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INTERNATIONAL MONETARY FUND

Minutes of Executive Board Meeting 76/44

8:00 p.m., March 16, 1976

W. B. Dale, Acting Chairman

Executive Directors	Alternate Executive Directors
	C. P. Caranicas
P. Åsbrink	J. H. Kjaer
S. Y. Cross	T. Leddy
J. de Groote	H. G. Schneider
N. Deif	M. Finaish
B. J. Drabble	D. Lynch
	S. Sevilla
S. Jagannathan	
A. Kafka	W. Temple-Seminario
K. Kawaguchi	M. Wakatsuki
	Sein Maung
P. Lieftinck	
H. R. Monday	
	E. O. de Toledo
	E. Sacerdoti, Temporary
	G. Laske
W. S. Ryrie	
	G. Heyden Q., Temporary
	J. Foglizzo
	R. S. Deane
	S. Nana-Sinkam

R. V. Anderson, Acting Secretary
K. S. Friedman, Assistant

1. Amendment - Draft Report to Board of Governors . . . . . Page 3

Also Present

Exchange and Trade Relations Department: D. K. Palmer, Deputy Director. Legal Department: J. Gold, General Counsel and Director; G. P. Nicoletopoulos, Deputy General Counsel; P. R. Lachman, J. K. Oh, S. A. Silard. Research Department: J. J. Polak, Economic Counsellor and Director; A. D. Crockett. Treasurer's Department: D. S. Cutler. Bureau of Language Services: J. S. Haszard, Director. Advisors to Executive Directors: C. Bouchard, J. K. E. Cole, F. K. Hussein, A. Malek. Technical Assistants to Executive Directors: V. Amiel, S. Arancibia, E. Avillez, T. Bilget, I. M. Cobbold, B. Goos, R. Khonsary, H. Kuroda, A. G. Morris, A. B. Nymark, M. Pietinen, S. B. Satyal, S. P. Upasani, A. van Dorssen, L. F. Vílches, P. Zimmer.

1. AMENDMENT - DRAFT REPORT TO BOARD OF GOVERNORS

The Executive Directors continued from a previous meeting (EBM/76/41, 3/12/76) their page-by-page consideration of the second draft of the report to the Board of Governors (DAA/76/5, Rev. 1, 3/1/76), starting at page 52. They also had before them the latest version of the draft amendment (DAA/76/9, 3/1/76).

Page 52

Mr. Leddy asked whether the staff intended to reissue the passage concerning the interpretation of the terms "profits" and "surplus value."

The General Counsel replied that he had hoped that the next draft would be in the form of a final document. The staff did not plan to issue separate pages of any particular document. Instead, it planned to assemble the whole document as it was to go forward. However, all the suggestions that had been made for redrafting the report would be incorporated in the next version, and Executive Directors would of course have the chance to suggest changes in that version.

Mr. Leddy considered that it might be useful to take up separately the text concerning the sale of the 25 million ounces of gold for the benefit of developing countries. The language might give rise to some difficulties, and he was particularly concerned about how it might apply to the situation after amendment. His chair was still proceeding on the assumption that the interpretation that had been agreed at EBM/75/206 (12/23/75) would be adhered to. In his view, the staff interpretation of "profits" and "surplus value" was applicable only to the 25 million ounces to be sold for the benefit of developing countries. There was specific authority in the Articles for the Fund to dispose of the gold after the first 25 million ounces either in the form of profits or of specie. Placing the definitions of "profits" and "surplus value" in the report might raise some question as to whether they were meant to apply, in the period after the amendment, to whatever gold might be left from the 25 million ounces that was to be sold for the benefit of developing countries.

The General Counsel observed that in the report, the concepts of "profits" and "surplus value" should be discussed only with respect to the balance of the 25 million ounces once the amendment had taken effect. The report was a report on the amendment, and that was all that it should deal with. Schedule B, however, did contain the two separate concepts, one of which would involve returning gold in specie. Although the distribution was made mandatory by Schedule B, the Fund would have a choice between the distribution of profits, and the return of specie. The return of specie was referred to as "surplus value." Therefore, any redrafting would have to be made on the understanding that there would be two choices under the amendment. If Mr. Leddy's position was that there should not be the two

choices with respect to the balance of the 25 million ounces under the amendment, then the reference to "surplus value" should be taken out of Schedule B. While he would of course be willing to circulate the relevant redrafts in advance of the final document, it was important to make clear what they should say on the particular question of the choice between "surplus value" and "profits."

The Acting Chairman commented that he took the General Counsel to mean that, because the two concepts were in the present draft of Schedule B, they had to be explained in relation to the postamendment period.

The General Counsel said that as a result of the previous discussion, the staff would make it clear that, in the discussion of the choice between the distribution of profits and the distribution of surplus value, i.e., specie, the report would be talking only of the balance of the 25 million ounces. The report would not attempt to deal with any part of the 25 million ounces that were to be disposed of before the amendment.

