INTERNATIONAL MONETARY FUND: CONDITIONALITY AND HUMAN RIGHTS

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CERTIFICATE

Certified that the dissertation entitled "**INTERNATIONAL MONETARY FUND: CONDITIONALITY AND HUMAN RIGHTS**" submitted by **MAHESH C. TIWARI** in partial fulfilment of the requirements for the award of the degree of MASTER OF PHILOSOPHY (M.Phil) of this University, is to the best of our knowledge his original work and may be placed before the examiners for evaluation. This dissertation has not been submitted for the award of any other degree of this University or of any other University.

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To

My Parents

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Mahesh Tiwari.

21-07-1992 **MAHESH C. TIWARI**

ABBREVIATIONS

BOP	Balance of Payments
BSFF	Buffer Stock Financing Facility
CFF	Compensatory Financing Facility
EAP	Enlarged Acces Policy
ECOSOC	Economic and Social Council
EFF	Extended Fund Facility
ESAF	Enhanced Structural Adjustment Facility
FAO	Food and Agriculture Organization
FCNRA	Foreign Currency Non-Resident Accounts
GAB	General Arrangements to Borrow
GDP	Gross Domestic Product
GNP	Gross National Product
ICJ	International Court of Justice
IDA	International Development Association
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IMF	International Monetary Fund
LDC	Less Developed Countries
NGO	Non-Governmental Organization
NREA	Non-Resident External Rupee Account
ODA	Official Development Assistance
OECD	Organization For Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
PFP	Policy Framework Paper
SAF	Structural Adjustment Facility

SAP	Structural Adjustment Programmes
SBA	Stand-By Arrangements
SDR	Special Drawing Rights
SFF	Supplementary Financing Facility
TF	Trust Fund
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference On trade and Development
UNICEF	United Nations Children's Fund
USA	United States of America
WHO	World Health Organization

INTRODUCTION

BIRTH OF THE BRETTON WOODS INSTITUTION

The International Monetary Fund [IMF] and the world Bank are sister institutions which were established in 1945 under the Bretton Woods Arrangement in order to restructure the war demolished capitalist economies of Western Europe, The United States came out of isolation after the Second World War and wanted to play an active role in the World Monetary System. It realised that the greatest mistakes US had committed in the inter-war period were 1] that it did not join League of Nations and 2] that, it remained too much preoccupied with political questions neglecting economic matters.[1]

The fundamental principle upheld by the United States for the working of world economy following the war was that of multilateralism.[2] While on the other hand, Britain, which had a long time held the leadership in world economy, owing to the nature of its economy, required an increase in world trade and in international cooperation as the indispensable foundation of its prosperity. Britain, therefore, had no reason to oppose multilateral transactions on a free and non-discriminatory basis, principles enshrined

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1. Shigeo Horie, The International Monetary Fund (Washington, 1963) p. 37

2. Ibid, p. 38

in its traditional liberalism in trade; but the fact remained that Britain had lost very considerable external assets and gold reserves in the two world wars. Britain had also lost its confidence in its ability to compete internationally on an equal footing with the United States. The war weakened economy of Britain had generated enormous socio-economic problems for its people. Consequently, the U.K. did not expect to dismantle its trade and exchange restrictions so easily.

Both US and UK gave serious thinking to common necessity of international cooperation in the post world war economic relations. The great principles of post war reorganization were already being studied in the United States on a broad scale by the leading departments of the Administration. According to Gardner, there were three main planning sections : first, the State Department headed by the Secretary of State, Cordell Hull and the Under-Secretary of State, Summer Welles. Second, the Treasury Department with Secretary of Treasury, Henry Morgenthau, and Assistant Secretary of the Treasury, Harry Dexter White, who was in change of international finance. And third, a group centered around Vice-President Henry A. Wallace of the Board of Economic Warfare. [3] These planners were survivors of the so

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3. Richard, N. Gardner, Sterling Dollar Diplomacy in Current Perspectives: The Origins and Prospects of our International Economic Order (New York: Columbia University Press, 1980), p. 4

called New Dealers, and wanted to shift the financial centre of the World from London to the United States. The post war plans were formulated by Dr. Leo Pasvolsky, the special adviser to Secretary of the Treasury. This elaborate plan was shown to J.M. Keynes, who at the time was also formulating a plan from the British point of view. [4] The United States was stressing too much on multilateralism. In theory its aim was the elimination of economic nationalism and economic isolationism, but in practice wished particularly to do away with preferential tariff system of the British commonwealth, which had been a bad feature of its international commercial relations; and at the same time, it sought to persuade all nations, including those of the British commonwealth, to reduce to the greatest possible extent their direct control of trade and foreign exchanges. [5]

This much talked about theme of multilatarlism first appeared in Atlantic Charter in 1941. Article 5 lay down that the two countries hope that all nations would cooperate in all economic sectors so that the two might be able to ensure improved labour standards, economic development and social security. These requirements were considered important as means towards achieving what President Roosevelt called 'freedom from poverty'. This

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4. Ibid, p. 13

5. Horie, n. 1, p. 41

explanation was confirmed in Article 7 of the Mutual Aid Agreement signed in Feb. 1942. This was regarded as the legal framework for post war economic programmes, according to which, 1] each nation could participate in the post war cooperation of the United States and Britain; 2] it intended expanding, through suitable international and domestic measures, production, employment, exchange, and consumption of goods, which measures constituted the basis of liberty and the welfare of all peoples; and 3] it had the intention of removing every form of discrimination and of reducing tariffs and other barriers to international trade, i.e., is, it has the intention of achieving those economic objectives which were contained in the Joint Declaration [The Atlantic Charter] of the United States and Britain.[6]

Both the countries referred this matter to their experts to formulate common intentions. In United States Morgenthau entrusted White to work out a Treasury Plan to deal with post war financial policies. The blue-print of this plan was informally presented to authorities concerned under the title of 'Suggested Plan for a United Nations Stabilization Fund and Bank for Reconstruction of the United and Associated Nations'.

THE WHITE PLAN

In January 1942, Herbert Feis had devised a plan named Feis Plan. According to this plan, the United States

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6. Gardner, n. 3, pp. 46-47

was to establish a credit in favour of sundry foreign countries amounting to three to four billion dollars ? These countries were to fix their share by negotiation and at the same time, open an account in the name of United States in their respective currencies or in third party currencies to the equivalent value of the amount already utilized, at an agreed rate of exchange. [7]

1942

This plan was followed by the White Plan. The original plan stipulated that the stabilization fund should hold funds of five billion dollars consisting of gold currencies and government securities of the participating countries to meet their demand for short term loans to overcome difficulties in their balance of payments. The fund was also given power of limiting very considerably the economic sovereignty of each participating country by unilaterally changing its exchange rate, abolishing exchange control, and supervising its domestic economic policies. The 'Bank' of the plan was much more ambitious than the fund, its capital amounting to as much as ten billion dollars, half to be paid immediately. While in the existing World Bank system only twenty percent of its capital is for immediate payment. [8]

The White Plan [a Preliminary Draft Outline of

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7. Horie, n. 1, p. 43

8. Gardner, n. 3, p. 74

Protocol for an International Stabilization Fund of the United and Associate Nations] was amended in July 1943 and was discussed by experts and thirty nations. Its main principles were as follows [9] :

1] Progress toward the establishment of a functioning democratic world in the post war period will depend on the ability of free peoples to work together in solving their economic problems. Not the least of these being the problem of how to prevent a widespread breakdown of currencies with resultant international economic disorder.

2] The free countries will not resort to competitive exchange depreciation, multiple currency practices, discriminatory bilateral clearing or other destructive foreign exchange devices.

3] These are not transitory problems of the immediate post war period affecting only a few countries.

4] The International Stabilization Fund of the United and Associated Nations is proposed as a permanent institution for international monetary cooperation.

5] The fund would deal with only member governments and their fiscal agents, and would not intrude on the customary channels for conducting international

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9. Horie, n. 1, p. 46

commerce and finance. The purposes of the fund also include a] to help stabilize foreign exchange rates, b] to shorten the periods and lessen the degree of disequilibrium in the international balance of payments. c] to help create conditions under which the smooth flow of foreign trade and of productive capital would be fostered, d] to facilitate the effective utilization of blocked foreign balances, and e] to reduce the use of foreign exchange restrictions and other discriminatory practices. To enforce the above purposes the following provisions were suggested: [10]

1] The fund should have resources of not less than 5 billion dollars.

2] The members countries are required to take payment of part of their quotas [minimum 30%] in gold, and balance being payable in their over currency with an option that payment of up to 50 per cents of their quotas may be made in government securities. The member countries may include in their legal reserves the amount of their contributions in gold less than their net purchases of foreign exchange from the fund paid for with local currencies.

3] The quota for each member shall be calculated on the basis of its foreign exchange reserves, balance of payments, national income etc. Quotas shall be adjusted on

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10. Ibid, p. 47

the basis of the most recent data three years after the establishment of the fund, and at intervals of five years thereafter.

4] The monetary unit of the fund shall be the Unitas, equal in value to 137 1/7 grains of fine gold [equivalent to 10 dollars]. No change in the gold value of the Unitas shall be made except with the approval of 85 per cent of the member votes.

5] The value of the currency of each member country shall be established in terms of Unitas. No member country shall deal in gold, directly or indirectly, at a price in terms of its national currency in excess , or below the party.

6] Changes in the exchange value of the currency of a member country shall be considered only when essential for the correction of a fundamental disequilibrium in its balance of payments, and shall be made only with the approval of three fourths of the member votes including the representative of the country concerned.

Apart from above measures some exceptional measures were suggested which were supposed to remain in force during the first three years of the fund's operation. The original version of the fund was called a 'preliminary draft', and it was indeed nothing but a draft, without any definite form. 'The novelty and boldness of White's plan could not be illustrated more vividly than by the accumulation in the title of two nouns [outline, proposal] and two adjectives, [preliminary, draft] to give the impression of tentativeness'.[11]

While the White plan was being prepared, Keynes was simultaneously preparing his proposals in relation to the functioning of the International Monetary System.

THE KEYNES PLAN

The years between the two world wars were a period of intense difficulty and strife in international affairs. It is astonishing that Keynes' consideration of international economic plans for the era that would follow World War II and his proposal for a Clearing Union were inspired originally by an official attempt to counteract Nazi propaganda. In 1940, Harold Nicholson, Parliamentary Secretary to the British Ministry of Information, informed Keynes that the Ministry was contemplating a campaign to bcontest the proposals for a German "New Order" by Walther Frank, German Minister of Foreign Affairs (1938-43) and President of Reischbank (1939-45). [12]

Keynes did not feel very enthusiastic about this proposal, However, he began to think that a purely negative

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11. Joseph Gold, <u>Legal and Institutional Aspects of the International Monetary System: Selected Essays, Vol. II</u> (IMF, Washington D.C., 1984), p. 19

12. Ibid.

approach was valueless and that it would be better to be silent if there was nothing positive to propose. He then set forth some positive declarations designed to achieve a transition to an 'international economic system'. That system would have liberal objectives but it would abandon the abuses of the "old laissez-faire international currency arrangements". The tyranny of gold would be ended while giving it a proper place as a central reserve and as a means of international settlement.

Keynes prepared a draft in 1941 and discussed it with Harry Hawkins advisor to President Roosevelt. With minor suggestions, he redrafted it and made clear that the purpose would be the institution of a multilateral system in which all international monetary transactions would be cleared between central banks, operating on their accounts with an International Clearing Bank. A final draft was published in April 1943 in the name of 'Proposals for an International Clearing Union'. The main principles of the Plan were as follows :

1) He suggested four ways of dealing with post war economic problems.

a) The mechanism of currency and exchange;
b) The framework of a commercial policy;
c) Orderly organization of production, distribution and prices of primary products so as to protect both producers and consumers from the loss and risk brought

about by the fluctuations of market conditions in recent times;

d) Investment aid, both medium and long term, for countries whose economic development requires outside assistance;

2) There should be the least possible interference with the internal policies of nations.

3) The management of the proposed system should be purely international and be of such a nature as to be able to protect the rights of small, and enable them to stand up to the pressure of great nations.

4) Nations should be given a guarantee that they would not be placed in such a position as to be driven to resort to bilateralism and direct control measures. The system would be in a position:

a) to offset inflationary and deflationary influences ;

b) to compel creditor and/or debtor, countries to adjust an imbalance of payment, so as to stabilize the value of all currencies; and

c) to constitute reserve funds for the purpose of increasing the degree of international liquidity.

5. The plan proposes the creation of an international bank currency having a fixed value in terms of gold. The currencies of all the members should be linked with Bancor at a certain fixed parity.

6) The central banks of all member states would keep accounts with the International Clearing Union through which they would be entitled to settle their exchange balances with one another.

7) Each member state shall be granted a quota which shall determine the measure of its responsibility in the management of the Union and its right to enjoy the credit facilities provided by the Union. The initial quotas might be calculated with reference to the total value of each country's exports and imports averaged over the three pre-war years, and fixed at 75 per cent of this amount.

8) As a condition of allowing a member to increase its debit balance to a figure in excess of half of its quota, the Governing Board may require the enforcement of all or any of the following measures :

a) a reduction in the value of the member's currency, should it deem this to be suitable;
b) the control of external capital transactions if not already in force; and
c) The outright surrender of a suitable proportion of any gold or other liquid reserves in reduction of its debit balance.

The Governing Board may also recommend to the government of member states any internal measures affecting its domestic economy which may appear to be appropriate to the restoration of the equilibrium of international balance. If a member's debit balance exceeds three quarters of its quota on an average over at least a year, it may be asked by the Governing Board to take measures to improve its position, and, in the event of its failing to reduce its debit balance accordingly within two years, the Governing Board may declare that the member is in default and is no longer entitled to draw against its account except with the permission of the Governing Board. Apart from that, the Governing Board may also suggest measures for the expansion of domestic credit and demand, the re-evaluation of its local currency in terms of Bancor, or, alternatively, encouragement of an increase in earnings, the reduction of tariffs and other barriers to imports and international development loans. [13]

COMPROMISE BETWEEN THE TWO PLANS

Both of these plans evolved by United States and Britain gave rise to heated discussions in government and other circles. In Britain, the gold standard character of the White Plan evoked serious apprehension, for it was regarded as not in keeping with its expansionist policies, nor with its desire to establish a welfare state. Objections were chiefly raised to the fixed rates, shortage of funds, and lack of free control over creditor countries

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13. Gardner, n. 3, p. 41

which were inherent in the proposed Stabilization Fund. In the United states on the other hand, strong dissatisfaction was expressed, as was expected, at the expansionist character of the Keynes plan. The dissatisfaction was directed against the principles of the Plan themselves. In America Keynes was understood as an antagonist of stable exchange rates and as a champion of devaluation and credit expansion. Picking on the planning aspect of his plan, it argued that the Clearing Union was machine for the regimentation of the world.

In September 1943, a British delegation consisting of financial experts including Keynes, visited the United states, and after discussion over several months, a 'Joint Statement by Experts on the Establishment of an International Monetary Fund' was issued. This new agreement basically based upon the White Plan with only some of the features of the Keynes plan. First, there was the question of liquidity. The Keynes plan permitted overdraft facilities amounting to at least 26 billion dollars. As a result, the potential burden of the United States could conceivable amount to as much as 23 billion dollars. The Americans, therefore, insisted, that this should not be allowed, saying that it would 'change the United States into a milch cow'. The insistence was based upon the argument that 2-3 billion dollars at most should be the limit of its subscription, and that the payment of a subscription which exceeded that sum and whose limit was unknown but was fixed automatically through the mechanism of a Clearing Union, was tantamount to a violation of the legislative power of Congress, and therefore, such a subscription would never be approved by Congress. Thus the subscription of the United States was fixed at 2,750 million dollars.[15]

Keynes now endeavored to obtain an agreement that would enable member countries to draw on IMF funds unconditionally. The White Plan, however, had no provision for unconditional drawing. The compromise on this point finally took the form of a general conditional clause in the Joint Statement to the effect that the member concerned should affirm that the currency it desires to purchase is required for making payments in that currency which are consistent with the purposes of the Fund. This clause was also incorporated in the IMF Agreement. [16]

Regarding imbalance and exchange parity White Plan was very strict while British demanded greater freedom for a change of par value. As a consequence, the Joint Statement contains a negative regulation to the effect that it is not for the fund to judge the question of a change, but that the member country concerned should not propose a change if there is no fundamental disequilibrium. This clause become part of the IMF Agreement. What is more important is that

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15. Ibid

16. Ibid

the IMF Agreement provides that 'the Fund shall concur in a proposed change if it is satisfied that the change is necessary to correct a fundamental disequilibrium, and provided it is so satisfied, it shall not object to the proposed change because of the domestic, social, or political policies of the member proposing the change'.[17] Under the original White Plan, the stabilization fund could request a debtor country to rectify its imbalance, but in the published plan this request was worked in a round-about way. In this the power of regard, IMF to formulate any conditions for a change in par value has been diminished.

At the Bretton Woods Conference, the American side returned to their previous contention, as a result of which they succeed in having Article - VII, section 8, inserted into the IMF Agreement reading as follows : "The Fund shall at all times have the right to communicate its views informally to any member on any matter arising under this agreement".[18]

OBJECTIVES OF THE FUND

The IMF was established to promote economic and financial cooperation among its member countries and facilitate the expansion and balanced growth of world trade.

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17. Ibid

18. Ibid

While fulfilling this mandate, the Fund has come to play a central role in international monetary circles. The objectives of the Fund are as follows:

1. to promote international monetary cooperation (the Fund was to be a permanent institution providing a machinery for consultation and collaboration on international monetary problems);

2. to facilitate the balanced growth of international trade, and thus contribute to the promotion and maintenance of high levels of employment and income, and to the development of all members' productive resources (economic development was therefore an objective of the Fund);

3. to promote exchange stability and orderly exchange arrangements among members and specifically to avoid the competitive devaluation that were a feature of the pre-war years;

4. to help develop a multilateral system of payments and assist in eliminating exchange restrictions, i.e. discourage measures that hamper the growth of world trade;

5. to give member countries confidence by providing temporary financial resource to help them correct maladjustments in their balance of payments without resorting to restrictions; and a result of the foregoing,

6. to shorten the duration of and decrease, the disequilibrium in the international balance of payments.

7. In 1969 through First Amendment another objective 'making the special drawing right the principal reserve

asset in the International Monetary System' was added.

STRUCTURE OF THE FUND

The structure of the IMF is described in Article XII of the Agreement, and consists of a Board of Governors, Executive Directors, a Managing Director and staff. The Managing Director is both the head of the staff and the Chairman of the Executive Board.

BOARD OF GOVERNORS

The Board of Governors is the highest decision making organ of the IMF and consists of one governor and one alternate appointed by each member, in such manner as it may deem appropriate. Each governor and each alternate should serve for five years subject to the pleasure of the members appointing him, and may be reappointed. The Board of Governors shall select one of the governors as Chairman. The Board of governors have got powers to :

1) Admit new members and determine the conditions of their admission;
2) Approve a revision of quotas;
3) Approve a uniform change in the par value of the currencies of all members;
4) Make arrangements to cooperate with other international organization;
5) Determine the distribution of the net income of the IMF;

6) Require a member to withdraw;

7) Decide to liquidate the IMF; and

8) Decide appeals from interpretations of the Agreement given by the Executive Directors.

This plenary organ is now too large to undertake any but formal functions. To assist and to strengthen the Fund, the Second Amendment (1978) provides for the creation of a council composed of governors or persons with ministerial or comparable rank. Councillors, therefore, whether governors or not would have prominent positions and exercise considerable influence in their own countries. The main task of the council would be to appraise the management and adaptation of the international monetary system. The Second Amendment[19] was passed with 85 per cent majority of the total voting powers of the members. The majority gave developing countries the assurance of a Veto.

In the absence of a council, the Interim Committee of the Board of Governors on the International Monetary System was created with a composition and terms of reference

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19. The Amendments to the Fund's Articles of Agreement are difficult to achieve. A decision to change aspects of the organisation's operations that are constitutionally bound requires, logically, the consensus agreement. Amendments entails a double majority for approval-three fifths of the members, on the one hand, and 85 per cent of the total voting power, on the often. The purpose of the double requirement is to ensure that Amendment will not be effected by a large number of members with a small proportion of the voting power or by a small number of members even though they have a large proportion of the total voting power.

comparable to those of council. The crucial difference between the two is that the Committee is not an organ of the Fund, cannot exercise powers of the Fund and cannot take decisions that bind members or the Fund. The Committee can do more than make recommendations. [20] Although the recommendations carry great weight on issues of policy considered by the Committee, the Board of governors or the Executive Board has the legal authority to refrain from adopting the decisions that would be necessary to give the recommendations binding force. Developing members wanted the opportunity to persuade one of the organs to request the Committee to reconsider recommendations that these members regarded as unfavorable to them. The wish of developing members to have broad power of veto was one of the motives for the expansion in the number of decisions for which a special majority is required by the Second Amendment. [21] One of the ironies of the history of the Fund is that the Proposal for the council was advanced by the United States in the Committee of Twenty that considered the reform of the international monetary system in 1974-76. [22]

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20. Joseph Gold, "The Fund's Interim Committee - An Assessment," Finance and Development, vol. 16, Washington, September 1979, pp. 32-35

21. Joseph Gold, "Voting Majorities in the Fund: Effects of Second Amendments of the Articles", IMF Pamphlet Series No. 20, Washington, 1977, pp. 5-8.

22. Gold, n. 11, p. 386

EXECUTIVE BOARD

The Executive Directors are responsible for the conduct of the general operation of the IMF, and for this purpose exercise all the powers delegated to them by the Board of Governors. This organ functions in continuous session and conducts the business of the fund. The fund's business is not confined to operation and transactions but extends to the formation of policy on all matters within its jurisdiction.

The Executive Board was originally composed of not fewer than twelve executive Directors, of whom 5 were appointed by the members having the five largest quotas; two were elected by constituencies of the American Republics not entitled to appoint Executive Directors, which at that time meant, in effect, Latin American members; and five were elected by undefined constituencies of the remaining members. Two seats were reserved for the American Republics not entitled to appoint Executive Directors as a result of the initiative taken by the Mexican Delegation at the Bretton Woods Conference. Two additional Executive Directors could be appointed by the two members who, in the two years before an election of Executive Directors, had subscribed or lent to the Fund the largest amounts of resources utilized by the Fund in its outstanding transactions if these members were not entitled to appoint Executive Directors because of the size of their quotas.

