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What's So Special About Special Drawing Rights— "With Lawyer's Prejudice"

In recent years, questions concerning international monetary matters have generated a great deal of controversy ranging from a simple laymen's debates to highly articulated presentations at diplomatic conferences. Various efforts aimed at the solution of the problem may conveniently be catalogued into two major categories. A conservative position has maintained that Bretton Woods provides the mechanism for a workable disposition of international financial issues in any given situation of international economic life; the purpose of the International Monetary Fund is to provide liquidity rather than creation or increase of reserve assets.[1] A more progressive view has built its case on the following contentions:

(a) An international economic institution is a super-structure founded upon certain definite international realities with the purpose of accomplishing a specific task.

(b) Changes in the infra-structure demand modifications in the institution.

(c) The Bretton Woods Arrangement has outlived its purpose; it needs to be amended to accord with present international economic realities.

(d) The scope of international trade in particular, and the contemporary economic realities in general, demand more than a mere increase in the velocity of existing reserve assets. In order to assure the smooth transnational movement of goods and services, creation of an additional reserve asset is imperative.

(e) Special Drawing Rights within the legal framework of the International Monetary Fund supply an answer to the problem.

(f) Although treaties cannot create power, they can assign responsibility.[2]

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[1]*See: Birnbaum Says Use of SDRs Won't Solve Monetary Problems,* The Washington Post, June 3, 1968.

[2]Edward M. Bernstein, *World Monetary System Seen Needing SDRs* The Washington Post, June 5, 1968. *See also* Mitchell B. Carroll, *Summit of International Monetary Law,* The International Lawyer, Vol. 3, No. 2, January 1969, p. 375. Pierre-Paul Schweitzer, Managing Director of the Fund, described the Outline of a Facility Based on Special Drawing Rights: "The Outline reflects the principle that the international community should be able to control reserves, instead of reserves controlling the community. When a collective judgment

The purpose of this paper is, within the scope of legal precedent, contemporary international jurisprudence and current practices, to show by way of a legal analysis of the Outline of a Facility Based on Special Drawing Rights in the International Monetary Fund, whether SDRs provide a realistic solution to the issue at hand.

New Facts of Law

The breath-taking acceleration in growth in general and in international trade in particular, has demonstrated that conventional sources of international reserves—gold and hard currencies—may not be sufficient to meet the demands of the time. The situation became even more acute when on November 1, 1967, England devalued the pound by 14.3 per cent.[3] An immediate effect of the move by England has been the general lack of confidence in hard currencies and flight to gold.[4]As a palliative the London Pool agreed that it would no longer supply gold to private persons establishing a two-price system, *i.e.*, a fixed price of $35.00 per ounce governing official transactions, and the free market price controlled by the law of supply and demand.[5]

Since the end of 1957, the United States gold stock has declined by some $13 billions and foreign dollar holdings have risen over $15 billions to a potential claim of over $31 billion on the $12 billion balance of the United States gold reserves.[6] United Stated deficit has transnational implications as at the beginning of 1959 the rates of nearly all convertible currencies were pegged to the dollar and a large part of the assets that back most of such currencies consists of indebtedness in terms of U. S. dollars.[7] Hence, any challenge to the free external convertibility of the dollar would profoundly affect the contemporary international financial order.

In the sphere of international economics, there have been two fundamental approaches to the solution of the problem. The French school stresses the stability in the quantity of money.[8] The Keynesian school, on

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is made that it is desirable to supplement existing reserves, there need be no fumbling for *ad hoc'* solutions. The risk has been dispelled that for the lack of agreed international arrangements countries would find themselves driven to adopt solutions dictated not by reason but by force of circumstances."

[3]*See* Walter F. Mondale, *Alchemy: The Expansion of International Monetary Reserves,* 13 South Dakota Law Review, 282, (Spring 1968).

[4]*Id.*

[5]Carroll, *supra,* note 2, pp. 383-384.

[6]Mondale, *supra,* note 3.

[7]HENRY J. STEINER *and* DETLEY E. VAGTS, TRANSNATIONAL LEGAL PROBLEMS, (Mineola, New York, The Foundation Press, 1968) pp. 1107-1113.