Mr. Leddy noted that the General Counsel seemed to feel that "surplus value" was meant to be interpreted as "specie." In his view, however, the question of interpretation had not yet been settled. At EBM/75/206 there had been an interpretation that both the profits and the surplus value would be in the form of currency; the text of Schedule B, which was the same then as it was now, had included the phrase "profits or surplus value" in line with the language of the Interim Committee communiqués. Thus, at that stage, the understanding had been that "surplus value" meant "currency."

The Acting Chairman remarked that there was some controversy as to what had actually happened at EBM/75/206. It was his recollection that, rather than having suggested an interpretation, the Chairman had indicated that there was some feeling that a choice between the two concepts had been made.

The General Counsel said that he agreed with Mr. Leddy that the draft prior to the Jamaica meeting of the Interim Committee and the draft after the meeting each contained references to "profits" and "surplus value," but there was one important difference, namely, that the word "sold" did not appear in the later text. The word "sold" had been eliminated because it had caused some confusion. The real issue, however, was whether a precisely written legal text should have two different concepts. If there were to be two concepts, the difference between them should be clearly explained, and it should be made clear that there was a choice between them. If it was decided that there was not to be a choice, the text would have to be changed so that only the concept of "profits" was used.

Mr. Lieftinck commented that the terms "surplus value" and "profits" had been discussed for some time and both had been used in the Executive Directors' previous reports to the Interim Committee. The terms had been accepted in the past, and neither of them should be eliminated at the present stage. The Chairman's summing up at EBM/75/206 did not suggest that a consensus had been reached. In addition, the issue had been reopened during the Jamaica meeting of the Interim Committee by Mr. Duisenberg, who had clearly expressed his view on it, and the staff itself had raised the question in connection with the disposition of the 25 million ounces for the benefit of developing countries. Prior to the present meeting no one had ever suggested that the two different terms should not be maintained in the amendment.

Mr. Leddy responded that as long as the question of the definition of the terms had at least been in doubt, there had been room for interpretation under the Articles. That room might be removed, however, if the definition in the report was accepted. He could accept the inclusion of the two terms if it was clear that they were not to apply to the remainder of the 25 million ounces of gold. It was his understanding that the definition on page 52 would be shifted so that it would appear nearer the discussion of how Schedule B would operate after amendment.

The General Counsel said that the two terms appeared in the Articles only with respect to the undisposed balance of the 25 million ounces. Although there were comparable powers with respect to the Fund's gold beyond the 25 million ounces, the language "profits or surplus value" was not employed. Therefore, if Executive Directors did not wish to accept the double concept with respect to the 25 million ounces, the provision was incorrectly drafted. Otherwise, the difference between "profits" and "surplus value" had to be defined.

The Acting Chairman remarked that he assumed that if it was felt that the words "profits or surplus value" should be kept in Schedule B, as presently drafted, but that nothing should be said in the report about the difference between the concepts, then, in the period after amendment, the terms would have to be applied, and the Executive Directors would have to make the choice.

The General Counsel commented that the provision did establish a choice between distribution of profits and distribution of gold in specie at the official price. The decision presumably would be taken by the Executive Directors under delegation and would not involve a special majority. For the rest of the gold, however, there would be a special majority.

There was no special merit in the term "surplus value," the General Counsel considered. Schedule B was a transitional provision, and the feeling had been that it should not be a long and elaborate provision,

like Article V, Section 12. Therefore, the term "surplus value" had been used. If it was thought that there was some prejudice in the use of the term, it could of course be avoided, and the text could refer, as did Article V, Section 12, either to the distribution of profits, or to the sale of gold at the present official price. The question remained one of principle, rather than of drafting.

Mr. Kawaguchi said that he wondered whether he was correct in assuming that "surplus value" meant, in terms of bookkeeping, the price for the gold in excess of the world market price.

The General Counsel said that the concept would not necessarily depend on the form of bookkeeping. Even if a member did not show the gold at a new price, there would nevertheless be the sense, or the understanding, that there had been the accrual of at least a potential profit to the purchaser of the gold. Therefore, Mr. Kawaguchi's understanding was correct except that "surplus value" would not depend on the precise form of bookkeeping.

The Acting Chairman added that, under the concept of "surplus value," the Fund would have to decide how much gold should be returned at the official price.

Mr. Sacerdoti thought that Mr. Leddy had meant that "surplus value" involved a distribution of profit but without a sale of gold in the market. A distribution of profits--not specie--would be made to the Trust Fund. That was precisely the concept that some other Executive Directors had in mind. Hence, a basis for an agreement on the interpretation seemed possible.

Mr. Leddy replied that his understanding of "surplus value" was, as Mr. Sacerdoti mentioned, not the transfer of gold to the Trust Fund, but rather the transfer of a notional profit to the Trust Fund. The Trust Fund would end up with currency, and the direct transfer to developing countries would be made in currency.

The Acting Chairman commented that there had been varying understandings of "surplus value" and "profits" by Executive Directors and their authorities. The concept of "surplus value" had been included in the Paris communiqué of the Interim Committee in June 1975, and had been repeated in the August 31, 1975 communiqué. In addition, it had been the subject of considerable discussion leading up to EBM/75/206.

