

September 24, 1974

To: Members of the Executive Board
From: The Secretary
Subject: A General View of Proposed Amendments to the Articles

The attached background paper, presenting a general view of the proposed amendments to the Articles of Agreement, has been prepared by the staff in response to requests by Executive Directors.

INTERNATIONAL MONETARY FUND

A General View of Proposed Amendments to the Articles

Prepared by the Legal Department
(In consultation with the Research and Treasurer's
Departments)

Approved by Joseph Gold

September 20, 1974

General Ideas

1. Various requests have been made for a statement of the general approach to, or the broad principles of, or the pattern implicit in the draft amendments of the Articles presented in the DAA series of memoranda.* So far, in preparing memoranda, the staff has been guided by the specific topics set forth in paragraph 41 of the Outline. The paragraph reads as follows:

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" The Executive Board is asked to prepare draft amendments of the Articles of Agreement, as needed to give effect to this Part of the Outline or as otherwise desired, for further examination by the Interim Committee, and for possible recommendation at an appropriate time to the Board of Governors. In particular draft amendments should be prepared on the following proposals:

- (a) to establish the Council referred to in paragraph 31;
- (b) to enable the Fund to legalize the position of countries with floating rates during the interim period;
- (c) to give permanent force to the voluntary pledge described in paragraph 36 concerning trade or other current account measures for balance of payments purposes;
- (d) to authorize the Fund to establish, as and when agreed, a Substitution Account;
- (e) to amend the present provisions concerning gold;

* The memoranda presented to the Executive Directors to date are listed in the attachment to this memorandum. The Executive Directors have held preliminary discussions of DAA/74/1 to 7 and 10 to 12. A second set of memoranda, based on these discussions, is in preparation.

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(f) to authorize the Fund to implement a link between development assistance and SDR allocation; and

(g) to introduce improvements in the General Account and in the characteristics of and rules governing the use of the SDR, as well as any other consequential amendments.

It is envisaged that such draft amendments, if agreed, would be presented for the approval of the Board of Governors at latest by the date fixed for completion of the current general review of Fund quotas, i.e., by February 1975."

With respect to draft amendments on special drawing rights, the staff has taken paragraph 27 into account:

" In the light of the agreed objective that the SDR should become the principal reserve asset, consideration will be given to revising the rules governing its use with a view to relaxing existing constraints. The suggestions for relaxation that have been made include:

(a) abolition of the limits on acceptance obligations and of the reconstitution obligation;

(b) some relaxation of the requirement of need for the use of SDRs;

(c) authority for willing partners to enter into transactions in SDRs without designation by the Fund;

(d) authorization for the General Account to accept or use SDRs in all transactions and operations in which it can accept or use gold or currencies;

(e) authorization for the Fund to designate any official international or regional institution of a financial character as a holder of SDRs;

(f) authorization for the Fund to permit additional types of transactions and operations in SDRs; and

(g) authorization for the Fund to modify the provisions on opting out of decisions to allocate SDRs.

Consideration will be given to other aspects of the SDR, including its name, with a view to promoting public understanding."

2. The Committee of Twenty (C-XX) did not regard the topics appearing in the two paragraphs quoted above as circumscribing the draft amendments that the Executive Directors might consider. In paragraph 41, the

Executive Directors are asked to prepare draft amendments for the purpose of giving effect to Part II of the Outline "or as otherwise desired". This phrase was intended to give scope to the Executive Directors to include amendments dictated more by their experience than by the detailed content of the Outline, although this was not the exclusive function of the phrase. Moreover, the list of topics on which draft amendments should be considered is preceded by the words "in particular". Finally, category (g) in paragraph 41 includes the words "as well as any other consequential amendments". A number of suggestions for amendment have been mentioned by individual executive directors in the course of the preliminary discussions of the DAA memoranda, but to date no decision has been taken to consider draft amendments on any one of these suggestions.