[8]JACQUES RUEFF, BALANCE OF PAYMENTS, (New York: Translated by Jean Clement for the Macmillan Co.,) pp. 30-35. In essence, the French school holds that the balance of payments settlements depends solely upon the level of the discount rate in relation to the

the other hand, emphasizes the stability of prices by maintaining sufficient liquidity.[9] In accordance with their general philosophy, the French approach accentuates domestic spheres of monetary responsibilities, limiting the international aspect to the realm of coordination and limited cooperation through the presently available international legal framework, *i.e.* the gold exchange standard, and the International Monetary Fund.[10] Conversely, the Keynesian postulate, that in order to keep full employment, prosperity and economic growth, price stability is imperative. To have price stability, they say, it is essential to have freedom of transnational movement of goods and services, and to provide a mechanism for insuring adequate monetary liquidity.[11]

The International Monetary Fund is predicated on the premise that "exchange rates and control traditionally within unlimited national discretion, are matters of international concern and hence should not be left entirely to a unilateral determination."[12] This in fact means that under the "domestic" jurisdiction of the Fund, members are legally bound to abide by the fair exchange rates of the Articles of the Agreement. However, the purpose of the Fund is to "give confidence to members by making the Fund's resources available to them under adequate safeguards [and] thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive to national or international prosperity."[13] In this connection, it is essential to note that the present international monetary legal framework does not provide additional reserve assets, but merely attempts to ensure liquidity through the control of velocity.[14]

In the light of rapid expansion of trade and the chronic deficit of the United States in her balance of payments, a question has arisen whether the present resources and institutionalization are adequate to meet the time requirements. The French seem to give a qualified "yes" that is condi-

corresponding money market rates. By keeping discount rates higher than the free market money prices, a country can ensure the equilibrium of credits and liabilities.

[9]STEINER, *supra*, note 7, *See also:* The Investor, January, 1969 (New York: Paine, Webber, Jackson and Curtis).

[10]RUEFF, *supra*, note 8, pp. 202-215.

[11]BERNSTEIN, *supra*, note 2.

[12]STEINER, *supra*, note 7, p. 1116. *See also:* Fritz Alexander Mann, *Money in Public International Law*, HAGUE RECUEIL DE COURS, Vol. 96 (1959) pp. 64-65.

[13]I.M.F. Art. I. STEINER, *supra*, note 7, p. 1116: "Three dominant purposes emerge. The Fund is to develop and to the extent possible, enforce—rules of conduct on exchange rates and exchange controls; to meet under certain circumstances the financial needs of members by making available to them the different national currencies among its assets; and to provide a forum for discussion about (as well as technical assistance to help to remedy) international monetary problems."

[14]FRED HIRSCH, MONEY INTERNATIONAL, (London: The Penguin Press, 1967), pp. 258-261.

tioned on the U.S. ability of improving the undermined confidence of the dollar. In order to do so, they urge the United States to undertake the necessary monetary policies to curb her imbalances and to increase the price of gold.[15] The Keynesians, on the other hand, contend that the most effective long-range step is to create a new facility within the framework of the I.M.F., that is, the Special Drawing Rights.[16] Ratification and activation of SDRs will provide a new reserve asset.[17] The rationale of this approach is based on the deemphasis of gold as a monetary asset and on the shift of international monetary responsibilities from the United States to multilateral responsibilities of all the participants. Translated into legal terms, it means that the overriding principle of coordination is to be replaced by the principle of cooperation or legally binding collaboration.

Legal Analysis

Conceptually, money has generally been regarded as legal tender representing a unit of account recognized as such within the territorial limits of the State which created it.[18] It is a firmly established principle of international law that the power to legislate is one of the fundamental manifestations of sovereignty. Hence, in the absence of a treaty, matters related to its currency are within the exclusive competence of the State.[19] Because of this inherent limitation, the modern international law of money has been concerned with the stability of exchange rates, convertibility and the balance-of-payments problems.[20] The weight of authority, however, has maintained that it is beyond the province of law to change the facts of law, that is, the economic realities of a given situation.[21] The law can provide only the means necessary for the realization of desirable economic policies based on those economic realities. Accordingly, an international legal framework is effective only in so far as the facts of law or the underlying

[15]RUEFF, *supra*, note 8, pp. 13-23. *See also:* Henry G. Aubrey, *Behind the Veil of International Money, Essays in International Finance*, No. 71, January, 1969 (Princeton, J. J. International Finance Section, Department of Economics) 37.