The General Counsel added that the summing up at EBM/75/206 had drawn the distinction between the first 25 million ounces and the gold to be sold thereafter. At that meeting the Chairman had not focused at all on the question of the preamendment and postamendment portions of the

25 million ounces. The Chairman had concluded that the Executive Directors should not discuss the disposition of the rest of the gold--in excess of the 25 million ounces--because that would be governed by clear language in the amendment. At that point, the issue had been dropped. But it was his impression that there had been a decision in principle. The summing up had not constituted an interpretation, because it would not have been sensible to interpret two different concepts to mean the same thing. Rather, there had been an understanding, coming out of earlier discussions, that there would be a distribution by way of profits with respect to the 25 million ounces. The staff had felt that there was still an issue with respect to the remnant of the 25 million ounces because of the apparent concurrence in the draft of Schedule B and the explanation in the draft report.

Mr. Ryrie thought that the question was one of substance rather than of drafting. There were three possible answers. First, the Executive Directors could resolve the issue itself, and the related drafting would flow from the solution. Second, the Executive Directors could agree that the issue could not be settled now, and the position could be recognized in the report. Third, the terms could be left undefined. It might be best to leave the matter open for, say, a week, by which time it might be easier to reach a conclusion.

The Acting Chairman said that he hoped that the issue could be resolved prior to work on the outstanding issues concerning gold sales. He agreed that the choices facing the Executive Directors were as Mr. Ryrie had described them, but it should be understood that, if the issue was in a sense left deliberately unresolved, some understanding on arrangements for eventual decision-making would have to be reached.

Mr. Kafka and Mr. Heyden suggested that the issue should be kept open for about a week.

Mr. Sevilla thought that the issue should be settled so that each eligible developing country would have the option of receiving the benefits either in specie or in currency.

The Acting Chairman remarked that the text as it stood would not leave that choice to the member. The Fund still had to decide whether a member would have such an option.

Mr. Drabble said that he favored Mr. Ryrie's third suggestion, namely, that the report should be redrafted and reorganized, so that it would not contain a definition of "surplus value" and "profits." The interpretation of those terms would be left to the future.

Mr. Lieftinck remarked that, as he had stated on previous occasions, he did not insist on including an interpretation in the report. He did object to any decision or wording that would prejudice the way in which the Fund would deal with the first 25 million ounces of gold. He would be satisfied if it was made abundantly clear--or if it stated so on page 52 of the report--that the interpretation referred only to the postamendment period. He would be pleased if the Executive Directors could agree on the definition, but he would not insist that it be included.

The General Counsel suggested that a kind of middle position, which would be without prejudice to any Executive Director, might be that there would be a statement that a proportion of the profits and surplus value would be distributed directly to each eligible member. The phrase "profits or surplus value" would be included in the text about as it was, but in the report there would not be a precise definition of "profits or surplus value." Instead, there would be a statement to the effect that the words "profit or surplus value" would enable the Fund to make a distribution in an appropriate form. The two concepts would therefore be retained in the Articles, but they would not be defined in the report.

Mr. Caranicas asked by what majority a decision would be taken.

The General Counsel replied that, unless the text was changed, the majority would be a majority of the votes cast.

Mr. Sevilla said that he favored retaining the definitions that had been added to page 52 of the report. The new text seemed to leave open whether the benefits should be distributed in currency or in specie. Hence, defining the concepts would not prejudice anyone's position, and the text would give the Executive Directors some additional time to think about the option while observing the behavior of the markets.

Mr. Leddy thought that the General Counsel's suggestion offered the most promising solution. The problem was that, given the history of interpretation and reinterpretation of terms, any agreement now on the interpretation of "profits or surplus value" would certainly prejudice the outcome.

The Acting Chairman said that the General Counsel could try a redraft on the basis of the suggestion that he had made.

Page 53

No comment.

Page 54

Mr. Foglizzo asked whether the third line on page 54 could not be extended to read: "that is described in 8 and 13 below for use pursuant to Article V, Section 12(f)(ii) and (iii)."

The General Counsel responded that he saw no technical problem with Mr. Foglizzo's suggestion. It was in effect a qualification of the present text in that it could provide an earmarked use for the remaining assets. However, the residual assets could not then be transferred to the general resources of the Fund.

Mr. Lieftinck remarked that, if Mr. Foglizzo's suggestion involved a new restriction on how to deal with the remainder of the gold beyond the first 50 million ounces, he was inclined not to favor it.

The General Counsel thought that the problem in question actually arose in connection with the Instrument of the Trust Fund, for which there were already provisions with respect to repayments and the use of certain residual assets associated with the sale of gold. In both cases, there was provision for transferring those repayments and residual assets into the Special Disbursement Account. Those assets were not earmarked, but that could be done.

The Acting Chairman added that it might be preferable not to make an addition to the third line on page 54, and to return to the matter in connection with the Trust Fund Instrument.

Mr. Leddy agreed with the Acting Chairman. The transfer of the residual assets in question would probably not become a problem for at least a decade, and it would not be appropriate to take a decision on it now. There was ample decision-making power in the Articles for dealing with the assets.

