

Introduction

Though Joseph Gold may not have been “present at the creation”¹ of the International Monetary Fund, he surely was the key legal architect of its post-war development. Even more significant than his role as chief draftsman of the First and Second Amendments to the Articles of Agreement, which respectively created the SDR and elaborated its role as the central reserve asset, was his leadership in expanding the powers of the Fund by interpretation.² The analogy to the role of Mr. Chief Justice John Marshall in expanding the powers of the U.S. federal government in the early nineteenth century is compelling.

Though Gold was a technical draftsman who believed that the text of the Articles deserved great respect and hence careful interpretation, his very skill enabled him to meet the needs of the hour. He certainly treated the Articles as a constitution to be construed, not as a commercial document designed to limit action. For example, he was able to find a legal basis for establishing a multilateral ministerial level Committee of Twenty in the form of an “ad hoc committee of the Board of Governors.” This innovation offered key nations an independent vehicle for developing an international monetary reform plan while at the same time preserving the authority and central role of the Fund.³ Similarly, he found a way to allow the Fund in the 1970s to tap the resources of the oil-exporting countries through a special oil facility imposing higher than normal Fund charges for borrowing in order to pay lenders more nearly competitive interest rates.⁴ He even created a Trust Fund, an unusual innovation for an international body.⁵

Gold’s success did not depend solely on his superior skill as an interpreter of the substantive rules of the Fund. It depended far more on two broad principles

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1. D. ACHESON, *PRESENT AT THE CREATION: MY YEARS AT THE STATE DEPARTMENT* (1969).
2. The Second Amendment had major provisions going well beyond the SDR. *See* K. DAM, *THE RULES OF THE GAME* 253–75 (1982).
3. *Id.* at 218; 2 M. DE VRIES, *THE INTERNATIONAL MONETARY FUND 1972–1978, COOPERATION ON TRIAL* 1020 (1985).
4. M. DE VRIES, *supra* note 3, at 1020.
5. *Id.*

that lifted his legal work at the Fund out of the routine. He believed that law and economics were both essential to the work of the legal staff. Economics was not the province of economists alone, just as "international lawyers do not restrain themselves from considering the laws of war because they are not warriors or the law of outer space because they are not astronauts."⁶ Hence, the economics issues should inform legal interpretation rather than the latter hamstringing the Fund's approach to the former.

The second principle was that although interpretation of substantive rules was the task of the Fund's lawyers, the real breakthroughs were to be made in procedural innovation because "procedure tends to determine outcome."⁷ More philosophically he observed, "The 'society of nations' is a primitive society because of the weakness of international law, but the anthropologists of the law have taught that in primitive societies law is often secreted in the interstices of procedure."⁸

To these legal and intellectual strengths he added an alert political intelligence. He was astute in finding a workable political balance between the developed countries that provided the bulk of the financing for the Fund and the borrowers that increasingly were the developing countries.

Gold arrived at the Fund almost at the creation, joining the Legal Department in 1946. His influence grew quickly, and in 1960 he became the General Counsel, the third-ranking official of the Fund and the senior member of the permanent staff. As General Counsel he was a key figure in dealing with the twin challenges of the 1970s—the reform movement of 1971–1974 and the oil crisis beginning in 1973. The reform movement was a direct response to the U.S. closing of the gold window in 1971, an action that proved to have knocked out one of the key props supporting the Bretton Woods system. The oil crisis created such massive payment imbalances that it led to a relative reduction of the comparative role of the Fund as a lender in favor of recycling by commercial banks. Neither the reform movement nor the oil crisis reduced the need for the Fund, either as a set of rules or as a financial institution. In retrospect, it can be said that the fact that the Fund survived to play a central role in the 1980s, particularly in dealing with the debt crisis, was in large part due to Gold's initiative and resourcefulness in finding a way to accommodate the strains of the 1970s within the Fund's rules, both by amendment of the Articles and by their interpretation.

One other major accomplishment of Joseph Gold has been to expand and deepen the scholarly field of international monetary law. No other person has

6. Gold, Book Review, 61 *AM. J. INT'L L.* 830 (1967) (reviewing R. TRIFFIN, *THE WORLD OF MONEY MAZE; NATIONAL CURRENCIES IN INTERNATIONAL PAYMENTS* (1966)).

7. Gold, Book Review, 24 *FIN. REV.* 51 (1987) (reviewing T. WEISS, *MULTILATERAL DEVELOPMENT DIPLOMACY IN UNCTAD: THE LESSONS OF GROUP NEGOTIATIONS, 1964–84* (1986)).

8. *Id.*

made a contribution in any way approaching his. One could even defend the proposition that he has done more through his public writings than have all other scholars of the post-war world combined. To be sure, he has had certain advantages over his university-based colleagues, especially in his access to unpublished and indeed restricted internal Fund documents as well as submissions of member governments. But it is precisely in the making available the essence of those documents without betraying their individual confidentiality that he has played an indispensable role in the creation of a body of legal analysis concerning the Fund.⁹ Particularly useful is the legislative history of the First and Second Amendments because together those Amendments left little in the original Articles untouched and because he, as principal draftsman, had an uncommon grasp of the background of all the changes.

Finally, the willingness and capacity of Gold to situate the Fund rules within the broader body of international monetary law has made his writings of permanent value going beyond historical reporting and explanation. We can be confident that in the twenty-first century Joseph Gold will not only be cited in every serious book and article on international monetary law but will be recognized as the seminal scholar of his time in that field.

9. K. DAM, *supra* note 2, at xvi-xvii.

