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To: Members of the Executive Board

From: The Secretary

Subject: Repurchase Obligations - Postponement (Article V, Section 7(g))

There is attached for the information of the Executive Directors a paper on the possible actions under Article V, Section 7(g) on the postponement of repurchase obligations.

Mr. Munzberg (ext. 6675) or Mr. Elizalde (ext. 7796) is available to answer technical or factual questions relating to this paper.

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INTERNATIONAL MONETARY FUND
Repurchase Obligations--Postponement
(Article V, Section 7(g))

Prepared by the Legal Department

(In consultation with the Treasurer's Department)

Approved by François Gianviti

August 24, 1987

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Introduction

In concluding the discussion of the Executive Board on June 9, 1986 (EBM/86/94) on the Six-Monthly Report on Overdue Financial Obligations to the Fund and on Legal Aspects of Ineligibility, the Chairman noted:

"...several Directors asked the staff to examine in a paper the possible actions under Article V, Section 7(g) on the postponement of repurchase obligations, and Article V, Section 8(e) on the payment of charges in domestic currency in exceptional circumstances. The majority of Directors do not favor the activation of these provisions, and the paper will not be of an operational nature. But, in response to the request of several speakers, the staff will prepare a paper on the legal and technical aspects of the subject." 1/

This paper examines the postponement of repurchase obligations under Article V, Section 7(g). 2/ A description of the legislative history of Article V, Section 7(g) is provided in Annex I. Excerpts from the Chairman's summings up at the conclusion of discussions of the Executive Board on policies on postponement are provided in Annex II.

Prior to the Second Amendment, the Articles of Agreement contained no specific provision on postponement of the discharge of repurchase obligations. From 1952, the Executive Board granted numerous requests to postpone the date of discharge of accrued obligations. In so doing the Board was guided by several considerations: 3/ (i) the existence of the obligation to repurchase established by the Articles was not affected since postponement did not relieve the member of this obligation; (ii) the Articles regulated the conditions under which a member incurred a repurchase obligation, but they did not contain any rules on the date of discharge of the obligation; the absence of a provision on a specific date for repurchase gave the Fund the power to prescribe the date of discharge and, impliedly, the power to grant postponement; (iii) in support of this implied power, reference was made to an analogy with common principles of national laws which give the power to an obligee to grant postponement; (iv) any postponement had to be in line with the temporary use of

1/ Chairman's summing up at EBM/86/94 (6/9/86), Buff 86/102 (6/16/86), pp. 3-4.

2/ A paper on "Payment of Charges in Domestic Currency, (Article V, Section 8(e))," SM/87/227 is being issued separately.

3/ See, e.g., EBM/52/29 (5/22/52); EBS/54/6 (3/15/54) and EBM/54/13 (3/22/54); EBS/55/17 (4/12/55) and EBM/55/17 (4/29/55).

Fund resources. On the basis of these considerations, the Executive Board had established a Rule that provided in part: "The member shall discharge the amount due within thirty days from the day on which the member receives the formal request for payment or within such other period as may be decided by the Executive Board" (Rule I-6(f)). 1/

This Rule must be understood in the light of the provisions of the Articles on repurchases prior to the Second Amendment: no fixed schedule of repurchases existed, and members' repurchase obligations were determined by changes in their reserve holdings and in the Fund's holdings of their currencies, on the basis of rules that specified the amounts to be repurchased, the assets with which repurchases were to be made, and the timing of the repurchases. In practice, repurchase obligations under the provisions of Article V, Section 7(b) of the original Articles did not accrue in sufficient amounts to ensure that members would always make a temporary use of the Fund's resources, and, therefore, the Fund augmented the provisions of the Articles with policies on repurchases. However, the Fund could not make its policies on repurchases obligatory in all circumstances. It could do so as a term of a waiver of any of the conditions of Article V, Section 3(a), in accordance with Article V, Section 4. In those cases, the Fund could also grant postponement of repurchases. 2/

The Second Amendment has introduced fixed repurchase schedules, and has, in Article V, Section 7(g), explicitly recognized the power of the Fund to postpone while imposing certain conditions on the exercise of that power. Therefore, the concept of implied powers can no longer be resorted to as a basis for postponement, and the power to postpone can be exercised only in accordance with the provisions of Article V, Section 7(g), 3/ which provides:

"The Fund, on the request of a member, may postpone the date of discharge of a repurchase obligation, but not beyond the maximum period under (c) or (d) above or under policies adopted by the Fund under (e) above, unless the Fund determines, by a seventy percent majority of the total voting power, that a longer period for repurchase which is consistent with the temporary use of the general resources of the Fund is justified because discharge on the due date would result in exceptional hardship for the member."

1/ By-Laws, Rules and Regulations, Twenty-Ninth Issue, 1970, p. 38. This Rule is no longer in effect.

2/ Paragraph 2(d) of Decision No. 102-(52/11), adopted February 13, 1952.

3/ On the exclusive character of Article V, Section 7(g), see remarks by the General Counsel at EBM/75/14 (2/10/75), p. 11 and at EBM/75/36 (3/24/75), p. 4.

This paper examines the general rules pertaining to postponement of the date of discharge of repurchase obligations (Section I), and the special rules with respect to postponement beyond the maximum period (Section II).

I. General Rules on Postponement

This section examines the scope, the meaning, the procedure and the effects of postponement.

A. Scope of Postponement

Article V, Section 7(g) applies only to repurchase obligations in the General Resources Account; it applies to all such obligations.

1. Application limited to repurchase obligations in the General Resources Account

The provisions of Article V, Section 7 deal exclusively with repurchases of holdings in the General Resources Account. More specifically, subsection (g) refers expressly to the maximum repurchase period for such holdings and to the temporary nature of the use of the Fund's general resources. Article V, Section 7(g), therefore, does not apply to repayment obligations under the Trust Fund Instrument, or under the Structural Adjustment Facility, both of which, however, contain provisions on postponement of repayment of loans. ^{1/} Similarly, obligations to pay charges in the General Resources Account cannot be postponed under Article V, Section 7(g), since no repurchase of holdings is involved.

2. Applicability to all repurchase obligations within the General Resources Account

There is no limitation as to the type of repurchase obligation within the General Resources Account that may be postponed. Article V, Section 7(g) applies regardless of the provision under which the repurchase period is prescribed. Therefore, it is applicable to repurchase obligations resulting from use of resources in the credit tranches, under the compensatory financing of export fluctuations, cost of cereal imports, and buffer stock facilities, under extended arrangements,

^{1/} See the Trust Fund Instrument (Section II, paragraph 4(e) of the Instrument to establish the Trust Fund, Decision No. 5069-(76/72), Selected Decisions, Thirteenth Issue, p. 361 and paragraph 2(c) of Decision No. 6704-(80/185)TR, *ibid.*, p. 377), and the Structural Adjustment Facility (paragraph 7(3) of the Regulations for Administration, Annex to Decision No. 8238-(86/56)SAF, *ibid.*, p. 142).

under the Supplementary Financing Facility, and under the Enlarged Access policy. 1/

Article V, Section 7(g) is also general in that no distinction is made between repurchase obligations that are due, or not yet due, or overdue. 2/ However, in the exercise of its power to postpone, the Fund may need to take into account these differences.