The Executive Directors agreed to retain the third line on page 54 without amendment.

Page 55

Mr. Foglizzo thought that subparagraph (iv) did not deal with the Special Disbursement Account and should therefore be changed or transferred.

The General Counsel said that the staff would take another look at the text.

Page 56

Mr. Foglizzo noted that lines 6 and 7 contained the words "if sold at a price based on market prices." That expression was used in reference to the sale of gold to members, not sales in the market. Hence, he wondered whether the report was suggesting that gold sold for the purpose of Article V, Section 12(f)(ii) was also to be sold to members. It might be difficult to deal with the proportions mentioned in the Articles if one part of the gold was sold at the market price and another part at the price on the basis of an auction procedure.

The General Counsel replied that there was no implication of sales to members with respect to the balance of the gold. The matter that Mr. Foglizzo had described had been one of the hardest concepts of the amendment to draft. If the situation arose, it would have to be the subject of an appropriate decision or rule. There seemed to be no way to provide fully for the consequences that Mr. Foglizzo had mentioned.

Pages 57 and 58

No comment.

Pages 59 and 60

Mr. Foglizzo noted that paragraph 12 contained a reference to "the Fund's liabilities." It was his understanding that the liabilities resulting from contributions made under Article V, Section 2(b) would not be liabilities of the Fund. Also paragraph 12(a) referred to "any gold remaining of the Fund's holdings on August 31, 1975." Would there be a rule to determine whether gold sold by the Fund was old gold or new gold?

The General Counsel replied that the Fund would have to adopt bookkeeping devices for segregating the two types of gold because they would be subject to two different sets of provisions. If there was new gold, it would have to be identified in some way.

Mr. Foglizzo noted that paragraph 12(b) stated that "the remaining gold holdings...would be distributed to members whose currencies were held by the Fund in the General Resources Account and in the Investment Account... ." The assets of the Investment Account would take the form of currencies and of securities. He wondered whether all of the assets including securities were taken into account in the discussion in paragraph 12(b).

The General Counsel said that, in a distribution, it would not be possible or proper to distribute the obligations or instruments of members. They would instead have to be realized, so that, for the purposes of Schedule K, only currencies would be distributed.

Mr. Foglizzo suggested that the provisions on the liquidation of the Investment Account should make it clear that securities were to be realized prior to the distribution.

The Acting Chairman said that the staff would consider where it would be best to make the kind of reference that Mr. Foglizzo had suggested.

Mr. Laske noted that paragraph 12 began by stating that "gold held by the Fund at the time of liquidation would continue to be used as an asset of the Fund for meeting the Fund's liabilities at a value based on prices in the market." His authorities understood from that sentence that no implication could be drawn to the effect that, at any time before liquidation, the Fund could base the valuation of its gold holdings on prices in the market.

The General Counsel said that the understanding that Mr. Laske had expressed was correct.

Mr. Leddy recalled that, on a previous occasion, Mr. Cross had asked why the Fund, in discharging its liabilities upon liquidation, should give preference in the distribution to gold. He had also inquired whether the Fund could either give members an option to receive the distribution in currency rather than in gold, or distribute its assets--including currencies and gold--in the proportion in which it held them. He continued to believe that it would be desirable to give members the option not to receive gold.

The General Counsel replied that acceptance of Mr. Leddy's suggestion for giving a choice between gold and currency--a choice that, incidentally, might be unfavorable to some parties compared with others--would mean rewriting the liquidation provisions. He had taken another look at the question, and his study had confirmed his original impression that the liquidation provisions were not meant to give choices of the kind that Mr. Leddy had proposed. He wondered whether, at the present stage, the Executive Directors would wish the staff to undertake a new study of the liquidation provisions. If necessary, of course, the staff would undertake such a study, but it could not be done quickly.

The present provisions on liquidation were a delicate and integrated mechanism that could not be tampered with simply by adding or deleting an occasional provision, the General Counsel explained. For example, if the choice was given between currency and gold, the distribution of the balance of currency holdings of the Fund would be upset.

Mr. Leddy thought that it would probably not be possible to settle the issue at the present meeting. His chair had raised the matter earlier. The problem arose in the provisions, not in the report, and it might be

necessary to change the provisions, although it might not be necessary to give members the option that he had described. Instead, the provisions could stipulate that the Fund would distribute its assets in proportion to its holdings.

Mr. de Groote, recalling the General Counsel's response to Mr. Laske, wondered whether the General Counsel meant that the market price could never be used in valuing the Fund's gold before liquidation. There would of course be no official gold price under the amended Articles, and, therefore, he wondered which price would be used for valuation purposes if the market price was not employed.

The General Counsel said that the Fund would not be prevented from using the market price in any circumstances. For example, if new gold entered the Fund, the price of that gold would have to be taken account of, whatever the form of bookkeeping.

Mr. Laske said that his authorities wished to establish the point that, after the amendment, there would be no re-evaluation at the market price of gold that was held presently by the Fund at the official price.

