INTERNATIONAL MONETARY FUND

Minutes of Executive Board Meeting 90/81

10:00 a.m., May 25, 1990

M. Camdessus, Chairman

Executive Directors	Alternate Executive Directors
G. K. Arora	L. E. N. Fernando
C. Enoch	
C. S. Clark	
Dai Q.	
T. C. Dawson	
	J. Prader
	L. B. Monyake
E. A. Evans	
E. V. Feldman	R. J. Lombardo
L. Filardo	
R. Filosa	
M. Finaish	A. M. Othman
	I. H. Thorláksson
	O. Kabbaj
G. Grosche	
J. E. Ismael	T. Sirivedhin
A. Kafka	L. M. Piantini
	J.-F. Cirelli
Mawakani Samba	
	M. Al-Jasser
G. A. Posthumus	
	S. Yoshikuni

L. Van Houtven, Secretary and Counsellor
J. W. Lang, Jr., Acting Secretary
S. W. Tenney, Assistant

Also Present

African Department: M. Touré, Counsellor and Director; R. O. Carstens. Asian Department: J. E. Zeas. Exchange and Trade Relations Department: T. Leddy, Deputy Director; C. V. A. Collyns, S. Eken, J. M. Landell-Mills. External Relations Department: E. Ray. Legal Department: F. P. Gianviti, General Counsel; W. E. Holder, Deputy General Counsel; R. H. Munzberg, Deputy General Counsel; J. W. Head, P. L. Francotte, R. Leckow. Secretary's Department: C. Brachet, Deputy Secretary, A. Tahari. Treasurer's Department: D. Williams, Deputy Treasurer; M. N. Bhuiyan, J. E. Blalock. Personal Assistant to the Managing Director: B. P. A. Andrews. Advisors to Executive Directors: N. Adachi, F. E. R. Alfiler, M. B. Chatah, A. Gronn, Z. Iqbal, M. J. Mojarrad, P. O. Montórfano, A. Napky, B. S. Newman, J.-C. Obame, F. A. Quirós, S. P. Shrestha. Assistants to Executive Directors: T. S. Allouba, S. Appetiti, G. Bindley-Taylor, C. Björklund, H. E. Codrington, E. C. Demaestri, S. Gurumurthi, M. E. Hansen, L. Hubloue, K. Ichikawa, A. Iljas, M. E. F. Jones, P. Kapetanovic, R. Marino, Wang J.

1. SUSPENSION OF VOTING AND RELATED RIGHTS - DRAFT REPORT TO BOARD OF GOVERNORS AND PROPOSED RESOLUTION ON THIRD AMENDMENT OF ARTICLES OF AGREEMENT

The Executive Directors considered a draft report to the Board of Governors and a proposed Resolution on the third amendment of the Articles, as revised to reflect the discussion at EBM/90/79 (5/21/90), to provide for the suspension of voting and related rights (SM/90/101, Rev. 1, 5/23/90).

Mr. Kabbaj recalled that, during previous discussions on the proposed amendment of the Articles, he had suggested that any linkage between the proposed amendment of the Articles and the proposed increase in quotas under the Ninth General Review of Quotas should work both ways. Since both of those proposals were controversial, some Governors might delay in approving one of them until the other was adopted. Therefore, a provision should be included in the Resolution on the third amendment of the Articles to duplicate the provision that had been included in the Resolution on the Ninth General Review of Quotas to link the proposed increase in quotas to the adoption of the third amendment of the Articles.

Mr. Dawson remarked that, in practice, Mr. Kabbaj's suggestion would have the same result as the original proposal of the United States that the proposed quota increase under the Ninth Review and the proposed third amendment of the Articles should be contained in a single Resolution. Directors would recall that that proposal was met with strong opposition, led by Mr. Kafka. Nevertheless, he wondered whether Mr. Kabbaj's proposal would be in keeping with the conclusions that had been reached during the recent Interim Committee meeting.

Mr. Kafka noted that Mr. Kabbaj's suggestion, which he fully supported, was different from the initial proposal put forward by the United States, because the double linkage between the two Resolutions would not prevent Governors from voting on each of them separately.

The Chairman recalled that, during the May 1990 Interim Committee meeting, Ministers had expressed concern about the difficulties that could arise if the proposed Resolution concluding the work on the Ninth General Review of Quotas and the proposed Resolution on the third amendment of the Articles were not adopted before end-1991. In that connection, the Committee had expressed the view that both of the proposed Resolutions were needed to strengthen the Fund in the years ahead. Therefore, rather than calling for a double linkage, which could cause the approval of one proposal to be delayed, owing to a failure to adopt the other, Ministers had agreed to meet again in December 1991, in the event that either of the proposed Resolutions had not been adopted, to consider the situation.

With respect to Mr. Kabbaj's suggestion, it was important to note the different voting majorities that were required for the adoption of the proposed quota increase, the Chairman considered. A majority of members

holding 85 percent of quotas in the Fund had to consent to their increases in quota to bring the quota increase into effect prior to December 31, 1991. Thereafter, consents from members holding only 70 percent of quotas would be needed.

Mrs. Filardo stated that she supported Mr. Kabbaj's proposal, and that she agreed with the comments made by Mr. Kafka.

The provisions on voting contained in the draft Resolution on the third amendment of the Articles were also a cause for concern, Mrs. Filardo noted. The proposed Resolution on the amendment of the Articles was to be submitted to the Board of Governors on May 30, 1990, and Governors were to cast their votes on or before June 28, 1990; thus, Governors would have only one month in which to submit the proposed Resolution to their parliaments for approval. She wondered whether that timetable would be adequate to allow members to carefully consider the proposed amendment of the Fund's Articles.