For instance, postponement beyond the maximum repurchase period requires a finding by the Fund that "discharge on the due date would result in exceptional hardship for the member." If a member requests postponement beyond the maximum period for a repurchase that is not yet due, the Fund would be in a position to make a finding of exceptional hardship only when the due date is imminent or reasonably near. With respect to overdue repurchase obligations, the finding of exceptional hardship on the due date would require a retrospective assessment of the member's circumstances by the Fund, but it would first have to be decided whether, in such cases, the judgment of the Fund should be based exclusively on the member's circumstances as of the due date, or rather on its present circumstances, or on both. 3/

The existence of overdue repurchases may lead to a declaration of ineligibility of the defaulting member, under Article XXVI, Section 2(a), because it constitutes a failure to fulfill one of its obligations under the Articles. 4/ Although postponement of repurchase obligations after a declaration of ineligibility is not expressly precluded in the Articles, the question must be examined whether a declaration of ineligibility limits the scope of Article V, Section 7(g). Under one possible interpretation, postponement cannot be granted to an ineligible member because it would involve use of

1/ It would also apply to the repurchase of holdings resulting from payment of charges in domestic currency, if the Fund decided to authorize such payments in accordance with Article V, Section 8(e).

2/ The final clause of the provision ("discharge on the due date would result in exceptional hardship"), although it could be read as referring to a present or future due date, thereby implicitly excluding postponement for overdue repurchases, has not been understood as excluding these obligations from the scope of the provision. See EBS/84/245 (11/28/84), p. 7.

3/ On the determination of the relevant date or dates, see, in general, subsection C.3.(a) of this section and, for the finding of exceptional hardship, Section II.C.3.

4/ The subsequent postponement of overdue obligations that were the reason to declare the member ineligible would not suffice to restore eligibility. A separate decision to this effect would be required. See subsection D.2 of this section.

Fund resources, i.e., use for a longer time than originally anticipated, and a declaration of ineligibility is intended to suspend such use. Another interpretation would be that Article V, Section 7(g) is a special provision, which can be read as an exception to Article XXVI, Section 2(a), because the decision to postpone increases only the length of use rather than the amount of resources used by the member, and because neither the text of the Articles, nor the legislative history, refer to the exclusion of ineligible members from the benefit of Article V, Section 7(g). Without contradicting either interpretation it can be concluded that, since the Fund would have the power to limit the scope of a declaration of ineligibility, it could also make an exception to ineligibility in the form of a decision granting postponement. It should be noted, in this respect, that postponement beyond the maximum period would require special conditions, and in particular a higher majority (seventy percent of the total voting power) than a decision terminating or limiting ineligibility (majority of votes cast).

B. Meaning of Postponement

A repurchase obligation has to be discharged by the due date. Postponement means that the period for discharge of the repurchase obligation is extended, and that a new due date is determined.

1. Concept of due date

A distinction must be made between the "due date" by which a particular repurchase must be made and the "maximum period" within which all repurchases pertaining to a purchase must be completed. When repurchases stemming from the same purchase have to be made in installments, the date of discharge of each installment is the due date of that repurchase. 1/

The Fund has the power, under the Articles, to decide that repurchases will be made in installments within periods that vary according to the type of purchase involved. 2/ Under Article V, Section 7(c), the Fund may prescribe that repurchases shall be made in installments during a period beginning three years and ending five

1/ See Proposed Second Amendment to the Articles of Agreement: A Report by the Executive Directors to the Board of Governors, Part II, Commentary on the Proposed Amendment of the Articles of Agreement, Chapter E, Section 2(vii), p. 29 (hereinafter referred to as Commentary on Second Amendment).

2/ The Fund may also set an individual due date when granting a waiver under Article V, Section 4. Such a due date would be within the scope of Article V, Section 7(g), and the conditions for postponement would apply.

years after the purchase date. 1/ Pursuant to that provision, the Fund has decided that repurchases should be made in installments within these periods purchases in the credit tranches, and for purchases under the compensatory, cereal and buffer stock facilities. 2/ In addition, Article V, Section 7(d) 3/ authorizes the Fund to adopt different periods for the repurchase of holdings acquired pursuant to special policies on the use of its general resources. Under this provision, the Fund has adopted specific repurchase periods for purchases under extended arrangements (4-10 years) and for purchases financed by borrowed resources under the Supplementary Financing and Enlarged Access policies (3.5-7 years), and has provided for the discharge of these repurchase obligations in installments. 4/

2. Postponement for a determined period

The power conferred upon the Fund by Article V, Section 7(g) is a power to "postpone the date of discharge of a repurchase obligation," i.e., to prescribe a later date for its discharge.

1/ Article V, Section 7(c) provides: "A member that has made a purchase under Section 3 of this Article shall repurchase the Fund's holdings of its currency that result from the purchase and are subject to charges under Section 8(b) of this Article not later than five years after the date on which the purchase was made. The Fund may prescribe that repurchase shall be made by a member in installments during the period beginning three years and ending five years after the date of a purchase. The Fund, by an eighty-five percent majority of the total voting power, may change the periods for repurchase under this subsection, and any period so adopted shall apply to all members."

2/ Decision No. 5703-(78/39), as amended, Selected Decisions, Thirteenth Issue, p. 122. Paragraph 1(a) of this decision prescribes that the repurchase shall be made in equal quarterly installments during the period beginning three years and ending five years after the date of the purchase unless the Fund approves a different schedule. Such a different schedule could not affect outstanding repurchase obligations. Such a schedule does not change the due dates of outstanding purchases and is, therefore, clearly distinguishable from postponement of the due date for the discharge of an outstanding repurchase obligation.

3/ Article V, Section 7(d) provides: "The Fund, by an eighty-five percent majority of the total voting power, may adopt periods other than those that apply in accordance with (c) above, which shall be the same for all members, for the repurchase of holdings of currency acquired by the Fund pursuant to a special policy on the use of its general resources."

4/ Decisions Nos. 4377-(74/114), as amended, Selected Decisions, Thirteenth Issue, p. 33; 5508-(77/127), ibid., p. 39; and 6783-(81/40), ibid., p. 47.

