meeting was called, the quorum for the draft resolution was still missing, and that at the time the special meeting was called off the missing vote (or votes) for a quorum was secured, to what extent is the decision to convene a special meeting and the decision to call it off consistent, under the circumstances, with the principle of impartiality?

4 - On September 19, 1980 the Boards of Governors adopted, by vote without meeting, the resolution on observers according to which attendance at the 1980 Annual Meetings was to be limited to the list of observers invited in 1979, which did not include PLO. On September 20, 1980 Chairman Jamal proposed to Bank and Fund managements that neither PLO nor 1979 observers would be invited to 1980 Annual Meetings. This proposal was in contradiction with his earlier decision of August 5, 1980 according to which both PLO and 1979 observers would be invited.

On September 22, 1980 the Secretary of the International Monetary Fund circulated a memorandum to the Executive Directors notifying them of the recent communication from Chairman Jamal and that:

"The Secretary will act in accordance with the communication of the Chairman of the Board of Governors." (Page 39 above)

It should be noted that the decision of the IMF Secretary was made with no reference to consultation required by Section 5(b). This stands in contrast with the management position with respect to Chairman Jamal's decisions of July 5 and August 5 requesting that PLO be added to the list of observers. Moreover, the decision of Chairman Jamal on September 20 was given effect with no reference to the Resolution adopted by the Boards of Governors only two days earlier according to which the 1979 observers were to be invited to the 1980 Annual Meetings. It may be recalled that in the case of Chairman Jamal's decisions of July 5 and August 5, 1980 both Bank and Fund managements maintained that the resolution of the Board of Governors would overrule the decision of its Chairman.

To what extent is the decision of Bank and Fund managements to give effect to Chairman Jamal's decision of September 20 to the disregard of both his earlier decision and the Boards of Governors' Resolution of September 19, 1980, consistent with the principles of impartiality and stewardship?

WHEREAS the Board of Governors of the International Monetary Fund and the Board of Governors of the World Bank adopted on September 19, 1980 a resolution on observers,-----

WHEREAS the above-mentioned decisions taken by the Executive Boards and the resolution adopted by the Board of Governors on September 19, 1980 raise issues concerning Section 5(b) and Section 1) of the By-Laws of the two institutions,

WHEREAS the Boards of Governors took note of the memorandum by the Arab Executive Directors in the two Institutions dated September 23 and entitled "Outline of Legal Issues,"

## IMF/IBRD 1980 ANNUAL MEETINGS

## AGENDA ITEM . . . . .

THE APPLICATION OF THE  
PALESTINE LIBERATION ORGANIZATION  
FOR OBSERVER STATUS

## RESOLUTION

The Board of Governors of the International Monetary Fund and the Board of Governors of the World Bank

WHEREAS the Executive Board of the World Bank approved a decision on July 25, 1980 recommending to the Board of Governors a draft resolution on observers for a vote without meeting,

WHEREAS the Executive Board of the International Monetary Fund approved the same decision on July 29, 1980,

WHEREAS the Executive Boards of the International Monetary Fund and of the World Bank took a decision on September 9, 1980 extending the deadline for voting on the draft resolution on observers from September 9, 1980 to September 19, 1980,

WHEREAS the Executive Boards of the International Monetary Fund and of the World Bank took a decision on September 17, and September 18, 1980 denying member countries the right to withdraw their votes under the procedure of voting without meeting,

WHEREAS the Board of Governors of the International Monetary Fund and the Board of Governors of the World Bank adopted on September 19, 1980 a resolution on observers,

WHEREAS the above-mentioned decisions taken by the Executive Boards and the resolution adopted by the Board of Governors on September 19, 1980 raise issues concerning Section 5(b) and Section 13 of the By-Laws of the two institutions,

WHEREAS the Boards of Governors took note of the memorandum by the Arab Executive Directors in the two Institutions dated September 28 and entitled "Outline of Legal Issues,"