The Acting Chairman thought that there was nothing in the amendment or in the report that constituted a requirement as to how the Fund, acting in a professional manner, was to value its old gold on its books. New gold was a different matter. Some account of the market price would have to be taken if it was used for new gold.

The General Counsel added that the only applicable rule in the Articles was that the Fund had to keep its books in SDRs. The rule did not deal with the pricing mechanism. That would certainly be one of the questions that would have to be faced fairly quickly in connection with the Rules and Regulations. Alternatively, a decision could be taken without incorporating it in the Rules and Regulations.

Pages 61 - 63(b)

No comment.

Page 64

Mr. Foglizzo thought that the immunities and privileges should be extended to the representative of a member that was being required to withdraw from the Fund.

The General Counsel replied that the words "the general tendency has been to cover most or all of the persons involved in the substantial business of an international organization" met Mr. Foglizzo's point.

Pages 65 - 69

No comment.

Page 70

The General Counsel said that the words "including the proceeds of matured or liquidated investments" in paragraph 14(c) were unnecessary.

Pages 71 - 79

No comment.

Page 80

The General Counsel explained that the bracketed sentence might have to be changed depending on the discussion, which was to take place soon, on Article XII, Section 3(c).

Page 81

No comment.

Page 82

Mr. Cross noted that the final sentence in paragraph 2 explained that Executive Directors and their Alternates would be entitled to attend meetings of the Council. He had never been aware of any agreement that Alternates as well as Executive Directors would be entitled to attend.

The General Counsel recalled that, at an earlier session on the report, speakers had asked that the amendment should make it clear that the Executive Directors would be entitled to attend. At the same discussion, it had also been suggested that Alternates should be entitled to attend.

Mr. Cross said that his support for the words "and their Alternates" had been given on the assumption that the Alternates were to be entitled to attend only when their Executive Directors were absent. He had not agreed that the structure of the Interim Committee should be broadened by adding Alternates.

Mr. de Groote said that he, too, understood that the Alternate would attend only when his Executive Director was absent. Hence, the sentence in question should begin "Executive Directors or their Alternates... ."

The Acting Chairman commented that a corresponding change would have to be made in Schedule D.

Mr. Deane wondered whether, when an Executive Director was designated an associate or a member, his Alternate could not act as the Executive Director.

The Acting Chairman replied that when the Executive Director was sitting in the meeting in some other capacity, he was not then functioning as the Executive Director.

Mr. Deane thought that it might be useful to entitle both Executive Directors and their Alternates to attend meetings of the Council. As it was, most Alternates already attended as associates.

Mr. Cross remarked that, in the U.S. delegation, it was true that the Alternate Executive Director did attend as an associate, but under the present language there would be pressure to add one person in addition to the Alternate Executive Director to each constituency. Hence, the effect would be to broaden the whole structure of the Council.

The Executive Directors agreed to reword the final sentence of paragraph 2 to make it clear that Executive Directors, or if they were not present in that capacity, their Alternates, would be entitled to attend meetings of the Council, except when the Council decided to hold a restricted session.

Pages 83 - 86

No comment.

Page 87

The Executive Directors accepted Mr. Foglizzo's suggestion for replacing the word "improvements" in the first line by the word "changes."

Mr. Kafka recalled that on previous occasions he had expressed the opinion that there was an anomaly in the provisions in that they would permit transactions and operations between other holders and participants that would not be allowed between participants and the General Resources Account. That anomaly should be corrected by permitting the General Resources Account to enter into the same kinds of transactions and operations with participants that other holders could enter into with participants.

Mr. Sevilla said that he supported Mr. Kafka.

The General Counsel, responding to a question by Mr. Cross, explained that, under Article XIX, Section 2(c), the Fund, by a 70 per cent majority of the total voting power, could permit operations in SDRs between

participants that were not provided for under other provisions. Examples that had been given in the past were loans, pledges, and grants. Mr. Kafka apparently was suggesting that the operations should be possible between a participant and the Fund on the ground that anything that could be done between participants should be possible between the Fund and the participant.

Mr. Cross said that Mr. Kafka's change was unacceptable. Although at some time in the future it might well be reasonable to decide that participants should be permitted to engage in certain operations, it would probably be undesirable to give the Fund the same freedom. The Fund should not be able to accept, or make grants of, SDRs.

Mr. Kafka responded that Mr. Cross' view was understandable, but he had meant to raise the issue in the context of Article XVII, Section 3, under which the Fund, by only a majority of the votes cast, could prescribe operations and transactions that could be carried out between prescribed holders. The Articles were more liberal with respect to transactions between other holders than they were for transactions between the Fund, on the one hand, and participants and prescribed holders on the other. For example, under Mr. Cross' approach, neither the Fund nor the Trust Fund would be permitted to accept a grant of SDRs, but the BIS would be able to accept such a grant.

The Acting Chairman commented that an 85 per cent majority would be required for the basic prescription of an other holder under Article XVII, Section 3(i). Although Sections 3(ii) and (iii) did not specifically require the same majority, all the decisions under those provisions would in effect normally be taken by the 85 per cent majority.