The setting of a new date is an element of the decision to postpone. Therefore, any postponement must be for a determined period; it cannot be indefinite. 1/

If it were possible to grant postponement for an indefinite period, a further decision would be required to set a new due date. In the event that the required majority were not obtained, postponement would in fact become permanent, which would be inconsistent with the requirement in Article V, Section 7(g) that postponement be "consistent with the temporary use of the general resources of the Fund." Another reason for excluding indefinite postponements is that Article V, Section 7(g), which has an exclusive character, contemplates only two types of postponements, i.e., within and beyond the maximum period, and indefinite postponements do not fall within either category. Not only would such a decision exceed the powers conferred by the provision, but one would not know whether it could be taken by a majority of the votes cast, in accordance with the general principle in the Fund (Article XII, Section 5(c)), or would require seventy percent of the total voting power, because it could result in a postponement beyond the maximum period (unless the due date were set by a subsequent decision within that period). Lastly, a similar question would arise concerning the subsequent decision setting the new due date if it were taken after the end of the maximum period: would it require a seventy percent majority, or would a simple majority suffice? In the former case, it may be impossible to muster the required majority, and no due date would be set. In the latter case, a simple majority could either decide not to set any due date, or to determine a due date that could possibly not have been accepted by the required seventy percent majority had the due date been set in the decision to postpone. Such results would be inconsistent with the rationale of protecting the Fund's assets evidenced by the seventy percent requirement for postponement beyond the maximum period.

3. Difference between postponement and cancellation

Postponement does not extinguish the member's obligation to repurchase. Cancellation would extinguish the debt and constitute a donation by the Fund. 2/

1/ At EBM/75/89 (5/23/75), the General Counsel stated: "It was explicit in the Articles...that postponement could not be indefinite" (p. 16).

2/ Usually cancellation of a debt is an indirect donation, because there is no transfer of assets from the creditor to the debtor. In the General Resources Account, cancellation of a repurchase obligation would take the form of an unrequited transfer, by the Fund to the debtor, of an equivalent amount of the Fund's holdings of the debtor's currency. This would be a direct donation.

Under the Articles the Fund's power to postpone is limited, and special conditions apply (exceptional hardship and seventy percent majority) for postponement beyond the maximum period. As for cancellation, the Articles contain no provision. They do provide, however, that use of the Fund's general resources must be temporary (Article I(v) and Article V, Section 3(a)), and the same limitation applies to postponement (Article V, Section 7(g)). Moreover, the Articles do not authorize donations from the General Resources Account. 1/

Cancellation is a form of donation. Being a disposition of assets, it does not have the temporary character of postponement. It is a definitive reduction of resources. Therefore, taking into account the limitations on the Fund's powers with respect to the use of its general resources, particularly the conditions on postponement beyond the maximum period and the principle of temporary use, it must be concluded that the Fund has no power to cancel repurchase obligations.

4. Similarity between postponement and "rollover"

Postponement of a repurchase obligation has similar effects for the use of the Fund's resources as a repurchase immediately followed by a new purchase of the same amount (rollover). There are certain differences, however, between the postponement of a repurchase and the making of a new purchase. For example, there is no service charge for postponement, the repurchase period may be different, and a special majority is required for postponement beyond the maximum period.

The common element is that, in both cases, the member is using the Fund's resources, whether for an extended or new period, and the decision of the Fund must be consistent with the temporary use of its general resources. Both Article V, Section 3(a) and Article V, Section 7(g) refer to the "temporary use of the general resources of the Fund." The question, however, is whether this principle has the same meaning in the two provisions.

Article V, Section 3(a) is a general provision requiring the Fund to "adopt policies on the use of its general resources...that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will

1/ Donations may be made from the Special Disbursement Account (Article V, Section 12(f)(ii)).

Donations under separate Instruments such as the SFF Subsidy Account, which are made by the Fund as Trustee, are not on the account of the Fund (see Article V, Section 2(b)).

establish adequate safeguards for the temporary use of the general resources of the Fund." ^{1/} Under this provision, the revolving character of the Fund's resources requires more than the prescription of a repurchase period; it requires "adequate safeguards" which, as part of the Fund's policies, are intended to ensure the effective temporariness of any use of its general resources. In general, such safeguards take the form of members' adjustment programs that are expected to be sufficient to assure that members are in a position to meet their repurchase obligations to the Fund as they fall due. Purchases of the Fund's general resources are subject to the requirement of adequate safeguards, because of the express condition in Article V, Section 3(b)(i) that they be in accordance with the Articles and the policies of the Fund. When a member requests a purchase, the Fund must "determine whether the proposed purchase would be consistent with the provisions of this Agreement and the policies adopted under them" (Article V, Section 3(c)). This provision is as applicable to a rollover as it is to any other purchase: safeguards will be required as a condition for the purchase.

In contrast, Article V, Section 7(g) does not expressly require safeguards as a condition for postponement. The reference to the "temporary use of the general resources of the Fund" is literally only a limitation on the Fund's power to determine the length of the repurchase period; it means that some outer limit (which is not defined) should not be exceeded in the decision to postpone. No reference is made to safeguards as a guarantee of effective temporariness. Therefore, one conceivable interpretation of the provision would be that the Fund does not need safeguards as a condition for postponement (perhaps because it is not disbursing fresh money), whereas, in the case of a purchase, safeguards would be required. The obvious objection to this interpretation is that a rollover, which involves a purchase, has the same effect as postponement and would require safeguards. It must be concluded, therefore, that adequate safeguards are required as a condition for postponement, just as they are for any other use of the Fund's general resources, in accordance with Article V, Section 3(a).

C. Procedure of Postponement

Postponement can only be granted by the Fund upon the request of a member. It is not a right of the member; rather, it is a discretionary action of the Fund.

1. Request by the member

In support of its request, the member must represent and demonstrate circumstances that can lead to the granting of postponement by the

^{1/} See also Article I(v).

Fund. This principle applies to postponement both within and beyond the maximum period. The Executive Board has discussed the latter case and has stated that "while the Board would have to satisfy itself that discharge on the due date would result in exceptional hardship, the burden of proof that such hardship would result must be on the country." 1/

2. Decision of the Fund

Since postponement must be preceded by a request of a member, it cannot be granted by a general decision of the Fund. Policies on postponement, however, can be adopted by the Fund. 2/

In the case of postponement beyond the maximum period, the condition of "exceptional hardship" requires an individual finding by the Fund on the basis of the member's particular circumstances. Even when postponement does not exceed the maximum period, the Fund will take into account the member's circumstances before reaching a decision.

Because a decision of the Fund is required, the Fund could not delegate to other entities its authority to make the determination that postponement is justified. Nor could it undertake to follow automatically their decisions. 3/

3. Discretion of the Fund

With respect to postponement both within and beyond the maximum period, Article V, Section 7(g) confers on the Fund discretionary power: the Fund "may postpone...a repurchase obligation." In the exercise of its discretion, the Fund may decide to act exclusively on an ad hoc basis, taking into account the relevant circumstances of the member and its own position. It may also decide to formulate policies on postponement in a general decision.

1/ Chairman's summing up at EBM/84/55 (4/5/84), Buff 84/56 (4/12/84), p. 3.

2/ See, in this subsection, paragraph 3 (pp. 10-11 and subparagraph (b)).

3/ Should the Fund decide to take part in a rescheduling together with other creditors, the Fund itself would have to determine the justification of postponement in accordance with the conditions established by Article V, Section 7(g). As a matter of policy, the Executive Board has concluded that there was a "very strong sentiment against the idea that the Fund should match the rescheduling operations of the Paris Club or any other group.... The Fund could certainly not adopt such course." Chairman's summing up at EBM/84/55 (4/5/84), Buff 84/56 (4/12/84) p. 3.