With respect to the Board's consideration of the proposed amendment, she had not yet received instructions from her authorities, Mrs. Filardo concluded. Therefore, she was not in a position to comment on that proposal for the current discussion.

Mr. Monyake noted that the linkage between the quota increase and the proposed amendment that had been provided for in the proposed Resolution concluding the Ninth General Review of Quotas went in only one direction, thereby preventing a quota increase from becoming effective before the effective date of the third amendment of the Articles. However, at the present stage, there was nothing to prevent the proposed amendment, which would extend the punitive measures available to the Fund, from coming into effect without an increase in quotas. In the light of that consideration, he agreed with Mr. Kabbaj that any linkage between the two Resolutions should work both ways.

In that connection, he wondered whether the Executive Board was legally obligated to follow the guidance received from the Interim Committee and, thus, to recommend to the Board of Governors that the coming into effect of the increase in quotas should be bound to the effective date of the third amendment of the Articles, Mr. Monyake concluded.

Mr. Ismael said that he wondered whether the Board was obligated to follow the invitation of the Interim Committee to submit the text of the third amendment of the Articles to the Board of Governors by May 30, 1990. An amendment of the Articles was of crucial importance to the future role of the Fund, and many concerns had been raised by Directors during the course of discussions on that amendment to date. Therefore, the Board should be given more time to carefully consider the draft report and proposed Resolution currently under consideration.

Mr. Lombardo stated that he supported Mr. Kabbaj's proposal. While some Directors considered that the proposed amendment of the Articles was necessary to strengthen the Fund, other Directors considered that the proposed increase in quotas was even more necessary.

Mr. Grosche noted that it would not be possible to establish a double link between the two proposed Resolutions, owing to the difference in voting majorities required for their adoption. While it would be possible to adopt the proposed increase in quotas by a 70 percent majority after December 31, 1991, an 85 percent majority was always required to adopt an amendment of the Articles.

Mr. Dai said that he supported Mr. Kabbaj's proposal for a double link between the quota increase and the proposed amendment of the Articles. As Directors were aware, his chair had been reluctant to accept the linkage of the proposed amendment to the Resolution concluding the Ninth Review of Quotas. Nevertheless, if the ratification of the proposed amendment was to be a condition for the coming into effect of the quota increase, a clause should be included in the draft Resolution on the proposed amendment of the Articles to make the increase in quotas a condition for its coming into effect.

Mr. Mawakani said that he fully supported the proposal put forward by Mr. Kabbaj.

Mr. Posthumus commented that the conclusions reached during the May 1990 Interim Committee meeting should not influence the ability of the Board to consider the proposal put forward by Mr. Kabbaj.

As Directors were aware, his chair had expressed strong opposition to the proposal to link the increase in quotas to the proposed amendment of the Articles, because that linkage reflected an abuse of the voting power that had been given to a single shareholder within the Fund, Mr. Posthumus remarked. In a similar vein, although he could sympathize with the quid pro quo attitude that had been taken by Directors favoring a two-way linkage, he could not support Mr. Kabbaj's proposal, because it would only serve to strengthen the dangerous precedent that had been set by the link contained in the Resolution concluding the Ninth General Review of Quotas.

Mr. Al-Jasser said that he agreed with the comments made by Mr. Posthumus. He considered that it was highly unlikely that the proposed amendment of the Articles would be adopted in the absence of an increase in quotas, but it might expedite the current discussion if the staff could comment on whether the proposal put forward by Mr. Kabbaj would have any negative consequences.

The General Counsel stated that the Interim Committee was not in a position to give legally binding instructions to the Executive Board. However, as an advisory body, the Interim Committee had clearly invited the

Executive Board to submit the text of a proposed amendment of the Articles to the Board of Governors by May 30, 1990. In that connection, it was important to note that any delay in submitting the proposed Resolution on the third amendment of the Articles to the Board of Governors would affect the proposed Resolution concluding the Ninth General Review of Quotas.

The adoption of an amendment of the Articles involved three stages, the General Counsel noted. The Executive Board was to submit the text of a proposed Resolution on the amendment of the Articles, providing for the suspension of voting and related rights to the Board of Governors by the end of May 1990; the Board of Governors was to vote on the proposed Resolution by the end of June 1990; then, after the Resolution was adopted, the proposed amendment would be transmitted to individual members for acceptance in accordance with their domestic legislative procedures. The third amendment of the Articles would become effective once the required majority--three fifths of the membership having 85 percent of total votes cast--had accepted it. Therefore, the June 28, 1990 deadline referred to in the text of the draft Resolution would not affect the amount of time members would have to consider the proposed amendment.

As to the question raised by Mr. Al-Jasser, it was important to consider both the practical and legal consequences of the proposal for a two-way linkage between the proposed Resolution on the third amendment of the Articles and the proposed Resolution concluding the work on the Ninth General Review of Quotas, the General Counsel considered. In practical terms, one consequence of the proposal would be to prolong the Board's consideration of the proposed amendment, particularly in the light of the difference of view that had been expressed by Directors thus far. In addition, the proposal could delay the coming into effect of the proposed amendment. Since the participation requirement for the increase in quotas would be reduced on December 30, 1991 to only 70 percent of the quotas of members consenting, it would be possible for a member, or a group of members, to postpone their acceptance of the amendment until the participation requirement for the quota increase was met.