334 3. The effort to reach agreement on a comprehensive and systematic reform did not succeed. As a result, the Committee chose to consider the possibility of a series of amendments that would recognize a diversity of interests. The Committee was not guided by any conscious pattern in selecting these topics, and it does not seem that any masterplan emerged in the absence of a deliberate design. If no single unifying theme runs through the topics in paragraph 41, it is nevertheless possible to discern certain general ideas in the Outline. The third sentence of paragraph 32 is crucial: "It is proposed that a number of steps should be taken immediately, to begin an evolutionary process of reform, and to help meet the current problems facing both developed and developing countries." The most general idea, therefore, that animated the C-XX in relation to amendment can be taken to be the desirability of adopting provisions that would be useful or necessary in order to meet immediate problems and the problems of an interim period pending reform. Provisions to deal with the problems of an interim period might help to bring about a more comprehensive reform, and might well be permanent features of that reform.

4. Another prominent idea was the desirability of strengthening the structure of the Fund and its ability to function more effectively as a financial and supervisory organization.

5. The Outline takes a view on the future role of various reserve assets. Paragraph 24 states that: "The SDR will become the principal reserve asset and the role of gold and of reserve currencies will be reduced. The SDR will also be the numeraire in terms of which par values will be expressed." Paragraph 27, which lists certain improvements in the characteristics and use of the SDR, begins with a reference to the "agreed objective that the SDR should become the principal reserve asset". The references to amendment in connection with the Substitution Account, gold, and special drawing rights in paragraph 41 must be understood to reflect the views of the Outline on the functions of various reserve assets in future arrangements.

6. Yet another general idea that was mentioned in the course of the deliberations of the C-XX and its Deputies and was taken into account in the drafting of the Outline is the desirability of more realistic provisions that would permit a return to as much legality as possible. Some

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officials have argued that the failure to restore a broader legality might undermine the capacity of the Fund to contribute to an orderly and legal system in the future.

7. A further consideration that was made explicit in the deliberations of the C-XX was the desire to facilitate the transactions and operations of the Fund, to provide a sound legal basis for them, and to eliminate certain outstanding and unresolved financial problems. This consideration was not confined to the simple concept of "housecleaning", but was associated once again with the idea of improved and revitalized legal provisions.

8. Most of the topics set forth in paragraphs 41 and 27 of the Outline can be shown to be related to the general ideas mentioned in paragraphs 3 to 7 above. It is not necessary to demonstrate the influence of these general ideas on the choice of each topic, but a brief comment on the topics of paragraph 41 in turn may be useful. These comments must be prefaced with the remark that the paragraphs of Part II vary in tone, and the note of confidence that agreement can be reached is stronger in relation to some topics than to others.

(a) The creation of a Council composed of governors of the Fund, ministers, or others of comparable rank would strengthen the Fund, by providing it with an organ composed of people with political responsibilities. An organ of this kind would be able to take decisions in the exercise of powers as well as give advice to other organs of the Fund, so that its functions would go beyond those of the Interim Committee. The Council would contribute to a strengthening of the structure and functioning of the Fund as a permanent organization.

(b) The reference in paragraph 41 to amendments on floating is an outstanding example of the desire to restore legality. Amendments on floating could be designed to meet immediate and transitional problems and to contribute to an evolutionary process of reform.

(c) Permanent legal force for the voluntary pledge described in paragraph 36 of the Outline is designed to bring about a single comprehensive view by an international authority on the proposed use of restrictions for reasons related to the balance of payments, without derogating from the jurisdiction of the CONTRACTING PARTIES.

(d) and (e) If arrangements with respect to gold or a Substitution Account could be agreed, they would constitute important aspects of a reformed system. Neither topic has been the subject of memoranda issued in the DAA series so far, but on a number of occasions executive directors have pointed out in discussions of the memoranda already issued that various amendments as drafted would be incomplete unless the present provisions with respect to gold were modified. The treatment of gold under the Articles is an outstanding issue even in connection with some of the other amendments contemplated by paragraph 41 and in connection with the evolutionary process as well.

