ORAL ARGUMENT SCHEDULED FOR FEBRUARY 6, 2017

No. 16-7051

United States Court of Appeals for the District of Columbia Circuit

BUDHA ISMAIL JAM, ET AL.,

Plaintiffs-Appellants,

v.

INTERNATIONAL FINANCE CORPORATION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FINAL BRIEF OF DEFENDANT-APPELLEE

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December 21, 2016

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Rule 28(a)(1) of the Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit, the undersigned counsel for Appellee International Finance Corporation ("IFC") certify the following:

1. Parties and Amici

Except for the following, all parties, intervenors, and amici appearing before the District Court and in this Court are listed in the Brief for Plaintiffs-Appellants:

Amici for Plaintiffs-Appellants:

Dr. Erica R. Gould and Prof. Daniel Bradlow.

Defendant-Appellee:

International Finance Corporation. The undersigned counsel certifies, to the best of his knowledge and belief, that IFC is an international organization as defined in and as subject to the International Organizations Immunities Act, that it is an international financial institution owned by the governments of 184 nations, and that IFC is not owned by any parent corporation.

2. Ruling Under Review

Plaintiffs seek review of the District Court's order dismissing their complaint on the basis of IFC's immunity from suit: *Jam v. Int'l Fin. Corp.*, No. 15-612 (JDB), 2016 WL 1170936 (D.D.C. Mar. 24, 2015), JA1413-25.

3. Related Cases

There are no related cases.

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GLOSSARY

CAO:	Compliance Advisor Ombudsman
CGPL:	Coastal Gujarat Power Limited
FSIA:	Foreign Sovereign Immunities Act of 1976
IOIA:	International Organizations Immunities Act of 1945
IFC:	International Finance Corporation

JURISDICTIONAL STATEMENT

Applying this Court's binding precedent, the District Court concluded that IFC is immune from Plaintiffs' suit pursuant to the International Organizations Immunities Act ("IOIA"), 22 U.S.C. § 288a(b) and the IFC Articles of Agreement, which is also a U.S. treaty, 7 U.S.T. 2197. Accordingly, the District Court dismissed Plaintiffs' suit in its entirety for lack of subject-matter jurisdiction. Standing against decades of binding precedent, Plaintiffs now argue that international organizations like IFC do not possess absolute immunity under the IOIA, subject only to limitation by Executive Order or intended waiver by the organization itself. Rather, they contend that this Court should create one or more new judicial exceptions to immunity so that the district court would have subject-matter jurisdiction.

The Court has appellate jurisdiction under 28 U.S.C. § 1291 because the decision below is final.

STATEMENT OF THE ISSUES

1. May this Court overrule decades of precedent holding that the immunity provided by the IOIA is absolute, which this Court unanimously reaffirmed only two years ago as vigorous Circuit law?

2. When Congress granted international organizations the same immunity enjoyed by foreign states in 1945 subject only to Executive Order, did Congress intend that a commercial-activity exception to foreign sovereign immunity enacted more than 30 years later, or other judicially-created exceptions, should be applied to international organizations?

3. In circumstances where plaintiffs have no commercial relationship with IFC, a waiver of immunity would not offer a corresponding benefit to IFC and its chartered objectives, and would impose financial and institutional burdens on IFC, did the District Court correctly determine that IFC did not intend to waive its immunity as to this type of claim by this type of plaintiff?

4. Where India is an available, adequate, and preferred forum for this suit, and Plaintiffs conceded that private and public-interest factors weigh heavily in favor of litigating this suit in India, should the Court affirm on the alternative ground of *forum non conveniens*?

STATUTES, REGULATIONS, AND TREATIES

Pertinent statutes, regulations, and treaties are set forth in an addendum included with this brief.

STANDARD OF REVIEW

The District Court's legal conclusions on its jurisdiction are reviewed de novo; however, the findings of fact "that bear upon immunity and therefore upon jurisdiction" must be affirmed unless clearly erroneous. *Nyambal v. Int'l Monetary Fund*, 772 F.3d 277, 280 (D.C. Cir. 2014).

STATEMENT OF THE CASE

I. IFC WAS CREATED BY A MULTILATERAL TREATY AND IS DESIGNATED AS AN INTERNATIONAL ORGANIZATION UNDER U.S. LAW

IFC is a public international organization that provides loans, equity, and advisory services to stimulate private-sector investment in member countries where capital is scarce. JA0325, ¶ 63. IFC was established in 1956 by its Articles of Agreement ("IFC Articles"). The IFC Articles constitute a multilateral treaty between the United States and IFC's other member states. *See* IFC Articles, December 5, 1955, 7 U.S.T. 2197, 264 U.N.T.S. 117.

The United States was a founding member of IFC and was instrumental in the negotiation of the IFC Articles. Once the U.S. Government was satisfied with the language of the IFC Articles, President Eisenhower requested that Congress authorize the United States' membership in IFC. The International Finance Corporation Act, which authorized the United States' membership in IFC as "provided for by the Articles of Agreement," 22 U.S.C. § 282, passed both houses of Congress in June and August 1955. *See* 101 Cong. Rec. 12,662 (1955) (passing

S. 1894); 101 Cong. Rec. 8815 (1955) (same). President Eisenhower then signed the IFC Articles on behalf of the United States on December 5, 1955. 7 U.S.T. 2197. President Eisenhower subsequently executed an Executive Order that "designate[d] [IFC] as a public international organization entitled to the privileges, exemptions, and immunities conferred by the [IOIA]." Exec. Order No. 10,680, 3 C.F.R. §§ 86-87 (Supp. 1956).

Under Article I of the IFC Articles, IFC's "purpose . . . is to further economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas . . . ." Its chartered objectives are to "assist in financing the establishment, improvement and expansion of productive private enterprises" through lending "in association with private investors"; (ii) "to bring together investment opportunities, domestic and foreign private capital, and experienced management"; and (iii) "to stimulate, and to help create conditions conducive to, the flow of private capital, domestic and foreign, into productive investment in member countries." IFC Articles art. I(i)-(iii). Under Article III § 3(iv) of the IFC Articles, IFC is prohibited from "assum[ing] responsibility for managing any enterprise in which it has invested." In other words, IFC is legally prohibited from managing any of its projects. *Id.*

"To enable the Corporation to fulfil the functions with which it is entrusted," Article VI § 3 provides IFC with immunity, subject only to a limited waiver. *See*

IFC Articles art. VI §§ 1, 3; *see also Mendaro v. World Bank*, 717 F.2d 610, 615-18 (D.C. Cir. 1983). This waiver provision is "identical to that appearing in the charter of . . . the World Bank, and is common in the charters of other international financial institutions." *Osseiran v. Int'l Fin. Corp.*, 552 F.3d 836, 838-39 (D.C. Cir. 2009).

II. IFC IS A MINORITY LENDER TO COASTAL GUJARAT POWER LIMITED

In 2005, the Government of India began planning large power-plant projects. IFC, *Frequently Asked Questions: Tata Mundra Project*, http://www.ifc.org/wps/wcm/connect/region__ext_content/regions/south+asia/countries/frequently+asked+questions (last accessed Oct. 21, 2016). The Government of India planned the Tata Mundra plant to serve 16 million people living in five Indian states. *Id.* The plant was developed and is operated by Coastal Gujarat Power Limited ("CGPL")

The total cost of CGPL's project was $4.2 billion. This cost was financed with $1 billion of private investments in CGPL, $1.5 billion in loans to CGPL from local banks, an $800 million loan by Korean export agencies, a $450 million loan by the Asian Development Bank, and a $450 million loan from IFC. *See* JA0233. IFC is a minority lender and financed only 10.6% of the project's funding.

III. PLAINTIFFS FILE A COMPLAINT WITH THE CAO

On June 11, 2011, Plaintiffs filed a complaint with the Compliance Advisor Ombudsman ("CAO") against the Tata Ultra Mega – Coastal Gujarat Power

Limited investment. JA0326, ¶ 64. The CAO is an independent oversight mechanism for IFC that reports to the World Bank President. JA0317, ¶ 4; JA0319, ¶ 16.

As explained by Mr. Fady M. Zeidan, Deputy General Counsel of IFC, the CAO process is a "problem-solving grievance mechanism" designed to serve a dispute-resolution function and to ensure that all projects adhere to the self-imposed "policies, standards, guidelines, procedures, and conditions for IFC involvement." JA0318-89, ¶¶ 15, 19. Any individuals or communities "who believe they are affected, or potentially affected, by the environmental and/or social impacts of an IFC project" may participate in the CAO process. JA0320, ¶ 24.

"CAO compliance investigations focus on whether IFC has 'failed to address environmental and/or social issues as part of its review process,' and whether that failure has 'resulted in outcomes that are contrary to the desired effect of the [IFC's] policy provisions.'" JA1416 (quoting JA0378). However, as the policies and standards are self-imposed, "the CAO is not a court, 'has no authority with respect to judicial processes,' and creates no 'legal enforcement mechanism.'" *Id*. (quoting JA0358).

The first phase of the CAO process — Dispute Resolution — brings the client-borrower and the complainant together in an effort to "improve outcomes on

the ground," over which IFC, as a lender, has no control. JA0321, ¶ 34; JA0325, ¶¶ 57-58; IFC Articles art. III, § 3(iv). If the complainant or the client-borrower refuses to participate in dispute resolution, the process moves on to the second phase: Compliance Audit. That phase requires the CAO to appraise IFC's adherence to its environmental and social sustainability policies. JA0322-25, ¶¶ 39-55. If IFC is found out of adherence, the CAO publishes a public report with its finding and continues "monitor[ing of] the situation until actions taken by IFC . . . assure CAO that IFC . . . is addressing the noncompliance." JA0325, ¶ 54.

In their CAO complaint, Plaintiffs alleged that IFC did not properly account for the environmental and health impacts posed by CGPL's plant, and that, as a result, the plant caused "adverse social and environmental harms. . . ." JA0470. In response, the CAO recommended "[o]pen dialogue between [CGPL] and [Plaintiffs]." JA0496.

Plaintiffs refused to engage in Dispute Resolution, so the process entered the Compliance Audit phase. JA0496. During this phase, the CAO issued three reports. These reports recognized that "both parties [i.e., CGPL and Plaintiffs], understand that part of the threat to the livelihoods of the wider Mundra coast's fisher folk stems from sources beyond Tata Power in the wider industrialization of the coast, and thus cannot be resolved by the company and the community alone." *Id.*; *see also* JA0505 (noting that "[s]ignificant in the context of the complaint is

the fact that the coastline around Mundra is undergoing a rapid industrial transformation" by other development activities). To assist its client, IFC devised a "10-point action plan to work cooperatively with CGPL and the Gujarat fishing communities." JA0327, ¶ 73.

As a result of the CAO process, CGPL has agreed "to develop and implement . . . mitigation measures based on the [CAO's] findings," and "IFC remains actively engaged with CGPL to ensure implementation of the action plan." JA0612. The CAO continues to monitor implementation of the plan. JA0592.

IV. PLAINTIFFS FILE SUIT AGAINST IFC

On April 23, 2015, Plaintiffs filed a complaint against IFC. JA0008. Despite IFC's role as a minority lender with no management control over CGPL, "Plaintiffs blame IFC for the injuries they have suffered." JA1416. Their case is "focused on" and "arises out of" the central allegation that IFC acted negligently "in appraising, financing, advising, supervising and monitoring its significant loan to enable the development of the Tata Mundra Project in Gujarat, India." JA1417, 1421 (quoting JA11, ¶ 2). None of the Plaintiffs has a commercial or contractual relationship with IFC. JA1421.

V. THE DISTRICT COURT FOUND THAT IFC WAS IMMUNE FROM PLAINTIFFS AND THEIR CLAIMS

On July 1, 2015, IFC moved to dismiss Plaintiffs' complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on the basis of the immunity

provided to it by the IOIA and the IFC Articles. JA0107-20. IFC also moved to dismiss pursuant to the doctrine of *forum non conveniens*. JA0120-28.

As on appeal, Plaintiffs' main argument below was that this Court's interpretations of the IOIA and the IFC Articles are incorrect. *See* JA0658-64. In the alternative, they argued that this suit provides a "corresponding benefit" to IFC, thus fitting within the scope of the waiver in Article VI § 3 of the IFC Articles. JA0666-70.

Plaintiffs also argued that *forum non conveniens* dismissal is inappropriate because IFC has not waived its immunity in India, thus rendering India not an "available" forum. JA0677-78. Plaintiffs conceded IFC's other *forum non conveniens* arguments, including that India has expertise in environmental cases and that the private- and public-interest factors dictate that India is the preferred forum. JA678-79; JA1117-19.

The District Court concluded that IFC is immune from this suit and did not address IFC's other arguments. JA1413. The District Court reaffirmed Circuit precedent interpreting IFC's immunity under the IOIA as "absolute." JA1425. It found that IFC did not waive immunity from this suit under Article IV § 3 of the IFC Articles because (1) Plaintiffs do not have a commercial relationship with IFC, and (2) even if a commercial relationship was not required, exposing IFC to

liability in this case would impose substantial burdens with no corresponding benefit to IFC's chartered objectives. JA1421-24.

The District Court concluded that suits of this type "invite[]—indeed, demand[]—'judicial scrutiny of the [IFC]'s discretion to select and administer its programs.'" JA1421-22 (quoting *Vila v. Inter-American Inv. Corp.*, 570 F.3d 274, 279 (D.C. Cir. 2009)). It reasoned that, under Circuit precedent, inviting such scrutiny of an international organization's internal operations is at odds with the fundamental purposes of international-organization immunity, and is therefore outside the scope of Article VI § 3. JA1421-22; *see Mendaro v. World Bank*, 717 F.2d 610, 618 n.53, 620 (D.C. Cir. 1983) (interpreting identical provision of World Bank's Articles of Agreement as "only restrict[ing] the Bank's immunity to actions arising out of its external commercial contracts and activities").

The District Court also found that waiver in this case "would 'produce a considerable chilling effect on IFC's capacity and willingness to lend money in developing countries,' by opening 'a floodgate of lawsuits by allegedly aggrieved complainants from all over the world.'" JA1422 (quoting JA1109-10).

VI. PLAINTIFFS INSERT THEMSELVES IN AN UNRELATED CASE

On September 30, 2016, in a separate appeal before this Court, another plaintiff filed a brief making many of the same arguments that Plaintiffs make in this appeal. Opening Brief of Plaintiff-Appellant, *Smith v. World Bank Grp.*, No.