[16]STEINER, *supra*, note 7, pp. 1132-1135.

[17]*Id.*

[18]F. A. MANN, THE LEGAL ASPECTS OF MONEY (London: Humphrey Milford, 1938) at 7, 10, 165: "... in law the quality of being money is to be attributed to all chattels, which issued by the authority of the law and denominated with reference to a unit of account. Only those chattels are money to which such character has been attributed by law, *i.e.* by or with authority of the State. Money, being a creature of the law is regulated by the State, and more particularly it is the State which decides which chattels are legal tender. Moreover, it is the State which determines the value set upon such money. As each State exercises these sovereign powers over its own currency and as there is no State which would legislate with reference to another country's currency, it must be the law of currency which determines whether a thing is money and what nominal value is attributed to it."

[19]*Id.*

[20]STEINER, *supra*, note 7, pp. 1111-1116.

[21]MANN, *supra*, note 18, pp. 47-48.

infra-structure have not changed its original texture. Moreover, in light of the structure of the contemporary international community, a concerted effort on an international scale is necessarily confined to a limited cooperation, parallel coordination, and guidance of the activities of member States, rather than to "performing operational functions and exercising power of direct action within the States' national system of law."[22]

From the standpoint of international legal order, a new framework transcending national boundaries has found its expression in the intergovernmental body corporate commonly known as the international organization.[23] An international organization as a genuine international institution must necessarily be the result of a juridical act of a constitutive character expressed in the form of an international arrangement, such as a treaty or convention duly ratified by the sovereign states parties thereto, and governed by public international law.[24] It represents a typical group of states or entities possessing an international personality which consciously combine their individual efforts in the common task. Moreover, in order to be effective, an international economic institution must have a unity of purpose which in turn requires the compatibility and harmonization of its objectives.

The International Monetary Fund (I.M.F.) is an international organization endowed with an international personality wherein its members pooled certain financial resources for the specific purpose of alleviating short-term imbalances of payment.[25] The Articles of the Agreement reflect the facts of law at the time of the Bretton Woods Arrangement, mainly:

(a) International cooperation in the monetary field is an essential counterpart to the pending policies of trade liberalization.
(b) Gold as a reserve asset has been substituted by the dollar due to its scarcity and confidence instilled by the soundness and stability of the United States economy.
(c) Currency stability is primarily a matter of domestic law, but the exchange rates are matters of international concern.[26]

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[22] *Ibid. at* p. 226.

[23] FRIEDMANN, WOLFGANG, THE CHANGING STRUCTURE OF INTERNATIONAL LAW (New York: Columbia University Press, 1964), pp. 50-9. A corporate structure is a product of man's ingenuity to carry out business efficiently. Its very nature, therefore, tends to approach international matters in a business like manner, for if it assumes a broader term of reference it sacrifices efficiency. *See also:* JENKS, WILFRED, C., THE PROPER LAW OF INTERNATIONAL ORGANIZATIONS (New York: Oceana Publications, 1962).

[24] Carlston, Kenneth, *International Administrative Law: A Venture in Legal Theory*, PUBLIC LAW Volume 8, No. 2, Fall 1959, pp. 299, 388.

[25] Bernstein, Edward M., The International Monetary Fund in the Global Partnership, International Agencies and Economic Development, ed. by Richard N. Gardner (New York: Frederick A. Praeger, 1968) p. 143.

[26] *Birnbaum Says, . . . supra*, note 1.

The outline of a facility based on Special Drawing Rights in the International Monetary Fund provides that the facility is to be established within the framework of the Fund, *i.e.* by an Amendment to the Articles.[27] This fact raises the overall issues, mainly the compatibility of the objectives, the universal scope of the task undertaken, and the legitimacy of the system and its harmonization with the existing international legal and administrative machinery. More specifically, the new arrangement raises what appears to be the threshold question, that is, whether an institution founded on the sound confidence of the dollar can serve as a proper legal framework for the purpose of restoring the undermined confidence of the dollar.