With respect to the legal consequences of Mr. Kabbaj's proposal, the existing provisions of Article XXVIII, Section (c) stated that an amendment of the Articles would become effective not later than three months after it was accepted by the required majority, the General Counsel stated. Since, under Mr. Kabbaj's proposal, the proposed amendment could enter into force more than three months after it was accepted--assuming the quota increase had not become effective--it would be necessary to introduce a provision that would deviate from the existing Articles. The need for such a provision could be accommodated by further amending the Articles to revise the existing provisions of Article XXVIII, Section (c) to introduce a procedure that would allow the Executive Board to postpone the effective date of an amendment. An alternative approach would be to provide for a temporary amendment that would give effect to Mr. Kabbaj's proposal within the context of the draft amendment under consideration. While it was difficult to find

precedents for the latter procedure in the previous practice of international organizations, the staff could examine the possibilities in terms of prevailing international law.

Mr. Arora said that, in light of the remarks made by the General Counsel, Mr. Posthumus was correct to point out the damaging effects of the original proposal to link the Resolution on the Ninth General Review of Quotas to the effective date of the proposed amendment of the Articles. While it would not be logical to repeat the same mistake, the members that had agreed to the originally proposed linkage had done so in order to ensure that the proposed increase in quotas would be adopted. Therefore, although it was unlikely that the proposed amendment would come into effect in the absence of an agreement to increase quotas, some action was required to assure members that that could not happen.

Mr. Finaish stated that he supported Mr. Kabbaj's proposal, because it would help to avoid a situation in which members favoring only one of the Resolutions would postpone voting on the proposal they did not support until the required majority was reached to ensure the coming into effect of the Resolution they did support.

The Chairman noted that the Interim Committee had agreed that it should meet again in the event that the coming into effect of either Resolution appeared to be jeopardized to consider the circumstances prevailing at that time. That agreement should serve as sufficient protection for members who were anxious about either of the proposed Resolutions.

It was clear that the views among Directors were divided with respect to Mr. Kabbaj's proposal, the Chairman said. Therefore, further consideration of that proposal could only prolong the current discussion.

Following some further brief discussion, Directors turned to the text of the draft report and proposed Resolution on the third amendment of the Articles.

Mr. Adachi recalled that the title of the draft report and Resolution at the time of the second amendment was "Proposed Second Amendment to the Articles of Agreement." Therefore, he wondered whether the title of the draft report and proposed Resolution currently under consideration should be changed to "Proposed Third Amendment to the Articles of Agreement."

The General Counsel said that, at the time of the first amendment, the draft report and Resolution were entitled "Proposed First Amendment of the Articles of Agreement." The words "to" and "of" had been used interchangeably in the text of the report to the Board of Governors on the second amendment. In the text of the Articles, both formulations were also used, but a distinction could be found between the general reference to an "amendment to," as in Article X, and a specific reference to "the second amendment of this Agreement," as in Schedule B, paragraph 6. Nevertheless, the staff

could examine the title of the proposed Resolution currently under consideration from a legal perspective.

Mr. Grosche recalled that, during the previous discussion (EBM/90/80, 5/23/90), he had expressed concern about the possibility of allowing a national of a member whose voting rights had been suspended to serve as an Executive Director. He wondered whether any provision had been included in the text of either the draft report or draft Schedule L to prevent such a possibility.

The General Counsel stated that the staff had not incorporated the suggestion made by Mr. Grosche during the previous discussion into the draft report and Resolution currently under consideration, because such a provision would be contrary to the traditional electoral process of the Fund, in which there were no requirements bearing on the nationality of Executive Directors. Under the existing electoral process, members were able to elect any individual as a representative to the Fund. Indeed, a constituency could even elect a national of a country that was not a member. Therefore, it did not seem appropriate to place a restriction on nationals of members whose voting rights had been suspended that did not apply to nationals of countries that were not even members of the Fund.

Mr. Grosche said that, in light of the comments made by the General Counsel, he could accept the text of paragraph B.3 on the consequences of suspension, as drafted by the staff.

Mr. Arora recalled that, during previous discussions, several Directors--including himself--had refrained from commenting on the alternative formulations of a draft amendment that had been presented in SM/90/55 (3/30/90), because they were opposed to the proposed amendment providing for the suspension of voting and related rights. Since the Interim Committee had agreed that such an amendment of the Articles was called for, he could reluctantly support the formulation that was presented as Alternative A in SM/90/55. Under that alternative formulation, the suspension of one member's voting rights would not impact on the other members of a constituency or its Executive Director.

Therefore, Section 3(c) of draft Schedule L should be deleted to bring the draft Resolution under consideration into line with the original Alternative A formulation, which was the least disruptive to the representation of members in the Executive Board, Mr. Arora suggested. Since the Fund was not in a position to regulate the nationality of Executive Directors--as pointed out by the General Counsel--it should be left up to the constituencies to determine whether their representation in the Fund was appropriate. Moreover, the election of an Executive Director was a delicate matter among most multicountry constituencies; therefore, it should be left to the constituencies to decide whether or not they wanted the incumbent Executive Director to continue to hold office and cast the votes of the nonsuspended members.

In the event that Directors could not agree to delete Section 3(c) of draft Schedule L, the period in which a special election for a new Executive Director was to be held should be extended from 30 days to 90 days to allow members of the constituency affected by that schedule sufficient time to arrive at a satisfactory agreement among themselves, Mr. Arora concluded.

Mr. Feldman, Mr. Lombardo, and Mr. Marino said that they supported Mr. Arora's proposal.