## RESOLVED:

1. There shall be established a Joint Committee of the Boards of Governors of the two Institutions on questions of interpretation of Section 5(b), Section 13 of the respective By-Laws of the two institutions and other related provisions arising out of the decisions taken by the Executive Boards on July 25, July 29, September 9, September 17 and September 18, as well as of the resolution adopted by the Boards of Governors on September 19, 1980. In its work the Committee shall take into account the questions formulated in the memorandum by the Arab Executive Directors in the two institutions dated September 28 and entitled "Outline of Legal Issues." The Committee shall be entitled to seek and obtain objective and independent legal advice as deemed desirable.
2. (a) The Committee shall consist of the following nine member countries: Belgium, France, Germany, Indonesia, New Zealand, Nigeria, Pakistan, Sweden, Yugoslavia  
(b) Each member of the Committee except the Chairman shall have one vote.  
(c) New Zealand shall act as Chairman with Mr. Muldoon in his personal capacity in the Chair. The Chairman will have a vote in case of a tie.  
(d) In order to emphasize the technical nonpolitical task of the Committee, each member country may be represented by an eminent jurist.
3. The Committee shall complete its work and report to the Boards of Governors not later than January 31, 1981.
4. The report of the Committee shall be taken into account by the Executive Boards in their work under paragraph 1 of the resolutions of the Bank and Fund on Section 5(b) of the By-Laws approved on September 19, 1980.



Socialist Federal Republic of Yugoslavia  
FEDERAL SECRETARIAT FOR FINANCE  
BEOGRAD

Office of the Federal Secretary

September 29, 1979

Rt. Hon. R. D. Muldoon, C.H.  
Chairman of the Annual Meetings

Dear Mr. Muldoon,

A meeting of the Ministers of Finance and/or Economy of the Group of 77 was held today in Belgrade. I had the honor of chairing that meeting.

The meeting unanimously approved the enclosed Resolution supporting the application of the Palestinian Liberation Organization for observer status in the International Monetary Fund and the World Bank.

In my capacity as Chairman of the ministerial meeting of the Group of 77, I am bringing to your attention the enclosed Resolution with a request to communicate it to all the Governors of the International Monetary Fund and the World Bank.

Thanking you in advance for your kind cooperation, I remain,

With kindest regards,

Ing Petar Kostić

Chairman of the Meeting of the Ministers of  
Finance and/or Economy of the Group of 77

encl.

I have to-day sent a cable to you to say that after having read the report I propose that the Palestine Liberation Organization be invited to attend as an observer the 1980 Annual Meetings which will take place in Washington at the end of September this year. I have also separately asked that the Report be released to the Executive Directors.

In proposing to invite the PLO as an observer, the following observations, inter alia, are of relevance.

RESOLVED:

RESOLUTION

1. There shall be established by the Board of Governors of the International Monetary Fund and the World Bank a Group of 77 consisting of the two least developed countries and the two least developed territories and other related provisions taken into account by the Board of Governors of the International Monetary Fund and the World Bank.

The Group of 77 resolves that:

1. The Group of 77 supports the application of the Palestinian Liberation Organization for observer status in the International Monetary Fund and the World Bank.

2. The Chairman of the Group of 77 communicates the support of this group to:

(a) The Chairman of the Bank and Fund Annual Meeting, His Excellency the Right Honorable R. D. Muldoon,

(b) The President of the World Bank, and

(c) The Managing Director of the International Monetary Fund.

Beograd, September 29, 1979

4. The report shall be taken into account by the Board of Governors of the International Monetary Fund and the World Bank.

encl.

The Treasury  
P.O. Box 9111  
Dar Es Salaam

The United Republic of Tanzania

THE MINISTER FOR FINANCE

Ref. No. TYC/1/210/12

5th July, 1980

Mr. Robert McNamara,  
The President, World Bank,  
Washington.

Dear Mr. McNamara,

The Chairman of the Informal Working Party of Governors of the IMF and the IBRD has submitted to me a report on whether the Palestine Liberation Organization should be invited to attend the Annual Meetings of the International Monetary Fund and the International Bank for Reconstruction and Development as an observer. This report is in pursuance of the decision of the Joint Procedures Committee which met in Belgrade on October 1, 1979. It was read out in the following terms by the Chairman of 1979 Annual Meetings of the IMF and the IBRD.

"The Joint Procedures Committee met on October 1, 1979 to consider the questions raised by the letter from the Chairman of the meeting of the Group of Seventy-seven and the accompanying resolution supporting the application of the Palestine Liberation Organization for observer status at the Annual Meetings. The Committee concluded that the Chairman should establish an informal working party of Governors to consider all aspects of the matter. The Working Party would report to the Chairman for next year's Annual Meetings in approximately three months' time. The Chairman would then make his decision taking into account this report and in accordance with the By-Laws."

I have to-day sent a cable to you to say that after having read the report I propose that the Palestine Liberation Organization be invited to attend as an observer the 1980 Annual Meetings which will take place in Washington at the end of September this year. I have also separately asked that the Report be released to the Executive Directors.

In proposing to invite the PLO as an observer, the following observations, inter alia, are of relevance.