The distinction between ad hoc decisions and policies is not as strict, however, as it may seem: because of the principle of uniform treatment, and because both individual decisions and policies must be based on similar considerations that are relevant to the exercise of the Fund's discretion, an individual decision on a request for postponement will be regarded by other members as an expression of the Fund's policies on postponement.

Nevertheless, the distinction between individual decisions and a general decision must be made, for two reasons. First, despite the adoption of a policy on postponement, the Fund would still have to assess a member's individual circumstances when postponement is requested. Secondly, individual decisions are based on a combination of factors which may differ from one member to another; the respective importance of these factors may be determined by the Fund in the exercise of its discretion, and the Fund is not required to specify the decisive considerations for its decision, whereas the adoption of a general decision would require--at least partially--an explicit formulation of the policies that would guide the Fund in its future individual decisions on postponement.

Therefore, individual decisions and the formulation of policies will be examined successively.

(a) Exercise of the Fund's discretion in individual decisions

Essentially two types of considerations have been regarded in staff papers and Board discussions as relevant to individual decisions on postponement:

- some relate to the member's justification for requesting postponement;
- others relate to the probable consequences of postponement for the member and the Fund.

(1) Assessment of the member's justification

When the member does not request postponement beyond the maximum period, it is not required to demonstrate that repurchase on the due date would result in exceptional hardship. Justification must be given, however, for its request.

In the three cases where postponement was granted, all within the maximum period, since the Second Amendment, the following factors were found relevant in the staff papers regarding the requests: a sharp deterioration in the balance of payments, a shortfall in exports, a low

level of reserves, and a reduction of inflows in capital. ^{1/} In each case, there was a summary evaluation of the member's ability to repurchase in view of its circumstances, without any identification of one decisive factor or quantification of the respective importance of each factor.

The assessment of the member's justification for postponement raises a particular question when the repurchase is overdue. The problem arises when the member failed to repurchase on the due date, either after unsuccessfully requesting postponement or without requesting postponement, and subsequently tries to regularize its situation vis-à-vis the Fund. The existence of overdue obligations does not in itself preclude the member from obtaining postponement under Article V, Section 7(g), but the member's circumstances may have changed significantly between the due date and the date of the request for postponement. In that event, should the assessment be made as of the due date, or as of the date of the request, or both? ^{2/} Obviously, if, at the time of the request, the member cannot demonstrate any current justification for postponement, its request should not be granted. Past circumstances cannot justify the continued failure to discharge an outstanding obligation. This does not mean, however, that, if the member could demonstrate that its present circumstances justify the request, the Fund would have to disregard the member's circumstances as they were on the due date. Assuming that the Fund found that those past circumstances were not such as to justify a request for postponement, the question would arise whether the Fund would have the power, in the exercise of its discretion, either to grant or deny the request, or would have the duty, as a matter of interpretation of the provision, to deny the request. In support of the latter solution, it can be argued that a member should not be allowed to derive any benefit from a breach of its obligations: since another member, in the same situation, but more mindful of its obligations, would have repurchased on the due date, the defaulting member should not enjoy a more favorable treatment. Otherwise, a member expecting a deterioration of its balance of payments or reserve position might be induced to defer payments to the Fund in the hope that postponement would

^{1/} Since the Second Amendment became effective the Fund has postponed repurchase obligations within the maximum period with respect to purchases made after the Second Amendment on three occasions and for brief periods of time. Decisions in these cases were taken on a lapse-of-time basis. The papers recommending postponement did not discuss explicitly the relevant provision of the Articles. ("Guyana--Rescheduling of Repurchases" EBS/82/81 (5/7/82); "Nicaragua--Postponement of Repurchase" EBS/82/150 (8/25/82); "Guyana--Postponement of Repurchase" EBS/82/161 (9/15/82).

^{2/} A similar problem arises for the finding of "exceptional hardship" (see Section II.C.3).

then be granted for its overdue obligations, thus regularizing its situation vis-à-vis the Fund. This interpretation of the provision should be preferred because it ensures uniform treatment of members that are in the same circumstances on the same due date.

(ii) Assessment of the consequences of postponement

In addition to the member's circumstances on the due date and at the time of the request, the Fund would need to take into account the expected effects of postponement on the member and the Fund, including possible effects of a decision granting postponement on the discharge of other members' repurchase obligations to the Fund.

One of the considerations would be the new schedule of repurchases that would result from postponement. Particularly when postponement does not exceed the maximum period, or when the member has other outstanding repurchases or external debts to repay, postponement of one or several repurchases "could result in a ballooning of repurchase obligations at the end of the normal repayment periods and, in the absence of adjustment, exacerbate difficulties at a later stage." 1/ Such a consequence would be contrary to the purpose of the standard schedule of repurchases, which was introduced by the Second Amendment to facilitate the reduction in indebtedness to the Fund by distributing repurchases in relatively frequent and equal installments over the specified repurchase period. 2/

An assessment of the consequences of postponement must also take into account the need for safeguards of the temporary use of Fund resources. An evaluation must be made of the prospective balance of payments and reserve position of the member on the new due date, taking particularly into account the expected results of adjustment policies to be implemented by the member or the temporary nature of the member's liquidity problem with a conclusion that payment would be better assured after a delay. 3/

Also relevant to the exercise of the Fund's discretion is the effect of postponement on the Fund's financial position and its standing. On this aspect, several remarks can be made.

1/ This consideration, recommended by the staff in EBS/84/46 (3/9/84), p. 16, was supported by a majority of the Executive Board (Chairman's summing up at EBM/84/54 (4/5/84), Buff 84/56 (4/12/84), p. 3).

2/ See "Overdue Payments to the Fund--Experience and Procedures" EBS/84/46 (3/9/84), pp. 9-10.

3/ See "Overdue Financial Obligations to the Fund--Six-Monthly Report" EBS/84/211 (10/11/84), p. 13.

First, when currencies have been borrowed by the Fund to finance a purchase, the Fund is obliged to repay its creditors whether or not the purchase financed from borrowed resources is repurchased. Postponement of repurchases of outstanding purchases financed from borrowed resources could lead to a substitution of ordinary for borrowed resources and impose a strain on the Fund's ordinary resources. 1/

Secondly, it could appropriately be argued that the Fund's capacity to provide assistance to its members might be seriously weakened, not only by the prolonged reduction in its usable resources, but also because one of the essential elements of the Fund's assistance, i.e., to be repaid in time, would be disregarded; 2/ that the central role of the Fund in the international monetary system needs to be considered as well as the monetary character of the Fund and the form of its assistance in supporting members' adjustment programs, which justify priority for the Fund in repayments over other creditors; 3/ and that the Fund's credibility and standing might suffer, 4/ to the extent that creditors' perceptions of the liquidity of their claims on the Fund, and the willingness of members to provide financing to the Fund, would be affected.

Thirdly, because of the principle of uniform treatment, the Fund must take into account the consequences of its individual decisions on other members placed in similar circumstances. This evaluation is an integral part of the assessment of the consequences of such decisions for the Fund. It is also relevant to the adoption of policies on postponement.