Mr. Kafka said that he fully supported the comments and proposals put forward by Mr. Arora. There was no reason for the Fund to force an incumbent Executive Director to resign in the event that a member of his constituency was suspended from voting; on the contrary, it should be left to the other members of the constituency to decide whether or not a special election for a new Executive Director was called for.

Moreover, if Directors insisted that special elections be held within 30 days from the suspension of a member's voting and related rights, a provision would need to be added to draft Schedule L to ensure that no other member's rights would be suspended for a period of at least 31 days following the date of the initial suspension, Mr. Kafka stated.

The Chairman commented that Mr. Kafka's remarks implied an active use of the amendment providing for the suspension of voting and related rights, while Directors had clearly agreed that that amendment would be used only in the most egregious cases.

Mr. Kafka remarked that the recent experience in trying to obtain even modest financing through support groups indicated that it might be more difficult than previously expected to solve the problem of overdue financial obligations to the Fund.

Mr. Al-Jasser recalled that, during previous discussions, he had been the only Director to support the Alternative A formulation presented in SM/90/55. Therefore, he would certainly support any proposal to revise draft Schedule L to bring it into line with the substance of Alternative A. Members of a constituency should not suffer as a result of the suspension of any one member's voting and related rights. In that connection, in drafting the proposed amendment, the Board should make every effort to avoid any disruption to the membership of constituencies, the representation of members in the Executive Board, or the operations of the Fund.

Mr. Dawson remarked that the agreement to provide that an Executive Director could remain in office for a period of 30 days was reached as a compromise in the light of the concern expressed by several Directors that a constituency should not be unrepresented, owing to the suspension of a member's voting rights. In the light of Mr. Arora's suggestion that the

constituency should decide whether or not the incumbent Executive Director should remain in office, he wondered what the existing provisions of the Fund were with respect to replacing an Executive Director during his term in office.

The General Counsel said that, under the existing provisions related to elected Executive Directors, there was no means to terminate the office of an Executive Director during the two-year interval between regular elections of Executive Directors.

Mr. Dawson stated that the existing provisions served as a strong argument for retaining the text of draft Schedule L as drafted by the staff, because the current text would allow the voting members of a constituency to conduct a special election to decide whether or not the incumbent Executive Director should continue in office.

Mr. Ismael recalled that, during the previous discussion, he had questioned whether or not it was appropriate to proceed on the basis of the Alternative B formulation presented in SM/90/89, given the fact that many Directors had not commented on the alternative formulations contained in SM/90/55. In the light of the complications that could arise from the requirement contained in draft Schedule L that a new Executive Director would have to be elected in the event that a member's voting rights were suspended, it was clear that the Fund would benefit from a reconsideration of the Alternative A formulation described in SM/90/55.

The special election of a new Executive Director provided for in draft Schedule L was unnecessary, Mr. Ismael noted. While that provision had been included as a means of terminating the position of an Executive Director who was a national of a member whose rights had been suspended, constituencies had rotational arrangements under which individual members took turns in appointing a candidate for the position of Executive Director. Thus, draft Schedule L would disrupt otherwise stable constituency arrangements. Moreover, if the voting rights of more than one member were sequentially suspended, a series of special elections for Executive Directors would result, thereby creating a level of instability that should be avoided at all cost.

Mr. Evans commented that he had difficulty with Mr. Arora's proposal, because the provision contained in draft Schedule L on Executive Directors applied not only to Executive Directors of multicountry constituencies, but also to Executive Directors that represented only one member. He wondered whether Mr. Arora considered that an Executive Director representing only one member should remain in office in the event that that member's voting rights were suspended.

Mr. Arora said that Mr. Evans was correct to point out that the main distinction among Executive Directors was the number of members they represented. While an Executive Director of a multicountry constituency would

continue to cast the votes of the nonsuspended members of his constituency, an Executive Director that represented only one member would no longer vote. Nevertheless, for the sake of symmetry, he could continue in office.

It was important to note that most Executive Directors represented multicountry constituencies, which had agreed arrangements to facilitate the representation of each member, Mr. Arora considered. The removal of any Executive Director in the middle of his term would create complications for the entire constituency. Since it would be unfair to allow the entire constituency to suffer, owing to the suspension of any one member's voting and related rights, it would be more appropriate for the Executive Director of the constituency to remain in office, but not cast the votes of the member whose rights had been suspended.

Mr. Enoch commented that he agreed with other speakers that the current text of draft schedule L would offer the most protection to a constituency in the event that one of its member's voting and related rights were suspended. Since the incumbent Executive Director would remain in office pending a special election for a new Executive Director, there would be no immediate impact on the representation of the constituency. At the same time, the requirement to hold an election for a new Executive Director within 30 days would offer the constituency an opportunity to evaluate the situation and decide whether or not to re-elect the incumbent Executive Director. As the General Counsel had pointed out, Mr. Arora's proposal could lead to difficulties, because the constituency would not have any opportunity to force the incumbent to step down.

Mr. Finaish stated that his position was similar to that expressed by Mr. Arora and Mr. Al-Jasser. As a matter of principle, once elected, an Executive Director was an official of the Fund as well as of his constituency. Therefore, his position should be protected; he should not be forced out of office, even if his constituency wished to do so. In that connection, the provisions on compulsory withdrawal did not require the termination of the Executive Director's position.