Mr. Kafka remarked that the Fund had prescribed the BIS as an other holder, and he assumed that that prescription remained in effect. In the future, the Fund could permit the BIS to receive grants from participants on the basis of a mere majority of the voting power, but the Trust Fund would not be able to receive grants of SDRs from participants.

Mr. Cross recalled that the adoption of a 70 per cent majority under Article XIX, Section 2(c) had been a last-minute change which he had offered on the assumption that the decision to establish an other holder would specify what the other holder could do. If that assumption was incorrect, some modification of the provisions should be considered. When taking a decision establishing an other holder, the Fund could state the rules under which the other holder would be eligible to use SDRs. Under that approach, the kind of situation to which Mr. Kafka had referred would not arise. An arrangement whereby an other holder could be permitted to, say, receive grants, after the decision prescribing it as an other holder had been taken, would in effect change the original prescription.

Mr. Drabble commented that, in principle, he warmly supported Mr. Kafka's proposal. But it was still not clear under which provision the proposed change would be made.

Mr. Kafka replied that the change could come either under Article XVII or under Article XIX, Section 2(c). The present provisions were confusing, since they provided for a 70 per cent majority for prescription of operations between participants, and a simple majority of the votes cast for prescription of the same operations between the Fund or participants and prescribed holders. Even if the majorities were re-established at 85 per cent, it would still be true that the Fund could prescribe certain operations between participants and, for example, the BIS, which it could not prescribe between participants and the General Resources Account. That situation seemed illogical.

The General Counsel, responding to Mr. Cross, explained that there had been a change in the majority required for the prescription of terms and conditions for other holders. On page 87 of the report it was explained that a change had been made from the present Articles in which not only the prescription of the other holder, but also the terms and conditions for its dealings in special drawing rights, required an 85 per cent vote.

Responding to Mr. Kafka, the General Counsel said that it did matter where the provision that Mr. Kafka was proposing was inserted in the Articles. The placement should be determined by precisely what was being suggested. If Mr. Kafka was suggesting transactions and operations in SDRs between other holders and the Fund, then the insertion would be in Article XVII. If, however, Mr. Kafka was suggesting that there would be transactions and operations between a participant and the Fund, the insertion would be in Article XIX. He understood the argument to be that the undefined operations were permitted between participants. Work had been done elsewhere in the Articles on the proposition that what was possible between participants should be possible between a participant and the Fund. Therefore, the insertion should be made in Article XIX, Section 2(c). With that change, there would be the possibility of loans, grants, pledges and other transactions between the Fund and a participant.

Mr. de Groote asked whether the transactions could be permitted without modifying the amendment.

The Acting Chairman said that it should be clearly understood that the operations that Mr. Kafka had proposed were not permissible, by any majority, under the amendment as written.

The General Counsel added that the words "or with the Fund" would have to be inserted at the end of the third line of Article XIX, Section 2(c).

Mr. Sevilla commented that, in supporting Mr. Kafka, he had been particularly concerned that the activities of the Fund would be seriously curtailed if the possibility of loans in SDRs was precluded. The possibility of grants was not as realistic.

Mr. de Groote said that he favored inserting the words that the General Counsel had mentioned. They would permit a further strengthening of the SDR by giving it another role and function in circumstances that could not be precisely foreseen at the moment.

Mr. Laske said that he doubted whether the possibilities that had been discussed should be extended to the Special Drawing Account. The General Counsel's suggestion for adding words to Article XIX, Section 2(c) was not acceptable, and the text should be left as it was.

Mr. Cross stated that, at the present stage of the discussions, he could not agree to what in effect would be an opening up of a major possibility for the use of the Fund's assets, the ramifications of which could not be known.

Mr. Kafka commented that, if his proposal was not accepted, the provisions should be changed so that it would not be possible for participants to engage in certain kinds of operations with other holders. The Fund should not be in an inferior position vis-à-vis other holders.

Mr. de Groote proposed that Article XIX, Section 2(c) could be changed to read: "The Fund, by a 70 per cent majority of the total voting power, may prescribe operations in which a participant is authorized to engage, in agreement with another member and by an 85 per cent majority, in operations in which participants are authorized to engage in agreement with the Fund." If Mr. Cross believed that it was a fundamental point, a prescription of operations between participants should be made by an 85 per cent majority.

Mr. Sevilla said that the issue that Mr. Kafka had raised was quite an important one. If the Executive Directors were not yet prepared to reach a compromise, the staff should study the matter in detail so that, at a later stage--even, perhaps, after the amendment--agreement might be reached.

The Acting Chairman responded that if there was any kind of extensive staff study, the issue under discussion would have to be reserved for the next amendment.

Mr. Cross suggested that something like "provided, however, that other holders could not do anything which the Fund cannot do" could be added to Article XVII.

The General Counsel thought that the fact that one could not get an additional power was a dubious argument for cutting down another extension of the Fund's authority, which had been accepted after difficult negotiations in the first amendment and the second one. In addition, he did not know what would be meant by the formulation that Mr. Cross had suggested.