16-7003 (D.C. Cir. Sept. 30, 2016). Plaintiffs filed an amicus curiae brief in the *Smith* case, noting that her brief raises "identical arguments." Brief of Amici Curiae 1, *Smith*, No. 16-7003 (D.C. Cir. Oct. 7, 2016). Two weeks later, Plaintiffs moved this Court to hold the *Smith* case in abeyance pending the outcome of this appeal. Mot. of Amici Curiae to Hold Appeal in Abeyance 1, *Smith*, No. 16-7003 (D.C. Cir. Oct. 20, 2016). In their motion, Plaintiffs acknowledge that their legal arguments pertaining to international-organization immunity are, in their words, "novel." *Id.* at 7. Plaintiffs did not contact appellees in either case before filing their motion. On November 3, 2016, appellees in the *Smith* case filed an opposition to Plaintiffs' motion. Opposition to Amici Curiae's Motion to Hold this Appeal in Abeyance, *Smith v. World Bank Grp.*, No. 16-7003 (D.C. Cir. Nov. 3, 2016).

SUMMARY OF ARGUMENT

More than 70 years ago, the United States recognized the need to provide international organizations with immunities "for the purpose of assuring to the Organization the possibility that its work could be carried on without interference or interruption" by member states. Chairman of the United States Delegation to the U.N., *Report to the President on the Results of the San Francisco Conference* 160 (1945) (reproduced at A-124). To this end, in 1945 Congress enacted the IOIA, granting international organizations "the same immunity from suit and every

form of judicial process" as foreign states. 22 U.S.C. § 288a(b). In 1945, foreign states possessed "absolute immunity" from suit absent express waiver, and Congress intended to confer this immunity on international organizations. The IOIA also empowers the President to modify that immunity as necessary to address an organization's engagement in an activity that was not anticipated at the time of the IOIA's enactment. *Id.* § 288; S. Rep. No. 861, 79th Cong., 1st Sess., at 4 (1945). The President has not modified IFC's immunity.

IFC's absolute immunity is a jurisdictional bar to Plaintiffs' suit. Plaintiffs urge the Court to misinterpret the IOIA and to invite a flood of suits against international organizations. Plaintiffs' arguments should be rejected and the District Court decision should be affirmed.

First, Plaintiffs argue that the IOIA should be read as subjecting international organizations to the "commercial activities" exception to foreign-sovereign immunity, as codified in the Foreign Sovereign Immunities Act of 1976 ("FSIA"). As Plaintiffs recognize, however, in *Atkinson v. Inter-American Development Bank* this Court considered and rejected the same argument. The *Atkinson* court concluded that IOIA immunity continues to be absolute, absent waiver by the international organization, and was unchanged by the FSIA's enactment. Further, any exceptions must be created by the President, who is empowered with the ability modify an international organization's immunities at

will. Only two years ago, in *Nyambal v. International Monetary Fund*, this Court reaffirmed that "*Atkinson* remains vigorous as Circuit law."

Plaintiffs contend that *Atkinson* has been "eviscerated" by several later Supreme Court decisions. None of the opinions Plaintiffs cite, however, addresses whether international-organization immunity should be subject to a "commercial activity" exception. In *Atkinson*, this Court correctly concluded that (1) the IOIA's context and legislative history showed that the President is responsible for changing organization immunities, and (2) foreign-sovereign immunity was absolute in 1945. To the extent that they address these issues at all, Plaintiffs' authorities support these conclusions.

Second, this Court should also abide by *Atkinson*'s interpretation of the IOIA because a contrary interpretation would conflict with the IFC Articles — a U.S. treaty. Because the IOIA lacks a clear statement abrogating the IFC Articles, *Atkinson* correctly avoided an IOIA interpretation that would nullify a U.S. treaty.

Third, Plaintiffs argue that the IFC Articles waive IFC's immunity from this suit. This Court has interpreted Article VII § 3 of the IFC Articles as only intending to waive immunity where the burden of suit, by a particular plaintiff and claim, is met with a corresponding benefit to IFC's chartered objectives. In that regard, this Court has only found waiver in cases brought by parties having a direct commercial relationship with IFC. Plaintiffs admit they have no commercial

relationship with IFC. While Plaintiffs attempt to rely on vague language from policy statements and speeches, their focus on these sources in lieu of the IFC Articles only confirms that the IFC Articles do not contain a waiver of immunity from this type of suit by this type of plaintiff.

Furthermore, as the District Court concluded, Plaintiffs' suit invites judicial scrutiny of IFC's discretion to administer its programs, which this Court has recognized is a burden. Thus, this suit would result in the very type of judicial interference in international organizations' operations that Congress intended to prohibit when it enacted the IOIA. The "benefit" Plaintiffs identify is simply an attempt to repackage the burden imposed by judicial scrutiny. IFC remains immune from this suit, and the District Court was correct to dismiss it.

In the alternative, this Court may also affirm the District Court's dismissal on *forum non conveniens* grounds. Plaintiffs have effectively conceded that India is an adequate and preferred forum for the litigation of this case.

ARGUMENT

I. THIS COURT IS BOUND TO FOLLOW PRECEDENT HOLDING THAT THE IOIA CONFERS ABSOLUTE IMMUNITY ON INTERNATIONAL ORGANIZATIONS

This Court must follow its prior decisions holding that the IOIA and the IFC Articles confer absolute immunity on IFC subject only to intended waiver by IFC.

This Court should affirm the District Court's dismissal of this action based on IFC's immunity.

A. The IOIA Shepherds This Court's Analysis Of IFC's Immunity

The IOIA and, through it, the President via executive order — not the FSIA, common law, international law, or anything else — is the basis for IFC's immunity.

The IOIA provides that an entity specifically designated by executive order as an "international organization" be accorded "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract." 22 U.S.C. § 288a(b). President Eisenhower "designate[d] [IFC] as a public international organization entitled to the privileges, exemptions, and immunities conferred by the [IOIA]." Exec. Order No. 10,680, 3 C.F.R. §§ 86-87 (Supp. 1956). In 1945, sovereign immunity was absolute, absent express waiver. *Atkinson v. Inter-American Dev. Bank*, 156 F.3d 1335, 1340 (D.C. Cir. 1998).

B. Congress Empowered Only The President With The Ability To Create Exceptions To IOIA Immunity

Under the IOIA, the President retains the authority to "withhold or withdraw from any such organization . . . any of the privileges, exemptions, and immunities provided for in this subchapter . . . or to condition or limit the enjoyment by any

such organization . . . of any such privilege, exemption, or immunity." 22 U.S.C. § 288. In other words, IOIA immunity may be modified at will by the President. Thus, for there to be any exception, it must be created by the President and the President alone.

In *Atkinson v. Inter-Am. Development Bank*, this Court crystalized this concept of Executive-only exceptions to IOIA immunity. First, this Court made plain that immunity was absolute: "The IOIA speaks in terms of 'immunity from suit and *every form of judicial process*, 22 U.S.C. § 288a(b), language which admits of no exception for 'unobtrusive' judicial process" or any other suit. *Atkinson*, 156 F.3d at 1339 (emphasis in original). It recognized no exceptions to immunity other than express waiver.

It also held that § 288 of the IOIA is a "built-in mechanism" for "updating the immunities of international organizations in the face of changing circumstances." *Id.* at 1341. The fact that "Congress was content to delegate to the President" the duty of adjusting organizational immunities is intrinsic evidence that Congress did not intend IOIA immunity to change "with developments in the law governing the immunity of foreign sovereigns." *Id.*; *accord Smith v. World Bank Grp.*, 99 F. Supp. 3d 166, 170 (D.D.C. 2015) (ordering dismissal where World Bank had not expressly waived its immunity and "[n]or [was] there any

indication that the President ha[d] directed that the World Bank's immunity be waived in a manner that would permit [the] claims to proceed").

The IOIA's legislative history confirms this Court's plain-text interpretation was and is still correct: Congress intended the President to have the discretion to adjust the immunities of international organizations "in the event that any international organization *should engage, for example, in activities of a commercial nature*." *Id.* (quoting S. Rep. No. 861, 79th Cong., 1st Sess., at 2 (1945) (emphasis added)); *see also* S. Rep. No. 861 at 4 ("The broad powers granted to the President will permit prompt action in connection with any abuse of immunities or the conduct by any such organization of activities of a type in which such organizations have not heretofore engaged."). The Court thus held that there is no "commercial activity" exception to IOIA immunity and that "Congress' intent was to adopt [immunity] only as it existed in 1945—when immunity of foreign sovereigns was absolute" absent an express waiver. *Id.* at 1341.

The Court also concluded that the text of the later-enacted FSIA shows that the shift in *foreign-sovereign* immunity towards the "restrictive theory" was not intended to create a new exception to *international-organization* immunity. 156 F.3d at 1342. FSIA sections 1609 and 1611 recognized that some of its provisions may be interpreted as abrogating organizational immunities, and so explicitly exempted international organizations from their reach. *See id.* ("[C]ontext

suggests, if anything, that the 1976 Congress wished to clarify that international organizations deserve special protection."). That is, the Court rejected plaintiffs' encouragement of judicially-created exceptions to IOIA immunity.

Twelve years later, the Third Circuit veered from the carefully constructed, Executive-driven apparatus created by the IOIA in *OSS Nokalva v. European Space Agency*, 617 F.3d 756 (3d Cir. 2010). In that decision, the Third Circuit found that international-organization immunity is a living concept that changed with the passage of the FSIA. *Id*. at 762-766.

Only two years ago, relying on *OSS Nokalva*, the plaintiff in *Nyambal v. International Monetary Fund* asked "this Court to 'revisit' its decision in *Atkinson* . . . and narrow the scope of IOIA sovereign immunity for international organizations." 772 F.3d 277, 281 (D.C. Cir. 2014). This Court responded: "*Atkinson* remains vigorous as Circuit law," despite the Third Circuit's reasoning. *Id*. Contrary to Plaintiffs' argument (Opening Br. 28), this Court did not decline to consider *OSS Nokalva*. It read the case and found the Third Circuit's reasoning to be unpersuasive. The *Nyambal* plaintiff subsequently petitioned the Supreme Court, which declined review. 135 S. Ct. 2857 (2015).

As in *Nyambal*, this Court should (and must) follow *Atkinson*. *See LaShawn A. v. Barry*, 87 F.3d 1389, 1395 (D.C. Cir. 1996) ("One three-judge panel . . . does not have the authority to overrule another three-judge panel of the court.").

Although he admits that "the plaintiffs here do not have access" to U.S. courts for their claims against IFC, Amicus Bradlow argues that the Court should create a "customary international law" exception to IOIA immunity. Bradlow Amicus Br. 10-11, 14 (asserting that plaintiffs have a "right to an effective remedy" under international law). Because this argument was not raised below or here by the parties to this appeal, it is forfeited. *See Baptist Mem'l Hosp. – Golden Triangle v. Sebelius*, 566 F.3d 226, 230 (D.C. Cir. 2009) (refusing to consider contentions raised only by amicus). Moreover, Amicus Bradlow is mistaken: customary international law cannot and does not supersede the IOIA. *See Al-Bihani v. Obama*, 619 F.3d 1, 16 (D.C. Cir. 2010) (concluding that "customary international law [that is] not incorporated into statutes or self-executing treaties" is "not part of domestic U.S. law") (Kavanaugh, J., concurring).

C. *Atkinson* Remains Undisturbed By The Supreme Court

Contrary to Plaintiffs' pages of argument about foreign-sovereign immunity, *Atkinson* remains vigorous precedent.

"A subsequent Supreme Court decision does not overrule Circuit precedent unless it 'eviscerates' it[]—something that does not occur if the High Court is silent or '*never ultimately resolves the issue*.'" *Fla. Bankers Ass'n v. Dep't of Treasury*, 799 F.3d 1065, 1079 (D.C. Cir. 2015) (emphasis added) (internal citation omitted). While Plaintiffs offer a host of arguments for why *Atkinson* has been

"eviscerated," none withstands scrutiny. In fact, none of the decisions cited by Plaintiffs has anything to do with the IOIA. *See Odhiambo v. Republic of Kenya*, 764 F.3d 31, 37 (D.C. Cir. 2014) (Circuit precedent that "had nothing to do with" subsequent Supreme Court decision was not "implicitly overruled"). If anything, they serve to reinforce *Atkinson*'s reasoning.

1. The Supreme Court Continues To Affirm That Foreign-Sovereign Immunity Was Absolute in 1945

Piggy-backing on a footnote in *OSS Nokalva*, Plaintiffs first argue that, before and after *Atkinson*, the Supreme Court has "repeatedly held that foreign sovereign immunity in 1945 was not absolute." Opening Br. 27-28 (mirroring the argument presented in *OSS Nokalva*, 617 F.3d at 762 n.4). This is incorrect.

In Plaintiffs' cases, the Supreme Court recounts that, prior to the FSIA, the decision whether a foreign state enjoyed absolute immunity once "fell primarily upon the Executive . . . and courts abided by 'suggestions of immunity'" from the State Department. *Republic of Austria v. Altmann*, 541 U.S. 677, 690 (2004) (quoting *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486-87 (1983)); *accord Republic of Argentina v. NML Capital*, 134 S. Ct. 2250, 2255 (2014) (noting policy was "to defer to the decisions of the political branches," and that the FSIA changed the landscape); *Republic of Iraq v. Beaty*, 556 U.S. 848, 857 (2009) (noting that Congress "eliminat[ed the] foreign sovereign immunity" previously granted to foreign states through Executive discretion).

Samantar v. Yousuf (Opening Br. 26-27), also states that foreign states were "extend[ed] virtually absolute immunity . . . as a matter of grace and comity" and upon a suggestion of immunity, "the district court surrendered its jurisdiction." 560 U.S. 305, 311 (2010) (internal quotation marks omitted). In *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1328-29 (2016), the Court merely notes that the courts accepted the Executive's "binding" suggestions of immunity. *Id.* (discussing separation-of-powers issues). In *Manoharan v. Rajapaksa*, 711 F.3d 178, 179 (D.C. Cir. 2013) (Opening Br. 28), this Court simply recounted this history. Thus, rather than "conflict" with *Atkinson*, these decisions actually *repeat Atkinson*'s description of foreign-sovereign immunity as it existed in 1945. 156 F.3d at 1340.

Plaintiffs argue that foreign-state immunity was less than "absolute" in 1945 because "*automatic* absolute immunity . . . is a far cry from immunity when DOS requests it." Opening Br. 27 (emphasis in original). But this argument conflates the *process* by which immunity is conferred with the *scope* of that immunity, once conferred. The legal character of the "absolute" immunity conferred under the IOIA is not lessened simply because the immunity is triggered by an action of the Executive Branch. Moreover, such an argument is directly contradicted by *Verlinden*, 461 U.S. at 486 (observing that "until 1952" absolute immunity was conferred by the Executive's request of immunity in an action against a foreign state).