The General Counsel recalled that, during the previous discussion, Directors had noted the inconsistency between the draft amendment under consideration and the existing provisions on compulsory withdrawal with respect to the position of Executive Directors. Those comments raised a question of whether the inconsistency should be corrected by aligning the draft amendment on the suspension of voting rights to follow along the lines of the existing provisions on compulsory withdrawal or the other way around. Since the Interim Committee had invited the Board to propose to the Board of Governors an amendment on the suspension of voting and related rights, the staff had limited its proposal to the effects of suspension. However, it would be possible also to amend the provisions on compulsory withdrawal.

It was important to take into consideration the differences among Executive Directors, the General Counsel considered. Some Executive

Directors were appointed by only one member, and one Executive Director had been elected by only one member. It would seem illogical for those Executive Directors to remain in office if they were not able to cast the votes of the member they represented. Nevertheless, other Executive Directors were elected by groups of countries; thus, there might be some rationale for them to remain in office in the event that the voting rights of one member of the group were suspended, because they would continue to cast the votes of the other members. However, since the suspension of a member's voting rights would upset the internal equilibrium of the constituency, there might be a need to reconsider the position of the Executive Director elected by the group.

Mr. Mawakani stated that he agreed with the position expressed by Mr. Arora and Mr. Al-Jasser. There was no need to distinguish between Executive Directors. Once elected or appointed, an Executive Director was an official of the Fund, with duties and responsibilities to the Fund as well as to the members he represented. Therefore, in the event that a member's voting rights were suspended, his position as an official of the Fund should be protected, and he could continue to contribute to the discussions of the Board, even if the votes cast by him were not counted toward meeting a requisite majority.

In the event that Directors could not agree to Mr. Arora's proposal, he considered that the period for special elections should be extended from 30 days to 90 days, Mr. Mawakani concluded.

Mr. Dawson said that he agreed with Mr. Enoch that the current text of draft Schedule L provided the most flexibility, because it would allow constituencies to re-evaluate the prevailing situation in the event that a member's voting and related rights were suspended, especially since the required special election could be used simply as a vote of confidence for the incumbent Executive Director. In that connection, it was important to note that the revision of draft Schedule L proposed by Mr. Arora would deprive constituencies of the right to select an appropriate representative when the circumstances under which the incumbent Executive Director had been elected changed. Moreover, it would be ridiculous for an Executive Director that had been appointed by only one member to remain in office if that member's voting and related rights were suspended.

Mr. Posthumus suggested that perhaps the provisions of draft Schedule L could be reversed to indicate that the incumbent Executive Director would remain in office, unless the members of the constituency asked him to step down.

Mr. Ismael said that he could agree to Mr. Posthumus's suggestion, as it would provide constituencies with the opportunity to decide whether or not the incumbent Executive Director should remain in office following the suspension of a member's voting rights.

The Chairman commented that the experience of individual countries showed that it was far more difficult to achieve a vote of no confidence than to achieve a vote of confidence.

The General Counsel noted that traditional parliamentary procedure provided for both votes of confidence and votes of no confidence. However, the main issue seemed to be one of whether priority should be given to the Executive Director or to the constituency. Mr. Posthumus's proposal would, to the extent possible, avoid disrupting the status of Executive Directors, because it would place the burden of challenging the position of the incumbent on the members of the constituency. However, the provisions of draft Schedule L would lead to more open debate within the constituency as to whether the incumbent Executive Director should remain in office or whether he should be replaced.

Mr. Dai recalled that, during EBM/90/59 (4/16/90), Directors had expressed concern that the suspension of a member's voting and related rights should not unduly affect the Executive Director or the nonsuspended members of a constituency. At that time, his chair shared the concerns that were expressed, although he had not been in a position to comment on the proposed amendment. Under the present circumstances, in which the proposed amendment was being drafted as part of a package agreement on the increase in quotas under the Ninth Review, those concerns were still relevant. He found it difficult to accept the rationale that an Executive Director should be held responsible or punished for the failure of a member to fulfill its financial obligations to the Fund. The comments made by Directors during the current discussion helped to point out the many uncertainties and complications that might result from the proposal to remove Executive Directors from their offices.

Moreover, since an Executive Director was not only a representative of his constituency, but also an international official of the Fund, responsible for conducting the business of the Fund, his position should be retained even if the voting rights of a member of his constituency were suspended, Mr. Dai considered. Any unnecessary interruption of his position should be avoided to the extent possible. In the light of those considerations, he supported Mr. Arora's proposal, and his position would remain flexible with respect to the suggestion put forward by Mr. Posthumus. While Directors' comments had focused mainly on the 11 members currently in arrears, caution should be taken not to lose sight of the far-reaching consequences and long-term implications the amendment could have on cases involving other breaches of obligations under the Articles.

Mr. Kafka said that he supported Mr. Posthumus's proposal. In a situation where the voting rights of one member of a constituency were suspended, it would be ridiculous to force all the other member countries--which could be as many as 22--to conduct a special election, in particular if the member whose rights were suspended held only a small percentage of total votes within the constituency.

The Chairman remarked that if a change occurred in the structure of a constituency, its members should be provided with an opportunity to consider the implications of that change.

Mr. Monyake commented that, although the Chairman wanted to give members of multicountry constituencies an opportunity to express their views, it did not seem as though such members wanted to realize that opportunity. In that connection, there was a need to consider the practical elements involved in conducting a special election. Under the provisions contained in the current text of draft Schedule L, in the event a member's voting rights were suspended, the constituency would have 30 days to inform its members of the need for a special election of a new Executive Director; the members would need to put up a candidate; and they would have to meet to consider the qualifications and appropriateness of that candidate for the position of Executive Director. Special constituency meetings were difficult to arrange, and they involved extrabudgetary expenditures for members, many of which were poorer developing countries. As the interval between regular elections was only two years, it would seem reasonable to wait until the next regular election to reconsider the situation of the constituency, rather than having to call an extraordinary meeting. In any event, 30 days was not a sufficient amount of time in which to hold a special election.