(b) Exercise of the Fund's discretion in the formulation of policies

In the exercise of its discretion, the Fund may adopt general decisions formulating its policies on postponement. These policies cannot be a substitute, however, for individual decisions. Each request for postponement must be dealt with by the Fund separately. Moreover, the circumstances of each member must be assessed individually.

1/ See EBS/84/46 (3/9/84), pp. 9-10.

2/ See remarks by the Managing Director at EBM/84/167 (11/19/84), Buff 84/188 (12/3/84), p. 3.

3/ See EBS/84/211 (10/11/84), p. 10 and remarks by the Managing Director at EBM/84/167 (11/19/84), Buff 84/188 (12/3/84), p. 3.

4/ See remarks by the Managing Director at EBM/84/167 (11/19/84), Buff 84/188 (12/3/84), p. 3.

Nevertheless, categories of situations can be identified on the basis of relevant criteria, and policies can be adopted for these different types of situations. Furthermore, considerations relating to the Fund's position are of a general nature and may be expressed in policies.

Therefore, the Fund has the power, in order to ensure uniformity of treatment, to establish policies based on these general considerations. It may adopt decisions setting out, in general terms, the considerations that would guide its decisions on individual requests for postponement. 1/

For instance, because of its interest to safeguard its resources, the Fund has the power, in the exercise of its discretion, to establish a policy not to grant postponement to members in arrears. The view could even be taken that the Fund has already adopted such a policy by deciding not to "engage in discussions or resume discussions on the use of Fund resources with a member that is in arrears to the Fund." 2/ It appears, however, that the issue of postponement was not expressly contemplated when this policy was adopted. Therefore, the Executive Board may wish to clarify this point.

4. Majority required for decisions

A decision to postpone the date of discharge of a repurchase obligation within the maximum period may be taken by a majority of the votes cast. Policies on postponement within the same period may be adopted by the same majority.

D. Effects of Postponement

Postponement provides an extension of a repurchase period. Any postponement is granted for the future.

1. No retroactive effect

Postponement has no retroactive effect. Special charges that became due before postponement would have to be paid.

1/ Policies on postponement have been discussed on several occasions by the Executive Board. The conclusions reached are reproduced in Annex II.

2/ Chairman's summing up at EBM/84/54 (4/5/84), pp. 37-38. (Selected Decisions, Thirteenth Issue, pp. 76-77. See also EBM/85/26 (2/20/85), p. 19 (ibid., pp. 80-81)).

2. Member becomes current

If a member's overdue repurchase obligations were postponed, the member would no longer be in arrears to the Fund with respect to these obligations, effective from the date of postponement. Any existing limitation imposed by reason of these arrears on the member's use of the Fund's resources would terminate. If, however, the existence of overdue obligations has led to a declaration of ineligibility, a decision to postpone will not automatically re-establish eligibility. A separate decision to this effect is necessary. A decision would also be needed to provide for limited use under Rule K-4. 1/

3. Possibility of increased charges for the future

The Fund could not impose increased, nonuniform charges for the future when a permission to postpone has been granted. Nonuniform charges may be imposed only under Article V, Section 8(c), which refers to a repurchase that the member has failed to make. In such a case, the Fund may impose such charges as it deems appropriate on its holdings of the member's currency that should have been repurchased. If a request for postponement is granted, there is no longer a failure to repurchase, since the period for the required repurchase has been extended.

The Fund could, however, decide to levy higher charges on holdings for which the repurchase period has been extended. The basis for such charges would be Article V, Section 8(b). 2/ The rationale for the increased charges would be provided by the length of the use of Fund resources, as extended through postponement. Such charges would have to be applied on a uniform basis.

II. Special Rules On Postponement Beyond the Maximum Period

Article V, Section 7(g) establishes special conditions for postponement beyond the maximum period. These conditions, which are expressed in terms of a limited exception to a general prohibition on postponement beyond the maximum period, are more restrictive on the exercise of the Fund's authority than for postponement within the maximum period. The Fund may postpone beyond the maximum period only if it "determines, by a seventy percent majority of the total voting

1/ See "Overdue Financial Obligations to the Fund--Ineligibility to use the General Resources and Subsequent Actions by the Fund--Legal Aspects" SM/86/102 (5/14/86), p. 3.

2/ The last sentence of Article V, Section 8(b) provides: "The rates of charge normally shall rise at intervals during the period in which balances are held."

power, that a longer period for repurchase which is consistent with the temporary use of the general resources of the Fund is justified because discharge on the due date would result in exceptional hardship for the member."

Except for the special conditions mentioned in Article V, Section 7(g), the general rules on postponement as presented above are applicable to postponement beyond the maximum period. It is not necessary to review them. Accordingly, this section will only examine:

- the concept of maximum period;
- the majority required for decisions;
- the justification required from the member ("exceptional hardship"); and
- the outer limit on postponement ("temporary use of Fund's resources").

A. Concept of Maximum Period

Repurchases from the General Resources Account must be completed within a specified period after the date of the purchase. Article V, Section 7(g) refers to the maximum period under Article V, Section 7(c) or (d), or under policies adopted by the Fund under Article V, Section 7(e). This maximum period means the end of the period which is established for completion of repurchase. 1/ The maximum period varies according to the type of purchase involved. For purchases in the credit tranches and under the compensatory financing of export fluctuations, the cost of cereal imports, and buffer stock facilities, the maximum period is the end of the five-year period for completion of repurchase; 2/ for purchases under extended arrangements, the end of the ten-year period; 3/ and for purchases of borrowed currency under the Supplementary and Enlarged Access Policies, the end of the seven-year period. 4/

1/ The Commentary on the Second Amendment in Chapter E, Section 2(iii), p. 28 refers to this period as the maximum period. See also remarks by General Counsel at EBM/75/36 (3/24/75), p. 6.

2/ Article V, Section 7(c) and Decision No. 5703-(78/39), as amended, Selected Decisions, Thirteenth Issue, p. 122.

3/ Article V, Section 7(d) and Decision No. 4377-(74/114), as amended, Selected Decisions, Thirteenth Issue, p. 33.

4/ Decisions Nos. 5508-(77/127) and 6783-(81/40), Selected Decisions, Thirteenth Issue, pp. 39 and 47.

B. Majority Required for Decisions

Postponement beyond the maximum period requires an individual decision of the Executive Board, adopted by a seventy percent majority of the total voting power. The Fund may exercise the same discretion as in cases of postponement within the maximum period, except for the required finding, as a special condition, that postponement "is justified because discharge on the due date would result in exceptional hardship for the member." The burden of proof that such hardship would result is on the member. 1/

The Fund can also adopt policies on postponement beyond the maximum period. However, in view of the special majority required for individual decisions on this type of postponement, these policies could not commit the Fund to take such decisions unless they are adopted by the same majority.