To analogize, federal judges enjoy absolute immunity from liability resulting from their judicial actions. *See Stump v. Sparkman*, 435 U.S. 349, 359 (1978). That immunity is no less absolute because, to obtain it, an attorney must be appointed by the President and confirmed by the Senate. *Cf. Butz v. Economou*, 438 U.S. 478, 512 (1977) (noting the purpose of absolute immunity is to assure judges "can perform their respective function[] without harassment or intimidation"); *VanHorn v. Oelschlager*, 457 F.3d 844, 847 (8th Cir. 2006) (concluding officials "appointed by the governor and confirmed by the legislature" were nonetheless entitled to "absolute, quasi-judicial immunity"). The adjective "absolute" only distinguishes the scope of the immunity from other varieties of immunity, such as "restrictive immunity" and "qualified immunity." *Cf. McSurely v. McClellan*, 697 F.2d 309, 318 (D.C. Cir. 1982) (describing the differing character and purposes of qualified and absolute immunity). The "absolute" quality of IOIA immunity has nothing to do with the mechanism by which it is conferred.

In 1945, foreign sovereigns gained their *absolute* immunity from suit via the process described in *Atkinson*. 156 F.3d at 1341. Similarly, IFC gained its *absolute* immunity through the IOIA and executive order, subject only to intended waiver by IFC. Exec. Order No. 10,680, 3 C.F.R. §§ 86-87 (Supp. 1956).

2. Recent Supreme Court Decisions on Statutory Interpretation Support *Atkinson*

Plaintiffs' argument that subsequent statements made by the Supreme Court while interpreting statutes have "eviscerated" *Atkinson* is also incorrect. *See* Opening Br. 33-37.

None of the Supreme Court decisions upon which Plaintiffs rely interprets the IOIA, and all predate this Court's decision in *Nyambal*, which reiterated that "*Atkinson* remains vigorous as Circuit law." Opening Br. 33-37

Plaintiffs argue that *Dole Food Co. v. Patrickson*, 538 U.S. 468, 478 (2003), requires interpreting every statute including the word "is" in the "present tense." Opening Br. 33. This is incorrect. In *Dole*, the Supreme Court interpreted § 1603(b)(2) of the FSIA, which extends "instrumentality" immunity to organs of a foreign state including corporations whose "ownership interest *is* owned by a foreign state." 28 U.S.C. § 1603(b)(2) (emphasis added); 538 U.S. at 473, 478-79. In light of § 1603(b)(2)'s context and purpose, the Supreme Court concluded that a corporation's instrumentality status must defined in the present tense, *i.e.*, at the time of suit, rather than at the time of the injury. *Dole*, 538 U.S. at 478-79. But as this Court recognized after *Dole*, the FSIA's "well-established purpose" dictates that the word "is" in § 1603(b)(2) *does not* carry a present-tense meaning when the "instrumentality" is a foreign official, as opposed to a corporation. *Belhas v. Ya'Alon*, 515 F.3d 1279, 1285 (D.C. Cir. 2008).

Dole does not impugn *Atkinson*. Rather, it proves the maxim that the meaning of identical words "may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed." *Yates v. United States*, 135 S. Ct. 1074, 1082 (2015) (quoting *Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932)). This Court has twice affirmed that the circumstances of the IOIA's enactment require an interpretation that affords international organizations absolute immunity from suit. *Nyambal*, 772 F.3d at 281; *Atkinson*, 156 F.3d at 1340-42.

Plaintiffs also rely on *Chickasaw Nation v. United States*, 534 U.S. 84 (2001), and a selective quotation of the Congressional Record for the argument that *Atkinson*'s interpretation of the IOIA was incorrect because "Congress considered providing absolute immunity, but chose not to." Opening Br. 36. Because this argument was not raised below, it is forfeited. *Elliot v. U.S.D.A.*, 596 F.3d 842, 851 (D.C. Cir. 2010). Plaintiffs assert that *Chickasaw* "recent[ly]" adopted a new rule "after *Atkinson*" that courts should not interpret a statute to have a meaning that Congress "discarded in favor of other language." Opening Br. 36 (quoting *Chickasaw*, 534 U.S. at 93). This is false; *Chickasaw* merely repeated, verbatim, a rule of interpretation that the Supreme Court discussed over ten years *before*

Atkinson. *See* 534 U.S. at 93 (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987)).

Plaintiffs also put a misleading gloss on the Congressional Record; in fact, it demonstrates that Congress intentionally delegated the task of creating exceptions to IOIA immunity to the President alone. Opening Br. 36 (quoting 91 Cong. Rec. 12,531 (1945)). The provisions of the House bill that Sen. Robertson described "were too broad" to pass the Senate were not related to whether international organizations enjoyed absolute immunity. 91 Cong. Rec. 12,531. As Sen. Robertson explained, those overbroad provisions would have provided "tax exemptions" without prior Congressional approval. *Id.* at 12,530. Plaintiffs conveniently overlook the express statements of Sens. Robertson and Folger, in the same discussion, that there was no need to create a commercial-activity exception under the IOIA because "[t]he situation is fully taken care of" by the President's ability to "withdraw" immunity at will. *Id.* at 12,530-31; *accord Atkinson*, 156 F.3d at 1341 ("The concerns that motivated [the commercial activity exception] were apparently taken into account by the 1945 Congress.").

In *Atkinson*, this Court concluded that the phrase "as is enjoyed by foreign governments," read in the IOIA's context and history, referred to the immunity enjoyed in 1945. Because no subsequent Supreme Court case has addressed that

contextual reading, it stands "vigorous as Circuit law." *Nyambal*, 772 F.3d at 281; *see Fla. Bankers Ass'n*, 799 F.3d at 1079.

D. Executive Branch Policy Is To Follow *Atkinson*

Plaintiffs' assertion that the Executive Branch policy currently holds international organizations to the "restrictive theory" of immunity is incorrect. Opening Br. 30-31. In fact, current U.S. policy abides by this Court's decision in *Atkinson*.

1. The United States Recognizes That *Atkinson* Is Good Law

In an attempted class action similar to the case brought by Plaintiffs, the plaintiff in *Lempert v. Rice* sued the United Nations after he was denied the desired remedy through the U.N.'s internal dispute resolution mechanism. *See* Reply in Support of Statement of Interest of the United States at 3, *Lempert v. Rice*, No-12-01518 (CKK) (D.D.C. June 19, 2013), ECF No. 24 (alleging waiver of the U.N.'s immunity based on its alleged failure to provide an adequate settlement mechanism) (hereinafter *Lempert* Reply). Lempert claimed that the U.N.'s assertion of immunity under the IOIA and the Convention on Privileges and Immunities of the United Nations violated his international-law right to an "effective remedy" and contravened the "actual goals" of the Convention. Plaintiff's Opposition to Defendant Susan Rice's Motion for Dismissal at 12, *Lempert*, No. 12-01518 (D.D.C. May 16, 2013), ECF No. 20. He also argued that

the IOIA and the FSIA "limit the UN's immunity in commercial cases." *Lempert* Reply at 2.

In response, the United States argued that the Convention's requirement that the U.N. provide an internal dispute-resolution mechanism did not limit the "absolute grant of immunity" located elsewhere in the Convention. *Lempert* Reply at 3. The United States also argued that "[T]he D.C. Circuit has squarely rejected the argument that the IOIA incorporates a commercial activities exception to immunity. In *Atkinson*, the Court held that the immunity provided by the IOIA is 'absolute' and subject only to limitation by Executive Order." *Id.* at 7 (internal citation omitted).

The President has continued to confer immunity upon international organizations in the 20 years following *Atkinson*. As Plaintiffs recognize, "22 U.S.C. § 288 gives the President authority to modify or revoke an organization's immunity." Opening Br. 38. Nothing has prevented the Executive Branch creating a commercial-activities exception if it wished to do so. Indeed, when President Reagan designated Interpol as an international organization under the IOIA, he intentionally modified and withheld several of its statutory immunities. *See* Exec. Order No. 12,425, 3 C.F.R. § 193 (1984) (reserving IOIA immunities ordinarily providing immunity from search and seizure of an organization's property, from taxation, and from suit against an organization's

employees). Moreover, the Executive Branch continues to designate other entities as international organizations under the IOIA, providing them unqualified, absolute immunity, without exceptions for commercial activities or anything else. *See, e.g.*, Exec. Order No. 13,705, 80 Fed. Reg. 54,403 (Sept. 9, 2015) (designating the International Renewable Energy Agency as an international organization).

2. Plaintiffs' Secondary Authorities Are Inapposite

As they did before the District Court, Plaintiffs cherry-pick yellowing inter-agency letters from State Department employees to prop up their argument that the United States has amended IFC's immunity. These sources are unpersuasive for several reasons, not the least of which is that the President has never amended Executive Order No. 10,680.

First, Plaintiffs rely on a letter from law professor Detlev F. Vagts, who was employed by the Department of State for one year,[1] and make the dubious assertion that this intra-branch letter from a State Department official constitutes evidence of U.S. policy. There is nothing ominous about Mr. Vagts's letter. He merely recognizes that, since the IOIA's passage in 1945, the *procedure* for conferring immunity on international organizations no longer involves case-by-case suggestions by the State Department; instead, it requires the President to designate an entity as an "international organization" by executive order. 22

[1] *In Memoriam: Detlev F. Vagts '51*, HARVARD LAW TODAY, http://today.law.harvard.edu/detlev-f-vagts-51-1929-2013/ (last visited Nov. 6, 2016).

U.S.C. § 288; *see Vila v. Inter-American Inv. Corp.*, 570 F.3d 274, 279 (D.C. Cir. 2009) (no mention of the State Department); *Osseiran v. Int'l Fin. Corp.*, 552 F.3d 836, 838-89 (D.C. Cir. 2009) (same). That the Department of State ceased suggestions of immunity in no way indicates that it "rejects absolute immunity"; this only shows that Department of State recognized it no longer had a role in conferring absolute immunity to international organizations in the wake of the IOIA. Opening Br. 30. Indeed, such a suggestion would be meaningless in the IOIA framework. The President, by executive order, is the only organ of the U.S. Government — not the Department of State or anyone else — that can create exceptions to an international organization's immunity.

Second, as they did at the District Court, Plaintiffs cite to two sources connected to *Broadbent v. OAS*, 628 F.2d 27 (D.C. Cir. 1980). Opening Br. 30-32. These materials highlight the futility of Plaintiffs' argument. One source is an amicus brief filed by the United States, and the other is a law review article in which the author excerpted the "principal portion" of a letter authored by a Department of State official two years later who merely repeats the views expressed in (and attaches) the same brief.[2] Critically, even when the United States argued for "restrictive immunity," this Court was not persuaded. *Broadbent*,

[2] Letter from Roberts B. Owen, Legal Adviser, State Dep't, to Leroy D. Clark, General Counsel, EEOC (June 24, 1980), *reprinted in* Marian L. Nash, *Contemporary Practice of the United States Relating to International Law*, 74 Am. J. Int'l L. 917, 918 (1980).

628 F.2d at 32-33 (considering arguments for the application of both absolute and restrictive immunity and deciding, "We need not decide this difficult question of statutory construction. On either theory of immunity absolute or restrictive an immunity exists sufficient to shield the organization from lawsuit on the basis of acts involved here."); *see id*. at 33 ("We discuss the narrower standard of restrictive immunity not because it is necessarily the governing principle . . . ."). That is, even when the United States intervened to advocate for a certain view of IOIA immunity, this Court did not accept that position. And for good reason. The President alone retains such authority. *See* 22 U.S.C. § 288. Moreover, the United States itself has recently recognized this. *See Lempert* Reply 7 (stating that immunity under the IOIA is "subject only to limitation by Executive Order").

Finally, Plaintiffs unearth a cover letter from Acting Secretary of State Arnold Kanter submitting to the President (for transmittal to the Senate) a treaty between the OAS and the United States covering the OAS headquarters in Washington, DC. Opening Br. 31 & n.2. This cover letter — again, Plaintiffs' suggestion that it constitutes an authoritative statement of Executive Branch policy is dubious at best — simply describes Secretary Kantor's view of the law. It does not — and cannot — evince a clear and plain statement from the President abrogating the United States' explicit conferral of immunity to IFC under the

IOIA. *See Roeder v. Islamic Republic of Iran*, 646 F.3d 56, 58 n.2 (D.C. Cir. 2011).

II. *ATKINSON*'S INTERPRETATION OF THE IOIA AS PROVIDING ABSOLUTE IMMUNITY IS CORRECT

Not only must this Court follow *Atkinson*, it should. *Atkinson* was rightly decided then and remains vigorous law today.

Atkinson's interpretation of the IOIA was correct for two reasons. First, under the "clear statement" rule, the IOIA may not abrogate or modify U.S. treaties that provide international organizations with immunity. When interpreting the IOIA, the reference canon of interpretation must give way to the clear-statement rule, which was devised to prevent the Judiciary from becoming unnecessarily involved in treaty affairs.

Second, the IOIA's plain text, read in context and in light of its legislative history, supports *Atkinson*'s interpretation. Congress never intended that the law of international-organization immunity should incorporate changes in foreign-sovereign immunity decades later. The commercial-activity exception was later implemented to level the playing field between private businesses and foreign states asserting their own national interests as private market participants. That rationale has no application to international organizations like IFC that, as Congress understood, support the interests of all nations through policy lending and do not compete with private business.

A. The IOIA Must Be Read Consistent With The IFC Articles

"[N]either a treaty nor an executive agreement will be considered 'abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed.'" *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 237 (D.C. Cir. 2003) (quoting *Trans World Airlines v. Franklin Mint Corp.*, 466 U.S. 243, 252 (1984)). This requirement "ensure[s] that Congress—and the President—have considered the consequences" to U.S. foreign policy of abrogating a treaty. *Id.* at 238. It is a rule of law, not simply another implement in a court's statutory-interpretation tool chest. *Id.* ("The *requirement* of a clear statement assures the legislature . . . intended to bring into issue[] the critical matters involved in the judicial decision." (emphasis added)); *Atkinson*, 156 F.3d at 1341 ("A canon . . . is not a rule of law."). The Court's "focus is not on the best reading," but whether an alternative reading would avoid superseding an international agreement. *Roeder v. Islamic Republic of Iran*, 646 F.3d 56, 61 (D.C. Cir. 2011). Given this rule of law, this Court need not follow Plaintiffs down their detour into the "reference canon" and the "disparate inclusion" canon. Opening Br. 37, 38.

The IFC Articles are a U.S. treaty, executed ten years after the IOIA. 7 U.S.T. 2197. They provide IFC with immunity from suit. *See Mendaro v. World Bank*, 717 F.2d 610, 615, 618 n.53 (D.C. Cir. 1983) (holding World Bank immune on the basis of its Articles of Agreement alone (which reserve jurisdictional

immunities with language identical to IFC Articles art. VI, § 3)); *Osseiran v. Int'l Fin. Corp.*, 552 F.3d 836, 839 (D.C. Cir. 2009) (applying *Mendaro* to the IFC Articles).