Mr. Kabbaj said that he supported Mr. Arora's proposal, because it would facilitate the smooth functioning of members' representation in the Fund.

Mr. Arora commented that in the light of the concern Directors had expressed about the need to provide for flexibility in maintaining the rights of constituencies, it would be best to allow the constituencies to decide whether or not they were adequately represented. If an Executive Director had recently been elected for a two-year term, in most cases the constituency would not want to replace him. In that connection, it should be stressed that the arrangements made within constituencies concerning the election of Executive Directors also pertained to Alternate Executive Directors, Advisors, and other representatives. Therefore, in the event a member's voting rights were suspended, it should be left to the constituency to decide whether its members wanted to undergo the complicated procedures that would be needed to change the existing arrangement. There was no need for the Fund to force its members to reconsider their constituency arrangements if a member's rights were suspended. Indeed, if the Fund was to force members to hold special elections, it should be generous in allowing them ample time to do so. Nevertheless, if Directors could not agree to delete Section 3(c) of draft Schedule L, he could accept Mr. Posthumus's proposal, which would allow the constituency to decide whether or not to ask the incumbent Executive Director to resign.

Mr. Clark said that he supported the comments made by Mr. Enoch and Mr. Dawson. The current text of draft Schedule L would provide the best balance in protecting both the constituency and the Executive Director. Under provisions currently contained in draft Schedule L, the suspension

of a member's voting rights would have no immediate impact on an incumbent Executive Director, because he would continue to hold office, casting the votes of nonsuspended members, pending the election of a new Executive Director. In that connection, a period of 30 days seemed reasonable--although the procedures of individual constituencies might vary--for constituencies to decide whether to re-elect or replace the incumbent Executive Director. While Mr. Arora was correct to point out that, in practice, most constituencies would likely re-elect the incumbent Executive Director if he was not a national of the member whose rights had been suspended, they would have no choice but to accept the incumbent until the next regular election under the proposal Mr. Arora had put forward.

Mr. Evans noted that there was nothing to prevent members from including in their constituency rules a provision to state that in the event that any member's voting rights were suspended, the members would automatically re-elect the incumbent Executive Director. By coming to such an agreement in advance, the members of the constituency could cast votes to re-elect the incumbent Executive Director on the same day that the suspension of voting rights become effective.

Mr. Thorláksson said that Section 3(c) of the current text of Draft Schedule L had two meanings: the Executive Director would not automatically cease to hold office if the voting rights of a member of the constituency were suspended; and the nonsuspended members of the constituency would have an opportunity and a responsibility to reconsider their representation in the Fund. Therefore, he could fully support the current text of draft Schedule L.

Mr. Filosa remarked that he could support the current text of draft Schedule L for the reasons expressed by Mr. Enoch, Mr. Dawson, and Mr. Clark. The need to provide constituencies with an opportunity to re-evaluate their representation in the Fund was highlighted by the fact that Executive Directors often expressed their personal views on issues, in particular when they had not had an opportunity to formally consult with their authorities.

Mr. Prader commented that he could support the wisdom contained in the suggestion put forward by Mr. Posthumus. The Fund should, at a minimum, be generous in accommodating the desire of some constituencies to extend the period for special elections of Executive Directors. The conduct of such elections was difficult for many constituencies, and as long as there was an agreement that nonsuspended members would have an opportunity to express their views concerning their representation in the Board, there was no need for the Fund to dictate a deadline for them to do so.

The General Counsel noted that, in practice, 30 days was the average period required to replace an elected Executive Director. However, the existing Articles prescribed that no vacancy on the Board should exceed 90 days. In that connection, the existing provisions stated that if a seat

on the Board became vacant more than 90 days before a regular election of Executive Directors, an election for a new Executive Director must be held.

Mr. Enoch said that the current text of draft Schedule L seemed to be in keeping with the existing provisions and practices of the Fund. However, it might be appropriate to amend draft Schedule L to indicate that an election for a new Executive Director would be held within 30 days, unless a regular election of Executive Directors was to take place within 90 days. He could not agree to extend the 30-day period referred to in the current text of draft Schedule L, because that would be inconsistent with the stated desire of many Directors to avoid disruption and uncertainty. Indeed, it would be best to move as quickly as possible to restore certainty to the representation of members in the Board. In that connection, he could endorse the observation made by Mr. Evans that constituencies could come to an agreement on representational matters before the suspension of one of its member's voting rights occurred. In the light of the previous practice of the Fund in dealing with cases involving arrears, it was unlikely that the suspension of a member's rights would come without a great deal of prior warning.

Mr. Kafka remarked that, in the light of common diplomatic practice, it was not logical to suggest that constituencies could hold meetings with a view to likely candidates for suspension. In addition, there was no reason to pressure constituencies to conduct special elections within 30 days. For many constituencies, it would not be easy to arrange for a special election within such a limited time frame, and some constituencies could not hold such an election without meeting. Therefore, he would prefer to follow Mr. Posthumus's suggestion.

Mr. Dai commented that he wondered whether it was either logical or legal to suggest that when an Executive Director was compelled to step down, his Alternate--who was appointed by him--should take up his position.