It is decidedly clear that the United States balance of payments deficit, and the apparent shaken confidence in the dollar, constitute the new facts of law demanding a new legal framework which might be competent to furnish the mechanism for a realistic solution of the present needs.[28] Furthermore, pursuant to the Articles of the Agreement, the Fund "shall be guided in all its decisions by the purposes set forth in the Articles."[29] As stated, the original purpose of the Fund was to provide short-term assistance to the members in overcoming temporary balance of payments difficulties.[30] In its revised form, the Fund would have an additional purpose of providing the long range deliberate control of international liquidity.[31] It is manifestly clear that the two purposes are diametrically opposed to each other, and when artifically grouped within the régime of the same organization must necessarily result in inefficiency and confusion.

The assets of the Fund consist primarily of subscriptions paid by mem-

[27]International Monetary Fund, Report by the Executive Directors to the Board of Governors; *Proposed Amendment of Articles of Agreement*, Washington, D.C., April 1968. At the Twenty-Second Annual Meeting at Rio de Janeiro in September 1967, the Board of Governors adopted a resolution with respect to incorporation of the Outline within the legal framework of the Fund. *See* page 1.

[28]MANN, *supra*, note 18, p. 11. Monetary policies "are or ought to be relevant to the lawyer if and in so far as they prove or disprove the existence of a legal rule, explain its nature and ambit, illustrate its usefulness or the need for reform or throw light upon legal techniques." But it must be emphasized that it is beyond the power of law to attempt to accomplish or even promote such objects of economic policy. The law can only devise the machinery necessary to give effect to such policies as have been laid down. It would be rash to assume that any of these institutions are of permanent character or have an unalterable structure.

[29]I.M.F. Article 1.

[30]*See supra*, text, note 25. STEINER, *supra*, note 7, p. 1129: "The purpose of the financing is to overcome short term disequilibrium in the balance of payments, not to cure a persistent deficit or a fundamental disequilibrium for which a devaluation is appropriate remedy."

[31]Joseph Gold, *The Next Stage in the Development of International Monetary Law: The Deliberate Control of Liquidity*, AM. J. INT'L. L. April, 1968, p. 374. According to Gold, the central thought is to have an international agreement which will assure the world of sufficient liquidity by a "process of deliberate and concerted action."

bers according to their designated quotas.[32] The assets become the property of the Fund which plays the role of a "banker" closely related to its regulation of exchange rates and exchange control.[33] The Articles set forth the conditions for drawing currencies from the I.M.F.[34] Under the new facility, any participant will have the unconditional legal right to use Special Drawing Rights whenever it has balance or reserve need to do so.[35] The use of SDRs does not entail repayment or repurchase according to a fixed schedule as does the use of the Funds' ordinary resources.[36] The outline merely provides for a partial 30% restoration or reconstitution following an extensive and abnormal use.[37] Thus, under the new régime, the Fund plays a dual role of "banker" and "bookkeeper", hardly two compatible functions. The outline, however, does not specify the criteria according to which SDRs should be supplied. It has been suggested, that there must be a widely recognized need to supplement existing reserve assets.[38] The initial role is played by the Managing Director who submits a proposal to the Executive Directors. Following the latter's approval, the proposal must still be approved by an 85 per cent majority of the voting

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[32]STEINER, *supra*, note 7, p. 1128: Members' quotas are determined in accordance with a schedule to the Agreement, "or separately agreed upon for countries which later joined the Fund.

[33]BERNSTEIN, The International Monetary Fund. *supra*, note 25, p. 135. "All drawings must be repaid unless a member is a creditor of the I.M.F. in excess of 25% of its quota. Thus even drawings in gold *tranche* must be repaid."

[34]*Id.*, "Under the policy adopted by the Executive Board (of the Fund) members which draw on the I.M.F. are required to give an undertaking (promise) that repayments will be made within three years with an outside limit of five."