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In the Executive Board, the original members with the five largest quotas were the United states, the United Kingdom, China France and India. The Federal Republic of Germany replaced China in 1960, and Japan replaced India in 1970. The provision for appointment on the basis of quotas has remained unchanged. Formerly the five included two developing members, but since 1970 the five have all been developed members. The Heads of State or government of the five countries always attend Summit Meetings, and their five currencies compose the "basket" according to which the SDR is valued. [23]

The strength of Board was increased to fifteen at the time of Second Amendment. It was further increased to twenty two in 1978. There has been a movement of powers from the Board of Governors to the Executive Board under the Second Amendment. Formerly, certain powers could not be delegated to the Executive Board either because they were conferred directly on the Board of Governors or because they were expressly declared to be reserved Power. The effect of the two legal techniques was the same. Certain powers could not be delegated because it was thought desirable, for various reasons, to have the safeguard of decision by the Board of Governors as the organ composed of personnel who had ministerial or comparable rank. Experience showed that

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23. Ibid

this safeguard was unnecessary for the exercise of some of the powers that the Board of Governors was not able to delegate and the decision under these powers should be considered part of the business of the Fund that the Executive Board should be able to conduct.[24]

MANAGING DIRECTOR

The Managing Director is the head of the staff and conducts ordinary business of the Fund under the direction of the Executive Board. He is also the Chairman of the Executive Board. The Second Amendment provides that the Executive shall consist of Executive Directors with the Managing Director as a chairman. In the earliest years of the Fund, the practical division of functions between the Executive Board, the Managing Director, and the staff was the subject of close scrutiny by the Executive Board and decisions taken, by it in January 1948. According to these decisions the Executive Board establishes the policies and takes decisions concerning the major problems of the Fund while the Managing Director and the staff prepare the recommendations on which the policies and decisions are based and are responsible for the execution of the policies and decisions, including the conduct of negotiations with the members.

Joseph Gold writes that the position of the Managing Director as the Chief Executive officer of the

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24. Ibid.

Fund, in which capacity he owes his duty entirely to the Fund, has been responsible for numerous ad-hoc or permanent duties that in the course of time he has been requested or required to perform. The most notable of these duties is to propose allocations of SDRs to members if he satisfies himself that allocations would be consistent with the Articles. This duty was imposed on him by the First Amendment.

CLASSES AND GROUPS

Diversity among the members of the IMF is very significant characteristics in the operation and decision making of the Fund. The Articles have always distinguished among members, and therefore, can be said to have recognized different classes, for a limited number of purposes. Distinction was immediate since the inception of the Fund, i.e., between developing and developed countries. A strong effort was made at the Bretton Wood Conference by the delegations of India and a few other developing countries to have some references inserted in the Articles to developing members or to development, but this effort was resisted. [25]

GROUP OF 77

In the North-South relations, the intensity of the political decolonization process reshaped membership

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25. Joseph Gold, "To contribute Thereby To... Development ----' Aspects of the Relations of the International Monetary Fund with its Developing Members", Columbia Journal of Transnational law, Vol. 10, 1971, pp. 270-76

configuration in the IMF and pointed to a new concern with the problems of developing countries. The year 1963 can be regarded as a turning point because in November of that year the consciousness by developing countries of their identity was expressed in a resolution of the General Assembly of the United Nations (UN). The resolution was the genesis of the Group of 77 and helped to create the United Nations conference on Trade and Development (UNCTAD) in the following year. In February of 1963, however, the Fund had already adopted its policy on the compensatory financing of export short falls, after an approach to the Fund by a UN Commission that was concerned with commodities.[26] Since then this group has been working hard to safeguard the interests of developing countries. Their combined efforts have manifested in several Board decisions.

THE COMMITTEE OF TWENTY

The Committee of Twenty was given the task of discussing reform of the international monetary system when the idea had become established that developing members were a class with interest that should be acknowledged in the Fund. It was formally a committee of the Board of Governors but was actually a special body composed of the representatives of members supervening events, such as the shock of the increased cost of importing oil, prevented the

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26. Gold, n. 11, p. 397.

Committee of Twenty from reaching agreement on a full reform of the international system or on the restoration of par value system and was disbanded and the task of proposing amendments was allotted to the Executive Board.

GROUP OF TEN

The Group of Ten was formed in 1962. The members of Group Ten are : Belgium, Canada, France, Italy, Japan, Netherlands, Sweden, United kingdom, United States and West Germany.[27] The establishment of the G-10 basically signified an informal opening up of the management structure for international monetary relations to include the European countries. Brian Tew writes :

"There can be no doubt that the Group of Ten countries, meeting in their various forums, have usurped an important part of the decision making responsibility that the founding fathers of the Fund had intended to vest in the Fund's Executive Board. The Board, therefore, may on occasions be reduced to rubber stamping propositions put to it by the nine Executive Directors who come from the Group of Ten Countries, which control slightly over 50 per cent of the Board Vote".[28]

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27. Even a narrower group - the Group of Five, comprising the United States, United Kingdom, France, West Germany and Japan also operate in the Fund.

28. Tony Killick, ed., Adjustment and Financing in the Developing World. The Role of International Monetary Fund. (Washington Dc, IMF. 1982), p. 172.

GROUP OF TWENTY-FOUR

The Group of Twenty Four was established in 1972 by competing group representing the developing countries. The G 24 represents the minority share holders, in terms of voting power, but also the preponderant numerical membership, in the IMF. The overriding task of G 24 has been to evolve and defend a common position for the Third world members of the Fund on international monetary issues. The G 24 and the G 10 not only have separate identities and represent different constituencies, but they generally articulate contending approaches on monetary problems.

WEIGHTED VOTING

In contrast to many other international organizations such as the United Nations where each member has one vote, the Fund Agreement provides for "Weighted Voting" when it states : "Each member shall have two hundred and fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand united states dollars" (Article XII, Section 5(a). Accordingly, the number of votes to which a member is entitled is clearly linked to its quota. Thus an increase in quota will also be reflected in a corresponding increase of the votes to which a member is entitled.

The Second Amendment substituted the SDR (special drawing right) for the US dollar but did not change the number 250 and 100,000 formula (Article XII Section 5). Basic votes represent a small proportion of the global quantum of votes granted most members at any particular moment. The Fund's constitution makes no provision for increases in the number of basic votes on a periodic basis to keep in step with increases in quotas. Over the years quotas have in fact increased substantially with a consequential diminution of the relative share of basic votes in terms of total votes. As shown in the table the share of basic votes has declined from a high of 11.3 per cent in 1946 to a mere 5.6 per cent in 1982.

Basic Votes as a proportion of total Votes

Year	Percent
1946	11.3
1960	10.3
1970	10.3
1975	9.9
1980	5.1
1982	5.6

Major countries, economically have been assured of an overwhelming dominance when voting shares are taken into account. Contrastingly, the smaller countries - have individually and collectively represented a minority shareholding in the decision making process. Despite the expressed concern of the United States during the formative stages of discussion on the fund to avoid giving to any country preponderant or veto power, the reality is that the system of weighted voting did result in the United States having a preponderance of the voting rights and an effective veto over substantive decisions of the Fund. The US above carried 33.5 per cent votes in 1946, the developed countries as a whole 74.4 per cent and the developing countries 25.6 per cent. Right now the United State commands 22 per cent and European community commands 27 per cent of total votes.

The Second fundamental rule of decision making is that of majority voting. Most decisions of the Fund require a simple majority (Article XII 5(C)), but higher majorities are necessary for certain identified categories of decisions. Under the original Articles of Agreement, these higher majorities were a majority of total voting power, two thirds, three fourths and four fifths, as well as a unanimous vote. Under the amended Agreement (1978), the special majorities have been reduced to two, i.e., 75 per cent and 85 per cent. [29] The tendency has been to confine the smaller majority to operational decisions that are most routine but are nevertheless not of the same importance as the decisions for which the larger majority is required.

High special majorities specified under the original Articles of Agreement, covered only limited number

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29. Gold, n. 21, p. 7

of decisions in fact nine decisions. As a result, however, of the first and second amendments of the Agreements there has been expansion in the number of decisions that require special majorities to 18 after the First Amendment, and to 39 after the Second. There was a parallel simplification, through reduction, of the number of special majorities after the second amendment to two 70 per cent and 85 per cent majorities.[30] High majorities have served two basic purposes : they have given important members or groups of members, acting together, a veto over the most important decisions of the organization, when allied with weighted voting, have had the effect of elevating the search for consensus in taking of decisions.

Voting has been a rare occurrence in the taking of decisions in the IMF. The actual practice observed in Fund is decision making by way of consensus. The practice is employed in the two formal decision-making organs - the Board of Governors and the Executive Board - and in adhoc and other committees established by the competent organs of the Fund.[31]

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30. Tyrone Ferguson, The Third World And Decision Making In The International Monetary Fund: The Quest for Full and Effective Participation (Pinter Publishers. London New York, 1988) p. 64.

31. Managing Director, "The Role of the Fund in the International Monetary System", IMF Survey, 23 October, 1972, p. 89

FORMS OF IMF SUPPORT

The Fund was created as a pool of currencies and gold subscribed by its members in proportion to their quotas, which were supposed to reflect country's importance to the international economy. Each member contributed a quarter of its quota in gold and the remainder in its national currency. In return for accepting that its currency might be drawn by another member, it acquired the circumstances. A drawing involves a purchase of another country's currency in exchange for its own currency: a repurchase, a country's buying back its own currency with foreign exchange.

In the course of time~~s~~ Fund has developed certain outlets/ Arrangements to lend to its member countries. They can be categorized as follows :

Special Drawing Rights (SDRs)

The SDR is a form of interest bearing international money created by the Fund to supplement other forms of international reserves and accepted in the settlement of a number of specified official transactions. In 1969 SDR formally became the accounting unit replacing gold. This time one SDR was equal to one US dollar. In 1967 the at Rio de Janeiro conference this was created as an international unit of account. In 1971 the US dollar was devalued by 10 per cent against SDR and thus one SDR became equal to 1.68 US dollar. In 1974 there was breakdown of fixed parity system due to oil crisis. IMF valued SDR in terms of basket of 16 currencies. In 1981 SDR was simplified to a weighted average of US dollar (42 per cent), Deutschmark (19 per cent), France, Yen and Sterling (13 per cent each) instead of the earlier basket of 16 currencies.

The value of the SDR is determined daily on the basis of a weighted average of the exchange rates of five key currencies and, because movements in these currencies often tend to cancel out, the SDR has a more stable value than any one of these currencies. [32]

Stand - By Arrangements (SBAs)

A Stand-By Arrangement is a decision of the Fund, largely in standard form, that gives a member the assurance that it will be able to make purchases of the Fund's general resources, in accordance with the terms of the decision, during a specified period and up to a specified amount. (Article XXX(b)) : Attached to the SBA is the member's letter of intent setting forth the member's programme, but the two documents do not constitute an agreement in the legal sense between the Fund and the member. The terms of the decision, however, make the member's ability to go on making purchases in the higher credit tranches dependent on

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32. Gold. n. 11, p. 788

the member's observance of certain policies or practice that are elements in the programme. These elements are called "performance criteria".[33]

The Stand-By Arrangement was developed as an instrument that would satisfy a member's need to have assured resources as backing for its programme without sacrificing the Fund's need to safeguard its resources against the possibility of future improper use.[34]

Extended Arrangements (EAs)

Extended arrangements are subject to the Fund's policies governing Stand-By Arrangements to the extent that the Fund has not decided on variations. An important difference between the two kinds of arrangement is that the normal period for a Stand-By Arrangement is one year, while for an extended arrangement it is three years, but this difference is not rigidly observed, particularly for Stand by Arrangements.[35]

Reserve Tranche

That portion of a member's quota that the Fund holds in SDRs or other reserve assets is designated as its

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33. Joseph Gold, "The legal Character of the Fund's Stand-By Arrangements and Why It Matters", IMF Pamphlet Series, No. 35, Washington, 1980. p. 17

34. IMF Survey, September 1984, p. 4

35. Decision No. 1280 (621 I) of 5 January, 1962

reserve tranche. Also called Gold tranche, a member can withdraw up to twenty five percent of its quota as a right without any conditions or repurchase requirements.

The First Credit Tranche

The next 25 per cent of a country's quota is called the first credit tranche. Access to this is semi-automatic, with a member required only to demonstrate that it has BOP need and that it is making reasonable efforts to solve its payments problems.

The Upper Credit Tranches

It is within this facility of the IMF that conditionality and Stand-By Arrangements are involved. There are four credit/ loan levels or tranches within this facility, each entitling the member state to withdraw an equivalent to twenty five percent of its quota. Once the country has submitted a request for purchase from the credit tranches, it is often obligated to abide by the IMF recommendations on its fiscal policy, payment plan, exchange rates and adjustment programme. Heavier conditionality is imposed once members draw from upper credit tranches, since the IMF has to assure that the country will repay the IMF within the specified time. The IMF makes an arrangement with the requesting country whereby the country has to observe certain "performance criteria". Such criteria usually covers government expenditures, policy on trade and payments, as well as payment of foreign debts.

General Arrangements To Borrow (GAB)

The General Arrangements to Borrow was created in 1962 by ten industrialized nations.[36] It was conceived essentially as a mutual security credit arrangement restricted to the participant countries of the Group of Ten. It envisaged that any deficiency in the Fund's credit capacity that potentially could limit access of these countries to needed resources was to be met by borrowing from the pool of resources on call from these countries. G-10 had originally initiated consideration of the GAB during 1961 outside the framework of the IMF and it was only by virtue of the insistence of the Fund's Managing Director that the institution became eventually associated in the discussions of the proposal at a late stage in its evolution.

The Extended Facility (EF)

This facility was set up in 1974. A member with a deficit in its balance of payments can obtain funds larger than the quota in the credit tranches would allow. Extended

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36. IMF Survey, September 1984, p. 4 and Decision No. 1280 (621 I) of 5 January, 1962

facility credits are usually drawn over a period of three years, which is the maximum, and are repayable over a maximum of ten years.

The Buffer Stock Financing Facility (BSFF)

This facility was created in 1969. It is intended to assist members to meet their contributions to international commodity buffer stock schemes. Under the 1969 decision, a member was eligible to draw to a limit of 50 percent of quota (currently 45 percent), though, unlike the CFF, there is annual borrowing limit. In so far as conditionality is concerned, the borrowing member is required to cooperate with the Fund to find solutions to its BOP problem. Replacement is to be completed in three to five years after a drawing.

Oil Facilities (OF)

Funded by IMF borrowings from OPEC surplus countries and certain industrial countries, this facility was established in 1974 following oil price increases in 1973. The first OF came into effect in June 1974 for a period of approximately one year, while the second came into effect in April 1975. This was low conditionality facility. Repayment was to be complete seven years after an OF purchase.

The Supplementary Facility (SFF)

This facility was established in 1979 on a temporary basis. To qualify a member must a) require assistance in excess of the amounts available to it in the credit tranches, b) have a problem that requires a relatively long period of adjustment and c) first obtain an upper tranche or extended credit. Unlike other facilities this facility was financed by borrowing from member countries and bore a higher rate of interest. However, a subsidy account was established which reduced the cost of such credits to low income less developing countries. Funds available in the supplementary facility became fully committed early in 1981 and followed by enlarged access policy (ECP). Members making strong efforts to correct their balance of payments problems are now able to draw up to 450 percent of their quotas over a three year period and up to about 150 percent during a single year.

The Compensatory Financing Facility (CFF)

Member can draw on the IMF to compensate for shortfalls in their export revenues due to sudden falls in world prices, harvest failures and other causes. The shortfall must be judged to be temporary and largely beyond the control of the member. Access is determined by a formula which measures deviations of exports from an average value and the amount of credit may not exceed 100 percent of quota. In May 1981 this facility was extended to cover abnormal increases in cereal imports. When a member makes use of both the export and food shortfall provisions, the maximum credit is 125 percent of quota.

The Enlarged Access Policy (EAP)

As the SFF replacement, it was set-up in 1981. Like the SFF, credit under the EAP was extended either through high-conditionality stand-by or extended arrangements. Disbursement periods could be for as long as three years and repayment was expected from 3.5 to 7 years after an EAP drawing.

The Trust Fund (TF)

It was established in 1976. The first phase of the Fund lasted until 1980. It was financed out of profits from sales of proportion of the Fund's gold stock and provided additional assistance on highly concessionary terms. Its purpose was to augment assistance obtained from the Fund by member countries which had a per capita income of not more than 200 dollars in 1975. Conditionality attached to this facility was slight but members availing themselves of it often already negotiated a stand by or extended facility credit which entailed the stricter forms of conditionality.

Structural Adjustment Facility (SAF) and Enhanced Structural Adjustment Facility (ESAF)

The SAF was established in March 1986 and the ESAF was established in December 1987. Under these facilities upto SDR 8.7 billiion of concessional resources are expected to be made available to help low-income countries with protracted payments problems. The funds available under the SAF come mainly from repayments on loans from the Trust Fund, which will continue to be received through April, 1991. Concessional resources oblige borrowing countries to pursue the bolder and longer-term reforms that are needed, and the resources available under both of the Fund's new facilities are highly concessional. An essential component of SAF and ESAF is Policy Framework Paper prepared by the national authorities with the joint support of the staffs of the World Bank and the Fund.

LEGAL BASES OF CONDITIONALITY

The provisions of the Fund Agreement form the constitution of the Fund. The Agreement in Article XVIII (a) expressly states that "Any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Directors for their decision". The decision of the Executive Directors is final, unless a member requires that it be reviewed by the Board of Governors. There is no appeal to any outside authority against a formal interpretation by the Board of Governors rendered under Article XVIII (b). In other words, Article XVIII exempts the interpretation of the Fund Agreement from the compulsory jurisdiction of the International Court of Justice even in respect of those members which have accepted the optional clause of Article 36, section 2 of the statute of the International Count of Justice. However, Article XVIII does not preclude requests by the Fund for an advisory opinion from ICJ in accordance with Article 96, para 2 of the United Nations Charter and Article VIII of the Agreement between the United Nations and the Fund.

The corpus juris of the IMF is embodied in the provisions of Articles of Agreement, by-laws and rules and regulations of the Fund and decisions and resolutions of the Executive Directors and the Board of Governors. The Executive Board has been taking decisions from time to time regarding certain practices to operate the system.

The IMF Articles of Agreement from very beginning fulfilled the double role of an international monetary code of conduct and the constitution of a short-term credit facility helping member states in difficulty to abide by the rules of the code. The decisions of the Fund's organs dealt either with the management of the system i.e., the application of the code as it stood, or with the evolution or, more radically changing the system when it came to the mere management or application of the system, the Fund organs gradually tightened their requirements in terms of internal adjustment and surveillance, through what came to be known as 'conditionality', a price which often proved to the socially and politically exorbitant, but which developing countries had to pay in order to obtain the Fund's certification of credit worthiness. Conditionality has emerge as the most contentious issue in recent years between the Fund and its developing member states.

No member has so far challenged the concept of 'conditionality'. What has been objected is basically its unequal enforcement and compatibility with local conditions. The legal bases of conditions are still to be justified for the Articles of Agreement do not contain any comprehensive definition or provision regarding the imposition of conditionalities. Article 1 (V) of the Articles of Agreement only speaks 'to give confidence to members by making the Fund temporarily available to them under adequate safeguards'. Under the the phase 'adequate safeguards' exorbitant conditions are prescribed by the Executive Board to use the Fud resources. This is again to be clarified in specific terms.

It is the Executive Board that ultimately determines the broad policy parameters of conditionality, while the management and staff on the basis of these guidelines, elaborate the detailed contents of particular stabilization programmes. The decisions to use the resources of the Fund are taken by a simple majority of the votes cast in the Board. Moreover, changes in the policies on use of resources and establishment of any special financing facilities also carry the same requirement. In essence, then developing countries as a group do not have the voting power to take these decisions, while the developed countries as a whole and the G-10 can prevent approval of any of the these decisions. Developed countries thus have the dominant say in defining conditionality and approving requests for use of Fund resources. [37]

It is quite apparent that developing countries have hardly any say in the formulation of conditionalities. In the beginning controversy was generated, however, by UK against receiving a conditional loan and the debate began about use of the Fund resources ; Americans arguing in favour while UK against the attaching of conditionalities. Though the controversy was resolved through bilateral agreements, the developing countries remained to face the oppressive behaviour of this concept. The United States urged from the very beginning that a policy of conditionality was very much implicit in the Articles of

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37. Ferguson, Tyrone, The Third World and Decision Making in the IMF: The Quest for Full and Effective Participation (Printex Publishers, London and New York, 1988) P.203 38. N. 11 p. 436-37 39. Ibid p. 437 40. Guitian, M., "Fund Conditionality and the International Adjustment Process", Finance and Development, June 1981, p. 16 30. Irving S. Friedman in IMF : Conditionality Ed. by John Williamson p. 113.

Agreement so that there was no use stretching a debate on this issue. However, the UK and other developing countries had, in one view, valid doubts about its legal bases.

Since there is no particular definition of this concept, it will be useful to judge this concept on the basis of definitions and explanations given by authors from time to time.

Joseph Gold says the "the word is applied to the practice according to which, under most policies, the Fund makes its resources available only if it receives satisfactory assurances from a member that it will follow policies likely to solve its balance of payments problem within a temporary period and enable it to terminate its outstanding use of the Fund's resources not later than a prescribed date".[38] "The content of conditionality has never been defined by the Articles or codified, beyond a few broad principles, by decisions of the Fund. The absence of a detailed code has enabled the Fund to develop and modify conditionality, as well as the form and content of stand - by and extended arrangements, to accord with changes in the world economy and with special circumstances of individual members or classes or members". [39]

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38. Gold, "The Interpretation by the International Monetary Fund of its Articles of Agreement" International comparative law Quarterly vol. 3, 1954 p. 257.

39. N. 11 p. 436-37

According to Mannel Guitian, conditionality involves important policy understanding which include : "public sector policies on prices, taxes and subsidies, which can contribute to eliminate financial imbalances and to promote efficiency and public sector activities ; interests rate policies, which foster the generation of domestic savings and improve resource allocation ; exchange rate policy, which helps to control absorption in the external accounts but is also a powerful tool of development"[40]

Irving S. Friedman notes that IMF conditionality arises from the decision that access to Fund's resources by member countries should not be automatic (in magnitudes, changes, and repurchase provision), i.e. guided only by the Articles of Agreement or by procedures closely derived from such Articles, without substantial additional requirements. Conditionality arises when the Fund adds requirements for access to its resources that are legally compatible for by the Articles. This results in a wide range of options, and even wider range in application of options to individual country situations. The choice of such options becomes a key management decision involving Executive Directors, staff, and at times Governors of the Fund.[41]

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40. Guitian, M., "Fund Conditionality and the International Adjustment Process", Finance and Development, June 1981, p. 16 30.

