

June 3, 1946.

MEMORANDUM:

A question has been raised whether the International Bank for Reconstruction and Development may communicate with the member governments through the diplomatic channel for the purpose of providing the members with information. It is understood that the matters with which such communications would be concerned would not be loans or guarantees to be made by the Bank nor would such communications constitute financial transactions between the Bank and its members.

Article III, Section 2 of the Articles of Agreement provides:

"SEC. 2. Dealings between members and the Bank. Each member shall deal with the Bank only through its Treasury, central bank, stabilization fund or other similar fiscal agency, and the Bank shall deal with members only by or through the same agencies."

When this section was first considered at the Bretton Woods Conference, it did not contain the word "deal" but read "The Bank shall conduct its business only with, etc." The earlier language indicates that actual business transactions were all that the drafters contemplated would be covered by this provision. Apparently the language was changed in order to conform the section to the language of Article V, Section 1 of the Articles of Agreement of the Fund.

The section limiting dealings to certain agencies appears in Article III, which is entitled "General Provisions Relating to Loans and Guarantees." Although the language of the section is not limited to those matters dealt with in the same Article, the fact that it is placed there indicates what the drafters had in mind when it was written. The principal object of the section is to channel all loan and guarantee transactions through the appropriate financial agencies of the member governments.

When contrasted with other sections of the Agreement, it is clear that the intention was to prevent operations of this nature being conducted with private persons or corporations. For example, Article IV, Section 3 prescribes certain transactions in securities and currency which the Bank may engage in and provides that in exercising these particular powers "the Bank may deal with any persons, partnership, association, corporation or other legal entity in the territories of any member." In view of the provisions of Article III, Section 2 it was considered necessary to make this exception, thus indicating that the limitation was aimed at private dealings and not at use of the diplomatic channel. As evidence of the fact that use of the diplomatic

channel was not to be prohibited to the Bank, it should be noted that Article XI, Section 2(c) continues the use of the diplomatic channel to notify member governments when additional countries sign the Agreement, notwithstanding the fact that the Bank is then in existence.

It is clear from an examination of all of these provisions that the purpose of Article III, Section 2 is to prohibit the Bank from dealing with non-governmental agencies or private persons when the matter to be dealt with is a financial transaction between the Bank and a member. There is nothing in Article III, Section 2, however, which requires an interpretation that it prohibits the use of the diplomatic channel for the purpose of transmitting information from the Bank to the members.

RB:met  
6/3/46