The General Counsel noted that the provision referred to by Mr. Dai had been included in the Articles to ensure the continuity of representation within the Fund. Otherwise, there would be no one to cast the votes of the constituency in the absence of the Executive Director. Under the current text of draft Schedule L, both the Executive Director and the Alternate Executive Director would continue to hold office for a period of 30 days following the suspension of a member's voting and related rights. However, in the event that a new Executive Director had not been elected within the prescribed 30-day period, the Alternate Executive Director would continue to hold office to ensure the continuity of the constituency's representation.

Under the provisions contained in Article XII, Section 3(f), the Alternate Executive Director was appointed by the Executive Director and could cast the votes allotted to the constituency in the absence of the Executive Director, the General Counsel continued. In that connection, he would cast the votes of the constituency in the interim between the end of an Executive Director's term in office and the election of a new Executive Director.

It was important to note that the Alternate Executive Director was an official of the Fund, irrespective of who appointed him, the General Counsel went on. Indeed, there were two meanings to the term appointment. Appointment as a designation would take place when an Alternate was selected by the Executive Director, but appointment as a status would continue until it was terminated. An Alternate's appointment could be terminated either by the Executive Director that appointed him or at the time a new Executive Director was elected and appointed a new Alternate. In that connection, Article XII, Section 3(f) made it clear that the appointment of the Alternate would not automatically end when the Executive Director that appointed him ceased to hold office.

Mr. Finaish stated that, in legal terms, the Alternate derived his position from the Executive Director, and the Executive Director could terminate the appointment of the Alternate at any time. In that sense, the Alternate was not an independent entity in the Board.

Mr. Grosche recalled that, during previous discussions, he had--in a spirit of compromise--reluctantly accepted the proposal that Executive Directors should continue to hold office for a period of 30 days following the suspension of a member of their constituency's voting rights. He could not support the proposal to extend that period. Nevertheless, he could agree to accept the suggested amendment put forward by Mr. Enoch, that no special election would be needed if a regular election of Executive Directors was scheduled to take place within 90 days of the suspension.

Mr. Adachi said that he could support the text of draft Schedule L as amended by Mr. Enoch.

Mr. Cirelli stated that he could support the current text of draft Schedule L, but his position was flexible with respect to the period for special elections of Executive Directors.

Following some further discussion, the Chairman noted that Directors agreed that the text of draft Schedule L should be amended to indicate that if a member's voting rights were suspended not more than 90 days before the next regular election of Executive Directors, the Executive Director should continue to hold office for the remainder of the term.

Mr. Ismael said, with respect to paragraph C.1. of the draft report, that he would prefer that a simple majority vote be required to terminate the suspension of a member's voting and related rights. If Directors holding 50 percent of the votes cast supported the termination of suspension, it would not be possible for 70 percent of the Board to support the suspension. Moreover, if the termination of suspension required only a simple majority, it would not be possible for a few members with large voting shares to block the reinstatement of a member's voting and related rights.

The Chairman noted that Mr. Ismael's proposal had not received sufficiently widespread support among Directors.

Mr. Al-Jasser commented, with respect to draft paragraph 4 on the effects of termination, that the major concern of his authorities was to ensure the smooth functioning of the Executive Board, Fund operations, and the constituencies of individual Executive Directors in the event that a member's voting and related rights were suspended. In that connection, it was also important to consider the interests of the member that had been suspended. The intention of the proposed amendment on the suspension of voting and related rights was to encourage members in arrears to normalize their relations with the Fund as soon as possible. Therefore, the major problem with the procedures envisaged under the current text of the draft amendment was that after a member's voting rights had been reinstated it would not be able to rejoin its constituency or any other constituency, thereby resuming its participation in the Fund until the next regular election of Executive Directors. As that election might not take place until two years after the special election for a new Executive Director, the effect of the amendment would be excessively punitive and serve as a disincentive for members in arrears to expeditiously normalize their relations with the Fund. In light of the stated intentions of the strengthened cooperative strategy on overdue financial obligations, the draft amendment should include a provision that would mitigate the effects of suspension in order to facilitate a reinstated member's efforts to resume an active role in the Fund.

Mr. Enoch said that, while he had no objection to Mr. Al-Jasser's suggestion, he wondered whether it would be consistent with the treatment received by countries that joined the Fund during the interval between regular elections of Executive Directors. Moreover, he wondered whether it would be fair to treat a member whose voting and related rights had been suspended any differently than a new member.

The General Counsel noted that the termination of suspension would immediately restore the member's right to appoint a Governor and an Alternate Governor. However, the effects of the termination of suspension on membership in the Executive Board needed to be considered.

According to the existing provisions of the Articles, regular elections of Executive Directors were held only at two-year intervals, the General Counsel stated. Therefore, a new member joining the Fund, or a member who had not participated in the most recent election, would normally have to wait until the next regular election to join a constituency and have its votes cast in the Board.

To accommodate the suggestion put forward by Mr. Al-Jasser, it would be necessary to include a provision in the draft amendment that would make an exception to the normal electoral process for a member whose voting and related rights were reinstated at a time other than during, or just prior

to, a regular election of Executive Directors, the General Counsel continued. While it would be possible to include such a provision in the draft amendment, the appropriate form of that provision would depend on whether or not a regular election of Executive Directors had taken place during the period of suspension.

