

May 19, 2009
Approval: 5/27/09

INTERNATIONAL MONETARY FUND

Minutes of Executive Board Meeting 09/10-1

11:00 a.m., February 2, 2009

**1. Republic of Kosovo—Establishment of Membership Committee to Consider
Application for Admission to Membership**

Documents: EBD/09/4

Staff: Hagan, LEG

Length: 26 minutes

Executive Board Attendance

M. Portugal, Acting Chair

| Executive Directors | Alternate Executive Directors |
|---------------------|--------------------------------|
| L. Rutayisire (AF) | M. Majoro (AE) |
| | B. Lischinsky (AG), Temporary |
| | C. Legg (AU) |
| W. Kiekens (BE) | |
| | M. Maia (BR), Temporary |
| H. Ge (CC) | |
| R. Guzman (CE) | |
| | S. O'Sullivan (CO) |
| A. Fayolle (FF) | |
| K. Stein (GR) | |
| A. Kishore (IN) | |
| A. Sadun (IT) | N. Giammarioli (IT), Temporary |
| | N. Imamura (JA), Temporary |
| J. Mojarrad (MD) | |
| | S. El-Khoury (MI) |
| A. Bakker (NE) | |
| J. Henriksson (NO) | |
| A. Mozhin (RU) | |
| | S. Alnefae (SA), Temporary |
| | Adrian Chua (ST) |
| T. Moser (SZ) | |
| M. Lundsager (UA) | |
| A. Gibbs (UK) | |

B. Esdar, Acting Secretary
S. Maxwell, Assistant

Also Present

European Department: R. Hagemann, N. Koliadina. Finance Department: H. Hatanpaa. Secretary's Department: S. Creane. Senior Advisors to Executive Directors: W. Abdelati (MI), S. Antic (SZ), M. Kaplan (UA), S. Rouai (MD), W. Schilperoort (NE), R. Weber (SZ). Advisors to Executive Directors: S. Cerovic (NE), N. Choudhary (IN), C. Denk (GR), K. Fisher (UK), P. Gasiorowski (SZ), M. Jakoby (BE), G. Jung (SZ), A. Lahreche (FF), M. Leemets (NO), S. Na (AU), D. Tartari (SZ), E. Valle (CE), J. Yang (CC).

1. REPUBLIC OF KOSOVO—ESTABLISHMENT OF MEMBERSHIP COMMITTEE TO CONSIDER APPLICATION FOR ADMISSION TO MEMBERSHIP

The Acting Chair (Mr. Portugal) noted that the meeting had been called at the request of Mr. Moser to discuss the establishment of a membership committee to consider Kosovo's application for admission to Fund membership. The matter had been proposed to the Executive Board on a lapse-of-time basis in EBD/09/4.

Mr. Moser made the following statement:

My Serbian authorities have asked for this meeting for two reasons. First, they consider full transparency on how the international community deals with Kosovo through the IMF as very crucial. As a member of the IMF, Serbia has established a solid track record of transparency and published all staff reports. The authorities thus expect the IMF to adhere to the highest standard of transparency as well, particularly on such a controversial issue as Kosovo. Second, given that my Serbian authorities feel very strongly about the issue, they would like to take any opportunity to present their views to the Executive Board, and they will continue to do so throughout the entire process.

In July 2008, the Managing Director determined that, reflecting the views of members having a majority of voting power in the Fund, Kosovo had seceded from Serbia and become a new independent state. Today, as a consequence, the Board is asked whether it agrees to proceed with a formal investigation of Kosovo's application for admission to Fund membership, and whether it approves the establishment of a membership committee.

As Directors know, in October 2008, the UN General Assembly, also reflecting the views of the international community, has approved the draft resolution presented by Serbia, requesting the International Court of Justice to provide an advisory opinion on whether the unilateral declaration of independence of Kosovo is in accordance with international law. My Serbian authorities are of the view that it would be premature to proceed with Kosovo's application for admission to Fund membership while the issue is under consideration at the International Court of Justice.

We would like to flag further the following two issues. First, the final decision about membership lies with the Board of Governors,

and will require the replies of a majority of the governors exercising two thirds of the total voting power. Judging from the results of the poll that the Secretary conducted last summer as a basis for the Managing Director's view, which seemed to indicate that less than half of the members responded, it is at least questionable whether in a vote of the Board of Governors the quorum of the majority of governors will be achieved, given that some governors consider the UN the more appropriate institution to proceed on this issue first.

Second, Kosovo does not issue a currency of its own, but instead uses the euro as a legal means of payment. Would the staff explain what the legal basis for Kosovo's use of the euro is, and whether this basis differs from other cases? It would also be useful if the EU or the ECB at some point could clarify in which cases countries that aspire to EU membership can become passive members of the euro zone and in which cases they cannot. The General Counsel's comments on these issues would be welcome.