41. Irving S. Friedman in IMF : Conditionality Ed. by John Williamson p. 113.

These definitions and explanations are hardly helpful in understanding the concept in legal sense. There has been gradual development in this process. Its inclusion in the Articles of Agreement has been deliberately avoided because the conditionality policies delve deeper into areas of national policy making. The phrase 'adequate safeguards' doesn't authorise either the Executive Board or the Managing Director to manage the economic policies of its members. Its decision may be send to be ultra virus because the Articles offer only flimsy basis. Another point to be noted is that much of the terms to change national economic programmes, are decided beyond the scope of agreement. Sometimes decisions are taken outside the IMF. GAB is one example. Countries do not authorized the international organizations to take up control over their vital national interests. The principle of sovereignty and right to equality are very sacrosanct principles of International law. So there should always be an understanding between the IMF and the member to decide the policies to be adopted during the adjustment process.

The bilateral process generally invites criticism that IMF offers unequal treatment. Right to equality is valid justification when the circumstances and the crisis are identical. The crisis situations demand equal treatment in objective sense. During the adjustment process the domestic realities must be taken into consideration for the imposition of conditionalities and its success in solving the problem. The conditions imposed stem from a basic free market ideology which assumes that unhindered markets are in all cases superior to any form of state intervention except for a few infrastructural and social sectors, and that the withdrawal of the state from economic activity is necessary. The state submitting a 'letter of intent' agrees to most of the conditions because of acute crisis. This package generally includes reduction of budget deficits devaluation of the exchange rate and trade liberalization elimination of subsidies, freeing of prices, financial liberalization and hiking of interest rates, closure or privatisation of public sector enterprise etc. The contracting members have been obliged to follow these terms irrespective of their necessity to gain success in implementing adjustment programme.

The policies contained in the package are inconsistent with the purposes contained in Article 1 of the Articles of Agreement. Article 1 (11) states that a purpose of the Fund is " to facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members". Further it is stated in Article 1(V) that a purpose of the Fund is to "give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards" thus providing them with opportunity to correct mal adjustments in balance of payments without resorting to measures disruptive of national or international prosperity. Moreover, para 4 of the 1979 decision of the Executive board provides that " the Fund will pay due regard to the domestic social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems".

However, the question remains whether the terms/ conditionalities attached with SBAs form an agreement which is legally enforceable. Paragraph 3 of the 1979 decision of Executive Board again states that SBAs are not international agreements. This again leaves the legal bases of conditionality and letter of intent in dark.

Although the terms established by the Fund in SBA may mean that the member will not be able to enter into transactions unless the members observes certain policies that it has declared, these policies are not provisions of an agreement. Rather they are made by performance criteria by the Fund, and serve as safeguards ensuring the proper use of Fund resources. Since stand by agreements do not constitute an agreement in the legal sense, non observance of a member's declared objectives and policies are not breach of an international agreement. Nor is non observance automatically a violation of any of a member's obligations under the Articles because the member's programme as set forth in the 'letter of intent', although the basis for proper use of the fund's resources, is not a rigid or an exclusive definition of proper use.

The analysis of the legal character of SBAs and conditionalities contained in it must take into account the fundamental fact the the Fund has decided that in approving SBA, it is exercising its own responsibility to establish the conditions for the use of its resources and that it is not intending to enter into an agreement for this purpose. If one party makes clear to the other that it has no *animus contrahendi*, an agreement in the legal sense between them cannot be the result of their negotiation, no matter how formal or detailed their understandings may be.

In case of non-observance of performance criteria, "the fund may suspend the member's right to make purchases under SBA until such time as new understanding is reached if necessary, on the circumstances in which transactions may be resumed", the reference to understandings is again non-contractual in intent, and means that the Fund must have the opportunity, after consulting the member to decide whether to waive the non-observance of a performance criteria or to establish amended terms for the use of its resources.

One conclusion can be drawn that the conditionality policies are neither consistent with the purposes of Articles of Agreement nor have uniform practice capable of having force of customary law. The principle of *opinio juris* will keep on alluding unless a uniform practice is developed.

OBJECTIVE AND SCOPE OF STUDY

This dissertation represents a modest attempt to evaluate the conditionality policies of the IMF in historical and legal perspective. During the September 1981 Annual Meeting of the IMF, the conditionality / adjustment theme was at centre stage, as disagreements resurfaced between countries such as the United States and Britain who felt IMF conditionality had become too lax, and those, mostly less developed countries who believed it is too strict.

In the following Chapter there is a detailed discussion of the Conditionality debate. The issue of legal basis of conditionality has already been addressed in the introduction. In this Chapter gradual developments in the formulation of conditionality have been examined. The Executive Board decision of 1979 has been discussed in detail because this was a major event in the history of IMF.

Further in the same Chapter the objective of study will focus on the issues like (1) balancing of short-term stabilization, the Fund's major objective, against long term development the major objective of its members; the effectiveness of IMF action against the respect for national sovereignty; the requirement of uniform treatment against the special structural problems of the disadvantaged countires, the lack of an absolute standard of conditionality in the Fund's Articles; the increasing difficulty to establish where economics ends and politics begins and creation of 'grey-conditionality' zone in the framework of IMF-World Bank cooperation.

The Third Chapter discusses the implications of conditionality for human rights. The Chapter establishes a linkage between conditionality lending and human rights issues. The application of human rights is currently invoked against the recipient governments only and not applied to donor policies and practices. Human rights are used in a punitive manner, to justify the discontinuation of aid to governments which violate some human rights. It has been shown that this practice is neither consistent,nor necessarily beneficial to those for whose sake it was introduced. Right to food has been discussed in detail to justify the developmental lending to safeguard basic human rights in the recipient countries.

The Fourth Chapter has been added on India and the IMF. India, as is known, has recently gone again to IMF to rectify its chronic economy. Its impact on socio-economic programmes have been discussed in short. The attempt has been made to recapitulate economic problems that led India to go to IMF in 1981. The period between 1980 and 1990 has been taken for study to evaluate the conditionality policies of IMF in the context of India.

CHAPTER II

THE EVOLUTION OF THE CONDITIONALITY CONTROVERSY

Article I (ii) of the Fund Articles of Agreement states that a purpose of the Fund is "to facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members."[1] It is further stated that a purpose of the Fund is "to give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct mal-adjustments in balance of payments without resorting to measures disruptive of national or international prosperity" [Art, I (v)].[2] There is no explicit mention of conditionality the terms on which a member draws funds in the Articles of Agreement. A member is entitled to withdraw funds if it can fulfil certain criteria. First, the member indicates a need for the resources. Second, it must be shown that the resources will be used according to IMF Articles. Third, the country should not have been declared ineligible for receiving funds from the Fund. Finally, the

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1. Article 1 (ii) of the Articles of Agreement of IMF.
2. Article 1 (v) of the Articles of Agreement of IMF.

member must not need any waiver due to its over- utilization of funds.3

Conditionality is the fundamental and distinctive element in the use of Fund is general resources; the use is subject to the adoption of adjustment policies and measures aimed at overcoming payments imbalance. This conditionality policy has been a peremial source of controversy. During the September 1981 Annual Meeting of the International Monetary Fund, the conditionality controversy was back at centre stage, as disagreements resunfaced between countries such as the United states and Britain who felt IMF "Conditionality" had become too lax, and those, mostly less developed countries (LDC) who believed it is too strict. This "Conditionality Controversy" can be traced back from the inception of Articles of Agreement. At the time the

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3. Articles of Agreeement of the International Monetary Fund (as amended in 1978(art. V. sec. 3 provides: ... (b) A member shall be entitled to purchase the currenccies of another member from the Fund in exchange for an equivalent amount of its own currency subject to the following conditions: (i) 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 this Agreement; (ii) The Fund has not given notice under Article VII, Section 3, that its holdings of the currency desired have become scarce; (iii) The proposed purchase would be a reserve tranche purchase, or would not cause the Fund's holding of the purchasing member's currency to exceed two hundred percent of its quota; (iv) The Fund has not previously declared under Section 5 of this Article, Article VI, Section I, or Article XXVI, Section 2(a), that the member desiring to purchase is ineligible to use the general resources of the Fund....

Fund was being established, there was a strong body of opinion, most forcefully led by lord keynes, that the Fund should be a regular intermidiary between surplus and deficit countries, that the Fund should constitute for members, after their own reserves, the next line of defence for the balance of payments. The original Articles of Agreement set a limit of 25 per cent of quota on members drawings each year, and in the early discussions on the Fund's lending policies several Executive Directors argued that a member should have an automatic right to drawings up to this amount in any year - subject of course to the limit specified in the Articles on the aggregate use of the Fund. Although this never became the Fund's policy, the Fund in 1947 did assure members that until a member had been informed to the contrary by the Fund it could count on obtaining prompt assistance in more moderate amounts. In fact, for a period the Fund applied a rule that if the requested drawing did not exceed 5 per cent of a member's quota within a 30 - day period, the request could be dealt with by the Managing Director without prior reference to the Executive Board. Indeed, several transactions were made under this procedure, including successive drawings by the same country. However, there was a growing dissatisfaction among the Board members as a whole with the simplicity of the operation contemplated by this rule, since it was felt that the policy provided little assurance that a temporary use of Fund resources was being made. In early 1948 the Board decided that the Fund had the power to postpone, reject or approve a request for a drawing subject to conditions designed to safeguard the Fund's purposes.[4]

A) ANGLO - American Divergence

Initial phase of this controversy was dominated by Anglo - American differences. In this period criticisms were more episodic or derived from narrower groups of the Fund membership, presently the attack is relatively more generalized phenomenon in that the overwhelming majority of the Fund members - the developing countries - are by large, involved in expressing their discontent with conditionality. In the pre -Bretton - Woods discussions between USA and U.K, the issue of conditional as against autonomic availability of IMF credit was a source of profound disagreement between these two countries.[5] Britain was arguing against while USA in favour. IT was essentially a creditor/debtor divergence a crucial factor in comprehending the Conditionality controversy in both its historical and current manifestations. The United states , as the country with the strongest economy in the immediate post-war years, was clearly going to be the principal crditor country in the IMF, while the war weakened United Kingdom economy placed it in the position of a potential debtor.

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4. Sidney Dell, 'On Being Grandmotherly: The Evolution of IMF conditionality', Essays in International Finance, No.144, Oct. 1981, p.15.

5. Ibid.

Later on this controversy ended with a compromise document called "The Joint Statement". The document said nothing about the fundamental conflict and one can conclude as to the significance of this silence according to one's preferences[6] Sidney Dell has interpreted it to mean that opponents of conditionality might have felt that the issue was settled to their advantage while others have inferred a contrary explanation for this silence.

In 1946, the United States sought a formal interpretation that the Fund credit was to be used for the financing only of temporary balance of payments. The Board adopted a decision whereby it was stipulateed that authority to use "the resources of the Fund is limited to use in accordance with its purposes to give temporary assistance in financing balance of payments deficits on current account for monetary stabilization operations."[7] This short term adjustment was sought to be formalized by US Executive Director in 1949 stating that drawings from the Fund were required to be temporary and therefore should be subject to close scrutiny. In effect, the struggle within the Fund over automatic or conditional credit was joined with the United States clearly using its position of power as the

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6. Tyrone Fergusan "The Third World and Decision Making in the International Monetary Fund : The Quest for Full and Effective Participation (Printer Publishers, London and New York, 1988). p. 104

7. E.B. Decision No. 71-2, of 26 Sept. 1946.

most important creditor nation to force a shown down on the matter.[8]

In 1949, the American Executive Director presented certain proposals to Executive Board stating that the purchases from the Fund should be evaluated against four criteria :- (i) that the par-value of the member was a appropriate one (ii) that the deficit was temporary; (iii) that the purchase was not needed for purposes of rehabilitation or development; and (iv) that the member was taking steps to assume the full obligations of the Articles.[9]

In 1952 the Executive Board approved these proposals. This decision contained certain important elements which were to serve as a basis for Conditionality practice. First, the balance-of-payments problem was to be of a temporary character stress was placed on the revolving nature of the Fund resources. Both to be operationalised in the short time frame for the disbursement of credit and in the requirement of payment within three to five years after a borrowing;

Secondly, the de-facto automaticity of reserve

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8. Ferguson N. 6, p. 109

9. Horsefield, Keith J., "The International Monetary Fund, 1945-65: Twenty years of Monetary Cooperation, Vol. 1, (Washington D.C.I.M.F., 1969) p. 244.

tranche purchase, and thirdly, reference to what was to become a mojor operational fact of Fund Conditionality the stand by arrangement (SBA).[10] This decision may be called a breakthrough in the history on IMF. This decision evolved the principle of conditionality. It had the force of law because it was taken by competent authority.[11]

The establishment of SBA meant a precaution against possible economic and financial difficulties, if not emergencies, rather than an instrument to be sought only when imbalances have become acute. But the backlog of discontent left by the discussions of Fund conditions, sovereignty questions, shrinking Fund resources relative to bank financing, as well as a deteriorating world economic outlook led the SBAs to become the last report of countries with limited or no creditworthiness left.[12]

In the Annual Report of 1959 it was pointed out that members should make reasonable efforts to solve their problems. Requests for transactions beyond the limits 'reserve branches' require substantial justification.[13] "In

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10. E.B. Decision No. 102-(52/11) of 13 February 1952.

11. The Articles (Second Amendment) define the SBA to mean 'a decision of the Fund by which a member is assured that it will be able to make purchases from the General Resources Account in accordance with the terms of the decision during a specified period and upto a spescified amount' - Article xxx(b).

12. IMF, Annual Report, 1959, p. 22.

13. Ferguson , n.6, p. 201.

short, Conditionality was conceived as a graduated process, linked to the quantitative lends of borrowing desired by a member. However, these decisions, while setting the legal foundation for conditionality and the broad framework for its implementation, did not specify its substantive content".

Joseph Gold pointed out that regarding SBAs two operational practices became standard requirements, the phasing of the disbursement of credit and the use of performance criteria to test a member's observance of policy and programmatic understanding.[14]

He further points out that a member's observance of performance criteria is some evidence that the member's programme of adjustment is succeeding. Performance criteria, however, are not conditions of an agreement between the Fund and members. A stand by or extend arrnagement is a decision of the Fund to which the member's letter of intent setting forth its programme is annexed, but the arrangement and the letter are not treated as s contract. Failures to observe performance criteria or other

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14. Joseph Gold, "The Legal character of the Fund's stand-By Arrangements and why It Matters", IMF Pamphlet series, No. 35 (Washington 1980).

departures from the programme are not breaches of contract. 15

The content of conditionality has never been difined by the Articles or codified, beyond a few broad principles, by decisions of the Fund. The absence of a detailed code has enabled the Fund to develop and modify conditionality, as well as the form and content of stand-by and extended arrangements, to accord with changes in the world economy and with the special circumstances of individual members or classes of members. In this regard First Amendment 1968 may be called a classic Amendement in the *corpus juris* of the Fund . In the same year a review of Fund conditionality practices was undertaken by the Executive Board. The proximate cause of this review was the SBA agreed for the United Kingdom in 1967.[16] LDCs were highly critical of certain elements of the arrangement using as the basis for comparison SBAs entered into between themselves and the Fund. The Brazilian Executive Director virtually supported by all the Directors suggested that they had serious misgivings about the equality of treatment that members were receiving in respect of the terms of SBAs, particularly those applying to the higher credit tranches. Moreover it contained no promisions for phasing, no

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15. Joseph Gold : "Legal and Institutional Aaspects of the International Monetary system: Selected Essays. Vol. II(Washington D.C. 1984) p. 439.

16. Joseph Gold, "Conditionality", Pamphlet Series No. 31, Washington D.C., IMF 1979, p. 27.

performances clauses, and relatively few ceilings under the terms of SBAs.[17]

The major features of the 1968 decision were (i) the inclusion of consultation clauses in all SBAs ; (ii) the omission of phasing and performance clauses for SBAs that do not go beyond the first credit tranche ; (iii) the inclusion of phasing and performance clauses in all other SBAs; and (iv) performance clauses covering performance criteria necessary to evaluate implementation of the programme, though there was no specification of a general rule as to the number and content of performance criteria.[18]

The review was followed by the First Amendment which prevented the Fund from adopting policies that permit an unconditional use of its resources. Some new provisions were added in Article v, secs. 3(c) and (d) - first Amendement - by the terms of which used of the Fund's resources had to be consistent with its purposes and requiring it to adopt policies on the use of is resources that will assist members to solve their balance of payments problems in a manner consistent with the purposes of the Fund and that will esstablish adequate safeguard for the

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17. De Vries, Margaret Garitsen <u>The International Monetary Fund, 1966-71,</u> Vol. 1, p. 342.

18. E.B. Decision No. 1345 - (62/63) of 23rd May 1962. as amended by Decision No. 26220-(68-41) of 1 November 1968.

temporary use of its resources.[19] The de-facto automacity of reserve tranche purchases was transformed into a consitutionally sanctioned automacity under the terms of Article v, section 3 (d). These were new departures from constitutional point of view, but they were nothing from the overall law of the land. It is important to underline, however, that whereas the legal necessity of conditionality and some of its key operational facets were now under written in the principal source of law of the IMF- its Articles of Agreement its substantive content was not similarly spelled out.[20] Another important change in the amended Articles, with fundamental implications for conditional use of resources related to the inclusion of the word 'temporarily' in one of the provisions of the Fund's purposes. [21]

THE EARLY EXPERIENCES OF DEVELOPING COUNTRIES WITH FUND CONDITIONALITY

Decolonization led to a changed international political landscape and to new global concerns. Economically, the reconstruction focus of the late 1940ss/early 1950s gave way in the 1960s to a concern with

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19. Art. V, Sec. 3(c) (First Amendment)

20. Joseph Gold, "Conditionality", Pamphlet Series No.31 Washington D.C.,IMF, 1979, p.9.

21. Art 1 (V) (First Amendment).

the development problems of the developing nations. This was most prominently seen in the decision taken within United Nations to designate the 1960s the Development Decade. Their overwhelming numerical preponderance aside, their role in the international economy was one of lessening, rather than increasing importance.

1960s saw some organised efforts from the side of developing countries to offer resistance against Conditionality measures. They felt that the Fund, "acting on behalf of the major industrialized countries, has assumed a growing role as the financial and economic policeman in Third World countries",[22] and thereby discriminates among its members. But the criticism remained very soft. The problem with conditionality was essentially resticted to a sub-group of developing countries in Latin America. The dissension revolved around the analysis of the causes of the external deficits experienced by these countries and the policy action required to re-establish equilibrium. Latin America and Asia were the main users. African use was negligible. However, the Latin American countries brought to bear a more defined analytical consensus regarding their economic problems. Led by ECLA, under Prebisch, they had not only elaborated, during the 1950s, a coherent analysis of

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22. "Terranova statement on an International Monetary system and the Third World,"Development Dialogue, (Uppasala 1979)

the problems of development, but also, of the interlinked problem of persistent external deficit and inflation. [23]

Developing countries found the IMF approach unacceptable, especially as it tended, from their perspective, to affect the process of economic development. Domestic socio-economic realities are set aside. Besides that Fund sponsored stabilization programmes include (i) devaluation ; (ii) tighter credit through an increase in interest rates and a slowing down in the rate of its expansion ; (iii) the removal of subsidies for basic commodities and services ; (iv) an increase in the size of the public sector ;and (iv) restraints in salary and wage increases and adoption of austerity measures.

THE CURRENT CONTROVERSY

During the 1970s, the Fund conditonality emerged as a more generalised third world concern. They accused Fund policies of being one sided, dogmatic, inappropiate to LDCs and too strict. Concerning one-sidedness, the IMF has been said to be neither ideologically, "apolitical" because it adopts a double standard in applying its criteria to similar situations, and may act as a political lever on borrowing countries: nor socio-economically "neutral" because it tends to favour existing power centres including

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23. Raul Prebisch, "Economic Development or Monetary Stability : The False Dilemma" <u>Economic Bulletin for Latin America"</u>, 6, No.1, March 1961, pp. 1-25.

private capital ; nor technically 'scientific', because it deals with a non-precise science such as economics, which is shrouded in political controversy. Regarding the charge of dogmatism, critics consider the IMF stabilization programmes too doctrinaire, uniform and strict - imposing identical solutions to economics with different development models, growth stages, institutions, product mixes, demand and supply elasticities. It has been felt that the IMF puts too much emphasis on freemarket concepts, short-term BOP considerations, and domestic factors, and too little on development and on external / exogenous factors affecting the BOP.

In the 1970s developing countries did not make much use of Fund conditional resources. The only year in which high conditional credit surpassed low conditional was in 1978 and this was mainly because two developed countries, Italy and the United Kingdom, had entered into substantial SBAs with the Fund.

In the 1970s IMF established several facilities to meet the above criticisms. [24] It is said that several of these innovations have widened the range of choices of

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24. Oil Facilities (1974-75), Extended Fund Facaility (EFF 1974), the Trust Fund (1976, 1978), the Supplementary Financing Facility (SFF 1977), Subsidy Accounts (1975, 1980), Modified the Compensatory Financing Facility (CFF) three times (1975, 1978, 1981) and Buffer stock Facility.

policy instruments, notably the EFF and SFF, and can contribute to correct member's structural maladjustments requiring institutional reform or other long term action. In fact since mid 1960s, where quick adjustment was unfeasible, the IMF has aimed at achieving adjustment by successive annual programmes. More recently, several arrangements were concluded for two years.[25] During this period, outside the Fund, financing sources included commercial bank credit and increased ODA, with the emergence of OPEC as a new source of official development financing at this time. In this context, the Fund's regular credit facilities and the new extended Fund arrangement were not attractive credit options for developing countries. This was also the reason that Fund confronted a crisis of clientele inspite of creation of new facilities and other attractive arrangements.

In fact EFF facility was created in keeping with a recommendation by the committee of Twenty for the establishment of a new facility under which developing countries would receive longer-term balance of payments

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25. Four such arrangements awere concluded in 1977 alone: Italy, Jamaica, Peru and the U.K. Many more have been concluded since. It may be interesting to add that according to U.S. Law "U.S. representative to the Fund shall recommend and shall work for changes in Fund guidelines, policies and decisions that waould permit SBAs to be extended beyond three years" and "minimise their adverse impact on basic human needs. (Pub. Law 96-389-1980).

financing.[26] This isolated the problems of third world countries. It became explicit from the legal standpoint, in the Executive Board decision on the EFF which specified that, "The facility, in its formulation and administration is likely to be beneficial for developing countries in particular".[27] Previously, Fund decisions had not adverted to a group of members known as "developing countries". The EFF, in a sense, was a related response to the earlier divergence between the proponents of the theory of structurally derived external deficits, with the inference of larger amounts of financing, a longer term framework for adjustment and a different economic content programmes and the Fund's emphasis on short term, demand oriented stabilization. Among the developed countries in the support of the facility were Italy and the Netherlands, while West-Germany, Japan and Canada were opposed to it.

The decision had stipulateed that the EFF was conceptualized to deal with" an economy suffering serious payments imbalance relating to structural maladjustments in production and trade and an economy characterized by slow growth and an inherently weak balance of payments position

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26. Committee of Twenty, International Monetary Reform : Documents of the Committee of Twenty p. 18.