If a member's rights were reinstated before a regular election of Executive Directors had taken place, it would be relatively simple for that member to rejoin its former constituency and have its votes cast by the Executive Director it had elected or his successor, the General Counsel noted. In that connection, complete symmetry between the effects of suspension and the effects of its termination would suggest that an election among the constituency for a new Executive Director should be held when a member's rights were reinstated, but that would unnecessarily complicate the provisions of the amendment, since the goal of the termination was to allow the reinstated member to have its votes cast in the Board.

However, if a regular election of Executive Directors had taken place during the period of suspension, a different situation would result, because the constituencies within the Fund might have changed and the Board of Governors might have decided either to increase or decrease the number of elected Executive Directors, the General Counsel went on. In such a situation, it might be reasonable to follow the existing provisions of the Fund with respect to the rare instance of when a member, owing to its creditor position in the Fund, was allowed to appoint an Executive Director. If that member was part of a constituency before it was allowed to appoint an Executive Director, any other member of the former constituency was permitted to arrange by agreement with the appointing member to have its votes cast by the appointed Executive Director.

To cover either of those situations, the section of the draft report on the effects of termination could be revised to indicate that if no regular election of Executive Directors had been conducted under Article XII, Section 3(d) between the date of the suspension and the termination of the suspension, the member would be automatically reintegrated in the constituency it had belonged to before the suspension, the General Counsel concluded. Under such a provision, the votes allocated to the member would be cast by the Executive Director that had been elected as a result of the member's suspension. Another provision could be added to indicate that if a regular election of Executive Directors had taken place before the termination of suspension, the member could join any constituency prior to the next regular election, provided all the members of that constituency agreed. In that event, the member would become part of the constituency and would be treated as if it had participated in the previous election of the Executive Director.

Mr. Al-Jasser said that he supported the proposal put forward by the General Counsel as it would send a message to the membership that the Fund

was not contemplating punitive actions, but was trying to induce members in arrears to normalize their relations with the Fund as soon as possible.

Mr. Dawson noted that, to be in keeping with previous draft reports, the third sentence of paragraph 3 under the section of the draft report on procedures should be revised to indicate that Governors' votes must be received at the seat of the Fund before 6:00 p.m., Washington time, on June 28, 1990.

The General Counsel stated that the revision suggested by Mr. Dawson would be appropriate, given the previous practice of the Fund.

Mr. Ismael commented that, although Article XXVIII prescribed that amendments to the Articles would enter into force for all members three months after the date of formal communication unless a shorter period was specified, it would be logical for the proposed amendment to become effective on the same date as the quota increase under the Ninth Review.

Mr. Kafka said that he agreed with Mr. Ismael's suggestion, particularly in light of the fact that the quota increase could not become effective before the effective date of the proposed amendment.

Mr. Chatah and Mr. Dai stated that they supported Mr. Ismael's suggestion.

Mr. Newman remarked that in the event that the amendment and the quota increase were both ratified on December 31, 1991, the coming into effect of both decisions would be delayed three months.

The General Counsel said that it would be possible to include a provision in the Resolution on the third amendment of the Articles to indicate that it would not come into effect until the date on which the Fund determined that the minimum number of consents required to bring the quota increase into effect had been received.

Mr. Ismael asked whether it would be possible to include a provision in the draft Resolution to state that the amendment of the Articles would come into effect on the same date as the quota increase under the Ninth Review.

The General Counsel replied that under Article XXVIII, the effective date of an amendment could not be postponed by more than three months after the communication by the Fund that the required majority had been met. Obviously, it was open to the Board to interpret that provision, but in any case it was rather unlikely that the quota increase would not have been consented to by the required majority by the time the required number of acceptances for the amendment had been received.

Following some further discussion, the Chairman noted that Mr. Ismael's proposal had not received sufficiently widespread support among Directors.

Mr. Kafka suggested that the footnote on page 10 of SM/90/101, Rev. 1, should reflect the sentence taken from the May 8, 1990 Interim Committee communiqué in its entirety.

The Chairman noted that Directors agreed to accept the revision of the footnote on page 10 of the draft report suggested by Mr. Kafka.

The staff would revise the draft report and Resolution on the third amendment of the Articles to reflect the comments made by Directors during the current discussion, the Chairman concluded.

The Executive Directors agreed to adjourn until May 30, 1990 their consideration of a draft report to the Board of Governors and a proposed Resolution on the third amendment of the Articles to provide for the suspension of voting and related rights.

DECISIONS TAKEN SINCE PREVIOUS BOARD MEETING

The following decisions were adopted by the Executive Board without meeting in the period between EBM/90/80 (5/23/90) and EBM/90/81 (5/25/90).

2. ISRAEL - INTERIM ARTICLE IV CONSULTATION DISCUSSIONS - DECISION CONCLUDING 1990 ARTICLE XIV CONSULTATION

1. The Fund takes this decision relating to Israel's exchange measures subject to Article VIII, Sections 2 and 3, and in concluding the 1990 Article XIV consultation with Israel.

2. Israel maintains the restrictive measures described in SM/90/95 (5/17/90) in accordance with Article XIV, Section 2, except that the tax on the import of services and the exchange rate insurance scheme are subject to approval under Article VIII, Sections 2 and 3. The Fund encourages Israel to eliminate the exchange tax and the insurance scheme as soon as possible. (SM/90/95, 5/17/90)

Decision No. 9438-(90/81), adopted
May 24, 1990

3. EXECUTIVE BOARD TRAVEL

Travel by Executive Directors as set forth in EBAP/90/131 (5/22/90) and EBAP/90/132 (5/23/90) is approved.

APPROVED: April 18, 1991

LEO VAN HOUTVEN
Secretary