C. Justification Required from the Member ("Exceptional Hardship")

Article V, Section 7(g) requires justification that "discharge [of the repurchase obligation to be postponed] on the due date would result in exceptional hardship for the member." Accordingly, three elements are relevant to the assessment of the member's justification: (1) a finding of exceptional hardship, and (2) a determination that the cause of exceptional hardship would be the discharge of the repurchase obligation (3) on the due date.

1. Finding of exceptional hardship

Article V, Section 7(g) was included in the Articles by way of a compromise, which subjected the exercise of the Fund's power to postpone to stricter conditions than envisaged in the original draft of the provision. 2/ The original draft referred to "exceptional circumstances." 3/ The adoption of the term "hardship" instead of "circumstances" was a deliberate choice. Although it was not defined, it was intended to give a more precise meaning and a narrower scope to the provision. 4/ A higher degree of seriousness is implied by

1/ See Section I.C.1.

2/ See Annex I for a description of the legislative history of the provision.

3/ The phrase "exceptional circumstances" was retained in the provision on payment of charges in currencies. See "Payment of Charges in Domestic Currency (Article V, Section 8(e))," SM/87/227, pp. 4 and 6-8.

4/ See EBM/75/88 (5/22/75): "The Chairman observed that ...the provision would be redrafted so as to be more explicit with respect to the 'exceptional circumstances' and to the ad hoc application of the provision" (p. 12).

"hardship" than by "circumstances." The high majority required for the determination and the association of the term "exceptional" with "hardship" also point to the seriousness that has to be associated with a particular case.

The exceptional nature of the member's hardship needs to be assessed in relative terms. A distinction must be made between exceptional hardship and other difficulties (i), and a finding of exceptional hardship requires a comparison between the circumstances of the member and those of other members (ii), and between the member's present and previous circumstances (iii).

(i) A finding of exceptional hardship cannot be made if the member is only facing general difficulties or hardship. As noted in an earlier staff paper, "in considering a request for postponement of a repurchase beyond the period specified under the Articles on grounds of exceptional hardship, the case could not rest on the existence of general difficulties or hardship on the part of the member concerned." 1/

(ii) The situation of a member need not be unique, or substantially worse than that of every other member of the Fund. Hardship may still be of an exceptional nature even if a similar situation is faced by some other members. 2/ In this case, however, the Fund could, in the exercise of its discretion, refuse to grant postponement by taking into account the continued timely discharge of their repurchase obligations by other members subject to the same difficult circumstances.

(iii) A comparison between the member's previous and present circumstances may show that, under similar circumstances, the member previously discharged repurchase obligations equivalent to those for which it is now requesting postponement. The conclusion could be that there is no exceptional hardship.

The Fund could adopt a general decision identifying particular circumstances that would be taken into account in the finding of exceptional hardship when an individual case is decided. A general

1/ "Overdue Financial Obligations to the Fund--Six-Monthly Report" EBS/84/211 (10/11/84), p. 12.

2/ The staff has stated that it "would be necessary for the member to establish, and for the Board to agree, that discharge of the particular repurchase on the due date would itself result in hardship that is of an exceptional nature and not faced by other members in discharging their obligations" (EBS/84/211 (10/11/84), p. 12).

decision would not exempt the Fund, however, from making individual findings of exceptional hardship on the basis of each member's circumstances.

In the absence of a general decision, the finding of exceptional hardship would be guided by considerations that had led to postponement in any previous specific cases. Those considerations would be relevant for the assessment of similar subsequent cases. However, since the Fund has not granted any request for postponement beyond the maximum period under the Second Amendment, no positive conclusions can be derived. 1/

2. Repurchase as cause of exceptional hardship

As a condition for postponement, the Fund must find that the cause of exceptional hardship would be the discharge of a repurchase obligation on the due date. It means that only the effect of the discharge of a repurchase obligation to the Fund will be considered for this finding, and that the discharge of the obligation to the Fund itself 2/ must result in hardship. The existence of other external debts of the member is not a relevant consideration. Otherwise, the Fund would be consenting to giving priority to the member's other debts over its obligations to the Fund. The case is even clearer when a member has actually given priority to other creditors, 3/ except if this priority was only a result of payments made as obligations became due, while the obligations to the Fund were not yet due.

3. Date of exceptional hardship

Justification is required, under Article V, Section 7(g), that "discharge on the due date would result in exceptional hardship for the member." The finding of exceptional hardship, therefore, is related to the situation of the member on the due date of the discharge of a repurchase obligation.

1/ In 1984 a formal request for postponement beyond the maximum period was made by a member. The Executive Board did not consider that the case for exceptional hardship had been established by the member (see "Viet Nam--Overdue Financial Obligations to the Fund" EBS/84/245 (11/28/84), and EBM/84/173 (12/3/84).

2/ See EBS/84/211 (10/11/84), p. 12.

3/ The assessment with respect to the justification of Viet Nam's request to be granted postponement took into account the country's decision on the allocation of its reserves to give priority to the discharge of its obligations to other creditors. See EBS/84/245 (11/28/84), p. 7.

The "due date" is the only possible date of reference when the request for postponement is made before the date on which the repurchase must be made. This situation seems to have been contemplated in Article V, Section 7(g), which requires a demonstration that hardship "would result" (apparently in the present or future) from discharge on the due date. Presumably, there was an expectation that members would normally wish to comply with their obligations and obtain the permission of the Fund before deferring a repurchase.

There may be instances, however, where postponement is requested after the due date, because the member either failed to request postponement or was not successful in its earlier request. In both cases the question is whether the finding of "exceptional hardship" must still be made as of the due date, or rather as of the date of the request, or both.

A similar question was discussed above in connection with postponement within the maximum period, 1/ and the answer should be the same, in spite of the specific reference to the due date in the case of postponement beyond the maximum period. First, this reference cannot be interpreted as meaning that once a member has demonstrated that repurchase on the due date would result, or would have resulted, in exceptional hardship, it is forever exempted from demonstrating that this repurchase, if made at a later date, would still result in exceptional hardship. There is no vested right to postponement on the basis of past circumstances. If, for example, a member had requested and obtained postponement on the due date and the new repurchase period were about to expire, the member could be granted postponement only if it demonstrated that repurchase on the new due date (as determined in the postponement decision) would result in exceptional hardship. The same requirement should apply to a member that has failed to request or obtain postponement. Failure to request or obtain postponement should not confer an advantage upon the defaulting member over other members. Secondly, the reference to the due date may be interpreted as meaning that the Fund should deny a request for postponement after the due date, even if a present repurchase would result in exceptional hardship, when it finds that repurchase on the due date would not have resulted in exceptional hardship. 2/ This interpretation would coincide with

1/ See Section I.B.4.

2/ The staff has argued in the assessment of Viet Nam's request to be granted postponement, that "any difficulties in making these payments would have been less had the obligations been settled as they fell due" (see EBS/84/245 (11/28/84), p. 7).

the conclusion reached with respect to postponement within the maximum period. In summary, when the repurchase is overdue, a finding of exceptional hardship on the due date would be a necessary condition for postponement, but it would not be sufficient to justify postponement if exceptional hardship could not be demonstrated at the time of the request.