(f) The Committee emphasized in paragraph 39 of the Outline that it was not unanimous on the question of establishing a link between development assistance and the allocation of special drawing rights. It was agreed, therefore, that the Interim Committee should reconsider "simultaneously with the preparation by the Executive Board of draft amendments of the Articles of Agreement, which it is envisaged would be presented for the approval of the Board of Governors by February 1975, the possibility and modalities of establishing such a link". Inclusion of the topic of the link is based on the idea, expressed in various contexts in the Outline, that both the immediate steps and reform should pay attention to the special interests of developing members.

(g) The final category in paragraph 41 refers to improvements in the General Account and in the characteristics and rules governing the use of special drawing rights, and to consequential amendments. In connection with the General Account, draft amendments have been presented in the DAA series on the subjects of repurchase; payments in respect of changes in quota, charges, interest, remuneration, and the distribution of net income; the conditions governing use of the Fund's resources and associated amendments; and the investment of a certain portion of the Fund's assets. In connection with special drawing rights, draft amendments have been presented in connection with the use of this asset in various payments to and by the Fund; consensual transactions between participants; relaxation of the expectation of need; the prescription of new operations and transactions involving special drawing rights; the elimination of reconstitution; modification of the limit on the acceptance obligation; opting out; simplification of the concept of currency convertible in fact; extension of the possible classes of other holders of special drawing rights; and an extension of the operations and transactions involving other holders.

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8. There are numerous reasons why the draft amendments on improvements in the General Account have been selected. For example, the provisions on repurchase are detailed, rigid, and cumbersome for both members and the Fund. The provisions must be applied even though the greater proportion of repurchases do not accrue under them. Some of the repurchase obligations that do accrue must be discharged in gold, and there is no authority under the Articles to accept discharge in some other asset. A number of obligations that have accrued remain unsettled. Various other payments to and by the Fund, including a proportion of the subscription a member must pay on an increase in its quota, must be made in gold, and the Fund has no authority to accept payment in some other form. The provisions on the use of the Fund's resources have become outmoded and create problems for the Fund and members. The absence of an express power of investment to raise income can have an inhibiting effect on the Fund's activities in periods of deficit and can lessen confidence in the Fund as a financial institution.

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9. Similarly, there are numerous explanations of the choice of draft amendments in connection with special drawing rights. For example, it should be possible to use special drawing rights to make payments that must now be made in gold. There are a number of restrictions on the capacity of participants in the Special Drawing Account to agree between themselves on transactions in special drawing rights of the kind now permitted by the Articles. These restrictions should be abrogated or reduced. Furthermore, the types of operations and transactions that are now possible under the Articles are severely limited, and do not include, for example, the direct settlement of obligations. There is a widespread view that the obligation of reconstitution is inconsistent with the character of special drawing rights as reserve assets. There are various other impediments to the use of special drawing rights that should be removed or modified in order to enhance their status as reserve assets. Amendments of the kind that have been referred to in this and in the preceding paragraph would be of immediate benefit to members and the Fund but might be just as beneficial as components of a future system.

10. From time to time during the discussions by the Executive Directors of the memoranda in the DAA series, it has been asked what are the minimum amendments essential for the immediate period ahead. It is not possible to answer this question with assurance because views may differ on what constitutes the minimum. The answer may depend on the ideas that are considered paramount among those that influenced the choice of topics in paragraph 41 of the Outline. For example, if legalization were singled out as a general idea that should determine the selection of amendments, a case would be made for amendments in relation to floating and undischarged obligations to pay gold to the Fund, to cite two obvious examples. Again, if the idea of strengthening the Fund were emphasized, a case would be made for a power of investment to raise income for the Fund. It might have seemed that the necessity to amend in order to provide solutions for the problems created by the reluctance or inability of members to pay gold to the Fund in connection with quota increases was uncontroversial. The subjective nature of the choice of so-called minimum amendments is illustrated by the fact that amendment even for this purpose has been questioned on the ground that solutions might be found comparable to the techniques of mitigation that have been adopted in the past even though most of them were criticized by some section of opinion. The determination of an agreed list of minimum amendments seems unrewarding, and in any event inconsistent with the broader vision of the Outline and the various indications that the Executive Directors might consider amendments even beyond those in paragraph 41 of the Outline.