[35]GOLD, *supra*, note 31, p. 380. The author points out that "it is arguable that some of the legal qualities of the asset will be superior under existing monetary law to the more traditional assets, gold and currencies. There are no obligations, under international law, on monetary authorities to buy or to sell gold for their own currencies. The acceptability of gold by monetary authorities rests on an emotion, which is beyond the law, but the acceptability of SDRs will rest on legal obligation." Proposed Amendment of Articles of Agreement, *supra*, note 27, p. 14. As a general rule, a participant will be expected to use special Drawing Rights in transactions with other participants only if it has a need as defined in the amendment to the Articles. However, the Fund will be authorized to prescribe transactions in which participants may use SDRs without fulfilling the requirement of need.

[36]HIRSCH, *supra*, note 4, p. 158. "Nominally transactions through the Fund comprise, not borrowing nor lending, but, an exchange of currencies through purchase and repurchase." I.M.F. Article V, Section 3Ea): "A member shall be entitled to buy the currency of another member from the Fund in exchange for its own currency subject to the following conditions (1) The member desiring to purchase the currency represents that it is presently needed for making in that currency payments which are consistent with the provisions of the Agreement."

[37]International Monetary Fund, *supra*, note 27, p. 15. Under the reconstitution principles, a participant's net use of its special drawing rights must be such that the average of its daily holdings of special drawing rights over a five-year period will not be less than 30 per cent of the average of its daily net cumulative allocations of special drawing rights over the same period.

[38]*Id.*, p. 14.

power.[39] In this connection, it is significant to note that both the United States, or the European Economic Community, with its 17% of the voting power, could veto the creation or allocation of SDRs. Moreover, SDR users will acquire currencies convertible in fact,[40] not out of resources held by the Fund, but directly from the other participants or through the facilities of the Fund.[41] It is also essential to point out that a country may buy its own currency with SDR's but only if the holding country agrees to accept SDR's in exchange.[42]

The lack of criteria with respect to the need, the straight-jacketing of decision making, and the "bookkeeping" operations of the Fund, raise some serious questions as to the independence of the Fund essential to the effective performance of its designated task. It is well established that when the personality of an international organization is an issue, the questions that must be asked are:

(a) Is the organization set up by the states for independent activity related to the functioning of the international community?
(b) What specific functions have been committed to it for the realization of this purpose?
(c) What capacities are necessary for the free and adequate performance of the functions?
(d) Is the government of the organization autonomous in activity or subject to the directions of member States?[43]

Hence, the crux of the matter is whether an international organization possesses a juridical nature manifesting, through the sum total of capacities as construed from its functions, a juristic personality recognized as such under the fiat of international law, or whether it is merely a mechanism of inter-state relations hidden under the cloak of an international body corporate.[44] An authoritative reply to this threshold question was given by the International Court of Justice in the Advisory Opinion on Reparations for Injuries Suffered in the Service of the United Nations. The Court held:

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[39]*Id.*, p. 10-18. Apparently, whenever the Managing Director has reached a conclusion that "there is no proposal that would be consistent with the principles and considerations governing allocations and cancellation that would have broad support among participants, he must submit a report to both the Board of Governors and the Executive Directors."

[40]*Id.*, p. 18-64.

[41]Carroll, *supra*, note 2, p. 377.

[42]Gold, *supra*, note 31, p. 386. The option in connection with accepting SDRs for the currency of the "offeror" of SDRs seems to defeat the overriding objective in regaining the confidence of the United States dollar as the United States would most likely use its allocations to recover its foreign dollar ballances.

[43]DANIEL P. O'CONNELL, INTERNATIONAL LAW (New York: Oceana Publications, 1965),p. 109.

[44]*Id.*

> . . . that it is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of the State.
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> Still less is it the same thing as saying that it is a "Super-State", whatever the expression may mean. . . . What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.[45]

Moreover, the Court held further that:

> . . . fifty States representing the vast majority of the members of the international community had the power in conformity with international law to bring into being an entity possessing objective international personality and not merely personality recognized by them alone.[46]

The body of international administrative law governing the relationship of the international economic institution is still very much in a rudimentary stage of development. In spite of this limitation, it has generally been recognized that a proper structure of an international organization demands:

> (a) Independent execution of duties on the part of its members and the administration; and
> (b) The minimum amount of interference from states in order to secure the highest standard of efficiency, competence and integrity.[47]

It is respectfully submitted that the cited provisions demonstrate that their incorporation in the Articles of the Fund would strip the Fund of an objective international personality amounting to a joint agency in service of divergent national interests.