A. H. Jama

GOVERNOR FOR TANZANIA

and CHAIRMAN OF THE BOARD OF GOVERNORS

- (i) In the course of deliberations in the Joint Procedures Committee meeting, there was no dispute as regards the specific point that the Chairman carried the final responsibility in the matter of extending an invitation to the PLO as an observer.
- (ii) The 1979 Chairman was left with the sole responsibility of appointing the members of the Informal Working Party. He said that "he would do his best that the Working Party of Governors would be representative." It is not clear to me how the membership of the working party reflected a "representative" view of the Board of Governors; the present outcome 'represents' an impasse. The particular composition of the Informal Working Party surely invited such an outcome, thus putting the ultimate burden of decision on the 1980 Chairman.
- (iii) When the Governors elected the Governor of Tanzania to be the 1980 Chairman of the Annual Meetings, they were aware that Tanzania had voted in the Group of 77 for the recommendation that the PLO be invited to the Annual Meetings as an observer.
- (iv) It was then also public knowledge that Tanzania had accorded full diplomatic status to the PLO and that its relations with the PLO were thus governed accordingly.
- (v) By expressing a desire for an observer status at the Annual Meetings of the IBRD and the IMF, the PLO underscores the continuing significance of the "Bretton Woods" institutions at a time of particular stress and strain.
- (vi) The exposé of the Governor of Pakistan as to the wide recognition given by the UN and other international organizations to the PLO sets out clearly the 'rationale' for extending the invitation.
- (vii) Overwhelming number of Governors have signified their wish that such an invitation be issued.

I shall therefore very much appreciate if in accordance with Section 5(b) of the By-Laws of the Bank an invitation is issued on my behalf by the Secretary of the Board, to the PLO to attend the 1980 Annual Meetings as an observer.

I have today also sent you a cable as per copy attached.

Please accept my warm regards.

Yours sincerely,

A. H. Jamal  
GOVERNOR FOR TANZANIA  
and CHAIRMAN OF THE 1980 BOARD OF GOVERNORS

CONFIDENTIAL

The Treasury  
P.O. Box 9111  
Dar Es Salaam

The United Republic of Tanzania  
THE MINISTER FOR FINANCE

Ref. No. TYC/1/210/12

5th August, 1980

Mr. Robert McNamara,  
President World Bank,  
Washington DC. 20433 U.S.A

Dear Mr. McNamara,

Invitation to the PLO as Observer

I confirm the exchange of various telegrams since the despatch to you of my letter of 5th July. The telegrams from you dated 21st, 24th and 31st July and from me dated 22nd July and 5th August refer.

I have endeavoured to follow the process related to the question of inviting the PLO from its very beginning, that is since Mr. Muldoon, the 1979 Chairman of the Boards of Governors carried out consultations with the Executive Directors under Section 5(b) of the by-laws. He did not extend the invitation to the PLO because he believed he could not reasonably go against the view of the Board of Executive Directors, although he realised he had the final say. When the unanimous view of Group 77 Governors was conveyed to him that he should invite the PLO as observer, he took the matter to the Joint Procedures Committee of the Governors.

The Joint Procedures Committee, among other things, has (i) stated that Section 5(b) be followed by the 1980 Chairman along with the study of the Report of the informal working group and (ii) understood that consultations with the Board of Executive Directors does not mean its consent.

I must not now repeat what I have already conveyed in my letter of 5th July. But I have had difficulty in understanding the procedure followed by the Board of Directors. While usage may have established the practice of the Board of Directors considering various proposals for inviting observers, whose names were then recommended to the then current Chairman of Governors, the wording of 5(b) is quite clear in that it is the Chairman, who in consultation with the Board of Executive Directors may invite observers.

- (i) In the course of deliberations in the Joint Procedures Committee meeting, there was no dispute as regards the specific point that the Chairman carried the final responsibility in the matter of extending an invitation to the PLO as an observer.
- (ii) The 1979 Chairman was left with the sole responsibility of appointing the members of the Informal Working Party. He said that "he would do his best that the Working Party of Governors would be representative." It is not clear to me how the membership of the working party reflected a "representative" view of the Board of Governors; the present outcome 'represents' an impasse. The particular composition of the Informal Working Party surely invited such an outcome, thus putting the ultimate burden of decision on the 1980 Chairman.
- (iii) When the Governors elected the Governor of Tanzania to be the 1980 Chairman of the Annual Meetings, they were aware that Tanzania had voted in the Group of 77 for the recommendation that the PLO be invited to the Annual Meetings as an observer.
- (iv) It was then also public knowledge that Tanzania had accorded full diplomatic status to the PLO and that its relations with the PLO were thus governed accordingly.
- (v) By expressing a desire for an observer status at the Annual Meetings of the IBRD and the IMF, the PLO underscores the continuing significance of the "Bretton Woods" institutions at a time of particular stress and strain.
- (vi) The exposé of the Governor of Pakistan as to the wide recognition given by the UN and other international organizations to the PLO sets out clearly the 'rationale' for extending the invitation.
- (vii) Overwhelming number of Governors have signified their wish that such an invitation be issued.