D. Outer Limit on Postponement ("Temporary Use of Fund Resources")

Under Article V, Section 7(g), the "longer period for repurchase" beyond the maximum period must be "consistent with the temporary use of the general resources of the Fund." It is clear that what is contemplated in this provision is the setting of a time limit for the repurchase, rather than the requirement of adequate safeguards to ensure the effective timely discharge of the repurchase. However, postponement is an extension of the use of the Fund's general resources, and, in the other provisions of the Articles on the use of the Fund's general resources (Article I(v) and Article V, Section 3(a)), both aspects of temporariness are closely associated because safeguards are a guarantee of effective temporariness. Therefore, it must be concluded that Article V, Section 7(g) should not be regarded as an exception to this general principle of the Articles. ^{1/}

Since the question of safeguards has already been discussed, ^{2/} temporariness will be envisaged here in the literal sense of Article V, Section 7(g), i.e., the outer limit that must be imposed on the length of postponement.

The requirement of a time limit obviously means that postponement cannot be indefinite, but it should not be interpreted as implying that any time limit, however remote, would be "temporary" in the sense of the Articles. "Temporary" is used in the Articles to convey the idea of the revolving character of the general resources of the Fund. Temporariness must also be understood in connection with the concept of safeguards: it can extend only as far as safeguards can exist for the effective discharge of the repurchase obligations.

It is often said that the Fund provides medium-term assistance to its members. This is only true if the concept of "medium-term" is broadly defined. Moreover, this concept is not used in the Articles and could not be regarded as expressing the outer limit of postponement.

^{1/} See Section I.B.4.

^{2/} Ibid.

Therefore, the definition of what is "temporary use of the general resources of the Fund" requires a judgment by the Fund, taking into account a number of related concepts ("revolving character of Fund resources," "adequate safeguards").

Within the outer limit, the Fund may determine the repurchase period for each postponement on a case-by-case basis. It may also specify different limits for different categories of repurchase obligations; any such limit would apply to all postponements within the corresponding category.

Conclusion

Under Article V, Section 7(g), the Fund has the power to postpone the date of discharge of a repurchase obligation in the General Resources Account. There is a clear distinction, in Article V, Section 7(g), between postponement within and beyond the maximum period: in the latter case, a finding of exceptional hardship and a higher majority are required for the decision of the Fund. In both cases, however, justification must be demonstrated by the member, and individual decisions are required in which the Fund may take into account all relevant circumstances and exercise its discretion in deciding whether or not to postpone. As a form of use of the Fund's general resources, postponement of repurchase obligations is subject to the existence of adequate safeguards and must be consistent with the temporary use of the Fund's resources.

The Second Amendment and the Power of the Fund
to Postpone Repurchase Obligations--Legislative History

1. The provisions on repurchases proposed by the first draft of amendments to the Articles under the Second Amendment included a proposal allowing for the postponement of the discharge of any obligation to repurchase on the following terms:

"In exceptional circumstances, the Fund may permit a member to postpone the discharge of any obligation to repurchase, provided that no member shall be permitted to make more than a temporary use of the Fund's resources." 1/

When this draft provision was first discussed by the Executive Board, 2/ some Directors expressed opposition to its inclusion, on the grounds that if money was purchased from the Fund under the normal three-year to five-year policies, it should be repaid within that period, and no provision whatsoever should be made for any extension. Other Directors added that in practice the Fund had been able to solve exceptional cases by allowing the member to make a new drawing, thus permitting it to repurchase in time. Such procedure should be the normal way of assisting a member. If that were not considered sufficient, they would attach importance to making the provisions of draft Section 7(f) subject to a qualified majority.

The staff explained that, notwithstanding the absence of any express power in the Articles to postpone the discharge of a repurchase obligation under Article V, Section 7, the Fund had found implicit authority to grant such postponements and that if it were desirable to eliminate any possibility of postponement, it should be written into the Articles, as in the past the silence of the Articles had been interpreted as not negating an implicit power to postpone.

With respect to the idea of granting a postponement of repurchases subject to a qualified majority, the suggestion was made, and widely supported, that a qualified majority should only apply to postponements that would go beyond a maximum repurchase period; otherwise, i.e., when the postponement was within the maximum period for repurchase, a simple majority would be required.

1/ DAA/74/2, Sup. 2, Cor. 1 (Article V, Section 7(f)).

2/ EBM/75/14 (2/10/75).

2. In the next round of discussions on a redrafted text of Article V, Section 7(g), 1/ the staff explained that:

- (a) recommendations to approve requests for postponement of repurchases had been and should continue to be based on whether or not there was economic hardship; and that
- (b) the judgement to be made was whether that practice should continue to be permitted or should be ruled out. 2/

Although there continued to be some opposition to the inclusion of a provision on postponement, a consensus started to form on the need to provide the Fund with flexibility:

- (i) to postpone, by simple majority, repurchase obligations within the maximum period allowed under the respective repurchase provision or policy; and
- (ii) to postpone under certain circumstances and by a qualified majority, a repurchase obligation beyond the maximum period allowed under the respective provision or policy.

3. The staff submitted for the next Executive Board meeting that took up the discussion of Article V, Section 7(g) two alternatives 3/

1/ DAA/75/2. The new version read as follows:

"(g) The Fund may permit a member to postpone the date of discharge of any installment of repurchase that is due, provided that a two-thirds majority of the total voting power shall be required for the postponement of a repurchase beyond the maximum period prescribed for it by or under (c) or (d) above."

2/ EBM/75/36 (3/24/75) p.4.

3/ EBM/75/85 (5/19/75) pp. 13-15. DAA/75/2, Sup. 2. The alternatives read as follows:

"Alternative A

[(g) The Fund may permit a member to postpone the date of discharge of any installment of repurchase that is due, but not beyond the maximum period prescribed for repurchase under (c) or (d) above.]

Alternative B

[(g) The Fund may permit a member to postpone the date of discharge of any installment of repurchase that is due. Any decision to permit the postponement of a repurchase beyond the maximum period prescribed for it by or under (c) or (d) above shall be made by a two-thirds majority of the total voting power and shall be subject to terms and conditions which take into account the policies adopted under Section 3(a) of this Article.]"

of the provision: the first, enabling the Fund to permit a member to postpone an installment of repurchase that it was obligated to pay, but only within the maximum period mentioned in the provision under which the purchase would have been made, and the second, in addition to the first alternative, also enabling the Fund, by a special majority of seventy percent of the total voting power, 1/ to permit the postponement beyond the final date prescribed in the provision under which the purchase would have been made.

Even though a majority favored the second alternative, some Directors continued to express reservations. In order to move forward in the process of reaching consensus, a proposal was made to modify the second alternative to make it clear that the provision on postponements beyond the maximum period allowed in accordance with the policy under which the purchase was made would be applied only in very exceptional circumstances. With only three Directors reserving their positions, the Directors agreed to rephrase Section 7(g) along the suggested lines, and to a required majority of 70 percent of the total voting power for the granting of such postponements.