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Techniques of Amendment

The opportunity to amend, it has been noted, will not occur at frequent intervals, even though there would have to be further amendments in order to establish a reformed system. It is useful, therefore, to mention a technical aspect of amendment that may enable the Fund to

propose amendments on some topic even though it proves to be impossible to resolve every issue connected with it before the time arrives to make proposals to the Board of Governors. If substantial agreement could be reached on most but not all aspects of a particular topic, amendments could be adopted to provide authority for the Fund, with appropriate safeguards, to take action after full agreement was reached. Enabling provisions are not the only techniques for giving the Fund the ability to deal in a flexible manner with future problems or requirements. Powers to vary provisions or to amend them without going through the procedure of Article XVII are other familiar techniques that are employed in the drafting of multilateral treaties.*

Majorities under Amended Provisions

338 An issue of policy that has been discussed in connection with the draft amendments is the desirability of special majorities for the exercise of certain powers under amended provisions. Among the relevant considerations are, on the one hand, the necessity to ensure the prompt and effective exercise of powers and, on the other, the need for special safeguards in certain circumstances. The question of special majorities cannot be settled in the abstract. The issue should be examined in relation to each power for which a special majority is suggested. The argument has been made that special majorities are necessary in defense of the practice of ensuring that there is a broad measure of support for proposed decisions before they are taken. The argument is dubious because under the present Articles special majorities are exceptions to the general principle that decisions are taken by a majority of the votes cast. The standard majority is all that is required for decisions on such important issues as policies on the use of the Fund's resources, but neither these nor other important decisions are taken in the absence of widespread support, arrived at sometimes only after lengthy debates. A memorandum will be issued in the DAA series on special majorities and comparable safeguards under the present Articles.

* See Joseph Gold, "The Amendment and Variation of Their Charters by International Organizations", Revue Belge de Droit International, Volume 9, 1/1973, pp. 50-76.

Documents in DAA Series

DAA/74/1	July 9, 1974	Draft Amendments on Establishment of a Council
Supp. 1	Aug. 10/74	Draft Amendments on Establishment of a Council-- Restructured Version
Supp. 2	Aug. 7/74	Draft Amendments on Establishment of a Council-- Explanatory Notes
Supp. 3	Aug. 14/74	Draft Amendments on Establishment of a Council-- Further Explanatory Notes
DAA/74/2	July 10/74	Draft Amendment of Provisions on Repurchase
Supp. 1	Aug. 14/74	Payments of Gold to Fund Pursuant to Article V, Section 7(b) and Article III, Section 4(a)
DAA/74/3	July 16/74	Payments on Changes in Quotas, Charges, Interest, Remuneration, Distribution of Net Income
DAA/74/4	July 19/74	Draft Amendments on Use of the Fund's Resources
DAA/74/5	July 19/74	Draft Amendments on Legalization of Floating
DAA/74/6	July 30/74	Commentary on Draft Amendments in DAA/74/2, 3, and 4
DAA/74/7	July 30/74	Draft Amendment of Provisions on Reconstitution
DAA/74/8	July 31/74	Draft Amendment on Avoidance of Trade Measures for Balance of Payments Reasons
DAA/74/9	July 31/74	Draft Amendments on the "Link" and on Other Holders of Special Drawing Rights
DAA/74/10	Aug. 8/74	Draft Amendment on Investment
DAA/74/11	Aug. 16/74	Draft Amendments on Provisions of Article XXV on Operations and Transactions in Special Drawing Rights
DAA/74/12	Aug. 20/74	Draft Amendments on Special Drawing Rights: Opting Out.