I shall therefore very much appreciate if in accordance with Section 5(b) of the By-Laws of the Bank an invitation is issued on my behalf by the Secretary of the Board, to the PLO to attend the 1980 Annual Meetings as an observer.

I have today also sent you a cable as per copy attached.

Please accept my warm regards.

Yours sincerely,

A. H. Jamal  
GOVERNOR FOR TANZANIA  
and CHAIRMAN OF THE 1980 BOARD OF GOVERNORS

CONFIDENTIAL

The Treasury  
P.O. Box 9111  
Dar Es Salaam

The United Republic of Tanzania  
THE MINISTER FOR FINANCE

Ref. No. TYC/1/210/12

5th August, 1980

Mr. Robert McNamara,  
President World Bank,  
Washington DC. 20433 U.S.A

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The Joint Procedures Committee, among other things, has (i) stated that Section 5(b) be followed by the 1980 Chairman along with the study of the Report of the informal working group and (ii) understood that consultations with the Board of Executive Directors does not mean its consent.

I must not now repeat what I have already conveyed in my letter of 5th July. But I have had difficulty in understanding the procedure followed by the Board of Directors. While usage may have established the practice of the Board of Directors considering various proposals for inviting observers, whose names were then recommended to the then current Chairman of Governors, the wording of 5(b) is quite clear in that it is the Chairman, who in consultation with the Board of Executive Directors may invite observers.

This is precisely what I have sought to do. I cannot see how either the Board of Directors or I can pick and choose as to what can or cannot be done under 5(b). The Board of Executive Directors may want to make whatever proposals it may consider necessary or desirable to the Governors for their consideration. But it cannot at one and the same time ride a horse and insist that it has unmounted it simply because it has now sought a mandate to do so, while asking me to continue to ride it!

As a transient Chairman of the Boards of Governors, my own task is mercifully of a limited duration. But as long as I have it, I must endeavour to be consistent in discharging my responsibilities and must comply with the legal provisions which have indeed been invoked to seek my approval.

It is with this understanding of procedures that I have requested that the PLO should be added to the list of the 1979 observers and invitations issued accordingly.

Please accept my warmest personal regards.

Yours sincerely,

A. H. Jamal  
CHAIRMAN BOARD OF GOVERNORS



Fund Resolution No. 35-9

Bank Resolution No. 359

SECTION 5(B) OF THE BY-LAWS OF THE BANK (AND THE FUND)

WHEREAS, the provision on observers to meetings of the Board of Governors contained in Section 5(b) of the By-Laws has given rise to a number of serious questions which cannot be resolved satisfactorily on the basis of the present wording;

WHEREAS, therefore, an amendment to Section 5(b) seems to be justified and even necessary;

HAVING REGARD to Section 23 (24) of the By-Laws;

NOW, THEREFORE, the Board of Governors RESOLVES:

1. THAT the Executive Directors shall consider the exact scope of Section 5(b) and make such proposals for amendment as they believe necessary and that they shall report to the Board of Governors by March 1, 1981; and
2. THAT pending the outcome of action pursuant to paragraph 1 of this Resolution, attendance at the 1980 Annual Meeting or any meeting of the Board of Governors thereafter, shall be limited to those observers who were invited to the 1979 Annual Meeting.

716/120

RECEIVED

30 JANUARY 1981

1981 JAN 30 10:52  
N735  
COMMUNICATIONS UNIT

TO: H GOLSONG  
VICE PRESIDENT AND GENERAL COUNSEL  
INTBAFRAD  
WASHINGTON DC

FROM: R D MULDOON  
PRIME MINISTER  
NEW ZEALAND

1 THANK YOU FOR YOUR TELEGRAM REGARDING PROPOSALS OF THE GERMAN AND PAKISTANI DELEGATIONS FOR MODIFICATION OF THE REPORT OF THE JOINT COMMITTEE OF THE BOARDS OF GOVERNORS.