Mr. Ryrie said that he opposed Mr. Kafka's most recent suggestion. Lack of agreement on extending the role of the SDR was not a good reason for cutting back its functions. He was fundamentally sympathetic with Mr. Kafka and he hoped that the change could be made in the way that the General Counsel had suggested, namely, by including the words "or with the Fund" in the third line of Article XIX, Section 2(c). The issue should be settled soon. But because it was a new one for most Executive Directors, they should be given two days to consider it and to see whether some formulation acceptable to Mr. Cross--possibly along the line of Mr. de Groote's suggestion--could be found. He agreed with Mr. Kafka that it was an anomaly that the Fund would not be able to do what its members could do.

Mr. Lieftinck commented that he agreed in principle with those who held that the Fund should be able to do what participants would be able to do among themselves. He wondered whether the words "or with the Fund," suggested by the General Counsel, could not be added somewhat earlier in the third line of Article XIX, Section 2(c), so that it would read: "is authorized to engage in agreement with the Fund or another participant... ." It seemed best to mention the Fund first and then participants.

Mr. Foglizzo commented that, although Mr. Kafka had made an important point, all the operations and transactions of the Fund were precisely enumerated in the Articles. It was his impression that the resources of the Fund were to be of a revolving character, which would prevent the institution from making grants in SDRs; since the Fund would not be allowed to make grants in SDRs, it would not be useful to give it the power to receive grants in SDRs. There was an important difference between that the Fund could do under its charter and what participants could do what the approval of the Fund. Hence, he preferred to leave the Articles as they were.

Mr. Kawaguchi remarked that, although he sympathized with Mr. Kafka's view, he thought it best at the present stage to keep the provisions as they were.

Mr. Monday said that he was not convinced by Mr. Cross' arguments; he would therefore support Mr. Kafka's position.

Mr. Deane commented that he was certainly interested in Mr. Kafka's proposal, and he was sympathetic with Mr. Ryrie's view that it might be best to give Executive Directors an additional two days to consider the issue.

Mr. Heyden said that he supported Mr. Kafka's proposal.

Mr. de Groote remarked that he failed to see how the risk of self-amendment, which Mr. Foglizzo had mentioned, would arise any more in the situation under discussion than in any other that might arise under the Articles. The situation in question was not essentially different from the possibility, under Article IV, of deciding, with the proper majority, that the Fund could enter into certain transactions with participants.

Mr. Foglizzo responded that, in his view, there was a significant difference. Under Article IV, it was clearly known what the Fund could and what it could not do. It was not clear precisely what the Fund could and could not do under Article XIX.

Mr. Nana-Sinkam agreed with Mr. Kafka that an anomaly existed and that a way of correcting it should be found. It seemed odd for other holders to have more power than the Fund itself with respect to operations and transactions in SDRs. The kind of suggestion that Mr. Lieftinck had put forward seemed preferable. It would not be appropriate to take a step backward by lessening the possible usefulness of the SDR.

Mr. Laske said that he wondered whether a change in the direction that Mr. Kafka had proposed would be consistent with the general purposes of the Fund stated in Article I. Before a decision could be taken on that proposal, it would have to be considered much more closely. In particular, it would be necessary to see what kinds of operations would be involved; there would certainly be operations between the Fund and participants to which he could not agree. He greatly preferred not to reopen the issue; it was a difficult and time-consuming one.

Mr. Foglizzo asked whether the Trust Fund could be prescribed as an other holder under the present amendment. If so, Mr. Kafka's concern would probably be met.

The General Counsel said that the Trust Fund could not be so prescribed if it was to maintain its present form. There should be someone on whom obligations could be laid by way of terms and conditions to ensure the effective operation of SDRs. He could see considerable difficulty in prescribing the Trust Fund as an other holder if the Trust Fund did not have some legal personality and, therefore, some capacity for undertaking to perform the obligations.

Mr. Sein Maung said that he had no strong views on the matter.

The Acting Chairman commented that opinion among Executive Directors seemed divided. There would be no point in asking the staff to produce a further paper; it was simply impossible to be certain what the kind of power that Mr. Kafka had proposed would mean in practice. Hence, the Executive Directors should give the matter some further thought and try to reach a conclusion the following day.

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No comment.

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Mr. Cross, referring to subparagraph (vii), noted that it had not been decided what the proper use of the SDR would be, and, until that was done, mention of examples of operations within the scope of the relevant provision should not be made. Hence, the sentence "examples of operations within the scope of this provision are loans, pledges, or grants of special drawing rights," should be eliminated.

The Executive Directors accepted Mr. Cross' proposal.

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No comment.

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Mr. Foglizzo said that, under the present Article XXXII(b), there was a relatively broad scheme whereby a member receiving a currency in exchange for SDRs had the opportunity to exchange the currency for a currency convertible in fact. That scheme had been deleted under the amendment, which provided only that the member receiving SDRs must provide the purchasing member with freely usable currency. It would perhaps be useful to have the same kind of provision--concerning collaboration by members to make exchanges involving freely usable currencies--in the Special Drawing Rights Department that was to be applied to the General Resources Account.