Even a more fundamental question is raised by the inquiry as to the legal nature of the facility. Since it lacks the nominalistic quality,[48] no one seems

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[45](1949) I.C.J. REP., p. 117.

[46]*Id.*, at 185.

[47]Jenks, *supra*, note 23, p. 27.

[48]MANN, *supra*, note 73, p. 38–59: "The notion of money involves the reference to a distinct unit of accounts;" and the unit of account refers to an abstract unit of measurement. "To the extent that monetary obligations cannot be determined otherwise than by the adoption of nominalism, the nominalistic principle in so far as it relates to the extent of liquidated sums, means that a monetary obligation involves the delivery of chattels which, at the time of delivery, are money and of so many of such chattels as represent units of measurement which if added together according to their nominal value would produce the owed sum of money." Moreover, the unit of account has been defined "not as a mere name, nor as a certain quantity of metal, but as an abstract measure of the relation of a given currency standard to its predecessor. Neither the metallic basis nor such incidents as convertibility, legal tender or symbols of money are of such cardinal significance that alterations in these would involve an alteration of the monetary system itself." In other words, Prof. Mann maintains that in so far as the legal concept of money is concerned, intrinsic changes, such as purchasing power, are irrelevant. What is significant are extrinsic changes. According to Prof. Mann, "alterations of currency are of an extrinsic nature if they do not or do not only affect the volume of money but affect the identity of the unit of account, and thereby of the monetary system itself." Prof.

to go so far as to say that it is money. It likewise cannot be called "credit", because credit can be given or withdrawn. Even more significant and far reaching, there must be considerable doubt in the eyes of a Western lawyer, whether it is a "right" vested under the fiat of international law. This doubt has been raised by the fact that, due to want of nominalistic attributes, the facility lacks the substance of the subject matter.[49] Accordingly, the quantum of its corresponding obligation is necessarily measured in the nominalistic terms of a chattel, creature of a municipal system incapable of governing the international obligation.[50] Even assuming, arguendo, that such a relationship could be governed by municipal law, it does not lend itself to a legal sanction since the scope of the right is incapable of delimitation resulting in uncertainty and unpredictability. Lacking clearly definable legal standard; the "right" amounts to an *ad hoc* allocation. It is therefore submitted that the fundamental issue goes beyond the inquiry whether it is a black zebra with white stripes, or a white zebra with black stripes;[51] the real question seems to be as to whether it is a "zebra" in the first instance. The illusory nature of the right is implicit in the Outline which merely "suggests" to holders that they regard SDRs as an asset but that they are not obliged to do so.[52] Doubtless the factor of uncertainty goes into the very essence of the confidence of the facility. From a practical standpoint, confidence is likewise undermined by the obligation to retain SDRs until a legitimate need has arisen for their use.[53]

Mann concludes, that in view of the State theory of money, "alterations of currency can only be effected by legislative measures."

[49]MANN, *supra*, note 23, p. 266. According to Prof. Mann, the money of account fixes the substance of the obligation.

[50]Angelo P. Sereni, *International Economic Institutions and the Municipal Law of States*, HAGUE RECUEIL DE COURS, Vol. 96 (1959) p. 150. The focal point of Prof. Sereni's position is that a legal system may not govern a situation, relationship or transaction, unless all of the participants are subjects of that particular system.

MANN, *supra*, note 23, p. 47: " . . . the maintenance of stable currencies is still largely an aim, a policy, a hope and the law has not yet succeeded in so regulating it as to give it the status of a fully and effectively enforceable legal principle. In international law, it is not only improper but impossible for a State to extricate itself from an international obligation by invoking its own municipal law, but as has been shown, this rule does not apply where a treaty governed by public international law itself contains a *renvoi* to municipal law and its institutions, *i.e.*, to a system of law known to be liable to changes."