27. E.B. Decision No. 4377 - (74/114) of 13 September 1974, as amended by Decisions Nos. 6339-(79/179) of 3 December 1979 and 6830-(81-65) of 22 April 1981.

which presents pursuit of an active development policy".[28] Under EFF, the time frame for disbursement of resources was lengthened compared to the one year SBAs, to three years. Borrowing limits were set at magnitudes that were larger than those permitted under the regular credit facilities. Credit under an EFF was set at a limit of 140 per cent of quota, thereby permitting a member to borrow a maximum of 190 per cent of its quota, without taking into account borrowing under the EFF and BSFF. Repayment requirement also indicated the longer term conception of the EFF an outside range of four to ten years in contrast to the three to five year period.

Developing countries still had serious problems regarding EFF. "The conditonality attached to the EFF was still the same combination of monetary cum fiscal contraction and relative price adjustment that applied to drawings from the upper credit branches, the corresponding implication being that the payments deficits to be treated with the new facility were still assumed to have their origins in imbalance amenable to such treatment. [29]

In the early 1970s the world economy, particularly third world countries which are not oil exporters, suffered

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28. E.B. Decision No.4377-(74/144), para I (II)(a).

29. Norman Girvan "Swallowing the IMF Medicine in the "Seventies", Development Dialogue, No. 2, ;1980, p. 57.

a series of shocks that were without precedent. First an inflationary explosion shook the world; 1973 and 1974 shaw a 100 per cent increase in the general level of commodity prices, a quadrupling of the price of oil, and a 43 per cent increase in the average price of exports of industrialized countries. In this period, the prices of Third World exports other than oil were swept along in the general price boom. But 1975 and 1976 were years of recession in the industrialized countries, and this dampened both prices and volumes of third world exports. As a result, most of these countries began to sustain large current account deficits. The IMF estimated that the cumulative total for the three year period 1974-76 for the non-oil Third World was US $ 94 billion, compared with US $ 32 billion in the previous three-year period.[30] Of their US $ 94 billion cumulative current account deficit, drawings on the IMF financed only some US $ 5 billion. The bulk of these drawings were from the Low Conditionality, Oil and Compensatory Financing Facilities. The Dell Report points out :

"Even where continues were under the most intense pressure both in their external accounts and in their domestic economics, they hesitated to make use of the upper,

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30. IMF, Annual Report, 1979, Table 8 and Annual Report, 1976. Table 9.

tranches of their quotas in the Fund, and avoided it if they would. It has been suggested by the Managing Director of the Fund that the severity of Fund conditions has often reflected the failure of countries to approach the Fund at a sufficiently early stage in the evolution of a problem. This in turn, however, was due to a vicious circle in which countries were reluctant to draw on the upper credit branches of the Fund except as a last resort, because of the exorbitant conditions they expected to be imposed". [31]

In the second half of the 1970s the non-oil countries found that the only institution which they could approach with their requirements was the IMF. In this period conditionality re-emerged as the critical issue for most developing countries in their relations with the IMF.

In this period principal areas of concern raised by Third World spokesmen were :-

(i) short-time duration of Fund arrangements; (ii) the related short maturities of SBA credit (iii) the limited quota-linked credit availablities ; (iv) the over emphasis on demand management in the stabilization programmes ; (v) the absence of any effort to set conditionality with due regard to the cause of BOP deficits ; and (vi) the

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31. Dell Report of 1976 paras 2-3.

inordinate share of the adjustment costs that fell on developing countries.[32]

Third world countries demanded an overall review of Fund conditionality. Rising third world criticism, both within and outside the IMF, took place in the context of the economic nationalism of the times and the overall North-South negotiations. The refusal of the developing nations to use high - conditonality resources was the most dramatic threat to the Fund. A review had become inevitable. As the Governor from the United Kingdom observed in 1977.

"I know that some of my colleagues are concerned about the conditions attached to Fund drawings. The might be an advantage in further discussion of this question. My view is that conditionality must be flexible and realistically related to the problems of our member countries and that the time scale of adjustment should be realistic . It is no good increasing the Fund's resources if those who need them most are unable to accept the conditions for their use".[33]

It was in this context that in 1978 the Fund began its review of conditionality which culminated in the 1979 Executive Board decision on twelve new guidelines.

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32. 'Communique: G 24; 13th Meeting, 1-2 October 1976.

33. IMF Summary Proceedings 1977, p. 62.

1) Members should be encouraged to adopt corrective measures, which could be supported by use of the Fund's general resources in accordance with the Fund's policies, at an early stage of their balance of payments difficulties or as a precaution against the emergence of such difficulties. The Article IV consultations are among the occasions on which the Fund would be able to discuss with members adjustment progrmmes including corrective measures, that would enable the Fund to approve a stand by arrangement.

2) The normal period for a stand-by arrangement will be one year. If, however, a longer period is requested by a member and considered necessary, by the Fund to enable the member to implement its adjustment programme successfully, the stand-by arrangement may extend beyond the period of one year. This period in appropriate cases may extend up to but not beyond three years.

3) Stand-by arrangements are not international agreements and therefore language having contractual connotation will be avoided in stand-by arrangements and letters of intent.

4) In helping members to devise adjustment programmes, the Fund will pay due regard to the domestic , social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems.

5) Appropriate consultation clauses will be incorporated in all stand-by arrangements. Such clauses will include provision for consultation from time to time during the whole period in which the member has outstanding purchases in the upper credit tranches. This provision will apply whether the outstanding purchases were made under a stand-by arrangement or in other transactions in the upper credit tranches.

6) Phasing and performance clauses will be omitted in stand-by arrangements that do not go beyond the first credit tranche. They will be included in all other stand-by arrangements but these clauses will be applicable only to purchases beyond the first credit tranche.

7) The Managing Director will recommend that the Executive Board approve a member's request for the use of the Fund's general resources in the credit branches when it is his judgment that the programme is consistent with the Fund's provisions and policies and that it will be carried out. A member may be expected to adopt some corrective measures before a stand-by arrangement is approved by the Fund, but only if necessary to enable the member to adopt and carry out a programme consistent with the Fund's provisions and policies. In these cases the Managing Director will keep Executive Directors informed in an appropriate manner of the progress of discussions with the member.

8) The managing Director will ensure adequate coordination in the application of policies relating to the use of the Fund's general resources with a view to maintaining the nondiscriminatory treatment of members.

9) The number and content of performance criteria may vary because of the diversity of problems and institutional arrangements of members. Performance criteria will be limited to those that are necessary to evaluate implementation of the programme with a view to ensuring the achievement of its objectives. Performance criteria will normally be confined to (1) macroeconomic variables, and (2) those necessary to implement specific provisions of the Articles or policies adopted under them. Performance criteria may relate to other variables only in eceptional cases when they are essential for the effectiveness of the member's programme because of their macro-economic impact.

10) In programmes extending beyond one year or in circumstances where a member is unable to establish in advance one or more performance criteria for all or part of the prgramme period, provision will be made for a review in order to reach the necessary understandings with the members for the remaining period. In addition, in those eceptional cases in which an

essential feature of a programme cannot be formulated as a performance criterion at the beginning of a programme year because of substantial uncertainties concerning major economic trends, provisiony will be made for a review by the Fund to evaluate the current macroeconomic policies of the member, and to reach new understandings if necessary. In these exceptional cases the Managing Director will inform Executive Directors in an appropriate manner of the subject matter of a review.

11) The staff will prepare an analysis and assessment of the performance under programmes supported by use of the Fund's general resources in the credit branches in connection with Article IV consultations and as appropriate in connection with further requests for use of the Fund's resources.

12) The staff will prepare from time to time, for review by the Executive Board, studies of programmes supported by stan-by arrangements in order to evaluate and compare the appropriateness of the programmes, the effectiveness of the policy instruments, the observance of the programmes, and the results achieved. Such reviews will enable the Executive Board to determine when it may be appropriate to have the next comprehensive review of conditonality.[34]

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34. E.B.. Decision No. 6056-(79/38) of 2 March 1979.

The 1979 decision showed a shift in principle from purely short-term to medium term stabilization measures, as required by the particular case. As far as borrowing limits are concerned, the Fund moved in the 1970s to increase the amounts of financing that a member could potentially get. At one level, this was achieved as a result of action taken to raise quota resources in the Fund. Two major quota increases were approved in the second half of the 1970s - in 1975 and 1978 under the 6th and 7th General Reviews of quotas. At another level borrowing limits were increased.

Paragraph 1 provides to take corrective measures which could qualify for Fund support. Failure to act early enough to solve BOP problems makes "more stremous corrective measures " unavoidable when the number after discussion with the Fund, finally adopts an adjustment programme opening the way for approval of a SBA. Delay increases the stringency of measures ultimately required. In this case Fund's conditionality becomes more severe. It has been called by; some a misapprehensive which in some cases may well have delayed adjustment efforts by the authorities, and thus in turn, para-doxically, contributed to the need for a more demanding conditionality.

In connection with the precaution on the nature of some sBAs a member in surplus in its balance of payments is not deterred by the Fund from requesting an SBA, although it will have no need to request transactions while the surplus continues. The advantage to such member is symbolized by the Fund's approval of an SBA.

Paragraph 2 provides longer period of adjustment. In 1952 it was six months and subsequently extended to 12 months. Extended arrangements provided the period for 3 years. The gradual lengthening of the period of arrangements gives esffect to the conviction that if adjustment will be difficult and protracted, a programme for the whole period of adjustment, if possible, is preferable to programmes for successive shorter periods. Nevertheless the basic or normal period was kept at 12 months so as to blur the distinction between balance of payments assistance and development financing.

One of the yardsticks for rating the 'severity of conditionality' is the time for adjustment, and in these terms 'the longer periods for stand-by and extended arrangements can be considered a reductrion i;n rigour of conditionality. This explains why, although a member may request a period of more than a year, the Fund reserves the right to determine whether a longer period is necessary;; for the sucess of the member's programme.

Paragraph 3 states that 'stand-by arrangements are not international agreements'. Gold says that this exposition is based on a variety of cogent legal and pragmatic reasons. He says, "the absence of an intention to contract helps a member to avoid the politcal embarrassment of an analysis that it has undertaken an obligation to an external authority to introduce and persist in certain policies on matters of national importance. Moreover a member frees itself from the risk that it will be changed with volating international obligations if it is forced by events -- to depart from or to modify its declared policies."[35] Conversely, insistence that SBAs are basically contractual, would encouraga members to declare policies with as much imprecision and ambignity as they could muster. They might even decide not to approach the Fund at all in support of stabilization. The international adjustment process as a whole would suffer if either of these consequences were to occur.

Another consequence is that the Fund does not consider itself forced to undertake the task of exercising close surveilannce over the manifold policies that usually constitute stabilization programmes. The Fund might find it difficult not to perform this task if all policies in the programme were treated as obligations undertaken by a member.

For this 'letter of intent' cannot be viewed as a binding 'unilateral declaration' for this would be as

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35. Gold - "Legal Bases of Stand-By Arrangements"- <u>IMF Survey</u> 1983 p. 195

objectionable as the analysis of contract. It is important to note that "a member's failure to observe any of its declared policies--does not automatically amount to an improper use of the Fund's resources within the meaning of its Articles. Nor does a member's failure to observe the policies set forth in its letter of intent mean that the Fund must declare the member ineligible or limit further acess to the Fund's resources whenever the Fund would be able to take these actions. Ineligibility and limitation are discretionary remedies of the Fund, and it has shown reluctance to employ them as safeguards.

Although it could be maintained that the Fund has innate right to cancel any of its decisions, and SBAs are decisions, it might be also be argued that members have been led to believe that the Fund has undertaken not to exercise any right of decision that it might have in relation; to such arrangements. The issue has never been tested, partly because cancellation would be a serious international judgment on a member and partly because further improper use of the Fund's resources can be adequately guarded against through other techniques as performance criteria.

Paragraph 4 calls for due regard to the domestic, social and political objectives, the economic priorities, and circumstances of members. The phrase 'due regards connotes something less than a direction to give decisive effect to the consideration in question, so that the Fund is no way required to concur in a use of its resources that waould be inappropriate.' 'The circumstances of members' is a phrase of panoramic scope and the wording must be taken to encompass the restraint of the Fund in accepting as beyond debate a member's economic organization, such as the extent to which; the economy is under government ownership or control. This implication is of paramount significance. "Only that attitude would be consistent with the technical mission of the Fund, the principle of universal membership, and the uniform treatment of all members.

The term "Circumstances" covers the causes of members' balance of payments problems but there is no implication that adjustment and conditonality will be unnecessary if a member's difficulty arises from circumstances beyond its control because it has been stated that 'ordinarily memberas must adjust their balance of payments whatsover may; be the origin of their problems.'

Paragraph 5 provides for 'appropriate consultation clauses.' In case of non-observance of a performance criterion some performance clauses require special consultation before further purchases can be made, while others provide that reactivation of the right to purchase will occur without special consultation if the member brings itself into the conformity with the criterion. The legal consequences can flow from an SBA long after it has expired. The consultation clause can be the basis for consultation even when the Fund is deemed no longer to hold any balances of a member's currency resulting from transactions under the SBA, if the Fund is still holding currency deemed to arise from transactions in upper credit tranches.

Paragraph 6 requires SBAs to include phasing in those tranches - "the practice of making resources available --in defined instalments". Each instalment is made available conditionally, on the basis of "observance of performance criteria in performance clauses," covered in paragraph 9. Both requirements are intended function not only of providing safeguards for the proper use of the Fund's resources, but also of enabling a member to demonstrate to lenders that its programme is carried out and is worthy of continued support.

Paragraph 7 provides "to adopt some corrective measures" as a precondition for a programme qualifying for Fund support. The Managing Director keeps Executive Directors informed of the progress of discussions with a member when pre-conditions are being discussed. The procedure may be confidential and does not involve a meeting of the Executive Board.

Paragraph 8 calls for "non-discriminatory treatment" Some critics have observed that the Fund has applied more severe conditionalities to developing members than to developed members. The provision is in fact declaratory of established practice and serves an assurance that the Fund will continue to be evenhanded by maintaining the practice it has followed.

Paragraph 9 provides for "performance criteria". It has been noted that the broad objective of conditionality in the upper credit tranches, when a corrective programme is necessary, is to bring about a sustainable balance between aggregrate demand and aggregate supply in the economy, mainly by means of credit and fiscal policies. It must not be assumed that conditionality will always necessitate the introduction of corrective policies in order to enable a member to use the Fund's resources. The member may already be following the policies that will bring about adjustment but may need only time and resources to enable it to persist in those policies. The objective elements in a programme are stated or defined in such a way that departure from them will be obvious to the member and to the Fund without the need for the exercise of judgment.

Much of the debate on conditionality has revolved around both the concept and the choice of performance criteria. It has been objected that an economic situation cannot be summarized in a few economic variables, that performance criteria are a temptation to concentrate excessively on quantifiable elements in constituting a programme, and that economic forecasting is too uncertain to be a reliable basis for performance criteria.

Paragraph 12 provides for general reviews, such reviews will enable the Executive Board to determine when it may be appropriate to have the next comprehensive review of conditionality.

1980s - Return to Old Principle

The beginning of the 1980s witnessed one of the most powerful changes in the IMf's operations as it related to its financing mandate. In contrast to the 1970s, a growing number developing countries had no alternative but to borrow from the Fund in the environment of limited financing options. With the growing of debt crisis and unwillingness of the Commercial Banks to level to third world countries which questioned the credit worthiness of these countries. Moreover in the 1980 Annual Meeting, the Governor. of West Germany cautioned to maintain the conditionality principle. In the 1981 Annual Meeting US Governor argued that : "In our judgment, it is critically important to the IMF as an institution, to the individual borrowing countries, and to the world economy in general that Fund financing be used only in support of sound and effectively implemented economic adjustment programmes".[36]

This brought a combined attack from the developed countries against developing countries. They accused that

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36. Summary Proceedings 1981, p. 109.

the Fund is catering the interests of developing countries only. While in the first three decades it was the developed countries which utilised the Fund in the years 1980-84, developing countries were beneficiaries of the various Fund facilities in the proportion of nearly, 90 per cent of all credit extended. The Fund's policies were criticized by developing countries particularly the type of stabilization programmes that borrowing countries, were required to enter into. In fact the debt crisis took place at the moment when the Fund was turning its back on the conditionality experiment and reverting to purely demand based adjustment.

During this period there was a substantial reduction in permissible borrowing limits: consequent upon the quota increase approved after the 8th General Review of quotas in 1983, normal access limits were reduced in stages from 150 per cent to 95-102 per cent of quota, 450 per cent 280-395 per cent, over three years periods and from 600 per cent to 408 respectively.[37] This situation sharply contrasted the 1979 decision of Executive board. Jospeh Gold argues :

"The language in which the Fund express its intention is that it will 'pay due regard' to the

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37. "Report of the G-24 Deputies on the Functioning and Improvement of the International System", IMF survey, supp. September 1985, p. 129, para 121.

considerations listed in the paragraph. As used in the Articles of Agreement and in the practice of the Fund the phrase cannotes something less than a direction to give decisive effect to the consideration to which the Fund must pay due regard". [38]

This reversal of policy brought severe criticisms from third world countries. Just before the Fund's 1985 Annual Meeting the Jamaica President pointed out : "The prevailing wisdom emphasizes the adjustment programmes through tight demand management. The result is severe austerity which, in the final analysis, cuts services and reduces growth. This austere path carries social and political costs which are often counter-productive to the final objective of achieving adjustment without sacrificing stabillity." [39]

The IMF 'responded' to the demands of poor countries with the establishment of Structural Adjustment Facility (SAF) in March 1986 and the Enhanced Structural Adjustment Facility (ESAF) in December 1987. Under these facilities up to 12 billion of concessional resources are expected to be made available to help low-income countries with protracted payments problems take measures to correct their BOP imbalance and foster growth over the medium term. The funds available under the SAF come mainly from

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38. Gold: No 20, p.22.

39. N. 6, p. 217.

repayments on loans from the Trust Fund, which will continue to be received through April 1991. [40]

Both of these facilities establish a procedure to build consensus on an adjustment progoramme within the borrowing country and among the international lending and donor communities and they provide a rallying point for mobilization of additional funds policy framework papers, the basic documents that describe in broad terms the measures the country proposes to take during the programme period, are prepared by the national authorities with the joint assistance of the staffs of the Fund and the World Bank. These papers identify the sources of a country's problems as well as the remedies and external financing that are needed, providing a frame work for other donors planning additional assistance to the country in question.

The philosophy behind the creation of these facilities was to help and support adjustment in the low income countries with low per-capita income. In the 1980s many countries faced following prices for their exports and deteriorating external position which led acute BOP problem. This combination of circumstances seriously undermined the capacity of LDCs to grow out of their poverty without exceptional assistance.

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40. Business & Political Observer, New Delhi, October 29, 1991.

Sustainable growth requires a steady rise in the level of investment as well as improvements in its efficiency. But after a decade of poor growth, the domestic resources available for investment in these countries were too low to compensate for the slowing inflow of foreign funds. Traditional sources of concessional lending were insufficient to support countries' efforts to meet the challenges. This conclusion was behind the decision of the international community to support the creation of these facilities. [41]

The broad objectives of the SAF and the ESAF are to help countries, restore and maintain payments viability while changing the structure of economic activity to achieve high and sustainable rates of economic growth. The terms of the facilities recognise that low income countries implementing strong adjustment programmes are apt to be less successful if they have access to financing only on market terms. Concessional resources allow borrowing countries to pursue the bolder and longer term reforms that are needed and the resources available under both of the Funds's new facilities are highly concessional.[42]

Sixty one of the Funds's poorest members are eligible to use the SAF, but two of the largest, China and India, indicated at the out set, as they did not anticipate

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41. Ibid.

42. Ibid.

acute or persistent balance of payments needs, they did not intend to make the use of the resources. The Fund now commits up to 70 per cent of a member's quota unde the three year arrangements supported by the SAF. Disbursements under the SAF are made annually and are linked to the approval of annual arrangements with members receiving the equivalent of 20 per cent of quota under the first annual arrangement, 30 per cent under the second and 20 per cent under the third.

The members can draw more assisstance under the ESAF than SAF up to 250 per cent of quota over a three year programme period, with provision for up to 350 per cent in exceptional circumstances. Disbursements under ESAF, however, are semi-annual; instead of annual. By the end of February 1991, 32 countries had obtained support from the SAF and 14 countries had obtained support from the ESAF, for their adjustment programmes.

Those facilities set more drastic conditions than the earlier ones. The members drawing under these outlets were supposed to surrender the domestic economic policies to the IMF and World Bank Staff. The concerned country had hardly any scope for intervention in framming out basic Policy Document. The PFP is virtually a blueprint to link the country's adjustment strategy with the sources of its problems and to show how structural change and payments viability will be achieved and the method that will be used to monitor progress. With this kind of document compelling the member to follow certain pattern of economic system, the IMF has virtually taken over the role of Finance Minister in the Third World Countries.

With these developments in the 1980's and the growing interdependence of World Bank and IMF some observers expressed an apprehension that the procedures set out in PFP tantamount to applying 'Cross-Conditionality', while others felt that it will have catalyzing impact.

In this period an important development took place when CFF which had extended in 1976 to cover an excess in cereal import costs and in 1990 it sought to cover excess oil import costs. No conditionality applied if the country had a satisfactory balance of payments except for the effect of the export shortfall or the excess in cereal import costs. Over the years, however, the application of the CFF tended to become more conditional, as payments problems were found to go beyond these specific and reversible adversities. Countries were expected, in such circumstances, to cooperate with the Fund in finding appropriate solutions to their BOP difficulties.

An aspect that came into sharper focus in the 1980s was the importance of helping a member implementing a Fund supported programme to obtain financing to cover part of the net effect on its balance of payments of external shocks. It was seen as suitable to cover unfavourable deviations beyond the member's control in the key current account variables that are easil;y identifiable as well as highly volatile. Initially contingency mechanisms were incorporated into arrangements with Mexico in respect of oil revenues in order to facilitate that country's debt negotiations with its banks. The experiences gained in this transaction provided a precedent for complementing the CFF with an approach to help key programmes on track in the face of unpredictable exogenous developments. Often in the past, the response by creditors to countries surprised by external adversity would be to insist upon more adjustment.[43]

In case of prolonged use, in this period, attention is given to levels and phasing of access, with a view to reducing outstanding Fund credit overtime. Continued access requires stronger policy justification. In cases where a country's record of payments performance indicates difficulties in meeting obligations punctually, a close examination of the cash flows is undertaken with a view to assuring the Fund that there would be sufficient resources available to meet obligations to the Fund as and when they fall due. Finally in cases where projections indicate a doubt that viability would be attained in the medium term if certain assumptions were not fulfilled, the Fund seeks additional and clear expressions of support from the

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43. Joseph Gold "Mexico and the Development of the Practice of the IMF", World Development Vol. 16 p. 1127-42.

international community to the effect that the Fund would be treated as preferred creditor.[44]

These developments had led the Fund to be increasingly unwilling to see its resources being used as part of 'gap-filling' exercises and to put greater weight on the building up of the borrowing countries' resources. Recently, the Fund has also tended to give much greater weight to the adoption of corrective measures of a durable character, especially in the fiscal areas, while being unprepared to accept measures that are of a "band aid" type, or measures that would lose effectiveness with the passage of time.