On today's decision as to whether the Fund should proceed with a formal investigation of Kosovo's application for Fund membership, my constituency is clearly divided, and I would thus like to be recorded as abstaining.

Mr. Bakker made the following statement:

On behalf of the Kosovar authorities, who have asked me to act as their means of communication in this Board, I would like to express their strong ambition to become a member of the IMF as soon as possible. There is a strong political consensus in Kosovo across a broad political spectrum behind the application for membership and for the obligations it entails. Kosovo applied for the IMF membership in June last year, and in the meantime it is my understanding that staff has finalized its report on Kosovo and the proposed membership. I believe it is time to move on for this Board to consider this application and the establishment of a membership committee is the normal procedure to do so.

Kosovo is a lower middle-income country, with a population of over 2 million. Despite some positive economic developments over the last couple of years, many challenges lie ahead. Their resources, as well as instruments are very limited, and the country is heavily dependent on foreign aid. An already fragile situation has been

aggravated by the current economic turmoil. Especially in these circumstances Kosovo needs all the help it can get from the international financial institutions.

The authorities are of the view that the IMF membership and potential financial program with the IMF would bolster stability in the short-term and lead to sustainable economic growth in the longer term. Moreover, the IMF membership is a prerequisite for membership in the World Bank, and the authorities would benefit greatly from enhanced cooperation with both institutions. Actually IMF membership is in practice a prerequisite for private capital flowing into Kosovo and so bolster stability in the short-term and sound growth in the longer run. It would help Kosovo integrate with the rest of the world and it would give increased confidence to potential private investors.

So, in sum, the Kosovar authorities remain confident that this Board will be supportive of its application. Mr. Moser raised a number of procedural questions and I would be interested to hear from staff where we stand on this.

The General Counsel (Mr. Hagan), in response to questions posed by Executive Directors, made the following statement:

There are really two sets of questions. One relates to the membership process that we have applied to date and the implications of the decision of the UN General Assembly to request the International Court of Justice to render an advisory opinion, and what implications if any that has on our process. A second question relates to complexities that might arise given that Kosovo is currently using the euro. As pointed out by Mr. Moser, that is also a question for the European Union (EU), and more specifically the European Central Bank (ECB), and I agree that it would be useful to consult with them.

Let me address both of these questions from the Fund's perspective. On the membership process, we had a Board discussion in July when the Managing Director made the determination. Let me revisit the principles that we follow. First, membership is only available to countries, and as an independent international organization, the Fund makes that determination for its own purposes. It is not bound by the approach taken by the United Nations (UN), and this is not the first time that the UN and the Fund have come out in

slightly different places on these questions. In fact, this was a matter of considerable importance in the dissolution of the former Yugoslavia back in the early 1990s. This is not the first time this sort of thing has happened.

For purposes of determining whether an entity is a country, management and the staff will look to the international community, and more specifically, to our membership. Normally, the issue is straightforward and there is a consensus. Where there is a difference in view, and we follow this not only with respect to recognition of countries, but recognition of governments within countries, we conduct a poll of our membership. In this particular case, consistent with past practice, we rely on our governance structure, which includes the weighted voting power, for the Managing Director to make a determination. Obviously, when the Managing Director makes these determinations he comes to the Executive Board, as he did in July, to get the Board's views. In this particular case, the informal poll demonstrated in excess of 60 percent in favor of recognition. In other words, these countries had recognized Kosovo themselves in their own bilateral diplomatic relations.

Following the Board meeting in July, there have been two other instances where the Board has been seized with this matter, albeit on a lapse-of-time basis. The first was when a decision had to be made as to whether or not to invite Kosovo as an observer to the 2008 Annual Meetings. In that particular case, the practice is that observer status is available for countries that are formally applying for membership. So, on that basis, a recommendation was made to the Board, and the Board agreed to recommend to the Board of Governors.

The second instance was a request for Fund technical assistance. The practice is that a country that is applying for membership would basically be able to obtain technical assistance as preparation for the membership process. That was made clear in the Board document that was presented to the Board, and the Board approved it on that basis.

Regarding the fact that the General Assembly has requested the International Court of Justice to provide an opinion, I think it is appropriate that we have some discussion of what that means. As I mentioned, it is not the first time that the Fund and the UN have taken different positions on these questions. I would note that the

International Court of Justice opinion is advisory. Even if a determination was made that the declaration of independence was illegal, it is not binding on the General Assembly, and it is certainly not binding on the Fund.

Third, and this is perhaps the most important point, the Managing Director's determination that Kosovo was a country was not based on a declaration of independence by Kosovo, but by a recognition by members that it was a state. In some respects, that question does not directly address the basis upon which we proceeded. We did not proceed on the basis of declaration of independence, but rather by a recognition by the requisite number of members.