2 MY UNDERSTANDING OF THE ARRANGEMENTS THAT WERE AGREED SHOULD APPLY TO COMPLETION OF THE REPORT IS THAT TEXTUAL CLARIFICATIONS BASED ON THE TRANSCRIPT OF THE COMMITTEE'S PROCEEDINGS COULD BE CONSIDERED BEFORE FINAL PRINTING, BUT THAT IT WOULD NOT BE APPROPRIATE FOR POINTS OF SUBSTANCE SEEKING TO VARY THE TEXT AGREED DURING THE MEETINGS TO BE PUT FORWARD AT THIS STAGE.

3 ON THE BASIS OF THIS INTERPRETATION. I AM AGREEABLE TO ALL OF THE CHANGES PROPOSED BY THE GERMAN AND PAKISTANI DELEGATIONS BEING INCORPORATED IN THE REPORT WITH THE EXCEPTION OF THE THIRD, FOURTH AND FIFTH PROPOSALS OF THE PAKISTANI DELEGATION.

4 I ALSO AGREE WITH YOUR COMMENT ON THE THIRD POINT PUT FORWARD BY PAKISTAN FOR MODIFICATIONS OF THE ORDER OF PRESENTATION OF THE SUMMARY OF CONCLUSIONS. THERE WAS NO AGREEMENT ON AN INTENTION TO MODIFY THE ORDER AND IT WOULD BE INAPPROPRIATE TO DO SO NOW. WITH RESPECT TO THE FOURTH AND FIFTH PAKISTANI PROPOSALS I AGAIN ENDORSE YOUR INTERPRETATION OF THE AGREEMENT REACHED AS TO THE BASIS ON WHICH THE SUMMARY OF CONCLUSIONS WAS TO BE INCORPORATED IN THE REPORT. IT WOULD BE MOST INAPPROPRIATE FOR SUBSTANTIVE CHANGES OF THE KIND NOW BEING PROPOSED BY THE PAKISTANI DELEGATION IN RELATION TO THE SUMMARY OF CONCLUSIONS TO BE CONSIDERED OTHER THAN AT A MEETING OF THE COMMITTEE, AND I AM NOT PREPARED TO AGREE TO THE SUGGESTED ADDITIONS TO PARAGRAPHS 3.8 AND 5.5 OF THIS SECTION OF THE REPORT.

5 NO OTHER PROPOSALS FOR CHANGES TO THE TEXT HAVE BEEN RECEIVED HERE AND I AGREE THAT THE REPORT SHOULD NOW BE PRINTED ON THE BASIS THAT THE SEVEN CHANGES PROPOSED BY THE GERMAN DELEGATION AND PROPOSALS ONE AND TWO BY THE PAKISTANI DELEGATION SHOULD BE INCORPORATED. PROPOSALS THREE, FOUR AND FIVE OF THE PAKISTANI DELEGATION SHOULD NOT BE INCORPORATED.

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Class of Service: TELEX Date: JANUARY ~~27~~ 28, 1981  
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SIXTH, PARAGRAPH 3.7, LINE FOUR, REPLACE QUOTE SECTION 13 OF THE  
BY-LAWS UNQUOTE BY QUOTE SECTIONS 12 AND 13 OF THE RESPECTIVE BY-LAWS  
UNQUOTE AND, IN THE VERY LAST LINE OF PARAGRAPH 3.7, REPLACE QUOTE  
SECTION 13 UNQUOTE BY QUOTE SECTIONS 12 AND 13 UNQUOTE SEMICOLON  
SEVENTH, PARAGRAPH 3.8, THIRD LINE OF PAGE 16, REPLACE QUOTE  
SECTION 13 UNQUOTE BY QUOTE SECTIONS 12 AND 13 UNQUOTE.  
ALL OF THESE SUGGESTIONS SEEM HELPFUL. THEY ARE OF A PURELY  
EDITORIAL NATURE AND WE WOULD HAVE NO PROBLEM WITH INSERTING THEM  
IN THE FINAL REPORT IF YOU AGREE.  
THE PAKISTANI DELEGATION HAS MADE THE FOLLOWING SUGGESTIONS:  
FIRST, THAT A MISSING PREAMBULAR PARAGRAPH BE REINSERTED IN THE TEXT  
OF THE FUND AND BANK RESOLUTIONS QUOTED ON PAGE TWO. WE HAD ALREADY  
NOTED THIS OMISSION AND ARE CORRECTING IT SEMICOLON  
SECOND, PARAGRAPH 1.5, PAGE FOUR, PENULTIMATE SENTENCE OF THE FIRST  
SUB-PARAGRAPH OF PARAGRAPH 1.5 TO BE AMENDED BY ADDING THE WORDS  
QUOTE IMPACT OF THE UNQUOTE AFTER THE WORDS QUOTE EXPLICITLY ASK  
ABOUT THE UNQUOTE. THE TRANSCRIPT OF THE PROCEEDINGS (FRIDAY  
MORNING, PAGE 2-J-2) INDICATES THAT MR. EL-NAGGAR, WHO EXPRESSED THE  
/c