CROSS-CONDITIONALITY

With the creationof SAF and ESAF, the cooperation between Bretton woods institutions has increased. The growing interdependence of IMF and world Bank for their decision making processes have increased the complexity of the negotiating process for potential borrowers, and this consideration alone has caused delay in the approval and disbursement of loans.

The World Bank lends for structural adjustment or sectoral programmes in most of the low income countries. It

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44. Jacob, A. Frenkel & Morris Goldstein (eds), International Financial Policy: Essays in Honour of Jacques J. Polak, (IMF Washington 1991)

is celarly important that the analysis and policy recommendations underlying these lending programmes be consistent with and complementary to the funds disbursed under the SAF and ESAF. The PFP provides a framework for ensuring this consistency. In general the staff of the Fund focuses mainly on the macro economic framework,[45] and objectives and on measures to eliminate financial imbalances, while the staff of the Bank tends to focus mainly on longer term issues and on the analysis of sector policies and the public investment programmes and its priorities. PFP's are reviewed by the Executive Boards of both the Bank and the Fund before the disbursements are made.

The word 'Cross-Conditionality' first appeared in communiques's of the Interim and Development Committees as well as of the Group of Twenty Four. This might arise under four circumstances.

1) if either of the Bretton Woods institution exercised, or sought to exercise a veto over loan under consideration by the other or over a drawing against an existing loan;

2) if there were a formal understanding between the two institutions that neither would take a loan to or an

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45. 'Programme for structural Reforms '- Dr. Man Mohan Singh, laid this letter on the table of the House of Parliament on November 11, 1991. Though this is not PFP, but it contains nuances of the desired form.

arrangement with any member country, or with a particular country, except with the concurrence of other institution.

3) if there were a formal understanding between the two institutions that neither would allow member countries or a particular member country, continued access to a previously agreed loan or arrangement except with the concurrence of other institution and;

4) if a formal action, notably a declaration of ineligibility by the Fund were by previous arrangement between the two institutions, to interrupt access to a bank loan.[46]

The idea has been gaining ground because the Bank has been refraining from operating in countries in need of adjustment, unless they have an effective SBA with the IMF.

SUGGESTION

Fund officials have been rjecting the idea of softening of conditionality because it would be contrary to the Fund's character and aims, defeat the adjustment purpose, reduce the influence of SBAs on other potential lenders including the World Bank and discourage some members from agreeing to quota increases, the IMF borrowings or SDR allocations. 'Under most circumstances, adjustment will take place, with or without policy actions; that is, claims on resources will eventually have to be limited to the resources that are available. The issue at stake is not therefore whether adjustment will be carried out, but whether it will be carried out efficiently, without involving unwarranted welfare losses, so that the productive capacity of the economy and its competitiveness are brought back to their potential level." Developed countries feel that IMF is neither a Bank nor a development institution.

It has been objected that the IMF emphasis on the "Laws of the market " excessively reflects western rich-country attitudes, and is inappropriate to many LDC conditions. The efficiency case of perfect competition depends upon a number of highly restrictive and unrealistic assumptions such as universality of perfect competition, free entry and no uncertainty. The developed countries have not allowed a balanced growth of LDC exports through relatively higher protection barriers against their most competitive manufacturers. The negative trade environment has had negative effects on LDC-BOP employment and real income, thereby redusing their leeway. The overall implication of this dictum is to avoid any embarrassment to any of the Bretton Woods instituions. In practice, it is not possible use of a formal veto that worries the G-24. Their concern is rather with cases in which, allegedly, one of the institutions succeeds in preventing or delaying a loan by the other without any formal action being taken and certainly without any formal veto being cast.

This phenomena is not new as posed in the 1980s.

There has always been close cooperation between these two institutions. A structural tie of a legal character is that the Article of the Bank restrict membership to countries that have become members of the fund. (World Bank Articles, Article II, Sec. 1). If a member of the Bank ceases to be a member of the Fund, membership in the Bank ceases after three months unless the Bank by three fourths of the total voting power agrees to permit membership in the Bank to be maintained. The provision in the Bank's Articles gives expression to the desirability of requiring members to accept the regulatory jurisdiction of the Fund in matters of the BOP and exchange rates if they wish to have the benefit of development assistance by the Bank. This requirement would help to ensure the repayment of loans by the Bank, although the consideration may not have been the main purpose of the provision.

There are a few committees to perform either adhoc or standing functions. The most interesting of these committes is the Joint Ministerial Committee of the Board of Governors of the Bank and the Fund on the Transfer of Real Resources to Developing Countries, which was established by parallel resolutions of the two Boards of Governors in October, 1974.

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6. Sidney Dell 'The Question of Cross - Conditionality World Development, Vol. 16 No. 5, pp. 558-559, 1988.

In the beginning the distinction was made on functional basis. The Fund and the Bank are legally distinct as international organizations and they continue to cherish a tradition of exclusive authority. Neither excersies a veto over or control of the activities of the other. Discussions between them of their relationship are almost invariably prefaced by some reference to the uniqueness of the purposes, functions and operations of each. It is understandable, therefore, that a distinction between the Fund and the Bank is expressed sometimes in aphoristic terms: The balance of payments is the business of the Fund; development is the business of the Bank. The Fund's financial activities are short to medium term; the bank's are longer term. The Fund's policies are concerned with fitting demand to supply; the bank's policies with changing the sources and pattern of supply. The Fund concentrates on the macroeconomic policies of its members; the Bank on policies of narrower scope. The Fund deals with the financial economy; the Bank with the real or physical economy.[47]

Now the horizon of operation has increased immensely. The Bank and the Fund providing structural adjustment lending demand compromise on conditionality practice. The bank excercises much leverage on certifying a

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47. Guitian M. "Fund conditionality and the International Adjustment Process: the Early Period, 1950-70," Finance and Development, December 1980, p. 24.

member's economic stability measures. Moreover, legal independence and functional interdependence inevitably require that the parallel lines of the two organizations must meet this side of infinity. What is required at this juncture is that closer collaboration should lead in these hard times to an increase in the total resources made available by the Fund and the Bank and not a division of the resources that either might have provided in days of looser collaboration for fiscal responsibility and has increased their need for foreign aid.

The IMF puts excessive emphasis on currency devaluation as compared to structural adjustment policies, that such devaluation is ineffective and can even be counter- productive. If higher prices for essential imports cannot reduce the latter in view of their low demand elasticities, they may reduce demand for other domestically produced goods, thereby aggravating the economic picture. It may aggravate inflationary pressures and BOP problems.

In view of the above criticisms some compromisory points may be suggested. The IMF should attempt to balance the short term stabilization, the Fund's major objective ag ainst long term development, the major objectives of the members. Respect for national economie sovereignty is important factor. The 1974 UN General Assembly Resolution on Economic Rights and Duties of States should be given due regard. Article 1 states that 'every state has the sovereign and inalienable right to choose its economic system as well as its political social and cultural systems in accordance with the will of its people, without outisde interference, coercion or threat in any form whatsoever.'[48]

There is requirement of uniform treatment and the need for politial realism against the needs for comparable treatment, as well as credibility in the private banking sector. There is also requirement for SBA consistency with the Fund's articles against the likelihood that the agreements will be carried out.

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48. Article 1 of the Charter of Economic Rights and Duties of states.

CHAPTER III

CONDITIONALITY AND HUMAN RIGHTS

NEED FOR HUMAN RIGHTS

Human Rights were first linked with aid by the United States, but the linkage was developed the furthest by the Netherlands, Norway and Canada. No country has yet elaborated a full-fledged policy of the linkage between human rights and development aid. There are donor governments which do not have a policy on human rights criteria in practice. Australia for example denies the feasibility of linking development aid and human rights on the level of policy. The United Nations established the foundations for this linkage by recommending the withdrawal of aid in cases of authoritatively determined gross and systematic violations of human rights.[1]

The punitive approach in linking human rights with development aid still prevails. Rather than elaborating the promotion of human rights through development aid, donors thus centred on the withdrawal of aid as a punishment. The suspension or discontinuation of aid could further aggravate the position of people victimised by the violation of their rights. The punitive approach should be confined to the

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1. UNGA Resolution 217 A (III) of 10 December 1948

government responsible for gross violations of human rights, and combined with measures to prevent the worsening of the position of the victims.[2]

The United States first initiated the incorporation of human rights into its aid policy and legislation. The explicit and radical human rights pronouncements of the Carter Administration raised human rights to international prominence. The US leadership in international policies was not continued by the Reagan Administration, which diminished the application of human rights criteria in aid, and in US Foreign Policy in general. David Heaps summarised the unfavourable record of both as follows:

"The Trouble with the Carter human rights policy, a critic observed, was the inconsistency between what it originally said and what it subsequently did. The trouble with the Reagan policy, the same critic later noted, was the consistency between what it originally said and subsequently did."[3]

By the Harkin Amendment, the United States made countries whose governments engaged in a consistent pattern of gross violations of internationally recognised human

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2. Katarina Tomasevski, Development Aid and Human Rights, (Printer Publication London 1989) pp. 50-51.

3. Ibid. p. 52

rights ineligible for assistance, with the exception of assistance to directly benefit the need of the people in such country. The United States does not make any reference to standards and procedures under the international human rights treaties because it is not a party to most of them. There is no mention of the promotion of human rights through aid.

This approach still continues. The Netherlands also recognizes the relevance of the human rights policy of the recipient government as a criterion in aid. While Jan Pronk the Minister of Development Cooperation called for the nations to adopt a positive approach towards the development and realization of human rights. He observed:

"Development aid must set in motion processes through which the poor and the oppressed can achieve freedom and the right to say in their own affairs. Development aid should be concerned with the rights of peoples and individuals, and not with the interests of states. We must try to use channels which reach the people directly."[4]

The individual practices of these countries set precedence for the international development agencies and United Nations particularly. With their overwhelming say in such agencies US and other developed countries could enforce

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4. Human Rights and US Foreign Policy. The First Decade 1973-1983 (American Association for the International Commission of Jurists, New York 1984) p. 46

their will on deciding aid and loans to developing countries. To ascertain proper framework of Human Rights practices and their linkage to development and aid it is imperative to discuss the relationship between Human Rights and aid. While IMF and World Bank are two prime institutions providing help to their members, its more important to relate human rights factor with IMF conditionality policies. These policies have direct impact on concerned nation's economic and social pursuits. [5]

The United Nations has made human rights one of the main purposes of international development cooperation. The widening of its human rights agenda represents an unprecedented phenomenon: rights of individuals have become the task and responsibility of the international community. Moreover, the human rights performance of every government has to conform to the international minimum standards and may be subjected to international scrutiny.

The codification of international law of state responsibility, carried out by the International Law Commission, contributed to the classification of the notion of state obligations in the field of human rights. The commission defined obligations of conduct and of result, and also included gross violations of human rights in the definition of international crimes.

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5. J.P. Pronk, "Human Rights and Development Aid; Review of the International Commission of Jurists," June 1977, pp., 36-7

The United Nations has succinctly defined and addressed the rights of man through a myriad of covenants, treaties and resolutions. By signing and ratifying these documents, the majority of states have conceded to a set of obligations which ensure respect for and realization of human rights. These arrangements include Universal Declaration of Human Rights,[6] International Convenant on Economic Social and Cultural Rights[7], Declaration on the Granting of Independence to Colonial Countries and Peoples[8], Declaration on Permanent Sovereignty Over Natural Resources[9], Declaration of the Rights of the Child[10], Declaration on Social Progress and Development[11], Universal Declaration on the Eradication of Hunger and Malnutrition[12] and above all Charter of Economic Rights and Duties of States[13]. The ideals set in those declarations are binding on all the states. These states have to respect in all conditions the ideals and work to promote human rights.

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6. UNGA Resolution 217 A (III) of 10 December 1948.

7. Ibid.

8. UNGA Resolution 2200 A (XXI) of 16 Dec. 1966. Entered Into Force. 3rd January 1976.

9. UNGA Resolution 1514 (XV) of 14 December 1960.

10. UNGA Resolution 1803 (XVII) of 14 December 1962

11. UNGA Resolution 1386 (XVI) of 20 November 1959

12. UNGA Resolution 2542 (XXIV) of 11 December 1969

13. UNGA Resolution 3348 (XXIX) of 17 December 1974 and UNGA Resolution 3281 (XXIX) of 12 December 1974

LINKAGE BETWEEN CONDITIONALITY AND HUMAN RIGHTS.

Among the most fundamental of human rights are the rights to minimum acceptable levels of nutritions, health and education. Hundreds of millions of people in developing countries through no fault of their own, are denied these rights today. It is in these countries that the IMF adjustment is particularly costly in human terms[14].

According to its Articles of Agreement of IMFs precise purposes are to increase international trade to promote exchange rate stability and monetary cooperation and to bring about high levels of employment, resource productivity and real income for member nations. The World Bank undertook the reconstruction of western Europe after World War II. With the inclusion of Third World countries as member states, the World Bank now provides technical and economic assistance for development in those countries.

To assess the role of IMF in the domestic economic affairs of contracting states, it is imperative to discuss the *modus operandi* of the IMF. When any country makes a request for use of resources in the credit tranches, a team of IMF economists visits the country to determine and analyse the extent of the economic malaise. After meeting with the governor of the central bank and the finance

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14. Rothschild, "The US Pushes World Bank and IMF to be Supporters for Global Corporations", Multinational Monitor Nov. 1981, p. 16

minister in the requesting country, the IMF recommends a specific fiscal policy in order to approve further funding for the country. This seal of approval by the IMF indicates to other investors that the country is safe for capital investment. After negotiations a 'letter of intent' is sent by the requesting country to the IMF which states its commitment to the new economic policies and its willingness to undergo an austerity programme to cure inflation and the balance of payments problems. This austerity programme aims at increasing the flow of foreign exchange into the country and minimising its use in the public sector. The programme usually requires the liberalization of foreign exchange and import controls, the devaluation of exchange rate, the implementation of domestic anti inflationary measures and higher interest rates in domestic banks. The deficit is controlled by abolishing price controls and consumer subsidies in food, health and medical care, housing, oil and a variety of services in order to create an environment which would be conducive for foreign investment. The measures cause the purchasing power of the lower classes to decrease substantially since incomes are subject to wage ceilings despite the removal of price control on basic human needs. Thus, without any government subsidies in the public sectors, the disadvantaged sectors of society are less able to afford essential foods and a medicine which leads to a higher rate of infant mortality, malnutrition and disease in the recipient country.

The IMF is capable of exercising leverage on developing countries because international commercial banks and financing institutions will not act positively on request for credits or loans, unless the requesting country has received the IMF seal of approval. The situation has been summed up with some clarity by the Jamaica President after pathetic failure of IMF adjustment programmes.

".... We are now facing a situation in which some of the people who could lend us money will apparently do only on the condition that they should be able to tell us how to conduct our affairs. The IMF, which is the central lending agency for the international capitalist system, has a history of laying down conditions for countries seeking loans..."[15]

Most of the time third world countries are hesitant to transact any loan under the credit tranches of the Fund they ultimately do so to continue their business transactions with banks and to import foreign capital for the resumption of trade. By the time a country submits a request for the higher credit tranches, however, it is usually under acute economic strains and subject to the IMF's severe conditionality. Thus the recipient country has

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15. Quoted by Norman Girvan in "The IMF and the Third World. "The case of Jamaica, 1974-80" Development Dialogue No. 2 1980 p. 1222.

to compromise on its domestic socio economic development project and focus the country's economic goals and policy on overcoming external deficit.[16]

RELATIONSHIP BETWEEN IMF AND UNITED NATIONS

Since its inception in 1945, United Nations has elaborated on the importance of the protection of human rights and has drafted covenants declarations and treaties to that effect. Article 1 (3) of charter states "The purposes of the United Nations are - to achieve international cooperation in solving international problems of the economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all."[17]

Article 55 further narrates: "With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of people, the United Nations shall promote:

a) higher standards of living, full employment, and conditions of economic and social progress and development;

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16. N. Girvan (ed.) The Political Economy of Development and Underdevelopment pp. 169-81

17. Article 1 para 3 of UN charter

b) solutions of international economic, social, health and related problems; and international cultural and educational cooperation; and

c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.[18]

Article 56 says further "All Members pledged themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55".[19] Furthermore, Article 57, provides that :

1) The various specialized agencies established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2) Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialised agencies.[20]

The agreement between the United Nations and the IMF strives to coordinate the policies of the IMF with

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18. Article 55 of UN charter

19. Article 56 of UN Charter

20. Article 57 of UN charter

those of the United Nations by having reciprocal representation and an exchange of information between the two organizations[21]. Article 1, para 2 of agreement between the United Nations and the International Monetary Fund states that : "The fund is a specialised agency established by agreement among its member governments and having wide international responsibilities, as defined in its Articles of agreement in economic, and related fields within the meaning of Article 57 of the charter of the United Nations".[22]

Article 63 of the UN charter states:

1) The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57 defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2) It may coordinate the activities of the specialised agencies through consultation with and recommendations to the General Assembly and to the Members of the United Nations.[23]

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21. The agreement came into effect in 1947.

22. Article 1(2) of Agreement Between the United Nations and the International Monetary Fund

23. Article 63 of UN charter.

These provisions call for close cooperation between United Nations and its specialized agencies. No specialised agency is expected to override the provisions of United Nations charter. There has to be consistency regarding legislation of laws as well the applicability of the same. Political consideration in taking decisions hamper the impartial character of IMF. Sir Joseph Gold has pointed out:

"Non-economic considerations, particularly of a powerful moral character, may make decisions on some occasions appear to some or even many members, to be applications of the *maxim dura lex sed lex* (hard law but law). If some application of the law of the Fund is too hard to be acceptable to the members, procedures for amendment exist under the Articles. The organs of the Fund, such as the Executive Board, are not authorized to adopt avowed amendments or decisions that have a similar though unavowed effect. The organs of the Fund, unlike to organs of some other international organizations, have not been granted the power to amend the treaty that governs the Fund. Members have reserved that power for themselves and have agreed on how it shall be exercised. They have required high majorities of their number and voting power to change the rules by which they have undertaken to be governed. The power may not be usurped by the organization created by members to administer the rules."[24]

Further he idiomatically points out "The swimmer who goes out to far may seem to be waving but is drawning. The Fund that swims out too far, even in a moral cause, will risk drawning. It will have lost the full confidence of its members. It will be less able to promote universal prosperity. That task is the Fund's moral cause."[25]

LEGAL EFFECT OF GENERAL ASSEMBLY RESOLUTIONS

The controversy over the legal effect and binding force of UN General Assembly resolutions is well known.[26] However, there is little disagreement that resolutions do

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24. Joseph Gold, "Political cosiderations are prohibited by Articles of Agreement when the Fund Considers Recquests for the use of Resources" IMF Survey, 146-148 (1983)

25. Ibid

26. For some writers even the Universal Declaration of Human Rights does not have a legally binding effect, see Loan, "The binding Force of a 'Recommendations" British year Book of International Law 1, 31; Lauterpacht, "The Universal declaration of Human Rights, 1948" British Year Book of International law 354-369. O. Assamoah, "The Usual Significance of the Declarations of the General Assembly of the United Nations" 190 (1966); Ermacora, "Human Rights and Domestic Jurisdiction," in 124 Recueil Des Cours 371, 427-30 (1968), other writers state that Declaration constitutes a binding obligation for Member States of the UN and forms part of customary international law or even jus cogens see remarks of McDougal at the American Society of International Law Proceedings 329 (April 26-28, 1979); P. Sieghart, The International Law of Human Rights 54-55 (1983).

not have the same legal value of effective international conventions and cannot instantly establish rules of international custom even when the resolutions are normative in nature or are a general declaration.

With the increased participation of the Third World in the United Nations and the greater emphasis on functional cooperation, the horatory effects of General Assembly resolutions was subjected to close scrutiny and debate. As a result of this evaluation, a number of legal theorists and diplomats have characterised General Assembly Resolutions in followings ways -

a) The intent and expectations of states;

b) respect for procedural standards and requirements;

c) the text of the resolutions;

d) the extent of support for the resolution;

e) the context in which the resolution was elaborated and adopted including relevant political factors and

f) any implementing procedures provided by the resolution.[27]

Essentially, the liberal interpretation of 'recommendations' holds that the process of voting for resolutions is and of itself, capable of creating customary norms of international law.

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27. Conclusion 6 of Institute de Droit International, Cairo session September 13-22, 1987.

Manley Hudson has pointed out that to create a norm of customary international law, assuming that a state practice exists, the practice must be accompanied by an intention to state a legal principle. There must be a conception on the part of the state actors that the practice is required by international law. Thus mere factual conduct is not sufficient; the conduct must be motivated by a conviction of obligation *opinio juris*.[28]

Moreover, Article 13(1) of UN Charter entrusts the General Assembly with the task of 'encouraging the progressive development of international law and its codification. The resolution on genocide and the resolution affirming the principles embodied in the charter of the Nuremberg Tribunal are examples of Assembly pronouncements that have legal effect. If the resolution is viewed as a statement of existing law, it is incorrect; as a statement of new law, it is not binding. At best, it constitutes evidence of a possible mode of state behaviour that could evolve eventually into a rule of customary international law[29]. As the office of Legal Affairs of the United Nations pointed out:

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28. Summary Records of the 44th meeting (1950) 1 Year Book of International law. Comm'n 26, UN DOC. A/CN. 4/SER. A/1950 (remarks by Manley Hudson).

29. O. Asamoah, the Legal significance of the Declaration of the General Assembly of the Untied Nations '96 (1966).

"Law creating resolution cannot be made binding upon member states in the sense that a Treaty or Convention is binding upon the parties to it ... The solemnity and significance attached to the declaration may impart a strong expectation of compliance... As the expectation is gradually justified by state practice, a declaration may by custom become recognized as laying down rules binding upon states."[30]

The question of the legal effect of U.N. General Assembly resolutions, including its declarations on human rights, has a special relevance to the IMF. The IMF is a specialized agency of U.N. and the General Assembly Declarations made from time to time cannot be taken for granted because of the the autonomous character this Brettonwoods Institution.

As far as the state practice and intention to accept the principles of various General Assembly declarations is concerned, United States President Franklin D. Roosewelt had recognised the crucial nature of economic rights and proclaimed the necessity for the United States to endorse them in their entirety.