Plaintiffs urge an interpretation of the IOIA that would carve out a judicial exception that would subject international organizations to suits by any plaintiff alleging injury arising from acts taken by the organization in the commercial sphere. Opening Br. 33, 40; *see e.g. Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1548-52 (D.C. Cir. 1987). Such an interpretation would abrogate the IFC Articles. *Mendaro*, 717 F.2d at 618-19. It would also cast aside U.S. treaties that provide immunity to other international organizations, such as the IMF Articles of Agreement[3] and the World Bank Articles of Agreement.[4]

Moreover, the IOIA does not contain a statement abrogating the IFC Articles or any other U.S. treaty. Thus, in *Atkinson* and then in *Nyambal*, this Court was correct to reject an interpretation of the IOIA that conflicts with the numerous treaties empowering international organizations to pursue the collective work of nations. *Roeder*, 646 F.3d at 61.

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[3] *See* IMF Articles of Agreement art. IX, § 2, *opened for signature* Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39 ("The Fund . . . shall enjoy every immunity from every form of legal process except to the extent that it expressly waives its immunity . . . .").

[4] *See* World Bank Articles of Agreement art. VII, § 3, *opened for signature* Dec. 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134 (entered into force Dec. 27, 1945).

B. *Atkinson* Correctly Concluded That Congress Did Not Intend To Subject IOIA Immunities To A "Commercial Activity" Exception

This Court has already considered and rejected Plaintiffs' invitation to interpret the IOIA as changing with the passage of the FSIA.

Plaintiffs argue that the reference canon "would have informed the IOIA's drafting. . . . ." Opening Br. 38. But in *Atkinson*, this Court considered whether canons of interpretation dictate that Congress intended the IOIA to incorporate subsequent changes in foreign-sovereign-immunity law and correctly decided that its utility for divining congressional intent is "outweighed by the [IOIA's] text and legislative history." 156 F.3d at 1341; *see also Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001) ("[C]anons are not mandatory rules. . . . And other circumstances evidencing congressional intent can overcome their force."); *see also Dolan v. United States Postal Serv.*, 546 U.S. 481, 486 (2006) (concluding that a statute's meaning "depends upon the whole statutory text, considering the purpose and context of the statute, and consulting any precedents and authorities that inform the analysis").

As this Court recounted in *Atkinson*, the IOIA's purpose, legislative history, and the context of its enactment show that when enacting the IOIA, Congress did not intend to incorporate foreign-sovereign immunity's watershed shift to the "restrictive immunity" theory.

In 1945, sovereigns had absolute immunity from suit and, in fact, the law of immunities for foreign sovereigns had never changed; that is, immunity was always absolute. "For more than a century and a half, the United States generally granted foreign sovereigns complete immunity from suits in the courts of this country." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983) (citing *The Schooner Exchange v. McFaddon*, 11 U.S. 116 (1812)).

Only two years before the IOIA's passage, the Supreme Court held that the Republic of Peru was immune from a suit based on its commercial shipping activities because it had not waived its immunity. *Ex parte Republic of Peru*, 318 U.S. 578, 586-89 (1943); *see also Berizzi Bros. v. S.S. Pesaro*, 271 U.S. 562, 574 (1926) (holding that "merchant ships held and used by a government" are "held to have the same immunity as war ships, in the absence of a treaty or statute of the United States evincing a different purpose"). And in *Republic of Mexico v. Hoffman*, a decision cited by Plaintiffs (Opening Br. 27), the Supreme Court reaffirmed this concept of absolute immunity, though it declined the Republic of Mexico's invitation to stretch this immunity to cover a ship that was not in Mexico's possession. 324 U.S. 30, 32-34, 38 (1945).

That was the status of sovereign-immunity law when Congress granted international organizations "the same immunity . . . as is enjoyed by foreign governments." 22 U.S.C. § 288a(b). The IOIA's "basic purpose" was not to

forever bind international-organization immunity to developments in foreign-sovereign immunity. Plaintiffs' supposition that Congress must have been aware of the reference canon when enacting the IOIA (Opening Br. 38) omits the entire history of sovereign-immunity law up to 1945. Congress cannot intend to incorporate future changes in a body of U.S. law that, until at least eight years later, was thought to be immovable.

It should come as no surprise, therefore, that courts continued to hold international organizations absolutely immune under the IOIA even after the State Department issued the Tate Letter and the FSIA shifted foreign-sovereign immunity to the "restrictive theory." *See, e.g.*, *Lutcher S.A. Celulose e Papel v. Inter-American Dev. Bank*, 382 F.2d 454, 456 (D.C. Cir. 1967) (immunity of international organization under IOIA "turns on whether it has waived immunity from suit"); *Miller v. United States*, 583 F.2d 857, 859-60, 868 n.42 (6th Cir. 1978) (upholding IOIA immunity from claim that international organization failed to prevent and investigate environmental harm caused by dam); *Edison Sault Elec. Co. v. United States*, 552 F.2d 326, 326 (Fed. Cl. 1977) (affirming IOIA immunity absent waiver).

III. IFC HAS NOT WAIVED — AND DID NOT INTEND TO WAIVE — ITS IMMUNITY AS TO THIS TYPE OF PLAINTIFF OR THIS TYPE OF SUIT

IFC has not waived its absolute immunity to Plaintiffs' claims via the limited waiver of immunity set forth in Article VI § 3 of the IFC Articles. IFC has not waived — and would not waive — its immunity to Plaintiffs' claims because it would not be necessary for IFC to subject itself to this type of suit by this type of plaintiff in order for IFC to achieve its chartered objectives. Rather, waiver of immunity as to this type of suit by this type of plaintiff would hinder IFC's chartered objectives with no corresponding benefit to IFC. Finally, IFC's interpretation of the scope of its waiver is entitled to judicial deference.

Plaintiffs attack this Court's core holding in *Mendaro* that Article VI § 3 "must be narrowly read in light of both national and international law governing the immunity of international organizations." 717 F.2d at 611. Plaintiffs then attack the District Court's reasoned conclusion that IFC did not intend to waive its immunity because (1) under Article VI § 3 of the IFC Articles, IFC intended to waive its immunity to lender-liability claims by plaintiffs with which it has no commercial relationship (Opening Br. 44-47); (2) becoming liable to innumerable plaintiffs hailing from IFC's 184 member states would confer a benefit because IFC "needs host community trust" (*id.* at 49); and (3) these lawsuits would not result in burdensome judicial scrutiny of how IFC administers its own lending

programs because such scrutiny is "necessary to protect the organization" (*id.* at 57). These attacks are meritless.

In several prior decisions, this Court has considered and rejected these same arguments. They are a transparent effort "to slip around the *Mendaro* test" by misconstruing precedent and "blurr[ing] the boundaries between cost and benefit." *Atkinson*, 156 F.3d at 1338; JA1423. As the District Court wrote, Plaintiffs fail to "point to a benefit that would justify opening the courthouse doors to a new type of plaintiff, bringing a new and very broad type of suit, more costly than those that have previously been allowed and aimed squarely at IFC's discretion to select and administer its own projects." JA1424.

A. *Mendaro* Was Correctly Decided And Remains The Law In This Circuit

This Court's interpretation of the World Bank's waiver provision in *Mendaro v. World Bank*, 717 F.2d 610 (D.C. Cir. 1983), remains the starting post for any analysis of the IFC Articles' waiver provision. In relevant part, Article VI § 3 of the IFC Articles states: "Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office . . . ." As Plaintiffs must concede, in *Mendaro* this Court analyzed a nearly identical provision in the World Bank's charter and found that the "facially broad waiver of immunity contained in the Bank's Articles of Agreement must be narrowly read in light of both national and international law

governing the immunity of international organizations . . . ." 717 F.2d at 611. And in *Atkinson*, this Court found that an international organization's "immunity should be construed as *not waived* unless the particular type of suit would *further* the [international organization's] objectives." 156 F.3d at 1338 (emphasis in original).

Encountering yet another blockade against its claims, Plaintiffs argue (again) that yet another opinion of this Court — this time, *Mendaro* — was wrongly decided. Opening Br. 41-43. They complain that *Mendaro* "is fundamentally inconsistent with" and "purported to overturn" *Lutcher S.A. Celulose e Papel v. Inter-American Development Bank*, which interpreted language identical to the World Bank Articles of Agreement as "waiving immunity in broad terms." *Lutcher*, 382 F.2d 454, 457 (D.C. Cir. 1967); Opening Br. 41, 42. Plaintiffs are again mistaken. In *Mendaro*, this Court carefully considered and distinguished *Lutcher* on its facts. *Mendaro*, 717 F.2d at 620 ("Mendaro's argument that *Lutcher* . . . requires us to read Article VII section 3 as a blanket waiver of immunity is unpersuasive."). Because the action "clearly arose out of the Bank's external lending activities," the *Lutcher* Court did not consider suits that "would expose the Bank to potentially crippling litigation but not appreciably advance the Bank's ability to perform its functions." *Mendaro*, 717 F.2d at 620; *Fla. Bankers Ass'n v. Dep't of Treasury*, 799 F.3d 1065, 1082 (D.C. Cir. 2015) ("*Stare decisis* compels adherence to a prior *factually indistinguishable* decision of a controlling court."

(emphasis added) (internal quotation marks omitted)); *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1163 (D.C. Cir. 1999) (concluding that a panel did not overrule a prior panel decision because it principally distinguished the case). Moreover, this Court has repeatedly reaffirmed *Mendaro*'s core holding. *See, e.g.*, *Osseiran v. Int'l Fin. Corp.*, 552 F.3d 836, 840 (D.C. Cir. 2009) (applying *Mendaro* and finding that waiver as to suits by parties with a commercial relationship "promote[s IFC's] chartered objective"); *Atkinson*, 156 F.3d at 1338 ("While the provision might be read to establish a blanket waiver of immunity from every type of suit . . . we rejected that reading in *Mendaro*").

Because there is no "intra-circuit split" (Opening Br. 42), *Mendaro* remains sound authority. This Court should apply its established reasoning to Plaintiffs' claims and, therefore, affirm the District Court's dismissal of them in their entirety.

B. This Court Must Consider The IFC Articles When Considering Waiver

While attempting to avoid references to the IFC Articles (Opening Br. 43-57), Plaintiffs have effectively conceded that this Court must look to them when considering their waiver argument. *Id.* at 43 ("A narrow waiver where the IFC harms a host community, in violation of its own policies, but ignores the findings of the CAO, furthers *IFC's chartered objectives*." (emphasis added)).

IFC remains immune unless it "intended to waive its immunity." *Mendaro*, 717 F.2d at 617. And, through Article IV § 3, IFC intended to waive immunity as

to the claims of "debtors, creditors, bondholders, and those other potential plaintiffs to whom [it] would *have to* subject itself to suit in order to achieve its chartered objectives." *Id.* at 615 (emphasis added).

IFC's chartered objectives are (i) to "assist in financing the establishment, improvement and expansion of productive private enterprises" through lending "in association with private investors"; (ii) "to bring together investment opportunities, domestic and foreign private capital, and experienced management"; and (iii) "to stimulate, and to help create conditions conducive to, the flow of private capital, domestic and foreign, into productive investment in member countries." IFC Articles art. I.

C. Suits Such As This Would Impose Significant Burdens On IFC

Plaintiffs seek a radical expansion of IFC's liability arising from suits purporting to promote IFC's internal environmental and sustainability policies. Such an expansion would severely impair IFC's chartered objectives. JA0325, ¶¶ 62-63. Potential liability for these types of claims, *i.e.*, those flowing from a plaintiff's dissatisfaction with the CAO process, would "negatively impact the IFC's ability to advance its purpose of furthering economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less-developed areas." JA0325, ¶ 63.

First, exposing IFC to this type of suit brought by this type of plaintiff would impose significantly more onerous economic costs that are distinguishable from those that ordinarily arise from the suits in which this Court "has found a waiver of immunity." *Vila*, 570 F.3d at 282.

IFC's liability has been traditionally limited to suits seeking to enforce its discrete contracts involving parties with whom IFC has established a direct business relationship. The contract-type claims to which this Court has held IFC subject to suit (*see Osseiran*, 552 F.3d at 840), cannot compare to the massive class-action suit that Plaintiffs have brought on behalf of thousands of individuals. The limited waiver in the IFC Articles was never intended to invite suits by innumerable (and unidentified) plaintiffs seeking potentially millions of dollars in damages based purely on IFC's role as a lender and its internal, self-imposed policies. *See Mendaro*, 717 F.2d at 618 (concluding that waiver was limited to instances in which the international organization specifically intends to waive its immunity); JA0073, ¶ 283 (alleging that "[t]he exact number and identities of all Class members is currently unknown" but identifying a class of over 1,000 plaintiffs); JA0325, ¶ 63 (stating that such liability "would negatively impact the IFC's ability to advance its purpose of furthering economic development").

IFC's potential liability in this case is significant and, as the District Court found, finding waiver under these circumstances would inevitably open "a

floodgate of lawsuits by allegedly aggrieved complainants from all over the world." JA1422 (quoting JA1109-10).

Although they do not highlight their own evidence, Plaintiffs' submissions to the District Court preview the classes of potential plaintiffs in line behind these. *See* JA0692-99, ¶¶ 8-28 (claims from residents of the Bajo Aguan region of Honduras based on a loan to an African palm oil company); JA0710-13, ¶¶ 13-25 (claims from the Peruvian Amazonian communities of Canaán de Cachiyacu and Nuevo Sucre based on an investment in a petroleum company); JA0721-24, ¶¶ 19-30 (claims from sugarcane workers in Nicaragua based on a loan to NSEL); JA1088-91, ¶¶ 8-13 (claims from villagers in Berezovka, Kazakhstan based on financing to Lukoil), JA1091-93, ¶¶ 14-15 (claims from citizens of Taman, Russia related to the Russkiy Mir II project).

As the District Court found, there is "little reason to doubt" that waiver in this case "would produce a considerable chilling effect on IFC's capacity and willingness to lend money in developing countries." JA1422 (quoting JA1109-JA1110); *see also* JA1423 (finding that the "relevant costs . . . in suits like this by these kinds of plaintiffs[] remain quite substantial").

These factual findings must be upheld unless clearly erroneous. *See Herbert v. Nat'l. Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992) (findings of fact underpinning a decision on a motion to dismiss for lack of subject matter

jurisdiction are accepted "unless they are clearly erroneous" (internal quotation marks omitted)).