4. The new draft version of Section 7(g) of Article V 2/ did not satisfy the objecting Directors, who thought that the provision would have to be more specific in three particular areas, 3/ namely:

- (i) more precision as to how to determine when "exceptional circumstances" would be deemed to prevail;
- (ii) more specificity as to a time limit for possible extensions beyond the maximum repurchase period allowed under any particular provision or policy, in order to stress the concept of temporary use of Fund resources; and

1/ The draft text required a two-thirds majority of the total voting power but the staff, in explaining the provision, suggested that the special majority required should be of seventy percent of the total voting power.

2/ DAA/75/2, Sup. 11, p. 24. The provision read as follows:
"(g) The Fund may permit a member to postpone the date of discharge of any installment of repurchase that is due, provided that the Fund, by a seventy percent majority of the total voting power, may postpone repurchase in exceptional circumstances beyond the maximum period prescribed for the repurchase under (c) or (d) above."

3/ EBM/75/88 (5/22/75), pp. 11, 12 and EBM/75/89 (5/23/75), p. 16.

- (iii) the ad hoc rather than generalized character of the provision.

The Chairman, at the end of the discussion, observed that the provision would be redrafted "so as to be more explicit with respect to the 'exceptional circumstances' and to the ad hoc application of the provision." ^{1/} Consequently, the proposed Article V, Section 7(g) was redrafted by substituting the reference to "exceptional circumstances" with "discharge on the due date would result in exceptional hardship for the member."

The provision as redrafted was approved, becoming the present Article V, Section 7(g).

1/ EBM/75/88 (5/22/75), p. 12.

Excerpts from Chairman's Summings Up at the
Conclusion of Discussions of the Executive Board
on Policies on Postponement

1. Chairman's Summing Up at EBM/84/54 (4/5/84), Buff 84/56
(4/12/84), p. 3

"4. Rescheduling or Postponement of Obligations

The position described in paragraphs 5 and 6 on page 16 of EBS/84/46 ^{1/} was supported by the majority of the Executive Board. The Executive Board clearly does not wish to open the way for rescheduling of obligations. The staff arguments on the point were clearly found convincing and were supported by the Board. This does not mean that the relevant Articles, and particularly Article V, Section 7(g) cannot be resorted to in exceptional cases if the Board so decides. But while the Board would have to satisfy itself that discharge on the due date would result in exceptional hardship, the burden of proof that such hardship would result must be on the country, and I did not sense much support in the Board for the use of this provision. There is a very strong sentiment against the idea that the Fund should match the rescheduling operations of the Paris Club or any other group, and it is useful that the Board was so clear on this point. The Fund could certainly not adopt such a course."

^{1/} Paragraphs 5 and 6 of EBS/84/46 (p. 16) read as follows:

"5. The question has arisen whether the Fund should reschedule repurchase obligations if a member represents difficulty in meeting financial obligations to the Fund within the normal repayment periods, or even stretching repurchases beyond these periods. Such postponements are unlikely materially to facilitate repayments to the Fund, or to contribute to the adoption of adjustment policies required to solve underlying balance of payments problems. In fact, postponement could result in a ballooning of repurchase obligations at the end of the normal repayment periods and, in the absence of adjustment, exacerbate difficulties at a later stage.

6. Repurchase obligations to the Fund have not been postponed when a member sought rescheduling of indebtedness to official institutions under the aegis of the Paris Club. The Fund's contribution in this connection is best rendered in the form of technical advice and by way of new stand-by or extended arrangements in support of adjustment policies that normally are a precondition for multi-lateral rescheduling of indebtedness to official creditors."

2. Chairman's Summing Up at EBM/84/167 (11/19/84), Buff 84/188 (12/3/84), p. 3
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"Let me add that, in my personal view, the problem of overdue obligations to the Fund is a very serious matter, which must be tackled without delay. At the moment there are not many countries in arrears, but, if we do not act now the number could increase significantly. Sizable repurchases will be coming due over the next two years, and the Fund must therefore take the appropriate measures to demonstrate the importance it attaches to the matter of arrears. The Fund is not a creditor like other creditors; it is the cornerstone of the international monetary system and must not be treated as other creditor institutions may be treated, particularly in terms of rescheduling. The Fund must preserve its credibility; and if it is considered desirable for the institution to continue to assist member countries that are facing structural weaknesses and difficulties, it must be demonstrated that Fund loans are indeed serviceable and repayable in a timely way. If the Fund gave the impression that some countries, because they were experiencing particularly severe hardships, would not be expected to meet the timetables and the obligations pertaining to Fund programs, then the institution would probably find it difficult to continue providing the assistance that members were accustomed to receiving.

I have always taken the view that we should stand ready to assist all members, including those which have severe structural difficulties; but this can only be done if they understand that the continuation of Fund support in the years to come is very much dependent on their meeting their obligations to the Fund. Such countries will have to orient their priorities toward repaying the Fund, even under difficult external circumstances. It must be understood that repaying the Fund is of critical importance, not only for the functioning of the system but also for the continuation of the Fund's ability to provide financial assistance. That is why I personally have little sympathy for the notion put forward today by some speakers that it is important to distinguish between the so-called recalcitrants --the ones that may have a negative attitude toward repaying the Fund--and those that are affected by various unfortunate external conditions. If we posed the problem in that way, we would very quickly reach a point where the membership would call for an overhaul of our lending policies; hence, I think we have to make all countries understand that payments due to the Fund must be made on a regular and timely basis."

3. Chairman's Summing Up at EBM/85/170 (11/25/85), Buff 85/206 (12/6/85), p. 2.

"First, seven Directors--who do not carry a majority of the votes--favor changing the Board's general strategy for dealing with overdue financial obligations. Basically they consider that arrears arise mainly because of exogenous factors that are beyond the control of the authorities concerned; in those cases, arrears do not arise because the members are unwilling to pay the Fund. Those Directors consider that such countries should be helped to formulate programs supported by the Fund and should not first have to settle their overdue obligations to the Fund. In the view of these Directors, requiring the members concerned to settle their arrears before negotiating a Fund-supported program would typically be incompatible with the low level of reserves and the general economic situation of those countries. These seven Directors believe that the best way for the Fund to handle such cases would be to negotiate programs with the countries concerned and to invoke Article V, Section 7(g), which permits a member to postpone the date of discharge of a repurchase obligation. This general approach to the problem was not supported by a majority of Directors. Indeed, the majority of Directors expressed strong reservations about such an approach, which in their view could considerably weaken the Fund's credibility and pose a threat to the future of the institution by possibly encouraging members to delay repurchases."

4. Chairman's Summing Up at EBM/86/94 (6/9/86), Buff 86/102 (6/16/86), pp. 3-4.

"Sixth, several Directors asked the staff to examine in a paper the possible actions under Article V, Section 7(g) on the postponement of repurchase obligations, and Article V, Section 8(e) on the payment of charges in domestic currency in exceptional circumstances. The majority of Directors do not favor the activation of these provisions, and the paper will not be of an operational nature. But, in response to the request of several speakers, the staff will prepare a paper on the legal and technical aspects of the subject."