NOT TO BE TRANSMITTED

SUBJECT:	DRAFTED BY:
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VIEW RECORDED IN THAT SENTENCE, MADE THE STATEMENT TWICE, ONCE USING  
THE WORD QUOTE IMPACT UNQUOTE, THE OTHER TIME NOT USING IT SEMICOLON  
WE WOULD HAVE NO PROBLEM WITH THE REQUESTED CHANGE BEING MADE  
SEMICOLON  
THIRD, SUMMARY OF CONCLUSIONS, PART III POINTS (A), (B) AND (C)  
SHOULD BE REARRANGED TO CORRESPOND TO THE ORDER FOLLOWED IN THE MAIN  
BODY OF THE REPORT, SO THAT IT WILL BE:  
(A) WITHDRAWAL FROM THE VOTING PROCEDURE  
(B) EXTENSION OF THE VOTING PERIOD  
(C) VOTING PROCEDURE SEMICOLON  
FOURTH, PARAGRAPH 3.8 OF THE SUMMARY OF CONCLUSIONS, ADD THE FOLLOWING  
SENTENCE AT THE END OF THE PARAGRAPH: QUOTE ACCORDING TO THE VIEW OF  
SOME MEMBERS, THIS DOES NOT IMPLY, HOWEVER, THAT THE INTERPRETATION  
WAS NECESSARILY CORRECT UNQUOTE SEMICOLON  
FIFTH, PARAGRAPH 5.5 OF THE SUMMARY OF CONCLUSIONS, ADD THE FOLLOWING  
SENTENCE AT THE END OF THE PARAGRAPH: QUOTE SOME MEMBERS TOOK THE  
VIEW THAT THE BOARDS OF GOVERNORS CANNOT OVERRULE DECISIONS VALIDLY  
TAKEN BY THE CHAIRMAN OR OTHER ORGANS OF THE TWO INSTITUTIONS. UNQUOTE  
WITH RESPECT TO THE THIRD PAKISTANI PROPOSAL, WE UNDERSTAND THAT IT  
WAS NOT THE INTENTION TO MODIFY THE ORDER OF PRESENTATION OF THE  
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NOT TO BE TRANSMITTED

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TELEX

Date: JANUARY 28, 1981

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Date:

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Originators Ext:

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SUMMARY OF CONCLUSIONS TO CORRESPOND TO THE ORDER FOLLOWED IN THE REPORT. WITH RESPECT TO THE FOURTH AND FIFTH PAKISTANI PROPOSALS, WE HAVE REFERRED BACK TO THE TRANSCRIPT OF THE PROCEEDINGS OF THE FRIDAY MORNING SESSION. YOUR STATEMENTS QUOTED ON PAGES 2-L-2, 2-L-5 AND 2-L-6 WOULD SEEM TO CONFIRM OUR UNDERSTANDING THAT THE INTENTION WAS NOT TO INCLUDE MINORITY VIEWS IN THE SUMMARY OF CONCLUSIONS, EXCEPT WHEN SPECIFICALLY AGREED, NAMELY IN PARAGRAPH 3.7. WE WOULD APPRECIATE YOUR RULING ON THE ABOVE GERMAN AND PAKISTANI PROPOSALS AND ON ANY OTHER PROPOSALS YOU MIGHT HAVE RECEIVED DIRECTLY IN WELLINGTON NOT LATER THAN BY THE CLOSE OF BUSINESS IN WASHINGTON TIME ON FRIDAY, JANUARY 30, IN ORDER THAT THE COMMITTEE REPORT MAY BE PRINTED AND MAILED BY THE JANUARY 31 DEADLINE. HIGHEST REGARDS, H. GOLSONG, VICE PRESIDENT AND GENERAL COUNSEL, IBRD, JOSEPH LANG, ACTING SECRETARY, IMF.

NOT TO BE TRANSMITTED

SUBJECT:

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DEPARTMENT:

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