Plaintiffs (and Amicus Gould) do not identify any clearly erroneous factual findings. *See* Opening Br. 47 (arguing that the District Court "should not have" made these findings, but ignoring that IFC's argument was based on Plaintiffs' own expert declarations); Gould Br. 20; JA1109-10. Neither Plaintiffs nor Amicus Gould offers any facts that contradict Mr. Zeidan's statement that "potential legal liability flowing from the CAO's function would negatively impact the IFC's ability to advance its purpose of furthering economic development" and would render IFC "less willing to invest in projects that might otherwise further IFC's purposes." JA0325, ¶ 63; *see Robinson v. Am. Airlines, Inc.*, 908 F.2d 1020, 1024 (D.C. Cir. 1990) (refusing to find the trial court's conclusions clearly erroneous when it relied on unrebutted witness testimony); *Zoroastrian Ctr. & Darb-E-Mehr of Metro. Wash., D.C. v. Rustam Guiv Found. of N.Y.*, 822 F.3d 739, 750 (4th Cir. 2016) (deferring to the findings of the trier of fact when substantial evidence, *i.e.*, unrebutted witness affidavits, supports those findings).

Amicus Gould mounts an unfounded attack on the District Court for "crediting IFC's contentions without citing any data or scholarship on the purported costs of waiver." Gould Amicus Br. 5. But her criticism properly lies with Plaintiffs, who offered no such "data or scholarship," and consequently failed

to satisfy their burden of persuasion. *See Kehr Packages v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (D.C. Cir. 1991) ("When subject matter jurisdiction is challenged under Rule 12(b)(1), the plaintiff must bear the burden of persuasion.").

Amicus Gould's "political science scholarship" about IFC's past practices, *i.e.*, during a time in which it did not face class-action-style litigation from these types of plaintiffs bringing these types of claims, does not — and cannot — refute IFC's testimony that waiver would result in a chilling effect on its lending. JA1422-23. Moreover, Amicus Gould does not argue that any of the sources upon which she relies account for the "institutional pressures" that would prevail if IFC's long-standing and broad-ranging immunity were radically curtailed. Gould Amicus Br. 12. Amicus Gould's argument that IFC's "loan approval culture" will fend off any possible chilling effect lacks basis. Gould Br. 11-13. Her sources collect reports from World Bank and IMF, which have different staff and management than IFC. *See, e.g.*, Willi Wapenhans et al., *Effective Implementation: Key to Development Impact* Annex F, at 1 (1992) (noting that Mr. Wapenhans was hired to analyze the portfolios of "[t]he Bank and IDA," and not mentioning IFC). The only source that Amicus Gould cites specifically addressing IFC's "culture," is a so-called "observer[]" who never worked at IFC and does not attribute the source of his knowledge. Gould Br. 13-14 (citing Bruce Rich,

Foreclosing the Future: The World Bank and the Politics of Environmental Destruction 73 (2013)).

Lastly, Amicus Gould argues that follow-on suits against IFC will be limited because the number of CAO complaints is relatively small at present. *Id.* at 21-26. In fact, the number of CAO complaints has no bearing on the magnitude of *damages* that large classes of plaintiffs will demand from IFC; in any event, it is indisputable that the number of CAO complaints will rise if Plaintiffs succeed in turning the CAO process into an exhaustion requirement that potentially gives plaintiffs all over world access to U.S. courts.

Second, exposure to liability in this case would impose substantial institutional costs: disruption to IFC's lending policies and "judicial scrutiny of the [IFC's] discretion to select and administer its programs." JA1421 (quoting *Vila*, 570 F.3d at 279) (alteration in original). Plaintiffs (and Amicus Gould) argue that IFC would benefit from class-action suits by entire communities from its 184 member states because IFC "needs local communities to believe its promises" (Opening Br. 49; *see also* Gould Br. 9), even more than it needs to conduct "commercial transactions with the outside world," *Mendaro*, 717 F.2d at 618. But suits based on this theory would lead to unprecedented judicial scrutiny of IFC's operations and would threaten its independence.

The basis for Plaintiffs' argument is that, under IFC's Performance Standards on Social & Environmental Sustainability, IFC's lending operations require "broad community support." Opening Br. 14, 49 (quoting JA0535-36; JA0749, ¶ 20; JA0940-46). So it is argued, IFC can only gain this support if IFC allows communities to "enforce [its] promises in court." Opening Br. 49.

At the outset, Plaintiffs' assertion that the "Broad Community Support" policy requires IFC to become accountable to unknown masses hailing from its 184 member states is incorrect. The policy requires the *borrower* ("client") to obtain "broad community support" for the *project* to which IFC lends:

> Through the Performance Standards, IFC requires *clients* to engage with affected communities . . . .
>
> IFC assures itself that the *client*'s *community engagement* is one that involves free, prior, and informed consultation . . . leading to broad community support for the project within the affected communities . . . . After the Board approval of the project, IFC continues to monitor the *client's* community engagement process . . . .

JA0749, ¶¶ 19-20 (emphasis added). The argument that "local communities may hesitate to host a high-risk project if they know that the IFC can ignore its own policies and standards and they will have no recourse" is unsupported. Opening Br. 49. IFC is a lender. It is barred from assuming a management role in projects to which it lends. IFC Articles art. III, § 3. If countries "refuse to host a high-risk project," it is because the project is "high-risk," not because their citizens cannot

sue an international organization that, like IFC, is merely a minority lender. Plaintiffs' argument that communities may fight IFC's lending "projects at every turn" because IFC is absolutely immune is not realistic. Opening Br. 49. Moreover, Plaintiffs offer no indication that immunity has halted IFC's lending to critical development projects during its 60-year history. *See* Gould Br. 18-19 (arguing that IFC's lending has increased).

Furthermore, IFC's environmental and sustainability policies have always exclusively been an issue between IFC and its borrowers. *See* JA0758, ¶ 1 ("[T]he eight Performance Standards [on Social and Environmental Sustainability] establish standards that the client is to meet throughout the life of an investment by IFC . . . ."). The decision whether, when, and to what extent IFC management should press those environmental covenants, or whether to suspend lending on a contract, is a drastic one that should be left to IFC alone. If IFC is made liable in suits like this by parties alleging IFC "negligently" failed to enforce its own covenants (Opening Br. 47), the practical effect will be the Judiciary's substantial and disruptive interference with IFC's internal decisional processes.

This Court recognized that "'judicial scrutiny of [an] organization's discretion to select and administer its programs' as a burden or cost, without regard to whether the underlying litigation is meritorious or in some other sense deserved." JA1423 (quoting *Mendaro*, 717 F.2d at 617); *see also Atkinson*, 156

F.3d at 1338 (decrying "disruptive interference" from judicial scrutiny). Because, as a practical matter, this "suit invites—indeed, demands—judicial scrutiny of [IFC]'s discretion to select and administer its programs," JA1421-22, the Court need not engage in the academic inquiry of whether Plaintiffs' claims arise from IFC's internal or external operations. Such an exercise is unnecessary where, as here, the cost-benefit analysis is dispositive. *See Vila*, 570 F.3d at 281 (suggesting that despite the "distinction between external activities and the internal management of international organizations" the court is "still required to engage in a weighing" of costs and benefits).

Nonetheless, Plaintiffs' argument that their suit is not aimed at IFC's internal operations, because every external act results from "some 'internal' decision," is not credible. Opening Br. 46; *see also id.* at 47 (arguing that "these claims are no more 'internal' than others that have been able to proceed"). The fundamental inquiry is whether the action is so aimed at "internal operations" that finding waiver would "lay [it] open to disruptive interference," *Mendaro*, 717 F.2d at 618, or would "entangle . . . courts in the internal administration of th[e] organization[]," *Broadbent v. Org. of Am. States*, 628 F.2d 27, 35 (D.C. Cir 1980). Plaintiffs' contention, if accepted, would render this "well-established precedent" meaningless. *Vila*, 570 F.3d at 281.

Plaintiffs admit that this suit directly arises from their dissatisfaction with IFC's *internal* disposition of their grievance to the CAO. Opening Br. 56-57 (arguing their injury resulted because IFC "ignore[d] the CAO"). The argument that Plaintiffs' claims "arise out of the IFC's external activities," belies their complaint, which "characterizes [this] suit as one that 'arises out of' IFC's 'irresponsible and negligent conduct . . . in appraising, financing, advising, supervising and monitoring its significant loan' to CGPL." JA1421 (quoting JA0011, ¶ 2).

Because this suit would demand judicial scrutiny of IFC's discretion to select and administer its programs, the District Court correctly concluded that IFC did not intend to waive its immunity. IFC does not "*have to* subject itself" to this type of suit by this type of plaintiff. *Mendaro*, 717 F.2d at 615 (emphasis added).

D. Waiver Of Immunity To Suits Of This Type, Brought By This Type Of Plaintiff, Offer No Corresponding Benefit To IFC

The "corresponding benefit" test from *Mendaro* is a proxy to assist the Court in deciding whether IFC *intended* to waive its immunity. *Mendaro*, 717 F.2d at 617 (stating that a court's application of the "corresponding benefit" test to a general waiver provision "should start with" its judgment of whether "the organization actually intended to waive its immunity"). IFC's chartered objectives show that the exception to IFC's immunity in Article VI § 3 was "designed primarily to enhance the marketability of its securities and the credibility of its

activities in the lending markets." *Mendaro*, 717 F.2d at 618. While a waiver of IFC's immunity with respect to its "commercial transactions with the outside world" makes common sense — IFC would exist in name only if it could not inhabit or supply its facilities — this evidences, at most, that IFC intended to waive "immunity from actions arising out of [its] external relations with its debtors and creditors." *Id.* at 618 (emphasis omitted).

This Court has only ever found waiver "for suits brought by individual plaintiffs with whom the organization had a direct commercial relationship." JA1421; *see also Vila*, 570 F.3d at 280 (finding waiver as to a suit seeking "a remedy based on the failure of [an] agreement with the IIC to meet the requirements of a formal contract" with the plaintiff); *Osseiran*, 552 F.3d at 840 (finding waiver of immunity as to suits on "sales agreements result[ing] from negotiations" with IFC); *Atkinson*, 156 F.3d at 1338 (noting waiver is intended as to suits to enforce "commercial transactions with the outside world").

Plaintiffs attempt to expand *Mendaro*'s singular focus on an international organization's "chartered objectives" by quote mining vague language from policy statements and speeches that support their strategic framing of "IFC's mission." Opening Br. 13 (arguing "environmental and social policies are . . . critical to IFC's mission"); *id.* at 53-54 (citing speech by Word Bank President referencing IFC policies). There is no basis for such an expansion.

This Court's focus has always been on *chartered* objectives, not fluid statements of policy that IFC's member states did not write into its Articles. This focus is for good reason: Plaintiffs' siren song would draw the Court into the unchartered waters of determining which of an international organization's policy statements sufficiently rises to the level of a "chartered objective." *See Broadbent v. O.A.S.*, 628 F.2d 27, 34-35 (D.C. Cir. 1980) (the court must not "open[] the door to divided decisions of the courts of different member states passing judgment on the rules, regulations, and decisions of international bodies"). Such scrutiny would infringe on the independence of international organizations and would force the Judiciary to decide on matters of foreign affairs.

Against this bulwark of authority, Plaintiffs' conclusory assertion that "finding a commercial contract [with the plaintiff] is sufficient does not imply it is necessary" (Opening Br. 45), is both unsupported and unsupportable. This Court's uninterrupted line of precedent supporting the commercial-relationship requirement is the product of *stare decisis*, not coincidence. *See, e.g.*, *Vila*, 570 at 279-80; *Osseiran*, 552 F.3d at 840; *Atkinson*, 156 F.3d at 1338; *Mendaro*, 717 F.2d at 618-19.

The policy statements and speeches Plaintiffs offer say nothing of IFC's charter. In fact, the earliest policy cited by Plaintiffs was implemented in 1993, nearly 40 years after the IFC's creation. JA0858. It is fair to say that these

policies are not essential to IFC's chartered objectives, considering that IFC operated for almost 40 years without need for them.

Because Plaintiffs have neither a direct relationship, nor a commercial relationship, with IFC, the District Court's conclusion that this suit does not fall within the scope of the waiver in Article VI § 3 of IFC's Articles was correct. JA1424; *Atkinson*, 156 F.3d at 1339 (where a suit offers no benefit to an organization's chartered objectives, the court "need not consider the costs side of the balance"). Despite Plaintiffs' attempt to overcomplicate the issue, *see* Opening Br. 43-57, there is no need to engage in laborious balancing of burdens and benefits. This Court already indicated in *Mendaro*, *Osseiran*, and *Vila* that suits by plaintiffs having no commercial relationship with IFC pose *no* benefit to its chartered objectives, so it "need not consider the costs side of the balance." *Atkinson*, 156 F.3d at 1339.

Further, Plaintiffs undermine their own arguments when they contend that waiver should occur only when IFC "ignores the findings of the CAO." Opening Br. 43; *see also id.* at 51 ("This type of action provides the same benefits to the IFC that motivated the creation of the CAO, but which the CAO has been unable to deliver."); Gould Br. 20-26. In effect, Plaintiffs argue that this suit does precisely the same thing that the CAO was already designed to do; in this, Plaintiffs are like the plaintiff in *Mendaro*. 717 F.2d at 616 n.41 ("Although we sympathize with

Mendaro, this factor alone cannot give the court jurisdiction over the World Bank, *since employee dissatisfaction with the efficacy of the administrative remedy is insufficient to dissolve the immunity of international organizations*." (emphasis added)). In the end, Plaintiffs' dissatisfaction with the CAO's operations and arguable lack of remedy are insufficient to somehow waive IFC's immunity under some form of "access to justice" exception to IFC's absolute immunity.

E. IFC's Interpretation Of The Scope Of Its Waiver Is Entitled To Judicial Deference

As this Court held in *Mendaro*, "under international law . . . an international organization is entitled to . . . such immunity from the jurisdiction of a member state as [is] necessary *for the fulfillment of the purposes of the organization* . . . ." 717 F.2d at 615 (emphasis added) (internal quotation marks and citation omitted); Restatement (Third) of Foreign Relations Law of the United States § 467(1) (1987) (same). Much like an executive department within the U.S. government, IFC is itself "in the best position" to identify the necessary means of fulfilling its functions due to IFC's unique "historical familiarity and policymaking expertise." *See Gonzales v. Oregon*, 546 U.S. 243, 266-67 (2006) (explaining the rationale behind judicial deference to administrative agencies' interpretations of their own rules); *Martin v. Occupational Safety and Health Rev. Comm'n*, 499 U.S. 144, 152-53 (1991) ("Because the Secretary promulgates these standards, the Secretary

is in a better position than is the Commission to reconstruct the purpose of the regulations in question.").