[51]Carroll, *supra*, note 2, p. 378. Mr. Carroll, referred to the allegoric description of the facility used by Dr. Emminger, former Chairman of the Deputies of the Group of Ten: "They are a sort of zebra which can with equal accuracy be described as a white animal with black stripes, or a black animal with white stripes."

[52]*Id.* According to Mr. Schweitzer, their value will derive essentially from the fact that participants will be obliged to accept them. An SDR which is merely a book entry has neither intrinsic nor extrinsic value despite its gold-value guarantee. A value for purposes of convertibility does not necessarily fix the abstract wealth reflected in the nominalistic principle of a currency of the state.

[53]The limited propriety of a legitimate use will undoubtedly affect the Central Bank's willingness to accept SDRs.

In accordance with the Outline, SDRs will be distributed to all participants in proportion to their present I.M.F. quotas.[54] This again demonstrates an unrealistic approach, since the quotas were based on the economic realities at the time of the original undertaking. Each participant is legally obligated to provide currency convertible in fact[55] in exchange for SDRs until its total holdings are equal to three times the amount of its cumulative allocations.[56] An acceptor is designated by the Fund.[57] Thus in fact, an individual obligation transcending the whole spectrum of national economy is imposed on a member state by a collective judgment whose value has been diffused by a multitude of divergent national interests voiced through the Board of Governors.

Conclusion

The analysis has shown that the major inpediment to clear current international monetary thinking is the seeking of a legal solution for what is in large part a political problem. Without regard to whether a nation's currency is considered a matter of prestige or crude economic power, the subject-matter is a political fact, and its depoliticization is a political decision within the prerogative of the state or a group of states. Accordingly, the smooth functioning of the proposed facility is unlikely to occur, since the ultimate decision of supporting the plan rests with the surplus countries. The attempted assigmnent of international responsibilities will encourage international irresponsibility, and in that sense undermine the underlying trust theory of the plan.

Moreover, the analysis has demonstrated that the employment of a legal framework which has outlived its intended purpose, brings into sharp focus the old and the new economic forces. The Common Market countries seek a more decisive role in the International Monetary Fund, and demand of the United States that it "set its house in order" as a condition precedent

[54]Gold, *supra*, note 31, p. 391. The Outline prescribes that member's quota in the Fund shall be the same for both accounts. According to Gold, the rationale of the provision is based on the assumption that "the Fund's quotas on the whole reflect the economic and financial positions of countries in relation to each other and there is no general agreement of a better datum for participation." It is manifestly clear that this approach ignores the fact that purpose is not a datum but a moral imperative.

[55]International Monetary Fund, *supra*, note 27, pp. 11-12. "The Outline contained two possible criteria to guide designation among participants with a sufficiently strong balance of payments and reserve position: (1) the ratios of these participants' holdings of special drawing rights to their gross reserves, and (2) the ratios of such holdings in excess of net cumulative allocations to gross reserves."

[56]Carroll, *supra*, note 2, p. 375. Carroll explains the language of the Outline in terms of a legal obligation, *i.e.*, "a participant's obligation to accept the asset will depend on whether the Fund has designaged it as acceptor and whether it is holding less than the maximum amount it can be required to hold. However, once the participant has been designated as acceptor of the rights, it is under a legal obligation to accept them."

[57]*Id.*

to the activation of the facility which requires an 85% majority. Thus, E.E.C. countries as a group have the power to veto any proposal to issue SDRs. This fact goes into the very essence of the organic jurisdiction of the Fund. An economic international institution, fragmented by conflicting interests and controlled by external forces, lacks the independence essential to the effective performance of its task. It is devoid of an objective international personality and is, therefore, nothing more than a joint agency serving divergent interests. Above all, the analysis has revealed that an artificial solution which ignores the broader frame of reference of contemporary international realities, is bound to result in an abortive interpolation of political and legal questions.

It is submitted, that all concerned are unlikely to succeed unless they realize that the issue is a political fact which requires a politically viable answer through responsible programs of parallel coordination in harmony with the ultimate purpose of the participants.