We have come to a clear realization of the fact that true individual freedom cannot exist without economic

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30. U.N. DOC. E/CN. 4/L. 610 (1962).

security and independence. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race or creed. Among these are:

the right to a useful and renumerative job......

the right to earn enough to provide adequate food and clothing and recreation:

the right of every businessman, large and small, to trade in an atmosphere and freedom from unfair competition and domination by monopolies at home or abroad;

the right of every family to a decent home;

the right to adequate medical care and the opportunity to achieve and enjoy good health;

the right to adequate protection from the economic fears of old age. sickness, accident, and unemployment;

the right to a good education.

This was clear pre-endorsement of certain principles voiced in many general Assembly Resolutions.[31]

LEGAL STATUS OF HUMAN RIGHTS

The nature of legal status of human rights has always been subject of controversy. How IMF conditions are capable of affecting these rights, needs an elaborate interpretation of sanctity of these rights. As the society

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31. Franklin D. Rooselvelt (1944) quoted in J.F. Green, The Untied Nations and Human Rights 14-15 (1956)

developed, the concept of rights also developed. 'Right'[32] is something which can be justified in the eyes of law. There are duties prescribing how people ought, or ought not, to behave with regard to others, who are said to have correlative claims or rights.[33] Now any society or state is not an isolated entity existing in seclusion , its activities reflect the implication on the existence of others as well. The world is changing fastly into a 'global village', where states and international organizations take decisions on behalf of individuals. So the concept of individual 'liberty', 'claim', 'immunity' and 'right' can be extended to states also.

Law is a social institution. A society may be described as an association of people with a measure of permanence. It is said to comprise (1) territory, (2) perpetuity (3) a measure of independence and (4) a culture as manifested in its art, philosophy, law, morality, religion, fashion and opinion. Third principle has come to a

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32. The debate in western literature on the components which constitute a "right' and the corresponding obligations is extensive. Highlights are Betnham 1782; Austin 1832; Hohfleldt 1913. Specifically for human rights. See Shue 1978 and Kanger 1984. Hohfeldt (1913) used a collection of notions called "legal claims, liberties powers and immunities in what he considered a unified and structured system Kanger (1984) examined the rights contained in the Universal Declaration of Human Rights and categorised them into claim rights, integrity rights, service rights, independence rights and freedoms."

33. R.W.M. Dias, <u>Jurisprudence</u>, (Butterworths, London 1985), p. 13.

drastic change with the establishment of United Nations. States have mutual understanding in waving their independence to make declarations and sign multilateral treaties. These treaties are law making treaties also. In case of a state, Parliament exercising sovereignty and independence make law for the people with giving due regards to custom. While in international context 'custom' is an important source. 'Source' has more than one meaning. It may refer to the source information of a rule, or the origin of the material content of a rule, or the formal stamp of authority as a law.

To justify human rights, it becomes important to find out the appropriate source of law and the mechanism of enforceability. When rights are moral or social, neglect of the corresponding duty entails moral or social reprobation, but society does not systematically organize effective action against the wrongdoer. While in case of a right of a legal nature necessitates a recourse procedure, or at least the possibility of one, whereby a victim of a violation can obtain from a competent third party an authoritative decision to that effect.

Third party adjudication derives from the fundamental principle of jurisprudence that no one can be a judge in his own cause. Lauterpacht cites this as a general principle of law recognized by civilized nations, within the meaning of Article 38(1)(c) of the statute of the

International Court of Justice.[34] The absence of third party determination of rights and obligations would leave various organisations in a position to unilaterally judge the nature and extent of their obligations. Unchequed discretion of this nature is inconsistant with the fundamental concept of law and basic requirement of a legal system.

Human Rights did not originate as legal rights. Alleged rights, existing only at the level of ideals, have been articulated by authors and thinkers through generations such as Lock and Rousseau.[35] When they are recognized by authoritative bodies of society in a positive statement of norms or principles, they move from ideals to rights, though perhaps only in a moral sense if the corresponding obligations are not yet formulated. In many domestic legal systems some human rights were incorporated, a century or more ago, into positive national law. At the international level, the process of transformation from ideals to positive law started with the adoption of the Universal declaration

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34. Lauterpacht E, International Law 68-74, 8th ed. 1970.

35. Locke and Rousseau as well as many others were concerned with civil rights and sought their justification in natural law. While natural law has undoubtedly been and is likely to remain an important source of inspiration for many the present system of human rights is now based on positively recognised international instruments such as the Universal Declaration of 1948 and the many Declarations and conventions since adopted. The justification therefore does not have to be sought in natural law.

in 1948[36]. The process is still going on, at two levels: internationally, human rights are gradually given more substance by way of concretization of the obligations of states; nationally, the requirements of the human rights system is gradually being implemented in national law and administration.

Regarding economic rights, it has been argued that they are fundamentally different from civil and political rights, because latter are 'negative rights',[37] the implementation of which is cost free while the former are positive and costly.

A. UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights adopted unanimously by the United Nations on november 10, 1948, addresses all the rights and freedoms to which people are entitled. The declaration calls for the Universal recognition of rights including right to food, housing, health care, clothing, work, social security, and freedom to opinion, association and expression. Article 23 states:

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36. There were several precursors to this event: Prohibition of slavery and the slave trade humanitarian law in armed conflict, refugee protection and the protection of labour rights by ILO, as well as minority rights. But the broad recognition of individual rights for all started at the international level with the Universal Declaration.

37. 'Negative' means that they consist in freedom from the state and positive that they require action by the state.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplementary, if necessary, by other means of social protection.

Article 25 further says:

(1) Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 30 further specifies that 'Nothing in Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

Thus an obligation has been created on the part of states to carry out these responsibilities. These obligations are applicable on international organisations as well. Right to an adequate living, nutrition, health, education and food are the most basic rights. Wherever IMF adjustment programmes are implemented, the concerned state has to carry out extensive economic overhaul to suit western market oriented system. This deprives them to implement certain welfare schemes which are important for the people. Cutting down of subsidies means reducing purchasing power.

According to data complied by UNICEF. 'More than one billion people are chronically hungry. Every year 13 to 18 million people die as a result of hunger and starvation. Every 24 hours, 35,000 human beings die as a direct result of hunger and starvation. No other disaster compares to the devastation of hunger. More people have died from hunger in the last two years than were killed in World War I and World War II together.[38] The Work Bank, in a different but no less serious language estimates that in 1980, 340 million people in developing countries (China excluded) did not have enough income to attain a minimum food, energy standard (calories) that would prevent serious health problem and stunted growth in children, while 730 million fell below a standard that would allow an active working life.

Within the framework of international law the right to adequate food has been recognized as a human right in a wide variety of instruments. Reference may be made to a

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38. The Hunger Project : Ending Hunger, 1985 p. 7, data compiled by UNICEF.

number of provisions in the International covenant on Economic, Social and Cultural Rights including (1) article 2 (1) dealing with the basic obligations of states parties; (2) article 2(2) requiring a guarantee that the rights enunciated in the convenant "will be exercised without discrimination of any kind......"; (3) Article 6 proclaiming the right to work; (4) Article 9 proclaiming the right to social security; (5) Article 10 providing for special protection for mothers and children; and (6) Article 12 which recognized the right to the highest attainable standard of physical and mental health. Article 11 is the most important single provision in the covenant relating to right to food :

(1) The states parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The states parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free-consent.

(2) The State parties to the present covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of World food supplies in relation to need.

FAO, in its report in 1981, recognized the importance of article 11 :

"It is widely recognized that, by adopting the measures indicated in Article 11(2) of the covenant, the international community would be in a position to eliminate completely the present state of chronic malnutrition and under-nourishment and to mitigate considerably the effects of calamities".

The World Food Security Compact, adopted by the general conference of the Food and Agriculture Organization on 27 November 1985, contains recommendations to developing as well as developed countries. Among these are:

Article 8 : Governments of developed countries, whether they be exporters or importers, should consider the interests of the world as a whole when making their policy decisions on food production, stocks and imports ... The overall objective should be the development of a World Food System characterized by stability and equity.

Article 12: Governments of developed countries should give a specially high priority to helping developing nations where a major effect is being made to overcome the problems or rural poverty, the principal cause chronic hunger and malnutrition.

International cooperation and assistance are not the only elements in a comprehensive international responsibility for the right to food, it is also necessary to build on several other fundamental elements of modern international law.[39] International obligations regarding there rights should be defined at three levels - to respect, to protect and to fulfil. Apart from the basic provisions regarding right to food, there are other references.

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39. Most of these are found in Declaration on principles of International Law concerning Friendly Relations and co-operation among states, adopted by General Assembly in resolution 2625 (XXV), 24 October 1970.

Non-Governmental Organizations have also contributed of considerable usefulness in a text unanimously adopted by the International Association of International Law at its 62nd Conference held in Seoul in 1986 entitled "Declaration on the Progressive Development of Principles of Public International law Relating to a New International Economic Order".

References may be made to freedom from hunger[40], safeguarding of the right to food in armed conflict[41] providing food for refuges[42], disaster relief[43], providing food for prisoners[44], international crimes involving deprivation of food[45], access to food and adequate nutrition[46], minimum wages[47], social security and social

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40. Universal Declaration on the Eradication of Hunger and malnutrition adopted by the World Food Conference in 1974 and endorsed by the General Assembly in resolution 3348 (XXIX) of 17 December 1974.

41. Geneva Convention of 1949 on the "Treatment of Prisoners of war" articles 26 and 51.

42. Statute of the office of the Untied Nations High Commissioner for Refugees, Convention Relating to the States of Refuges, p. 6.

43. General Assembly Resolution 2816 (XXVI), 1971.

44. United Nations Standard Minimum Rules for the Treatment of Prisoners, European standard Minimum Rules for the Treatment of Prisoners.

45. Convention on the Prevention and Punishment of the Crime of Genocide, Art 11(c)/

46. World Food Conference 1974 Res. V.: Policies and Programmes to improve nutrition; Mexico Declaration of the World Food Council.

47. ILO Convention No. 131, 1970: Minimum Wage Fixing Machinery (Agriculture) Convention; ILO Recommendation No. 135, 1970.

assistance[48], adequate nutrition for infants[49], consumer protection[50], food strategy[51], population policy[52], natural resources[53], fisheries[54], prohibition of slavery and forced labour[55], special categories of agricultural workers[56],

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48. ILO Social Security (Minimum standards) Convention; ILO Social Policy (Basic Aims and Standards) Convention; World Employment Conference: Basic Needs Strategy; Inter American Charter of Social Guarantees; OAS Charter: Right to Nutrition and Well Being; European Social Chapter; European Convention on social and Medical Assistance.

49. Declaration of the Rights of the Child, Principle; International Code of Marketing of Breast Milk Substite adopted in May 1981 as a Recommendation under article 23 of its constitution by the WHO conference.

50. Code of Ethics for International Trade in Food, adopted by the Codex Alimentarius commission of the FAO.

51. World Conference on Agrarian Reform and Rural Development convened by FAO in Rome 12-20 July 1979: Food Strategy Guidelines, Contained in Programme of Action, Paras 51-65.

52. World Food Conference 1974 Res VIII; International Conference on Human Rights, Tehran 1968: Human Rights of Family Planning.

53. General Assembly Resolution 1980 (XVIII): Permanent Sovereignty Over Natural Resources; General Assembly resolution 3281 (XXIX) Charter of Economic Rights and Duties of states; General Assembly Resolution 37/7, 1982 (Annex.)

54. United Nations Convention on the Law of the Sea, 1982: Fishing Rights, articles 62 and 63.

55. Slavery Convention 1926; ILO Abolition of Forced Labour Convention (No. 105), 1959.

56. ILO Tenants and Share Croppers Convention, Plantations convention and Recommendations.

education and vocational training in agriculture[57], rural organisations and associations[58], elimination of discrimination against women, elemination of racial and ethnic discrimination[59], and the rights of indigenous peoples[60].

These endeavours cannot be successful unless whole international community fulfils its obligations honestly. In undertaking international co-operation and assistance pursuant to article 2(1) of the covenant, the role of the international organizations and the contribution of NGOs should be kept in mind. The World Food Council was set up in 1974 to serve as a co-ordinating body to provide overall, integrated and continuing attention for the successful coordination and follow up of policies concerning food production, nutrition, food security, food trade and food aid. IFAD, the International Fund for Agricultural

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57. Human Resources Development Convention and Recommendation; Special Youth Schemes Recommendation; Conventional training (Agriculture) Recommendation.

58. Cooperative (developing countries) Recommendation; Rural Worker's Organizations Convention.

59. International Convention on the Elimination of All forms of Discrimination against Women (1979). Resolution on Women and Food; General Assembly Resolution 37/59, 1982.

60. International Convention on the Elimination of all forms of Racial Discrimination 1965, Article 5.

Development was proposed by the World Food Conference in 1974 and established as a specialized Agency by a United Nations Conference for this purpose in 1976.[61]

UNICEF is also currently promoting "Adjustment with a Human face" pertaining to the impact for the poor of economic recession and policy adjustments[62]. The World Health Organisation is also increasingly recognizing its responsibilities in intersectoral efforts towards food security. The UNICEF's Adjustment[63] with a Human Face say : "The aggregate tendency of prevailing adjustment policies to have poverty-inducing effects together with the negative influence of specific policies give rise to serious concern about the influence of such policies on human condition."[64]

The Conditionality-lending has demonstrated the division within the United Nations concerning the distribution of benefits and burdens. UNCTAD joined UNICEF in voicing protest and noted. "Where once a major objective

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61. ILO Indigenous and Tribal Populations Convention (No. 107, 1957).

62. Article 7 of the Conference: "to need to increase food production and to improve the nutritional level of the poorest populations in the poorest food deficit countries."

63. Adjustment with a Human Face. Special Study UNICEF, New York 1987.

64. G.A. Cornia et al (eds.) Adjustment with a Human Face, Protecting the Vulnerable and Promoting growth, A study by UNICEF, (Oxford, Clarendon Press, 1987) Vol 1 p. 67

of assistance policy was to eliminate poverty, under current conditions donors must at least ensure that the poor do not get poorer under the effect of adjustment."[65] The detrimental impact of conditionality on the capacity of indebted countries to secure the survival of their population has been the topic of numerous conferences and international discussions organized by UNICEF. The UNICEF's 'adjustment with a human face' approach has challenged the feasibility, but also the legitimacy of development aid which jeopardizes human well-being, even its mere survival. UNICEF, joined by the 'like minded' UN bodies such as the ILO and UNCTAD, objects to the fact that the poor have been suffering avoidable hardship.

The main target to eliminate uneconomic, ineffective and wasteful programmes has been social sector under the aim of the structural adjustment process. The UNICEF paper points out that the negative consequences of structural adjustment on the human condition have resulted in retrogression, rather than development, in the areas of nutrition, eduction, employment and social welfare.[66] Human Rights to food, education, work and social assistance have been rendered meaningless. UNICEF's focus on children also brought up an important human rights issue which is seldom made explicit : those affected have no political voice

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65. Ibid. p. 69

66. Ibid. p. 78.

because immense military expenditure, which is really wasteful expenditure is hardly subject of discussion.

Thus it is quite clear that the right to food has been recognized in very specific terms. The right to an adequate standard of living including food represents the broadest formulation of the rights of individuals; the right to be free from hunger is specified as the fundamental right which should be ensured at all terms.

Right to development is another aspect for realizing human rights. While IMF offers short-term loans and pin-points areas which are least important in overall development of the concerned nation. Right to development was proclaimed by the UN General Assembly in a Declaration adopted on December 4, 1986. Article 1(1) states :

The right to development is an unalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 2 reads :

(1) The human being is the central subject of development and should be the active participant and beneficiary of the right to development.

(2) All human beings have a responsibility for

development, individually and collectively, taking into account the need for full respect of their human rights and fundamental freedoms as well their duties to the community, which alone can ensure the free and complete fulfilment of the human being.[67]

The right of states to choose their economic system is also most direct and non-controverrsial emanation and application of principle of sovereign equality of states in the economic field. Though other provisions of the charter of Economic Rights and Duties of states gave rise to much controversy and could not be adopted by consensus, this was not the case with this right, which was easily and generally accepted :

"Every state has the sovereign and inalienable right to chose its economic system as well as its political, social and cultural systems in accordance with the will of its people without outside interference, coercion or threat in any forms whatsoever."[68]

The United Nations General Assembly has emphasized that "the right to development is a human right and that equality of opportunity for development is as much a

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67. Ibid. p. 81

68. Declaration on the Establishment of a New International Economic Order, para 4(a) UN General Assembly Resolution 3201 (S-VI).

prerogative of nations as of individuals within nations."[69] The UN Secretary General, in his report "The International Dimensions of the Right to Development as a Human Right" stated that "the realization of the human potentialities of the human person in harmony with the community should be seen as the central purpose of development" and that "the human person should be regarded as the subject and not the object of the development process".[70]

All states and authorities are under obligation to refrain from any forcible action to deprive a people of self determination. Non-intervention and self-determination includes refraining from using or encouraging the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights, or to secure from its advantages of any kind.

Right to education is another aspect which needs proper attention. Article 13 of the International Covenant provides that the states recognize the right of everyone to

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69. Alternative Approaches and Ways and Means within the Untied Nations System for improving the effective enjoyment of human rights and fundamental freedoms UN General assembly resolution 34/46, 23 November 1979.

70. The International Dimensions of the Right to Development as a Human Right in Relation with Other Human Rights based on International Co-operation including Right to Peace, taking into account the requirements of the NIEO and the Fundamental Human Needs. E/CN. 4/1334.

education, Paragraph 14 of the Proclamation of Tehran, adopted at the twenty-seventh plenary meeting of the UN International Conference on Human Rights on May 13, 1968 points out :

"The existence of over seven hundred million illiterates throughout the world is an enormous obstacle to all efforts of realizing the aims and purposes of the Charters of the United Nations and the provisions of the Universal Declaration of HUman Rights. International action aimed at eradicating illiteracy from the face of the earth and promoting education at all levels requires urgent attention."

Eradication of illiteracy was at the top of the agenda of many developing countries during the phase of their independence struggle and has remained so during the phase of post-independence economic and social development.[71]

Thus, United Nations has made an elaborate arrangement to overcome basic problems of human beings and reduce human sufferings at minimum level. IMF approach is quite contrary suitable to developed countries, market oriented economies. It emphasizes upon Export promotion to earn foreign exchange for debt repayment. The implications

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71. The International Convention on Economic social, and Cultural Rights, G.A. Res. 2200, 21 UN, GAOR Supp. (No. 16) at 18-19.

of this measure are apparent. Food crops are replaced with export crops which becomes in long run real cause for hunger and starvation. There is definite damage to ecology through frequent use of pesticides used in export agriculture and cutting of forests. Earnings go to debt repayments instead of investment in development. Rural population migrate to urban areas to find out remunerative jobs thus making them daily wage employees.

IMF's insistence on devaluation damages import-oriented economies. UN survey of 12 SAPs found little improvement in export earnings. Devaluation makes imports more expensive and exports more competitive. Life saving drugs become very costly. Sizable population does not have that much purchasing power to buy costly health facilities. In cases where a country imports substantial proportion of its foodstuffs, devaluation raises the prices of these items. On the other side of the balance, the decrease in export prices scarcely brings on an export boom, since most Third World countries lack significant exportable surpluses.

The debtors countries are accused of maintaining high subsidies and floated civil services, thereby incrasing budget deficits. But this is not true. The USA also maintains a greater budget deficit than any single third world country. In fact, the Industrialized countries maintain high subsidies and welfare spending as compared to the low income countries who are forced to cut the expenditures on subsidies.

Amount spent on	Low Income countries	Industrialized countries
Subsidies	6% GDP	18% GDP
Public Sector Wages	2.4% GDP	4% GDP
Social spending	8% of Govt. budget	56% of Govt. budget
Capital spending	16% " "	6% " " "
Total Govt. spending	26% GDP	29% gdp
Budget Deficits	4.8%	5.1%

There is severe cut in the field of education, health services, sanitation, water and irrigation, electric power supply and in building up roads and transportation. Certain important programmes like illiteracy elimination programmes and employment generation programmes are given up due to scarcity of resources. For instance, more than a third of the world's illiterates live in India. Despite the massive problem of illiteracy, public expenditure on education has actually declined in the last few years. The expenditure on education fell from Rs.9,185 millions to Rs.7,385 millions between 1989-90 and 1990-91.

The impact of IMF programmes on social spending was dramatic in case of Jamaica, which concluded an IMF agreement in 1981. Social service expenditures, including expenditures on health and education declined. At 1979-80 prices public expenditure on health care, which was 154 million Jamaican dollars in 1981-82 fell to 106 Jamaican dollars in 1985-86. Similarly public expenditure on education declined from 305 Jamaican dollars before the IMF programme (1981-82) to 193 Jamaican million dollars. The decline in capital expenditures meant the closure of schools and the downgrading of services offered by hospitals, cutbacks in expenditures on housing resulted in the collapse of schemes to supply new houses to low income groups, a hard blow to those living in slums and in conditions of over crowding.

Chile is another interesting study. In a coup d'etat Pinochet occupied power in 1973 and followed IMF path. He reversed policies of earlier government by imposing wage ceilings, the reduction of public sector employment and expenditure, the abolition of import controls and price controls for basic needs, and the increase of military spending. The working class was denied any parrticipation in economic decision making.[72] Further more strikes and collective bargaining were declared illegal. The Junta devalued the currency 143 per cent, allowed the price of essential commodities to increase between 200 per cent and 1800 per cent, terminated land reforms, and

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72. C. Wibber (ed.) The Political Economy of Development and Under development (1973). pp. 402-404

despite a trade deficit of 500 million dollars and a foreign debt of 4 billion dollars, returned previously privately owned property and nationalized companies to their original owners.

In May 1975, **The Economist** declared the IMF medicine failture.[73] Inflation and food prices had risen beyond control in the two years of military control. Both the IMF and the official Junta indicated that the end of 1975, unemployment in the Santiago region was 18.7per cent and more than twenty two per cent in the countryside.[74] Again one forth of the population i.e. about 2.5 million chileans, had no income at all and were able to live solely because of the aid provided by Church and humanitarian groups.[75] The price of a minimum food basket was approximately three times the monthly wages of minimum wage workers.[76] A white collar worker was estimated to spend eighty-seven per cent of his income on food, yet the caloric intake was below the recommended by the World Health Organization and the Food and Agricutlture Organization of United Nations.[77] Infant mortality jumped eighteen percent

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73. Chile: They failed too, The Economist, May 17, 1975, p 90.

74. Fund for New Priorities in America, US Policy on Human Rights in America (Southern cone, 1987) p. 186

75. Ibid.

76. Ibid.

77. Ibid.

during the first year of adjustment programme and malnutrition in children in Santiago went over sixty-one per cent.[78]

Two classic cases of Jamaica and Chile show that austerity measures suggested by IMF do not suit to domestic socio-economic conditions of developing countries where social and economic priorities are different from developed countries. Another aspect suggested to follow by IMF is excessive privatization which turns over utilities to private sector where profitability overrides social welfare. The concept of unrestrictive imports undermines local industries; discourages food self-reliance; encourages luxury imports while poor cannot afford basic necessities.