By analogy, an international organization's understanding of the relationship between its own objectives and its own waivers of immunity should also be afforded substantial weight. As explained by Mr. Zeidan, "legal causes of action or purported waivers of immunity flowing from the activities of the CAO would have a severe chilling effect on CAO's and IFC's effectiveness . . . ." JA0325, ¶ 62. Based on his experience working with both IFC clients and affected communities through the CAO process, Mr. Zeidan observes that "[i]f the results of a CAO investigation could potentially form the basis for a legal cause of action against IFC or its clients, IFC's clients would be far less willing to work with CAO and IFC in a cooperative manner." JA0325, ¶ 61. This view is entitled to deference based on the IFC's "historical familiarity" with providing lending assistance to developing countries. *Gonzales*, 546 U.S. at 266-67; *see Martin*, 499 U.S. at 152-53. Because an international organization's "immunity should be construed as *not waived* unless the particular type of suit would further the [international organization's] objectives," the international organization's views on the nature of its own objectives thus must inform the interpretation of any purported waiver by this Court. *Atkinson*, 156 F.3d at 1338; *see Mendaro*, 717 F.2d at 615.

Plaintiffs have no substantive response to this. Opening Br. 44 (carefully quoting *Osserian*, 552 F.3d at 840: "Whether immunity 'would interfere with [the organization's] mission' is 'for the federal judiciary to decide'; IFC management's litigation position is afforded no deference." (alteration in original)). But Plaintiffs' excerpt cuts off the more relevant portion, *i.e.*, the next sentence: "One might suppose that an organization could mount a case that its judgment about the need for immunity in certain classes of cases was deserving of judicial deference." *Osseiran*, 552 F.3d at 840. IFC mounts such a case here, and Plaintiffs cite no authority in response to Mr. Fady Zeidan's sworn declaration in support of it. *See* JA0325, ¶¶ 61, 63.

For these reasons, this Court should affirm the District Court's decision dismissing the Plaintiffs' claims in their entirety.

IV. THIS COURT MAY AFFIRM THE DISMISSAL IN THE ALTERNATIVE ON *FORUM NON COVENIENS* GROUNDS

This Court may affirm the District Court's dismissal under the doctrine of *forum non conveniens*. *See Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 423 (2007) ("[A] district court has discretion to respond at once to a defendant's *forum non conveniens* plea, and need not . . . first . . . resolve whether it has authority to adjudicate the cause (subject-matter jurisdiction) . . . ."). Plaintiffs conceded that such a dismissal is warranted. *See* JA0677-79 (declining to address IFC's argument that the private- and public-interest factors demand

dismissal). Indeed, all of the alleged harm occurred in India and none of the Plaintiffs is a U.S. resident. Affirmance on this alternative ground would be appropriate for the following reasons.

A. India Is An Adequate And Available Forum

India is an adequate and available forum in which to resolve Plaintiffs' claims.

This Court must first determine whether there is "an alternative forum that is both available and adequate." *MBI Grp., Inc. v. Credit Foncier du Cameroun*, 616 F.3d 568, 571 (D.C. Cir. 2010). Courts have routinely concluded that Indian courts provide an adequate forum. *See, e.g., In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India*, 809 F.2d 195, 199 (2d Cir. 1987). The "tort law of India, which is derived from common law and British precedent, [is] suitable for the resolution of legal issues arising in cases involving highly complex technology." *Id.*; *see also* JA0121 (collecting cases where dismissal was proper because India was an adequate and preferred forum).

Mr. Cyril Shroff, a qualified expert on Indian law, submitted an affidavit below explaining that the Indian courts are an adequate forum for resolving this case. JA0618-21, ¶¶ 21-28. India's National Green Tribunal is particularly well-suited to "hear[] all cases relating to environmental protection . . . including enforcement of any legal right relating to the environment." JA0623, ¶ 33. The

Green Tribunal would also be able to adjudicate Plaintiffs' claims more expeditiously than the District Court would. JA0624, ¶¶ 36-37 (stating that the Green Tribunal is statutorily mandated to "dispose of cases within six months from the date of filing" and citing data demonstrating that it handles hundreds of these cases each year). Plaintiffs did not contest these points below, conceding that India is an adequate forum. JA0677-79.

At the District Court, Plaintiffs argued that IFC failed to demonstrate that India is an available forum because IFC has not waived its immunity from suit in India. JA0677. Plaintiffs have dropped that argument on appeal. Indeed, they now argue that India's courts may exercise jurisdiction over IFC. Opening Br. 55. Plaintiffs' expert conceded that Plaintiffs claims are timely in the Green Tribunal. JA0701-03, ¶¶ 7, 10 (stating only that statute-of-limitations issues would be "litigated" and "time consuming").

B. India Is A Preferred Forum For The Resolution Of Plaintiffs' Claims

India is a preferable forum for the resolution of Plaintiffs' claims. The *forum non conveniens* analysis next requires the Court to weigh the private and public-interest factors.

The private interests include "ease of access to sources of proof," "availability of compulsory process for attendance of unwilling" witnesses, "the cost of obtaining attendance of willing" witnesses, the "possibility of view of

premises" by the court if needed, and "all other practical problems that make trial of a case easy, expeditious and inexpensive." *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). Plaintiffs essentially conceded below that these factors weigh in favor of dismissal. JA0678-79. They did not rebut IFC's assertion that "the vast majority of material witnesses and documents bearing on causation, liability, and alleged damages is located solely in India." JA1118 (internal quotation marks omitted). Plaintiffs also did not respond to IFC's arguments that (i) none of the material witnesses is subject to compulsory process, (ii) the costs of trial in the United States are prohibitive, (iii) a site visit to the Tata Mundra plant would be expensive and difficult, and (iv) "all other practical problems that make trial of a case easy, expeditious and inexpensive" weigh in favor of the NGT. JA1118.

The private-interest factors include "local interest in having localized controversies decided at home"; the possibility of holding the trial in a forum "at home with the . . . law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself"; and other avoiding "administrative difficulties" that flow from foreign litigation congesting local courts. *MBI*, 616 F.3d at 576. As IFC argued below, JA0126-28, the public-interest factors also support dismissal in this case. By

failing to address IFC arguments at all, JA0678-79, Plaintiffs conceded that India is a preferred forum and that their case should be dismissed.

CONCLUSION

For the reasons stated herein, IFC respectfully requests that this Court affirm the District Court's order of dismissal.

December 21, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and D.C. Cir. R. 32(e)(1) because this brief contains 13,368 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

December 21, 2016

/s/ Francis A. Vasquez, Jr.
Francis A. Vasquez, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2016, I caused the foregoing Brief for Appellee-Defendant and Statutory Addendum to be filed with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

/s/ Francis A. Vasquez, Jr.
Francis A. Vasquez, Jr.

ORAL ARGUMENT SCHEDULED FOR FEBRUARY 6, 2017

No. 16-7051

United States Court of Appeals for the District of Columbia Circuit

BUDHA ISMAIL JAM, ET AL.,

Plaintiffs-Appellants,

v.

INTERNATIONAL FINANCE CORPORATION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ADDENDUM OF STATUTES, REGULATIONS, UNPUBLISHED CASES, AND OTHER MATERIALS CITED IN BRIEF FOR DEFENDANT-APPELLEE

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Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 22. Foreign Relations and Intercourse
Chapter 7. International Bureaus, Congresses, Etc.
Subchapter XI. International Finance Corporation

§ 282. Acceptance of membership by United States in International Finance Corporation

The President is hereby authorized to accept membership for the United States in the International Finance Corporation (hereinafter referred to as the "Corporation"), provided for by the Articles of Agreement of the Corporation deposited in the archives of the International Bank for Reconstruction and Development.

CREDIT(S)

(Aug. 11, 1955, c. 788, § 2, 69 Stat. 669.)

HISTORICAL AND STATUTORY NOTES

Short Title

1955 Acts. Section 1 of Act Aug. 11, 1955 provided that: "This Act [enacting this subchapter] may be cited as the 'International Finance Corporation Act'."

CROSS REFERENCES

Advancement of human rights through financial assistance programs, see 22 USCA § 262d.

LIBRARY REFERENCES

American Digest System

International Law 10.45.
Key Number System Topic No. 221.

RESEARCH REFERENCES

Treatises and Practice Aids

US Sec. L. Int'L Fin. Trans. & Cap. Markets 2d Ed § 4:21, Introduction.

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 22. Foreign Relations and Intercourse
Chapter 7. International Bureaus, Congresses, Etc.
Subchapter XVIII. Privileges and Immunities of International Organizations (Refs & Annos)

§ 288. "International organization" defined; authority of President

For the purposes of this subchapter, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter (including the amendments made by this subchapter) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this subchapter or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this subchapter.

CREDIT(S)

(Dec. 29, 1945, c. 652, Title I, § 1, 59 Stat. 669.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1945 Acts. House Report No. 1203, see 1945 U.S. Code Cong. Service, p. 946.

References in Text

This subchapter, referred to in text, was in the original, "this title", meaning Title I of Act Dec. 29, 1945, c. 652, 59 Stat. 669, which enacted this subchapter. For complete classification of Title I to the Code, see Short Title note below and Tables.

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 22. Foreign Relations and Intercourse
Chapter 7. International Bureaus, Congresses, Etc.
Subchapter XVIII. Privileges and Immunities of International Organizations (Refs & Annos)

§ 288a. Privileges, exemptions, and immunities of international organizations

International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity--

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

CREDIT(S)

28 USCS § 1603

Current through PL 114-244, approved 10/14/16

United States Code Service - Titles 1 through 54 **>** ***TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE*** **>** ***PART IV. JURISDICTION AND VENUE*** **>** ***CHAPTER 97. JURISDICTIONAL IMMUNITIES OF FOREIGN STATES***

§ 1603. Definitions

For purposes of this chapter [*28 USCS §§ 1602* et seq.]--

(a) A "foreign state", except as used in section 1608 of this *title [28 USCS § 1608*], includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity--

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this *title [28 USCS § 1332(c)* and (e)] nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

History

(Added Oct. 21, 1976,*P.L. 94-583*, § 4(a), *90 Stat. 2892*; Feb. 18, 2005, *P.L. 109-2*, § 4(b)(2), *119 Stat. 12*.)

Annotations

Notes

Effective date of section:

This section took effect ninety days after enactment, pursuant to § 8 of Act Oct. 21, 1976, *P.L. 94-583*, which appears as *28 USCS § 1602* note.

Amendments:

C

EXECUTIVE ORDER 10680

DESIGNATING THE INTERNATIONAL FINANCE CORPORATION AS A PUBLIC INTERNATIONAL ORGANIZATION ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

October 2, 1956

By virtue of the authority vested in me by section 1 of the International Organizations Immunities Act, approved December 29, 1945 (59 Stat. 669), and having found that the United States participates in the International Finance Corporation under the authority of the act of Congress approved August 11, 1955, (69 Stat. 669), I hereby designate the International Finance Corporation as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the said International Organizations Immunities Act.

The designation of the International Finance Corporation made by this order is not intended to abridge in any respect privileges, exemptions, and immunities which such corporation may have acquired or may acquire by treaty or Congressional action; nor shall such designation be construed to affect in any way the applicability of the provisions of section 3, Article VI, of the Articles of Agreement of the Corporation deposited in the archives of the International Bank for Reconstruction and Development.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
October 2, 1956.
Exec. Order No. 10680, 21 FR 7647, 1956 WL 8147 (Pres.Notice)
END OF DOCUMENT

Editorial Note: For the President's statement of June 10, 1983, on the extension of the Commission, see the *Weekly Compilation of Presidential Documents* (vol. 19, p. 858).

Executive Order 12425 of June 16, 1983

International Criminal Police Organizations

By virtue of the authority vested in me as President by the Constitution and statutes of the United States, including Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), it is hereby ordered that the International Criminal Police Organization (INTERPOL), in which the United States participates pursuant to 22 U.S.C. 263a, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions and immunities conferred by the International Organizations Immunities Act; except those provided by Section 2(c), the portions of Section 2(d) and Section 3 relating to customs duties and federal internal-revenue importation taxes, Section 4, Section 5, and Section 6 of that Act. This designation is not intended to abridge in any respect the privileges, exemptions or immunities which such organization may have acquired or may acquire by international agreement or by Congressional action.

RONALD REAGAN

THE WHITE HOUSE,
June 16, 1983.

Executive Order 12426 of June 22, 1983

President's Advisory Committee on Women's Business Ownership

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on women's business ownership, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Advisory Committee on Women's Business Ownership. The Committee shall be composed of no more than 15 members appointed or designated by the President. These members shall have particular knowledge and expertise concerning the current status of businesses owned by women in the economy and methods by which these enterprises might be encouraged to expand.

(b) The President shall designate a Chairperson from among the members of the Committee.

Sec. 2. *Functions.* (a) The Committee shall review the status of businesses owned by women; foster, through the private sector, financial, educational, and procurement support for women entrepreneurs; and provide appropri-

Federal Register
Vol. 80, No. 174
Wednesday, September 9, 2015

Presidential Documents

Title 3—

The President

Executive Order 13705 of September 3, 2015

Designating the International Renewable Energy Agency as a Public International Organization Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

Section 1. *Designation*. By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and having found that the International Renewable Energy Agency is a public international organization in which the United States participates within the meaning of the International Organizations Immunities Act, I hereby designate the International Renewable Energy Agency as a public international organization entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act. This designation is not intended to abridge in any respect privileges, exemptions, or immunities that such organization otherwise may have acquired or may acquire by law.

Sec. 2. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

MULTILATERAL

Articles of Agreement of the International Finance Corporation

Open for signature at the International Bank for Reconstruction and Development, Washington.
Signed on behalf of the United States of America December 5, 1955;
Acceptance of the United States of America deposited December 5, 1955,
Entered into force July 20, 1956.

International Finance Corporation

Articles of Agreement [1]

[1] The text printed herein, including signatures and Schedule A, is as certified by the Secretary of the International Bank for Reconstruction and Development on Dec. 7, 1955.

84539 O 57 Pt. II 71

Articles of Agreement of the International Finance Corporation

The Governments on whose behalf this Agreement is signed agree as follows:

INTRODUCTORY ARTICLE

The INTERNATIONAL FINANCE CORPORATION (hereinafter called the Corporation) is established and shall operate in accordance with the following provisions:

ARTICLE I

Purpose

The purpose of the Corporation is to further economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas, thus supplementing the activities of the International Bank for Reconstruction and Development (hereinafter called the Bank). In carrying out this purpose, the Corporation shall

(i) in association with private investors, assist in financing the establishment, improvement and expansion of productive private enterprises which would contribute to the development of its member countries by making investments, without guarantee of repayment by the member government concerned, in cases where sufficient private capital is not available on reasonable terms,

(ii) seek to bring together investment opportunities, domestic and foreign private capital, and experienced management, and

(iii) seek to stimulate, and to help create conditions conducive to, the flow of private capital, domestic and foreign, into productive investment in member countries.