The General Counsel remarked that, at the moment, there were arrangements by which particular balances of a currency could be deemed to be currency convertible in fact because they could be converted into one of the three currencies convertible in fact as currencies and not as particular balances. In addition, among the three currencies convertible in fact there was a structure of arrangements that ensured interconvertibility among them. The necessity for that structure had been excised from the amendment. It had been his understanding that there had been a

determination to simplify the structure of convertibility in fact that had been built up for the purpose of the SDR. The principle that Mr. Foglizzo had suggested was an interesting one. Certainly, under the present draft amendment when a freely usable currency was provided for SDRs, that would be the end of official responsibility. There would be no specific official responsibility for seeing that there could be exchanges or for undertaking obligations of collaboration to see that there could be exchanges.

Mr. Ryrie said that he was not certain whether Mr. Foglizzo's suggestion would in fact alter the practice that had prevailed thus far. In connection with the provisions on freely usable currencies in relation to drawings on the General Resources Account, he had been concerned that privileges and obligations that had existed in practice should not be whittled away as a result of the amendment. While he sympathized with Mr. Foglizzo's approach, he would feel uneasy about expanding the rights of users of SDRs at the present stage. It would be useful to understand clearly whether Mr. Foglizzo's suggestion was in fact to expand the rights of users of SDRs.

The General Counsel said that there would be a diminution of the privileges of members in connection with SDRs. Mr. Foglizzo's suggestion would be confined to the currencies that were now convertible in fact. The suggestion would not be applied to the secondary batch of currencies because there was no comparable concept in the amended Articles. At the moment there were three currencies convertible in fact. A recipient of one of those currencies was entitled to go from one currency to another that it wished to have, and there were obligations placed on members to ensure the exercise of that entitlement. That structure of obligations was not present in the amendment. For example, at the moment, if a member had, say, sterling and wanted to go into dollars, it could do so because those were currencies convertible in fact. Under the amendment, if the member received sterling and wished to have dollars, there would be no obligation to ensure that the member could make that movement officially.

Mr. Cross considered that the text should be left as it was.

Mr. Foglizzo said that his wish was not to introduce into the Articles explicit obligations on the part of the member using freely usable currency, but rather to have a general clause to the effect that members would undertake to collaborate with the Fund and with other members to ensure the smooth functioning of the operation of currency exchange. He did not understand why there was such a provision for the use of the general resources but not for SDRs.

The General Counsel responded that, to the extent that there was an anomaly, it was because the two problems were approached from different directions. In connection with the SDR, the Fund had found that the

present system was cumbersome and, to a large extent, had not been operated for some time. Therefore, the reform effort had been directed toward simplifying the operation in connection with SDRs. The opposite situation existed with respect to the General Account. Not all currencies were usable, and the reform effort had been directed toward creating a structure by which the resources of the General Account could be made usable. There was something of a curiosity in the contrast, and Mr. Foglizzo had made a good suggestion. During a recent discussion, there had been a suggestion for adding in the report a statement that members would be expected to do their best to facilitate the movement from one currency to another. That suggestion had been accepted, and the staff would attempt a general sentence along those lines. A similar exhortation about collaboration would be appropriate in the text under discussion if it was carefully drafted to state that, in the normal course of events, a member would be expected--but not obliged--to help other members. Of course, no one should be opposed to the concept of collaboration.

The Acting Chairman thought that the kind of exhortation that the General Counsel had described would probably appear in subparagraph (xi) on page 91, concerning the discussion on draft Article XIX, Section 4.

Mr. Sevilla agreed with Mr. Cross. There should not be an additional obligation on a member that supplied its own currency in exchange for SDRs.

The Acting Chairman noted that, under draft Article XIX, Section 4, it was not a matter of a member supplying its own currency against SDRs, but rather of providing a freely usable currency on demand. The question therefore arose whether there should be some sort of collaboration in the exchange involving a freely usable currency. Changing the draft Article might present difficulties, but there could be a carefully drafted sentence in the commentary of the report on Article XIX, Section 4. The sentence would express the "expectation"--or whatever word was considered appropriate--that members would behave sensibly and would in practice collaborate to try to be of assistance in making exchanges among themselves.

The General Counsel noted that Article XXII stated that "in addition to the obligations assumed with respect to special drawing rights under other articles of this Agreement, each participant undertakes to collaborate with the Fund and with other participants in order to facilitate the effective functioning of the Special Drawing Rights Department... ." That general obligation of collaboration could be made somewhat more specific in connection with Mr. Foglizzo's point.

Mr. Cross commented that such a sentence would be acceptable if it was hortatory; he could not accept it if it constituted an obligation. Article XXII should be referred to in subparagraph (xi) on page 91 of the report.

The Executive Directors agreed to continue their discussion on the draft report on March 17.

APPROVED BY THE EXECUTIVE BOARD:
Meeting 76/100, July 9, 1976

H. JOHANNES WITTEVEEN
Chairman

ROGER V. ANDERSON
Acting Secretary