On the question of the euro, Mr. Moser is correct that, if the membership committee is established, it will essentially consider the terms and conditions for membership in the Fund and will recommend a resolution to the Board of Governors. In that resolution, there would be references to the currency of Kosovo, which is relevant for paying the quota subscription. For Fund purposes, the fact that a country does not issue its currency but uses another member's currency does not preclude that currency from being the currency of the member. We have other members who do not issue their own currency.

The issue of the euro, however, is for the ECB, to the extent to which Kosovo would be using the euro, and if its use was not consistent or had not been agreed upon by the ECB and what problems that might create. I would recall that we had precisely this issue in the case of Montenegro, and we explained to the ECB that we were only making this determination for Fund purposes. This was not intended to be a general statement that would have precedent value in the ongoing discussions with the ECB and Montenegro. We included specific language in the resolution to that effect, and my understanding, which could be confirmed by the ECB, is that this language alleviated their concerns.

Mr. Stein, referring to the question on the euro, remarked that, while he could not provide an official assessment on behalf of the EU or the ECB at the moment, he was aware of the problems that might arise, and he had gone through those issues with Mr. Hagan in their discussion. On Montenegro, there were difficulties that arose with the ECB in part because the ECB was not fully involved in the whole process. For the Kosovo case, he intended to involve the ECB at an early stage in the process,

before the Board was provided a decision on Kosovo, in order to avoid any contentious discussion on the issue.

Ms. Lundsager thanked Mr. Hagan for his explanation and for reminding Executive Directors of the process, including reference to the case of Montenegro. Mr. Stein's comments had also been very helpful. She continued to support the formation of the membership committee, and looked forward to it concluding its work.

Mr. Mozhin remarked that, as his chair did not recognize the existence of Kosovo, he opposed the proposal to establish the membership committee. On process, it would be useful for the staff to elaborate and clarify the requirements for the voting majorities for the membership application to be approved.

Mr. Guzmán indicated that he wished to be recorded as opposing the establishment of the membership committee.

Mr. Kishore remarked that he had sympathy with what Mr. Moser had observed, and therefore wished to be recorded as abstaining.

The General Counsel (Mr. Hagan) explained that the decision by the Executive Board to recommend to the Board of Governors a resolution on membership would be based on a majority of votes cast. A decision by the Board of Governors to actually approve membership, which was to offer the terms of membership to Kosovo, was also based on a majority of votes cast. However, there was a need for a quorum, which required a majority of the governors having not less than two thirds of the total voting power at the meeting for purposes of approving the request. What such a requirement meant for a vote by mail, which was often the case, was a majority of governors having not less than two thirds of the voting power actually responding in one way or the other to the voting ballot. However, assuming that the quorum requirement had been met, then the voting power required would be a majority of votes cast.

Mr. Mozhin sought clarification as to what was needed for the quorum to be achieved—two-thirds of the voting power or two-thirds of the membership.

The General Counsel (Mr. Hagan) responded that a majority of the governors having not less than two thirds of the total voting power was needed for a quorum.

Mr. Moser asked whether there was a connection between the quorum needed in the Board of Governors and the determination that had been made by the Managing Director last summer. Essentially, if the determination made by management were to

be challenged, would there be a case to make it on the basis that the quorum was not reached in the informal poll?

Mr. Ge stated that he found the requirement of a simple majority of votes cast as unreasonable to accept a new member. There were many members that had not recognized Kosovo as a country. That said, it was premature to establish a membership committee to consider Kosovo's application and he wished to be recorded as abstaining.

The General Counsel (Mr. Hagan) indicated that, based on the number of countries that had responded to the informal poll, a quorum would have been achieved. On another matter, it was worth noting that the two questions being posed were slightly different and required separate determinations. The issue that would arise for the Board of Governors was whether or not Kosovo should be offered membership on the terms and conditions set forth in the resolution. One could oppose that resolution, but still recognize Kosovo as a country. The other question was whether Kosovo was a country. If members did not believe Kosovo was a country, clearly they could oppose the terms and conditions of membership.

The Executive Board took the following decision, with two objections by Mr. Guzmán (CE) and Mr. Mozhin (RU), and three abstentions by Mr. Ge (CC), Mr. Kishore (IN), and Mr. Moser (SZ):

Republic of Kosovo—Membership—Committee

The Executive Board, under Rule D-1, decides to establish an ad hoc committee to proceed with the formal investigation, to obtain all relevant information, and to discuss with the Government of the Republic of Kosovo any matters relating to their application for membership in the Fund.

The Committee shall consist of Mr. Itam (Chairman), Mr. Bakker, Mr. Gibbs, Mr. Lee, Ms. Lundsager, Mr. Mojarrad, and Mr. Nogueira Batista. (EBD/09/4, 01/23/09)

Adopted February 2, 2009

APPROVAL: May 27, 2009

SHAIENDRA J. ANJARIA
Secretary