The Corporation shall be guided in all its decisions by the provisions of this Article.

ARTICLE II

Membership and Capital

SECTION 1. *Membership*

(a) The original members of the Corporation shall be those members of the Bank listed in Schedule A hereto which shall, on or before the date specified in Article IX, Section 2(c), accept membership in the Corporation. *Post*, p. 2226.

(b) Membership shall be open to other members of the Bank at such times and in accordance with such terms as may be prescribed by the Corporation.

SECTION 2. *Capital Stock*

(a) The authorized capital stock of the Corporation shall be $100,000,000, in terms of United States dollars.

(b) The authorized capital stock shall be divided into 100,000 shares having a par value of one thousand United States dollars each. Any such shares not initially subscribed by original members shall be available for subsequent subscription in accordance with Section 3(d) of this Article.

(c) The amount of capital stock at any time authorized may be increased by the Board of Governors as follows

(i) by a majority of the votes cast, in case such increase is necessary for the purpose of issuing shares of capital stock on initial subscription by members other than original members, provided that the aggregate of any increases authorized pur-

suant to this subparagraph shall not exceed 10,000 shares,

(ii) in any other case, by a three-fourths majority of the total voting power.

(d) In case of an increase authorized pursuant to paragraph (c)(ii) above, each member shall have a reasonable opportunity to subscribe, under such conditions as the Corporation shall decide, to a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Corporation, but no member shall be obligated to subscribe to any part of the increased capital.

(e) Issuance of shares of stock, other than those subscribed either on initial subscription or pursuant to paragraph (d) above, shall require a three-fourths majority of the total voting power.

(f) Shares of stock of the Corporation shall be available for subscription only by, and shall be issued only to, members.

SECTION 3. *Subscriptions*

(a) Each original member shall subscribe to the number of shares of stock set forth opposite its name in Schedule A. The number of shares of stock to be subscribed by other members shall be determined by the Corporation.

(b) Shares of stock initially subscribed by original members shall be issued at par.

(c) The initial subscription of each original member shall be payable in full within 30 days after either the date on which the Corporation shall begin operations pursuant to Article IX, Section 3(b), or the date on which such original member becomes a member, whichever shall be later, or at such date thereafter as the Corporation shall determine. Payment shall be made in gold or United States dol-

lars in response to a call by the Corporation which shall specify the place or places of payment.

(d) The price and other terms of subscription of shares of stock to be subscribed, otherwise than on initial subscription by original members, shall be determined by the Corporation.

SECTION 4. *Limitation on Liability*

No member shall be liable, by reason of its membership, for obligations of the Corporation.

SECTION 5. *Restriction on Transfers and Pledges of Shares*

Shares of stock shall not be pledged or encumbered in any manner whatever, and shall be transferable only to the Corporation.

ARTICLE III

Operations

SECTION 1. *Financing Operations*

The Corporation may make investments of its funds in productive private enterprises in the territories of its members. The existence of a government or other public interest in such an enterprise shall not necessarily preclude the Corporation from making an investment therein.

SECTION 2. *Forms of Financing*

(a) The Corporation's financing shall not take the form of investments in capital stock. Subject to the foregoing, the Corporation may make investments of its funds in such form or forms as it may deem appropriate in the circumstances, including (but without limitation) investments according to the holder thereof the right to participate in earnings and the right to subscribe to, or to convert the investment into, capital stock.

(b) The Corporation shall not itself exercise any right to subscribe to, or to convert any investment into, capital stock.

SECTION 3. *Operational Principles*

The operations of the Corporation shall be conducted in accordance with the following principles

(i) the Corporation shall not undertake any financing for which in its opinion sufficient private capital could be obtained on reasonable terms,

(ii) the Corporation shall not finance an enterprise in the territories of any member if the member objects to such financing,

(iii) the Corporation shall impose no conditions that the proceeds of any financing by it shall be spent in the territories of any particular country,

(iv) the Corporation shall not assume responsibility for managing any enterprise in which it has invested,

(v) the Corporation shall undertake its financing on terms and conditions which it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the Corporation and the terms and conditions normally obtained by private investors for similar financing,

(vi) the Corporation shall seek to revolve its funds by selling its investments to private investors whenever it can appropriately do so on satisfactory terms,

(vii) the Corporation shall seek to maintain a reasonable diversification in its investments.

SECTION 4. *Protection of Interests*

Nothing in this Agreement shall prevent the Corporation, in the event of actual or threatened default on any of its

investments, actual or threatened insolvency of the enterprise in which such investment shall have been made, or other situations which, in the opinion of the Corporation, threaten to jeopardize such investment, from taking such action and exercising such rights as it may deem necessary for the protection of its interests.

SECTION 5. *Applicability of Certain Foreign Exchange Restrictions*

Funds received by or payable to the Corporation in respect of an investment of the Corporation made in any member's territories pursuant to Section 1 of this Article shall not be free, solely by reason of any provision of this Agreement, from generally applicable foreign exchange restrictions, regulations and controls in force in the territories of that member.

SECTION 6. *Miscellaneous Operations*

In addition to the operations specified elsewhere in this Agreement, the Corporation shall have the power to

(i) borrow funds, and in that connection to furnish such collateral or other security therefor as it shall determine, provided, however, that before making a public sale of its obligations in the markets of a member, the Corporation shall have obtained the approval of that member and of the member in whose currency the obligations are to be denominated,

(ii) invest funds not needed in its financing operations in such obligations as it may determine and invest funds held by it for pension or similar purposes in any marketable securities, all without being subject to the restrictions imposed by other sections of this Article,

(iii) guarantee securities in which it has invested in order to facilitate their sale;

(iv) buy and sell securities it has issued or guaranteed or in which it has invested,

(v) exercise such other powers incidental to its business as shall be necessary or desirable in furtherance of its purposes.

SECTION 7. *Valuation of Currencies*

Whenever it shall become necessary under this Agreement to value any currency in terms of the value of another currency, such valuation shall be as reasonably determined by the Corporation after consultation with the International Monetary Fund.

SECTION 8. *Warning To Be Placed on Securities*

Every security issued or guaranteed by the Corporation shall bear on its face a conspicuous statement to the effect that it is not an obligation of the Bank or, unless expressly stated on the security, of any government.

SECTION 9. *Political Activity Prohibited*

The Corporation and its officers shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in this Agreement.

ARTICLE IV

Organization and Management

SECTION 1. *Structure of the Corporation*

The Corporation shall have a Board of Governors, a Board of Directors, a Chairman of the Board of Directors, a President and such other officers and staff to perform such duties as the Corporation may determine.

SECTION 2. *Board of Governors*

(a) All the powers of the Corporation shall be vested in the Board of Governors.

(b) Each Governor and Alternate Governor of the Bank appointed by a member of the Bank which is also a member of the Corporation shall *ex officio* be a Governor or Alternate Governor, respectively, of the Corporation. No Alternate Governor may vote except in the absence of his principal. The Board of Governors shall select one of the Governors as Chairman of the Board of Governors. Any Governor or Alternate Governor shall cease to hold office if the member by which he was appointed shall cease to be a member of the Corporation.

(c) The Board of Governors may delegate to the Board of Directors authority to exercise any of its powers, except the power to

(i) admit new members and determine the conditions of their admission;

(ii) increase or decrease the capital stock,

(iii) suspend a member,

(iv) decide appeals from interpretations of this Agreement given by the Board of Directors;

(v) make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary and administrative character),

(vi) decide to suspend permanently the operations of the Corporation and to distribute its assets,

(vii) declare dividends;

(viii) amend this Agreement.

(d) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board of Governors or called by the Board of Directors.

(e) The annual meeting of the Board of Governors shall be held in conjunction with the annual meeting of the Board of Governors of the Bank.

(f) A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.

(g) The Corporation may by regulation establish a procedure whereby the Board of Directors may obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.

(h) The Board of Governors, and the Board of Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Corporation.

(i) Governors and Alternate Governors shall serve as such without compensation from the Corporation.

SECTION 3. *Voting*

(a) Each member shall have two hundred fifty votes plus one additional vote for each share of stock held.

(b) Except as otherwise expressly provided, all matters before the Corporation shall be decided by a majority of the votes cast.

SECTION 4. *Board of Directors*

(a) The Board of Directors shall be responsible for the conduct of the general operations of the Corporation, and for this purpose shall exercise all the powers given to it by this Agreement or delegated to it by the Board of Governors.

(b) The Board of Directors of the Corporation shall be composed *ex officio* of each Executive Director of the Bank who shall have been either (i) appointed by a member of the Bank which is also a member of the Corporation, or (ii) elected in an election in which the votes of at least one

member of the Bank which is also a member of the Corporation shall have counted toward his election. The Alternate to each such Executive Director of the Bank shall *ex officio* be an Alternate Director of the Corporation. Any Director shall cease to hold office if the member by which he was appointed, or if all the members whose votes counted toward his election, shall cease to be members of the Corporation.

(c) Each Director who is an appointed Executive Director of the Bank shall be entitled to cast the number of votes which the member by which he was so appointed is entitled to cast in the Corporation. Each Director who is an elected Executive Director of the Bank shall be entitled to cast the number of votes which the member or members of the Corporation whose votes counted toward his election in the Bank are entitled to cast in the Corporation. All the votes which a Director is entitled to cast shall be cast as a unit.

(d) An Alternate Director shall have full power to act in the absence of the Director who shall have appointed him. When a Director is present, his Alternate may participate in meetings but shall not vote.

(e) A quorum for any meeting of the Board of Directors shall be a majority of the Directors exercising not less than one-half of the total voting power.

(f) The Board of Directors shall meet as often as the business of the Corporation may require.

(g) The Board of Governors shall adopt regulations under which a member of the Corporation not entitled to appoint an Executive Director of the Bank may send a representative to attend any meeting of the Board of Directors of the Corporation when a request made by, or a matter particularly affecting, that member is under consideration.

SECTION 5. *Chairman, President and Staff*

(a) The President of the Bank shall be *ex officio* Chairman of the Board of Directors of the Corporation, but shall

have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors but shall not vote at such meetings.

(b) The President of the Corporation shall be appointed by the Board of Directors on the recommendation of the Chairman. The President shall be chief of the operating staff of the Corporation. Under the direction of the Board of Directors and the general supervision of the Chairman, he shall conduct the ordinary business of the Corporation and under their general control shall be responsible for the organization, appointment and dismissal of the officers and staff. The President may participate in meetings of the Board of Directors but shall not vote at such meetings. The President shall cease to hold office by decision of the Board of Directors in which the Chairman concurs.

(c) The President, officers and staff of the Corporation, in the discharge of their offices, owe their duty entirely to the Corporation and to no other authority Each member of the Corporation shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(d) Subject to the paramount importance of securing the highest standards of efficiency and of technical competence, due regard shall be paid, in appointing the officers and staff of the Corporation, to the importance of recruiting personnel on as wide a geographical basis as possible.

SECTION 6. *Relationship to the Bank*

(a) The Corporation shall be an entity separate and distinct from the Bank and the funds of the Corporation shall be kept separate and apart from those of the Bank. The Corporation shall not lend to or borrow from the Bank. The provisions of this Section shall not prevent the Corporation from making arrangements with the Bank regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

(b) Nothing in this Agreement shall make the Corporation liable for the acts or obligations of the Bank, or the Bank liable for the acts or obligations of the Corporation.

SECTION 7 *Relations With Other International Organizations*

The Corporation, acting through the Bank, shall enter into formal arrangements with the United Nations and may enter into such arrangements with other public international organizations having specialized responsibilities in related fields.

SECTION 8. *Location of Offices*

The principal office of the Corporation shall be in the same locality as the principal office of the Bank. The Corporation may establish other offices in the territories of any member.

SECTION 9. *Depositories*

Each member shall designate its central bank as a depository in which the Corporation may keep holdings of such member's currency or other assets of the Corporation or, if it has no central bank, it shall designate for such purpose such other institution as may be acceptable to the Corporation.

SECTION 10. *Channel of Communication*

Each member shall designate an appropriate authority with which the Corporation may communicate in connection with any matter arising under this Agreement.

SECTION 11. *Publication of Reports and Provision of Information*

(a) The Corporation shall publish an annual report containing an audited statement of its accounts and shall circulate to members at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

(b) The Corporation may publish such other reports as it deems desirable to carry out its purposes.

(c) Copies of all reports, statements and publications made under this Section shall be distributed to members.

SECTION 12. *Dividends*

(a) The Board of Governors may determine from time to time what part of the Corporation's net income and surplus, after making appropriate provision for reserves, shall be distributed as dividends.

(b) Dividends shall be distributed *pro rata* in proportion to capital stock held by members.

(c) Dividends shall be paid in such manner and in such currency or currencies as the Corporation shall determine.

ARTICLE V

Withdrawal, Suspension of Membership; Suspension of Operations

SECTION 1. *Withdrawal by Members*

Any member may withdraw from membership in the Corporation at any time by transmitting a notice in writing to the Corporation at its principal office. Withdrawal shall become effective upon the date such notice is received.

SECTION 2. *Suspension of Membership*

(a) If a member fails to fulfill any of its obligations to the Corporation, the Corporation may suspend its membership by decision of a majority of the Governors, exercising a majority of the total voting power. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same majority to restore the member to good standing.

(b) While under suspension, a member shall not be entitled to exercise any rights under this Agreement except the right of withdrawal, but shall remain subject to all obligations.

SECTION 3. *Suspension or Cessation of Membership in the Bank*

Any member which is suspended from membership in, or ceases to be a member of, the Bank shall automatically be suspended from membership in, or cease to be a member of, the Corporation, as the case may be.

SECTION 4. *Rights and Duties of Governments Ceasing To Be Members*

(a) When a government ceases to be a member it shall remain liable for all amounts due from it to the Corporation. The Corporation shall arrange for the repurchase of such government's capital stock as a part of the settlement of accounts with it in accordance with the provisions of this Section, but the government shall have no other rights under this Agreement except as provided in this Section and in Article VIII (c).

(b) The Corporation and the government may agree on the repurchase of the capital stock of the government on such terms as may be appropriate under the circumstances, without regard to the provisions of paragraph (c) below Such agreement may provide, among other things, for a final settlement of all obligations of the government to the Corporation.