Brazil is another case which found IMF medicine ineffective to cure its economy. At the end of 1984 Brazil's foreign debt totalled 103 thousand million dollars - a colossal burden which had accumulated after two decades of forced industrialization, a policy initiated by the technocratic military government which took power in the coup of 31st March, 1964.

When debt crisis got out of control, US AID and World Bank imposed a credit boycott on Brazil. The measures which the USA and the IMF considered necessary for the stablization of the Brazilian economy simply could not be

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78. Ibid.

implemented by a democratically elected government wishing to be reelected. All succeeding governments had ambitious development programmes. First oil shock of 1973-74 hit Brazil very hard. Instead of adopting deflationary policies, the military government decided on an aggressive response to external shocks and went for massive loans from World Bank. Brazil's foreign debt increased fourfold between 1973 and 1979 to reach 53.5 thousand million dollars and the GDP more than doubled from 16.4 to 36.5%. Industrialization grew, but the main beneficiaries were international banks, transnational corporations, the Brazilian military, the upper and middle classes.[79]

The second oil shock worsened the situation. The creditors were worried about the credit-worthiness of Brazil. In this situation Brazil followed IMF lines in 1980. The first stablization programme showed some signs of improvement. But in 1983 Brazil was forced to accept drastic measures suggested by IMF. Brazilian Cruzeiro was devalued by 30% and the IMF Executive Board approved the 4.5% thousand million dollars (IMF survey, 7 March, 1983).

The terms of the three-year stablization programme connected with the agreement were completely in line with the traditional IMF medicine; the balance of payments

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79. Peter Korner et al (ed) The IMF and the Debt Crisis a Guide to the Third World's Dilemmas; (Bath Press Avon. 1987.) p. 74.

deficit was to be slashed in 1983 from 14.7 to about 7 thousand million dollars (2% GDP) and by 1985 was to be further reduced to about 4 thousand million dollars; the budget deficit measured against GDP was to be cut drastically from 16.9 per cent in 1982 to 8.8 per cent in 1983 and inflation was to be brought down by 100% at the end of 1982 to 85-90 per cent at the end of 1983. To boost exports, cut imports, reduce state expenditure and increase state revenue, monthly devaluations of cruzeiro. The domestic supply of credit was to be restricted, domestic interest rates increased, state subsidies for nationalized companies and services, for wheat, sugar and oil derivatives, for the export and agricultural sectors were to be cut. Export duties and import controls were to be removed. Free foreign investments by TNCs to be allowed. To cut subsidies for various goods and services, a measure which had been agreed with the IMF, there was 45 per cent cut on electricity while 90 per cent cut on wheat. Wages were cut drastically.[80]

As unemployment increased rapidly and the marginalised urban classes who relied havily on casual work found it more and more difficult to scrap a livelihood, riots and plunderings of supermarkets took place in several major cities in April 1983. Strikes were declared illegal, workers were forced to return to work. There was

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80. Ibid. p.75

countrywide unrest due to scarcity of essential commodities. There was temporary declaration of emergency in September, 1983.[81] The real income of those who stayed in work dropped considerably. Wage indexation even before the Wage Act (Nov. 1983) had not made up for inflation which, according to official sources totalled 167 per cent between January and October - the inflation rate for food was 310 per cent. Austerity programmes burdened and impoverished already half fed stomachs.[82]

Portugal is a case where IMF boasted success in improving its balance of payments crisis. The economy of Portugal was severely affected by the long overdue break-up of Portugal's colonial empire, because it lost sales markets and cheap sources of raw materials. Half a million white settlers returned to their mother country. The balance of payments became so large that foreign exchange reserves were exhausted and the Bank of Portugal had to sell or mortgage some of its substantial gold reserves. Government of Portugal nationalised several banks and introduced massive land and socio-economic reforms. Western countries thought that the country was moving towards communism so they thought this best opportunity to strike through IMF.[83]

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81. Ibid. p. 76

82. Ibid p. 78

83. Stuart Brian "Stabilisation Policies 1974-78" <u>Finance and Development</u>. 1981 pp. 25-29

When Portugal compromised on political issues NATO states showed willingness to grant 750 million dollar loan. In 1977 Portugal signed an agreement for 300 million dollar loan with IMF. For the IMF loan, the Fund accepted the measures the government had passed shortly before in its first economic package. 15 per cent devaluation, an increase of the credit interest rate, a 15 per cent ceiling on wage rises, price increases for state services and a reduction of state price controls in the form of cuts in subsidies for basic articles (IMF survey, 2 May, 1977). The first programme could not bring any improvement.

For another 750 million dollar aid IMF representatives suggested more drastic austerity programmes and a direct political condition that the government should reach a consensus with parties employers' associations and trade unions on drastic economy measures. Government didn't have any option but to resign in 1977. In 1978, to increase state revenue, the government raised income tax by 10 per cent, sales tax by 30 per cent, welfare contributions by 10 per cent and prices for state services by up to 50 per cent.[84]

The IMF programme led the country into recession, could not cope with the problem of inflation and merely shifted the economic crisis from the export industry to domestically oriented industry, which was hit by the

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84. Ibid. p.26

slackening of the domestic economy. In 1982, the balance of payments deficit was 3.2 thousand billion dollars, the largest in the country's history; foreign indebtedness rose from 5.8 thousand million dollars in 1978 to 13.5 thousand million dollars in 1982 and of these 4 thousand million dollars were short term debts. Inflation soared to nearly 30 per cent, zeal wages dropped substantially and the official unemployment rate shot up from 8.3 per cent to 10 per cent.[85]

The above details show the inability of IMF in checking balance of payment crisis. The IMF deflation policies, with devaluation and reduction of domestic credit as their cornerstones, are based on the Fund's almost invariable diagnosis of excessive home demand which has to be reduced. The implementation of these policies leads to economic recession in the debtor countries.[86] The IMF's stabilization programme brought Chile a fall in per capita income of 12.7 per cent in 1975 and had similar effects in Peru in 1977-78 (3.9 per cent & 4.6 per cent), in Zambia in 1977-79 (7.4 per cent, 2.6 per cent, 11.8 per cent) and Turkey in 1978-79 (2.8 per cent and 3.2 per cent).[87]

Apart from these countries discussed above there are other countries too where IMF adjustment programmes

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85. No. 79, p.174

86. Ibid 126

87. Ibid 126

failed because of undue conditions imposed by IMF. Tanzania, Zaire, Sudan, Argentina, Kenya, Ghana and India are important examples. All conditionality measures violate and are hindrances in the UN path to fight against poverty, illiteracy, unemployment, malnutrition, health problems, ecological problems and underdevelopment.

It is fully recognized now that the ultimate end of all development strategy must be people and their welfare; economic growth is only a means. Income generation is necessary but is not the sum total of human life. Development must enlarge the range of choices at the dispersal of people. These choices include not only income and employment but also, health, education, physical environment, human dignity and freedom.

CHAPTER IV

INDIA AND IMF

NTRODUCTION

India is one of the founding members of the International Monetary Fund. Until 1970 India had a right to appoint its permanent Director in the Executive Board one of the important decision making bodies in the Fund. The five appointed Directors have historically come from the developed countries only. India and Saudi Arabia have been the exceptions. India's entitlement was the accidental outcome of the Soviet Union's decision not to join the IMF, thus permitting its place as one of the envisaged five largest contributors to the institution's financial resources to fall to India. The Republic of China ceased to appoint a Director in 1960 and so also India in 1970 when they ceased to count among the five largest contributors. West Germany in 1960 and Japan in 1970 took the positions of China and India respectively.

Since then India has faced considerable changes in the economic sphere. India's economy is continental in scope; highly industrialized and extremely poor and centrally planned.[1] India has a considerably large public sector which is sometimes called a white elephant. India's experience with IMF for a massive loan began in 1981 when

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1. Catherine Gwin, IMF Contitionality (ed) John Williams, Institute for Int. Economics, Washington D.C. 1983, p.513.

India faced an acute balance of payments crisis. The most immediate source of the country's economic woes was the triple blow dealt to the economy in 1979-80. First, a severe drought triggered substantial power shortages, associated shortages of coal and transport services, and related deep cuts in agricultural and industrial production. The drought, the worst since independence, received only little attention in the international press because newly attained agricultural resiliency spared the society the human drama that had previously accompanied poor monsoons. There was decline in agricultural production by 16 percent and 4 percent in national income. The second blow, unrest in Assam, cut into domestic production of crude oil and thus led to a $ billion increase in India's oil import bill.[2] India also felt blow when in 1979-80 there was a sharp rise in world oil prices, which contributed significantly to a terms of a trade loss equivalent to 3 percent of GDP.

There was a sharp rise in inflation to a rate of nearly 20 percent by the end of 1980. India's current account fell from a $ 413 million surplus in 1978-79 to a deficit of $ 850 million in 1979-80 and $3.5 billion by 1980-81. This led a steep decline in foreign exchange reserve-leaving India at the end of that year with reserves equivalent to only three month's imports.[3]

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2. ibid p.516

3. Economic Survey : 1979-80, 1980-81.

INDIA'S EXPERIENCES WITH THE FUND IN 1981

Against this background India approached the IMF. On November 9, 1981, the IMF approved an extended arrangement authorizing purchases up to $ 5.75 billion over a three year period. The arrangement was the largest in the Fund's history.

Under the arrangement, purchases upto the equivalent of 291 percent of India's quota will be financed in part (48 percent) from the Fund's ordinary resources and in part (52 percent) from resources borrowed by the Fund under the policy of enlarged access. The loan was supposed to carry an average rate of interest of 12 per cent.[4]

The sanctioning of this loan generated much controversy. While some of the controversy focussed on the arrangement's conditionality, it also concerned the timing of the use of fund resources for financing structural adjustment. The United States, in abstaining on the vote on India's extended arrangement, argued that India's balance of payments position did not justify extended access India was authorized to purchase. The US contended that by approving India's EFF programmes threaten the Fund's liquidity and significantly alter the character of the institution. US criticism was based on three points:

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4. IMF survey, July 19, 1982, pp.11-17.

First, the US argued that the Fund's policy of enlarged access (which allows a country total purchases of 450 per cent of quota over three successive years) applies, as stated in the agreed decision to the members "facing serious payments imbalances that are large in relation to their quotas." India, the US argued, could ease its balances of payments pressures and reduce its expected purchases from the Fund by borrowing more aggressively in the international capital markets or by pursuing a less expansionary domestic expenditure policy.

Second, the US argued, the EFF was established, as stated in the decision to enable the Fund to assist "an economy characterized by slow growth and an inherently weak balance of payments position which presents pursuit of an active development policy'. The Indian arrangement which placed emphasis on an ambitious investment programme, was seen by the United States to stretch the concept too far.

Third, while acknowledging that countries have been encouraged by the revised guidelines on conditionality to come early to the Fund before they are confronted with a balance of payments crisis, the US proposed that, consistent with those guidelines, a larger proportion of the resources committed to India should have been made available on a standby basis with greater emphasis on the contingent nature of such resources.[5]

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5. Catherine Gwin, No. 1, pp.530-31.

IMF Conditionalitites:

But India's contention was that it was not willing to borrow the resources which it cannot afford. However, the IMF imposed the following conditions. These conditions can be devided into three categories. (a) binding conditions, (b) set of policy prescriptions having direct bearing on current economic problems and (c) long-term policy prescriptions. In the first category the conditions were as follows:

(1) Ceiling on total domestic credit and a sub-ceiling on net bank credit to the government (which would cut credit expansion and deficit financing on the part of the Government).

(2) A ceiling on borrowing from international capital markets (which means that the government could not engage in commercial borrowing abroad beyond the limits specified by the IMF).

(3) No imposition or intensification of import restrictions for balance of payments reasons (which implies that the government could not save foreign exchange by restricting imports further should the need arise.

(4) No bilateral payments agreements and,

(5) No multiple currency practices (which meant that differential rates of taxes and subsidies on trade would not be possible unless approved by the IMF).[6]

It was apparent that by accepting such conditionalities, i.e. credit stringency, price decontrol and elimination of subsidies, and import liberalization India was losing its economic sovereignty and forfeited the social objectives of its economic policy. As an Indian Scholar puts it:

"Since expenditure on infrastructure development connot be cut and since export subsidies are deemed necesary for reversing the relative attractiveness of the domestic market vis-a-vis exports, the axe has to fall on salary increases and welfare and relief expenditures, including food subsidies. At the same time, to 'encourage investment and production in the private sector', prices of agricultural and key industrial products have to be revised upwards. The logic of the IMF package therefore is such that its net result must be an "engineered" inflation, an "engineered" recession and unemployment, a squeeze on money wages and salaries and a cut in public expenditure on welfare relief and subsidies on essential consumption items. Each of these measures adversely affects the low - and

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6. Deepak Nayyar, "IMF loan and its Conditions", in the West Bengal Government publication. The IMF Loan : Facts and Issues (November 1981).

middle income groups; together their impact can be disastrous. And if a devaluation is additionally thrown in, the impact is even greater via its inflationary consequences."[7]

Long term policy prescriptions included (1) Industrial policies towards the private sector were to be liberalised. Anti-monopoly regulations, domestic licensing provisions and restrictions on imports of foreign techonology are to be relaxed for the sake of promoting efficiency in the private sector. (2) Policies involving the purchase of foreign techonology, royalty payments, and foreign participation in Indian industry were to be applied more liberally and flexibally. (3) To facilitate such outward-looking industrialisation, trade policies were also to be amended suitably. And (4) Price reforms to be enforced efficiently.

These criticisms basically flowed from the 'left group'. The question arises whether all conditionalities attached to EFF were inconsistent with the socio-economic pursuits of India. India's public investment and provides only 15 per cent of total domestic savings. Moreover, while total saving as a proportion of GNP had climbed to about 24 per cent, which growth in output has never risen for any

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7. Prabhat Patnaik : "Implications on Borrowing From the Fund". The IMF LOAN: FACTS AND ISSUES, published by Govt. of W. Bengal. 1981. pp. 70-80.

length of time beyond 3.5 per cent a year.[8] Moreover, the sixth five-year plan contained much of the aspects of the conditionality to improve the ailing economy. But the overall point is whether India's economic face improved after this massive loan even though immediate problem of balance of payments showed considerable improvements.

Repayment to the IMF under the EFF began in 1985-86 and imposed a heavy burden for the coming years. In addition to repayment of principal amount, large interest payments were also involved,

ECONOMIC SITUATION IN THE 1980s

Even after opting for such conditionalities Indian economy did not show a rosy picture. The trade deficit averaged 3.4 per cent of GDP during the sixth plan. It increased to 3.7 per cent of GDP in 1985-86 due to a decline in volume growth in exports and showed a declining trend during 1986-87 and 1987-88 due to an acceleration in volume growth of exports and a contraction in volume growth of imports. In aboslute terms, the current deficit averaged around Rs. 7,772 crores (US $ 5,539 million) per annum during the seventh plan compared with an annual average of Rs. 2,227 crores (US $ 2,334 million) for the sixth plan.[9]

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8. Annual Report, R.B.I., 1981-82, p.4.

9. Ibid.

The large and sustained current account deficits in BOPs had to be financed by substantial inflows of capital in the form of loans from multilateral and bilateral sources, commercial borrowings and inflow of funds from non-resident Indians under the Non-Resident (External) Rupee Accounts (NRERA) and the foreign currency Non-Resident Accounts (FCNRA). Over the last two plan periods, the average cost of multilateral assistance has been rising as IDA assistance has declined and recourse to IBRD, which supplies funds at market rates, has risen. Net availability of assistance from bilateral concessional borrowings and non-resident deposits, which are costlier sources of finance to meet current account deficits during the Seventh Plan. During the Seventh Plan, loans under external assistance from multilateral and bilateral sources provided 29 per cent of the financing need, commercial borrowings provided 25 per cent, non-resident deposits 23 per cent and other capital transactions about 13 per cent and other capital transactions about 13 per cent. The balance of 11 per cent of financial need was met by the use of reserves. In contrast the current account deficit during the sixth plan period was financed to the extent of 55 per cent by external assistance and 28 per cent by use of IMF resources. Non-resident deposits provided finance to meet 17 per cent of the financing needs.[10]

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10. Economic Survey 1990-91, pp.156-157.

Foreign currency assets of the RBI stood at Rs.4,338 crores at the end of March 1991 and showing a decline of Rs.1,339 crores during 1990-91, in spite of recourse to IMF resources. The heavy draw-down of reserves in nominal terms reflects a combination of worrisome trends in current and capital sides of BOP transactions. Export growth during 1990-91 in rupee terms at 17.5 per cent was lower than export growth achieved in the preceding year. Although import growth at 21.9 per cent was lower than the growth during 1989-90, there was further deterioration in the trade deficit which at Rs.10,644 crores was higher by Rs.2,913 crores compared with preceding year's level.[11]

The gulf-crisis which began with invasion of Kuwait by Iraq on August 2, 1990 lasted for about seven months with the end of combat on February 28, 1991. This time the gulf-crisis was different in terms of its impact, from the earlier two episodes of sharp spurts in petroleum prices. First, it did not have some of the compensating features of the earlier two oil shocks: large inflows of remittances, surge in exports and tendency of non-fuel commodity prices to rise in sympathy with oil prices. Secondly, it imposed an additional cost of repatriating non-resident Indians from the affected countries of the region. Thirdly, the crisis had adverse impact on international capital markets.

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11. ibid. p.157.

Oil prices, from an average of about \$ 15 per barrel during April-July 1990, the average price paid by India for crude in the world market rose to \$ 30 per barrel during August-November 1990 and then declined to an average of \$ 19 per barrel during the remainder of the 1990-91. Similarly, average prices of petroleum products rose from about \$ 182 per tonne to \$ 354 per tonne and then declined to \$ 313 per tonne over the same period. The petroleum bill during 1990-91 is estimated \$ 6.0 billion as against \$ 3.8 billion for 1989-90.

The evacuation cost of about 1,80,000 Indians is estimated about \$ 200 million.[12]

NEGOTIATIONS WITH THE IMF

This was the background against which new regime of Prime Minister P.V. Narsimha Rao started negotiations with the Fund. The IMF asked India to adopt corrective measures and make structural change in the system. On July 4, 1991 the government announced a Trade Policy reform package together with supplementary measures announced on August 13, 1991, aimed at significant reduction of quantitative restrictions on imports of intermediate and capital goods, reduction in tariff rates, substantial elimination of state monopoly on exports and imports and convertibility of the rupee for foreign trade transactionin

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12. ibid. p.157.

3-5 years. On July 24, 1991, the 1991-92 Budget as well as 'statement of Industrial Policy' were presented to Parliament. The Government's letter of Development Policy, transmitted to Bank, outlines the thrust of the Government's medium-term adjustment programme.

The Highlights of policy statement are as follows:

1) The Government's reform strategy, seen over the course of the next five years aims at achieving (a) a liberalised trade regime characterized by tariff rates comparable to other industrialising developing countries and the absence of discretionary import licensing; (b) an exchange rate system which is free of allocative restrictions for trade; (c) a financial system operating in a competetive market environment and regulated by sound prudential norms and standards; (d) an efficient and dynamic industrial sector subject only to regulations relating to environmental security, strategic concerns, industrial safety, and unfair trading and monopolisitc practices; and (e) an autonomous, competitive, and streamlined public sector.

(2) Reduction in budgetary deficit and cuts in expenditure.

(3) The adjustment in the exchange rate of the rupee by 23 per cent (in terms of rupees per dollar) in early July 1991 provides for a significant real depreciation which will improve export incentives and international competetiveness.

(4) There are five key medium-term objectives in the Government's trade policy agenda. First, the broadening and simplication of export incentive measures and the removal of restrictions on exports; second, the elimination of quantitative restrictions on all imports; third, substantial reductions in tariff rates; fourth, the decanalisation of exports and imports with the exception of a few items; and finally, moving to a foreign exchange system which is free of allocative restrictions of trade. [13]

Apart from that some corrective measures were suggested :

(1) Increasing fertilizer prices in the 1992-93 budget. This measure is expected to yield Rs.1800 to 1900 crores.

(2) Imposing a freeze on Central DA in 1992-93 budget. This is expected to yield nearly Rs.1,000 crores.

(3) Excluding the better off sections from the ambit of the Public Distribution System. This measure would yield abot Rs.400 crore.

(4) Limiting the 1992-93 Plan expenditure increase to 6 per cent in nominal terms. This is expected to yield Rs.2,000 crores.[14]

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13. Government's Letter of Development Policy Written to President of World Bank; laid on the table of Parliament on July 24, 1991.

14. Indian Express November 11, 1991.

These measures were thought to be imperative to cure the ailing economy and get the IMF loan. Government of India negotiated for $ 7 billion credit for a period of three years, under the IMF extended fund facility (EFF) for the completion of the structural adjustment programme. Meanwhile, IMF has sanctioned 2.2 billion stand-by credit to India.

Drawals from International Monetary Fund, 1990-92

Date	Facility	SDR million	US$ million	Rs crore
July-Sept 1990	RT	490	660	1177
23.01.1991	FCT	552	789	1450
23.01.1991	CCFF	717	1025	1884
22.07.1991	CCFF	166	221	570
12.09.1991	CCFF	469	639	1654
15.11.1991	UCT	85	117	305
02.01.1992	UCT	185	265	683
Expected till March 1992	UCT	461	650	1700

Source: Economic Survey 1991-92 Part I General Review p.15

During 1991-92 India has drawn SDR 166.180 million and SDR 468.900 million on July 22, 1991 and September 12, 1991 respectively under the Fund's Compensatory and Contingency Financing Facility. The Fund's

Compensatory element provides resources to a member for an export shortfall or excess in import costs. On October 31, 1991 IMF approved a Stand-by Arrangement of SDR 1656 million to India to be disbursed in 8 tranches over a 20 month period. India has already drawn two tranches amounting to SDR 85 million and SDR 185 million on November 15, 1991 and January 2, 1992 respectively. India had drawn SDR 3.9 billion from the IMF during the period November 1981 to April 1984 under an Extended Arrangement. As on February 1992, India had repurchased SDR 3558.35 million leaving a balance of SDR 341.65 million to be repurchased by 1994-95. During 1991-92 India has received SDR 206,199 amounting to Rs.55,50,474 as its share of remuneration on its SDR holding account.[15]

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15. Annual Report 1991-1992, Government of India, Ministry of Finance, New Delhi. p.25-26.

FOREIGN EXCHANGE RESERVES

	Reserves			Transactions with IMF		
	Gold	SDRs (in millions of SDRs)	Foreign exchange	Drawings	Repurchases#	Outstanding repurchase obligations
1	2	3	4	5	6	7
1981-82	225.6	425.1	3354.5	636.8@@	--	901
1982-83	225.6	270.2	4265.3	1892.8@@	--	2867
1983-84	225.6	216.4	5497.9	1413.7@@	72.1	4444
1984-85	245.8	146.5	6816.8	218.8@@	155.9	4888
1985-86	274.3	115.1	7384.4	--	253.0	5285
1986-87	274.3	139.4	7645.2	--	672.2	5548
1987-88	274.3	69.7	7287.1	--	1208.9	4732
1988-89	274.3	79.5	6604.6	--	1547.3	3696
1989-90	280.7	81.9	5787.2	--	1459.6	2572
1990-91	6828.3	75.9	4388.1	2858.7@@@	1155.9	5132
June	280.7	89.1	5356.2	--	251.1	2405
Sept.	280.7	343.3	4511.6	--	344.8	2243
Dec.	6584.9	222.1	2152.4	--	238.9	2034
March	6828.3	75.9	4388.1	2858.7@@@	321.1	5132
1991-92						
April	6960.6	134.1	2527.1	--	112.5	5185
May	7160.2	47.7	2677.4	--	103.6	5252
June	7410.8	47.7	2382.7	--	--	5206
July	9105.8	88.4	3312.9	570.4	241.5	6748
Aug.	8882.6	36.8	2964.8	--	86.3	6716
Sept.	8658.4	134.5	4441.6	1262.2	--	8525
Oct.	8909.7	105.3	6032.5	--	102.6	8422
Nov.	8945.4	32.3	7015.8	228.8	134.0	8706
Dec.	9489.6	32.3	9286.7	--	--	8993

Notes:

@ Excludes Rs. 544.53 crores drawn under Trust Fund.

@@ Drawals under Extended Fund Facility (EFF)

@@@ Drawals of Rs.1615.2 crores under Compensatory and Contingency Financing Facility and rs. 1243.5 crores under first Credit Tranche of Stand-by Arrangement.

$$ Sales of rupees by the Fund.

Additionally, SDRs 59.9 million in May 1979, SDRs 7.3 million in July 1980 and SDRs 34.5 million in March 1982 were used for voluntary repurchases of rupees.

Source: Economic Survey 1991-92 Part II General Review.

ITS IMPACT

Whether this amount disbursed by IMF and other external aid likely to come to India would improve the situation is very difficult to believe. India's external debt service charges in 1990 amounted to $ 7.1 billions. In the current financial year (1991-92), the figures are likely to be around $ billions. Moreover, the external current account in any normal year would be in deficit to the extent of at aleast 2 per cent of Gross Domestic Product (GDP). At the prevaiiling exchange rate of the rupee, the current account deficit would stand at over $ 5 billion in 1992-93. The total requirement for external account financing would be in the range of $ 13 billions in 1992-93.[16]

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16. Sukumar Murlidharan, Frontline July 31, 1992, p.84.

This IMF loan is not going to solve the problem. How the rest of requirements would be met is a matter of mere speculation. Moreover, conditionalities attached to current loan are going to worsen the system. The conditions range from actual fiscal targets to specified values and quantities for taxation and other fiscal devices, exact changes in exchange rates, tariffs and other trade measures, nature of financial sector reform including the timing, the extent of required increase in public enterprise output prices and which enterprises should be closed or sold, the pattern of agricultural pricing and desired movement in intersectoral terms of trade etc. This amounts to the takeover of virtually the entire economic policy making of a country, by a handful of external bureaucrats whose familiarity with the context is at best sketchy.[17]

Latin American experience can be a lesson for India in this regard. We must be cognisant of the fact that we have not only to liquidate the overhang of short-term loans incurred in the past, but also to start repaying the IMF/World Bank loans three years from the date of borrowing, and over a period varying from two years to seven years. Moreover, conditionalities attached to these loans will have irreparable and irreversible impact.[18]

17. Jayati Ghosh, "The Getting of Wisdom" Social Scientist vol. 20 Nos. 1-2 January-February 1992, p.117.

18. Arun Ghosh, Economic Adjustment : A Programme for the Medium Term; ibid. p.91.

CRITICISM

Main criticism of the left group is based on cutting of subsidies[19] and retrenchment policy being followed in the public sector. They contend that the Central Government is predominant in the provision of economic services, while states account for the bulk of subsidies in social sector. Social services accounted for nearly 40 per cent of the total volume of subsidies, nearly 6 per cent of the GDP. Education is another sector which accounts for 23 per cent of all subsidies. Much less than half of this was spent on primary education. The major component of Rs.5460 crores was spent on secondary and higher education, sports, art and culture. While health services accounted for entitlement of 6.91 per cent of the total subsidy, i.e. Rs.2,925 crores. Rs.600 crores were given to rural area. In the case of water supply, sanitation and housing, out of a total subsidy of Rs.2,363 crores, only Rs.823 crores flowed to rural sector.[20]

The subsidy on fertilizer industry is over Rs.2000 crores. The subsidies on consumer industries and atomic energy are Rs.490 crores and Rs.342 crores respectively. The subsidy on major irrigation schemes such as big dams is Rs.2,679 crores, double than major irrigation works.

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19. Government Subsidies can be defined as the difference between the cost of delivering vairous publicly provided goods or services and the recoveries arising from such deliveries.

20. Economic & Political Weekly, May 4, 1991, p.4.

TABLE

Another problem is reduction of deficit, whether this reduction will be achieved at the expense of development or non-development spending becomes a moot question. Left groups contend that the expenditure on non-development spending such as police and para-military forces is increasing. The budget reduction is therefore likely to be achieved at the expense of development spending with adverse effects not only on economic growth but also on poverty alleviation schemes. A retrenchment policy will result into tremendous loss of employment. Major subsidy areas like health, education and public distribution system are going to suffer more. Again the impact on women, children and environment cannot be ruled out.

The basic problem of the Indian people continue to be the problems of hunger, undernutrition, avoidable disease, inadequate clothing and shelter, illiteracy, servility and in general, the incapability to people to lead full lives. There has been tremendous inflation from 5.8 per cent in 1986-87 to over 10 per cent in 1990. Recent price information from official sources indicates a 22.5 per cent rise in the wholesale price of food articles and a 19.8 per cent rise in the whole sale price of non-food articles over 1991.[21]

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21. Structural Adjustment who Really Pays Public Interest Research Group, Indraprastha Extension, Delhi. p.16.

On the emplolyment front, the number of applicants on the live registers at the employment exchanges has been rising. There were 33.2 million applicants for jobs in 1990. In the first four months of 1991 alone, the number of applicants grew to 34.9 millions. On average it is estimated that a worker in agriculture only obtains 150 days of employment in a year and remains unemployed for about seven months. The new industrial policy says nothing about how the gap between the rate of growth of the labour force, 2.1 per cent and the annual rate of growth of employment, 1.5 per cent, is to be bridged.

Budget allocations for rural employment programmes have fallen in 1991 even at current prices : from Rs.21,000 mmillions in 1989-90 to Rs.20,010 millions in 1990-91. This is a fall of more than 13 per cent in real terms. Other programmes of rural development have also fallen. Allocations for the Integgrated Rural Development Proggramme (IRDP), the major anti-poverty programme in the country have been brought down from Rs.3,720 millions in 1989-90 to Rs.3,560 millions in 1990-91 in current prices. Again, the decline in real terms is even greater, and of the order of 13 per cent. According to an ILO report, nearly 8 million people will be rendered unemployed as a result of the Structural Adjustment Programme.[22]

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22. Economic Survey 1990-91, p.73.

Health care is another dimension which will be severely affected due to severe cut in subsidies. India as a signatory to the Alma Ata Declaration of 1978,[23] is committed to the goal of "Health for All" by the year 2000 A.D. Moreover, Parliament has adopted a National Health Policy to fulfill the commitment. Health care accounts for 2.1 per cent of the government expenditure in India as compared with 4.1 per cent for all developing countries and 12.3 per cent for the industrial countries.

We have one doctor for about every 3300 population, while there is only one midwife per 14000 population. Some of the facts regarding health care are as follows :

1) Only 20 per cent of our people have access to modern medicine.

2) 8 per cent of health care costs is paid for privately..

3) 40 per cent of our children suffer from malnutrition. Even when the foodgrain production in India increased from 82 million tonnes in 1961 to 124 million tonnes in 1983, the per capita intake decreased from 400 grams of cereals and 69 grams of pulses to 392 grams and 38 grams respectively. Due to increasing economic burden on a majority of the people, they just cannot buy the food that is theoretically available.

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23. No.21, p.17.

4) Of the 23 million children born every year, 2.5 million die within the first year. Of the rest, one out of nine dies before the age of five and four out of ten suffer, from malnutrition.

5) 75 per cent of all the deseases in India are due to malnutrition, contaminated water and non-immunization.

6) Life expectancy in India is 57 years. This is less than even that in many Third World Countries like Nicaragua, Brazil, Vietnam, Burma and Peru etc.

7) 550,000 people die of TB every year. About 900,000 people get infected by TB every year.

8) 1.5 million children die due to diarrhea every year.[24]

Education is another sector which will be sharply hit due to the structural adjustment programme. The expenditure on education has already fallen from Rs.9,185 millions to Rs.7,385 millions between 1989-90 and 1990-91. India ranks 115th with respect to per centage of Gross National Product invested in Education. Out of every 10 illiterates in India 7 are women. Various commissions and policies have recommended investing more than 6 per cent of national income on education. But it has never crossed 4 per cent. Most of the subsidies in higher education is directly transferred to foreign countries in the form of

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24. ibid. p.17 and N.3 pp.73-75.

brain drain. India transferred over $ 51 billion in brain power to United States and Western countries between 1967 and 1985.[25]

The impact of the IMF Adjustment Progamme on Agriculture due to cut in subsidy on fertilizers will mean reduced production because small farmers will soon lose purchasing power. These all factors will ultimately violate human rights already discussed in Chapter-IV.

The possible conclusions which can be drawn out of the above analysis are as follows : This kind of medium term/short-term adjustment will not reduce the problem rather it will precipitate it. Secondly, we have to build up proper social infrastructure with long-term objectives. The level of general education and with it the level of skills - and the level of the economic development of a country are found to be strongly correlated. No country with a high level of education is found to be lacking in economic development. Equally good health care is essential for higher productivity of labour.[26] Thirdly, any progamme of adjustment must be deemed to be a means to the objective of the development of the Indian people. It would therefore, be a mistake to merely talk in terms of 'safety nets' to protect the vulnerable sections of society during

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25. ibid.p.19 and N.3 pp.70-71.

26. No.18, p.97.

the process of adjustment. Fourthly, the objective of medium term adjustment should be over-all economic development on egalitarian lines, an improvement of the quality of life for all the people. There are three parameters[27]:

a) Self-reliance in the matter of balance of payments, and in the matter of domestic savings financing domestic investment as far as possible.

b) Macro balance between aggregate demand and aggregate supply, which requires, inter alia, fiscal discipline and fiscal balance which in turn calls for a concerted drive against untaxed incomes.

c) The meshing of medium term adjustment with a long term development strategy which has its starting point the raising of the level of skill of the entire population, which requires, in turn, focus on employment, on education, on health care, etc.

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27. No.18, p.98.

CHAPTER V

CONCLUSION

The Central focus of this study has been the IMF conditionalities, and, their impact on human rights with particular reference to India. The conditionality debate needed elaboration in the light of four aspects : 1) genesis of IMF instution ; 2) evolution of International Monetary system; its legal bases ; 3) third world countries' vigorous recourse to IMF lending and opting for conditional loans and ; 4) Universal Declaration of Human Rights with emphasis on right to food and their ultimate violations due to implementation of conditionalities.

Conditionality has emerged as the fundamental and distinctive element in the use of the Fund's general resources; the use is subject to the adoption of adjustment policies and measures aimed at overcoming payments imblances. The Executive Board of the IMF in its 1952 decision stated that the Bop problem was to be of a temporary character and stress was placed on revolving nature of the Fund resources, both to the operationalized in the short-time frame for the disbursement of credit and in the requirement of payment within three to five years after a borrowing, the defacto automacity of reserve tranche purchases; and reference to what was to become a major operational facet of Fund conditionality, i.e., the Stand-By

Arrangements (SBAs). With regards to SBAs, two operational practices became standard requirements: the phasing of the disbursement of credit and the use of performance criteria to test a member's observance of policy and programmatic understandings.

A review of Fund conditionality was undertaken in 1968. The major features of this decision were (1) the inclusion of consultation clauses in all SBAs; (2) the omission of phasing and performance clauses for SBAs that do not go beyond the first credit tranche; (3) the inclusion of phasing and performance clauses in all other SBAs ; and (4) performance clauses covering performance criteria necessary to evaluate implementation of the programme, though there was no specification of a general rule as to number and content of performance critera. This was followed by the First Amedment (1968) preventing Fund from adopting policies that permit an unconditional use of its resources.

In the 1970's the Fund conditionality emerged as a more generalized Third World concern. The Group of 24 contended that the conditionalities attached to the various credit facilities of the Fund needed to be reviewed bearing in mind that members had been discouraged from making use of some of the Fund's resources available to them on account of severe conditionalities. The range of monetary and fiscal measures that in varying combinations, appear in Fund, sonsored stabilization programmes included: (1) devaluation

(2) tighter credit through an increase in interest rates and slowing-down in the rate of its expansion: (3) the removal of subsidies for basic commodities and services: (4) an increase in prices of public utility services; (5) a reduction in the size of the public sector; and (6) restraints in salary and wage increases.

Under these circumstances the EFF was established in 1974 for longer term BOP-financing. The 1974 decision of Board stipulated that the EFF was conceputualized to deal with an economy suffering serious payments imbalance relating to structural maladjustments in production and trade and an economy characterized by slow growth and inherently weak balance of payments position which pervents ppursuit of an active development policy. In this period with massive oil shocks, developing countries suffered most. Inflationary explosion shook the world. In 1973 an 1974 there was 100 percent increase in the general level of commodity prices, a quadrupling of the price of oil, and a 43 percent increase in the average price of exports of industrialized countries. In this period, the prices of Third World exports other than oil were swept along inthe general price boom.

During this period of rapidly rising deficits the non-oil Third World countries made only minimal use of IMF credit and virtually none at all of the higher credit tranches of Fund resources. The Fund confronted a crisis of clientele in the 1970s. One important indicator of this tendency was the dramatic decline in SBAs, the main vehicle for conditional credit, in the 1970s compared to the 1960s-global total for 168 SBAs were agreed for the 1970s in contrast to 222 in the 1960s, with developing countries 152, compared to 194 in the 1960s. The establishment of Oil Facilities and EFF could hardly improve the lot of developing countires. The sole reason for the restraint was severity of conditionality. During this period principal areas of concern were (1) the short time durationof Fund arragements; (2) the related short maturities of SBA credit; (3) the limited, quota linked credit availabilities; (4) the over-emphasis on demand management in the stabilization programmes; (5) the absence of any effort to set conditionality with due regard to the cause of baalance of payments deficits; and (6) the inordinate share of the adjustment costs that fell on developing countries.

In 1979, the Executive Board again reviewed conditionality policies and formulated twelve gidelines. Among the new f eatures that met some of the concerns of the developing countries were: (1) the possibility of SBAs of a longer-term framework and (2) the acceptance by the Fund of the need, in devising adjustment programmes, to pay due regard to the domestic, social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems.

What happened in the 1980s was an explicit recognition that for payments adjustment to be durable, there had to be a restoration ofgrowth in theeconomy or at least an effort to incorporate a growth factor into thedesign of an adjustment programme. The conviction was applied in the case of low income countries. In formulating programmes under the Fund's Structural Adjustment Facility (SAF) denised in 1986, the eligible countries were expected to develop macro-economic and structural policy objectives as well as the measures they intended to take during a three year period. These measures were supposed to be incorporated in a Policy Framework Paper (PFP) to be reviewed by the Executive Directors of both the IMF and World Bank. While some observers expressed on apprehension that those procedures were tantamount to applying "Cross-Conditionality", most borrowers under the SAF saw the PFP process as an efficient means of catalyzing and coordinating financial assistance in support of their adjustment programmes. The adjustment programmes supported by Enhanced. Structural Adjustment Facility (ESAF) were expected to incorporate structural measures that would be ambitious in scope and timing. The basic idea of ESAF was to foster growth and achieve a substantial strengthening of BOP position sufficient to allow exceptional financing to be discontinued after the three year programme period.

The other concern of this study has been a linkage between conditional loans and human rights. The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948 "as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and progressive measures, national and international, to secure their universal and effective recognition and observance both among the peoples of territories under their juristiction".

The existing human rights obligations form a part of international law and lay down the minimum, but universally applicable standards. Because these are universal, human rights which have been defined in such a manner that any state, whatever its economic, political or legal system is able to and must observe them. Each country has the right to adopt the economic and social system most appropriate to its development but it also has the duty to ensure that the syustem respected fundamental human rights. The IMF being specialised agency of the United Nations has got special responsibility to foster these rights.

Human rights were first linked with aid by the United States. The United Nations established the foundations for this linkage by recommending the withdrawal of aid in cases of authoritatively determined gross and systematic violations of human rights. This punitive approach in linking human rights with development still prevails. The suspension or discontinuation of aid could further aggravate the position of the people victimized by the violation of their rights.

Detrimental effects of the IMF conditionality have already been documented in Chapter III, The IMF is regularly singled out because of its total disregard for the Un Human Rights policy. There is no mention of human rights in the IMF's policy documents. Human rights issues are subsumed under the politically neutrality clause, and are thus excluded from the Fund's terms of reference The 1979 Guidelines on Conditionality thus include "domestic social and political objectives" among the factors to be taken into account in the elaboration of performance criteria.

The UNICEF's 'adjustment with a human face' approach has challenged the legitimacy of development aid which jeopardizes human well being, even its mere surrival. The aim of the structural adjustment has been to eliminate uneconomic, ineffective and wasteful programmes. The main target however, has been the social sector. Social expenditure, affecting mainly education and health, tend to decreased by one-quarter, even one-half. The military expenditures, for example, which would fit well into the definition of uneconomic, ineffective and wasteful and regularly exceed social investment, are not even raised in discussing reductions.

The IMF conditionality relating its financing to policy performance, is also applied by aid donors. They condition continued aid on clearance by the IMF. The policy changes thus instigated have lowered the level of living in the countries concerned, particularly for the weakest and the poorest, those most in need of aid. This has split the United Nations into two camps. One consists of the proponents of 'adjustment with growth' (IMF and the World Bank), the other of an 'adjustment with a human face' (UNICEF, ILO, ECOSOC, the General Assembly).

The effects of severity of IMF conditionality can be seen in Latin America, where IMF adjustment programmes failed altogether. The IMF austerity programmes led to proteste in which many people died. General Strikes were held. The effects of cuts in subsidies and price rise are ccompounded when the IMF insists on keeping wage and salary increases below the rate of inflation, thus reducing real income. In 1978 and 1979 the governments of Portugal and Jamaica respectively had to promise the IMF to implement such measures. In Brazil, ~~too~~, the Fund vehemently insisted on cuts in real wages in 1983. In chile, where the IMF gave loaws for the first two years of the Pinoche era, real wages dropped 30 percent. And in Turkey real wages fell as a result of IMF programmes by 54 percent between 1977 and 1980.

The IMF's devaluation policies often lead to economic recession in debtor countries. The IMF's stabilization policies brought Chile a fall in per-capita income. Samething happend in Peru, Zambia, Turkey, Portugal and Argentina. Though the purpose of devaluation is to improve the competitiveness of a raw-materials producing county, it can infact often lead to a spiral of competitive devaluation among countries producing the same saw material. This accelerates the slump in prices and reduces the foreign exchange earnings. Devaluation an also seriously affect the ability of domestic borrowers to service their foreign debts.

With remarkable frequency, IMF interventions coincide with military coups: the military takeover in Argentina in March 1976 as in 1962 was closely connected with negotiations for an IMF stand by credit. In Ghana, the Fund was indirectly responsible for bringing down the democratically elected government in 1976. In Jamaica the elected government lost favour of the people and lost the elections in 1980 because it had to force through the IMF's draconian austerity programme. In this context a veteran costa Rican social democrat Pepe Figueres complained that 'The IMF has overthrown more governments than the military'.

In the context of India, the International Monetary Fund approved SDR 5 billion in 1981. This loan was supposed to be disbursed in three instalments (phases) provided the conditions of the preceding phase have been met to the satisfaction of the IMF. The conditions imposed by IMF included. (1) Measures to encourage investment and production in the private sector including steps to ease excessive regulations and restrictions; (2) considerable liberalisation of procedures relating to foreign collaboration and royalty payments; (3) an export orientation that reverses the previous direction of economic development and policies which made the domestic market more attractive than exports; (4) a reform, i.e., an upward revision of the price structure in agricultural and key industrial fields; (5) a liberalised import regime; (6) action on the need to contain subsidies on public foodgrain distribution and on other items; (7) a fiscal policy which is tight in terms of expenditure but which promises to raise indirect taxes further and to lower direct taxes with the aim of promoting savings and stimulating investment; (8) the pursuit of a realistic policy in regard to exchange rates; and (9) a tight monetary policy.

Even after transacting this massive loan India could hardly improve its BOP position. It has to again resort to IMF with more exhorbitant conditionalities in 1991. Before getting ~~the~~ IMF loan the Indian finance Minister Dr. Man Mohan Singh delivered a letter to President World

Bank outlining certain reforms to carry out adjustment programmes successfuly. With massive devaluation, liberalization in trade sector, abolishing export subsidies, increasing fertilizer prices Government has also taken steps to keep nonplan expenditures including defence expenditure in check.

The IMF's conditions throughout its operationin sanctioning SBAs have been identical. If all conditions proposed by the IMF are accepted, the growth rate will go down and India will have unemployment at large scale leading to Civil Violence. This way Put a check on the negative Bops but growth rate will also fall. The IMF terms will not help the country develop a policy for itself but catch on the global economic system. Various scholars have expressed doubts about the policy content of these programmes. Nevertheless, it is very important to reduce the budgetary deficit. All government expenses which are not related to urgent social prioriteies should be scaled down. Subsidies to hotels, losses in mining sector, loss-making airlines operations etc. have tobe stopped. At the same time very high priority sectors have to be protected. The problems with IMF conditions that they ask for a uniform reduction in expenses. India should have a rule-based system but the rules need not be of the IMF.

India is a sovereign country. It has to folow its own independent path which is suitable to its socio-economic conditions. The IMF conditionalities will imply a substantial loss of freedom in policy formation. Though plagued with horrendous economic problems, India has got a lot of accumulated wisdom, institutional strength and untapped resources. The solution does not lie in resorting again and again to IMF. The policy of self-reliance must be sustained at all cost. The solution lies in more pragmatic value- guided approach but not in doctrinaire thinking, some hard decisions, elimination of corruption and a will to succeed.

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