(c) If such agreement shall not have been made within six months after the government ceases to be a member or such other time as the Corporation and such government may agree, the repurchase price of the government's capital stock shall be the value thereof shown by the books of the Corporation on the day when the government ceases to be a member. The repurchase of the capital stock shall be subject to the following conditions

(i) payments for shares of stock may be made from time to time, upon their surrender by the government, in such instalments, at such times and in such available currency or currencies as the Corporation reasonably determines, taking into account the financial position of the Corporation,

(ii) any amount due to the government for its capital stock shall be withheld so long as the government or any of its agencies remains liable to the Corporation for payment of any amount and such amount may, at the option of the Corporation, be set off, as it becomes payable, against the amount due from the Corporation;

(iii) if the Corporation sustains a net loss on the investments made pursuant to Article III, Section 1, and held by it on the date when the government ceases to be a member, and the amount of such loss exceeds the amount of the reserves provided therefor on such date, such government shall repay on demand the amount by which the repurchase price of its shares of stock would have been reduced if such loss had been taken into account when the repurchase price was determined.

(d) In no event shall any amount due to a government for its capital stock under this Section be paid until six months after the date upon which the government ceases to be a member. If within six months of the date upon which any government ceases to be a member the Corporation suspends operations under Section 5 of this Article, all rights of such government shall be determined by the provisions of such Section 5 and such government shall be considered still a member of the Corporation for purposes of such Section 5, except that it shall have no voting rights.

SECTION 5. *Suspension of Operations and Settlement of Obligations*

(a) The Corporation may permanently suspend its operations by vote of a majority of the Governors exercising a majority of the total voting power. After such suspension of operations the Corporation shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations. Until final settlement of such obligations and distribution of such assets, the Corporation shall remain in existence and all mutual rights and obligations of the Corporation and its members under this Agreement shall continue unimpaired, except that no member shall be suspended or withdraw and that no distribution shall be made to members except as in this Section provided.

(b) No distribution shall be made to members on account of their subscriptions to the capital stock of the Corporation until all liabilities to creditors shall have been discharged or provided for and until the Board of Governors, by vote of a majority of the Governors exercising a majority of the total voting power, shall have decided to make such distribution.

(c) Subject to the foregoing, the Corporation shall distribute the assets of the Corporation to members *pro rata* in proportion to capital stock held by them, subject, in the case of any member, to prior settlement of all outstanding claims by the Corporation against such member. Such distribution shall be made at such times, in such currencies, and in cash or other assets as the Corporation shall deem fair and equitable. The shares distributed to the several members need not necessarily be uniform in respect of the type of assets distributed or of the currencies in which they are expressed.

(d) Any member receiving assets distributed by the Corporation pursuant to this Section shall enjoy the same rights with respect to such assets as the Corporation enjoyed prior to their distribution.

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ARTICLE VI

Status, Immunities and Privileges

SECTION 1. *Purposes of Article*

To enable the Corporation to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Corporation in the territories of each member.

SECTION 2. *Status of the Corporation*

The Corporation shall possess full juridical personality and, in particular, the capacity

(i) to contract,

(ii) to acquire and dispose of immovable and movable property,

(iii) to institute legal proceedings.

SECTION 3. *Position of the Corporation with Regard to Judicial Process*

Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Corporation shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Corporation.

SECTION 4. *Immunity of Assets from Seizure*

Property and assets of the Corporation, wherever located and by whomsoever held, shall be immune from search,

requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5. *Immunity of Archives*

The archives of the Corporation shall be inviolable.

SECTION 6. *Freedom of Assets from Restrictions*

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of Article III, Section 5, and the other provisions of this Agreement, all property and assets of the Corporation shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7. *Privilege for Communications*

The official communications of the Corporation shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8. *Immunities and Privileges of Officers and Employees*

All Governors, Directors, Alternates, officers and employees of the Corporation

(i) shall be immune from legal process with respect to acts performed by them in their official capacity,

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9. *Immunities from Taxation*

(a) The Corporation, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held

(i) which discriminates against such obligation or security solely because it is issued by the Corporation, or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held.

(i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation, or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

SECTION 10. *Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and

shall inform the Corporation of the detailed action which it has taken.

SECTION 11. *Waiver*

The Corporation in its discretion may waive any of the privileges and immunities conferred under this Article to such extent and upon such conditions as it may determine.

ARTICLE VII

Amendments

(a) This Agreement may be amended by vote of three-fifths of the Governors exercising four-fifths of the total voting power.

(b) Notwithstanding paragraph (a) above, the affirmative vote of all Governors is required in the case of any amendment modifying

(i) the right to withdraw from the Corporation provided in Article V, Section 1,

(ii) the pre-emptive right secured by Article II, Section 2(d),

(iii) the limitation on liability provided in Article II, Section 4.

(c) Any proposal to amend this Agreement, whether emanating from a member, a Governor or the Board of Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board of Governors. When an amendment has been duly adopted, the Corporation shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members three months after the date of the formal communication unless the Board of Governors shall specify a shorter period.

ARTICLE VIII

Interpretation and Arbitration

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Corporation or between any members of the Corporation shall be submitted to the Board of Directors for its decision. If the question particularly affects any member of the Corporation not entitled to appoint an Executive Director of the Bank, it shall be entitled to representation in accordance with Article IV, Section 4(g).

(b) In any case where the Board of Directors has given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board of Governors, the Corporation may, so far as it deems necessary, act on the basis of the decision of the Board of Directors.

(c) Whenever a disagreement arises between the Corporation and a country which has ceased to be a member, or between the Corporation and any member during the permanent suspension of the Corporation, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Corporation, another by the country involved and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the International Court of Justice or such other authority as may have been prescribed by regulation adopted by the Corporation. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE IX

Final Provisions

SECTION 1. *Entry into Force* [1]

This Agreement shall enter into force when it has been signed on behalf of not less than 30 governments whose subscriptions comprise not less than 75 percent of the total subscriptions set forth in Schedule A and when the instruments referred to in Section 2(a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before October 1, 1955.

SECTION 2. *Signature*

(a) Each government on whose behalf this Agreement is signed shall deposit with the Bank an instrument setting forth that it has accepted this Agreement without reservation in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

(b) Each government shall become a member of the Corporation as from the date of the deposit on its behalf of the instrument referred to in paragraph (a) above except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) This Agreement shall remain open for signature until the close of business on December 31, 1956, at the principal office of the Bank on behalf of the governments of the countries whose names are set forth in Schedule A.

(d) After this Agreement shall have entered into force, it shall be open for signature on behalf of the government of any country whose membership has been approved pursuant to Article II, Section 1(b).

[1] July 20, 1956.

SECTION 3. *Inauguration of the Corporation*

(a) As soon as this Agreement enters into force under Section 1 of this Article the Chairman of the Board of Directors shall call a meeting of the Board of Directors.

(b) The Corporation shall begin operations on the date when such meeting is held.

(c) Pending the first meeting of the Board of Governors, the Board of Directors may exercise all the powers of the Board of Governors except those reserved to the Board of Governors under this Agreement.

DONE at Washington, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to act as depository of this Agreement and to notify all governments whose names are set forth in Schedule A of the date when this Agreement shall enter into force under Article IX, Section 1 hereof.

International Bank for Reconstruction
+ Development
Eugene R Black
President

FOR CUBA

MAY 25, 1955

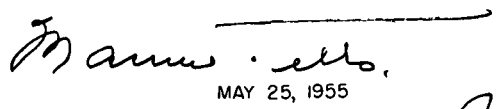
FOR PANAMA [1]

MAY 25, 1955

FOR COSTA RICA [2]

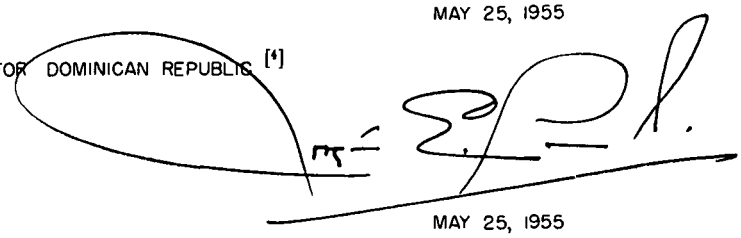
MAY 25, 1955

FOR MEXICO [3]



MAY 25, 1955

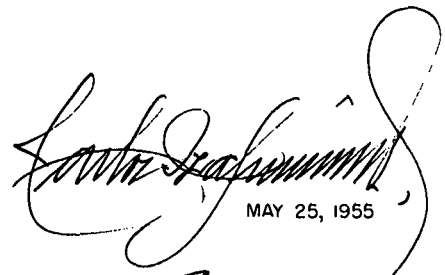
FOR DOMINICAN REPUBLIC [4]



MAY 25, 1955

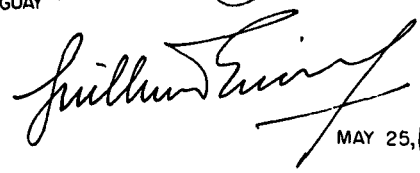
[1] Acceptance deposited Feb. 27, 1956.
[2] Acceptance deposited Jan. 5, 1956.
[3] Acceptance deposited Dec. 30, 1955.
[4] Acceptance deposited Feb. 21, 1956.

FOR HONDURAS [1]



MAY 25, 1955

FOR PARAGUAY [2]

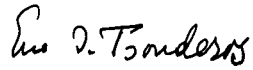


MAY 25, 1955

FOR GUATEMALA [3]

MAY 25, 1955

FOR GREECE



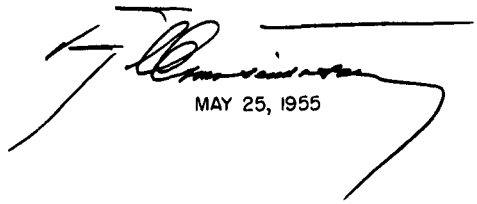
MAY 25, 1955

FOR PERU [4]

MAY 25, 1955

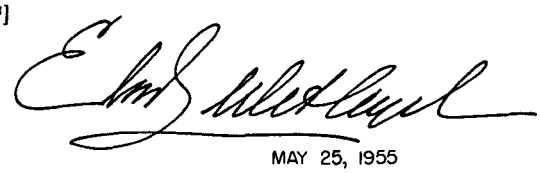
[1] Acceptance deposited Apr. 16, 1956.
[2] Acceptance deposited July 27, 1956.
[3] Acceptance deposited Mar. 14, 1956.
[4] Acceptance deposited Feb. 6, 1956.

FOR NICARAGUA [1]



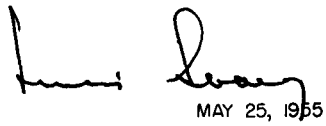
MAY 25, 1955

FOR COLOMBIA [2]



MAY 25, 1955

FOR CHILE

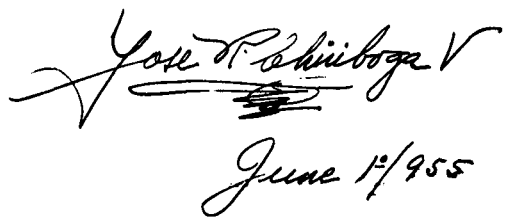


MAY 25, 1955

FOR HAITI [3]

MAY 25, 1955

FOR ECUADOR [4]



June 1st/955

[1] Acceptance deposited Mar. 14, 1956.
[2] Acceptance deposited July 16, 1956.
[3] Acceptance deposited Mar. 9, 1956.
[4] Acceptance deposited Dec. 5, 1955.

FOR PAKISTAN [1]

21 July 1955

FOR ICELAND [2]

18 August 1955

FOR INDIA [3]

19 October 1955

FOR UNITED KINGDOM [4]

25th October 1955.

FOR CANADA [5]

25th October 1955

1 Acceptance deposited May 18, 1956.
2 Acceptance deposited Aug. 18, 1955.
3 Acceptance deposited Apr. 18, 1956.
4 Acceptance deposited Jan. 3, 1956.
5 Acceptance deposited Oct. 25, 1955.

FOR AUSTRIA

December 2, 1955

FOR UNITED STATES [1]

Dec 5/55

[1] Acceptance deposited Dec. 5, 1955.

SCHEDULE A

Subscriptions to Capital Stock of the International Finance Corporation

Country	*Number of Shares*	*Amount (in United States dollars)*
Australia	2,215	2,215,000
Austria	554	554,000
Belgium	2,492	2,492,000
Bolivia	78	78,000
Brazil	1,163	1,163,000
Burma	166	166,000
Canada	3,600	3,600,000
Ceylon	166	166,000
Chile	388	388,000
China	6,646	6,646,000
Colombia	388	388,000
Costa Rica	22	22,000
Cuba	388	388,000
Denmark	753	753,000
Dominican Republic	22	22,000
Ecuador	35	35,000
Egypt	590	590,000
El Salvador	11	11,000
Ethiopia	33	33,000
Finland	421	421,000
France	5,815	5,815,000
Germany	3,655	3,655,000
Greece	277	277,000
Guatemala	22	22,000
Haiti	22	22,000
Hondnras	11	11,000
Iceland	11	11,000
India	4,431	4,431,000
Indonesia	1,218	1,218,000
Iran	372	372,000
Iraq	67	67,000

Country	*Number of Shares*	*Amount (in United States dollars)*
Israel	50	50,000
Italy	1,994	1,994,000
Japan	2,769	2,769,000
Jordan	33	33,000
Lebanon	50	50,000
Luxembourg	111	111,000
Mexico	720	720,000
Netherlands	3,046	3,046,000
Nicaragua	9	9,000
Norway	554	554,000
Pakistan	1,108	1,108,000
Panama	2	2,000
Paraguay	16	16,000
Peru	194	194,000
Philippines	166	166,000
Sweden	1,108	1,108,000
Syria	72	72,000
Thailand	139	139,000
Turkey	476	476,000
Union of South Africa	1,108	1,108,000
United Kingdom	14,400	14,400,000
United States	35,168	35,168,000
Uruguay	116	116,000
Venezuela	116	116,000
Yugoslavia	443	443,000
Total:	**100,000**	**$100,000,000**

TIAS 3620

Note by the Department of State

In addition to the countries which became parties to the Articles of Agreement by signature thereof and deposit of instruments of acceptance as indicated on pages 25–29, the following countries have become parties by virtue of signature of the Articles of Agreement and deposit of instruments of acceptance, on the dates indicated.

Country	*Articles Signed*	*Acceptance Deposited*
Australia	Dec. 23, 1955	Dec. 23, 1955
Bolivia	Apr. 2, 1956	Apr. 2, 1956
Ceylon	Feb. 27, 1956	Feb. 27, 1956
Denmark	June 18, 1956	June 18, 1956
Egypt	Dec. 16, 1955	Dec. 16, 1955
El Salvador	May 4, 1956	May 4, 1956
Ethiopia	Jan. 26, 1956	Jan. 26, 1956
Finland	June 22, 1956	June 22, 1956
France	July 20, 1956	July 20, 1956
Germany, Federal Republic of	July 20, 1956	July 20, 1956
Japan	June 15, 1956	June 15, 1956
Jordan	May 28, 1956	May 28, 1956
Norway	June 11, 1956	June 11, 1956
Sweden	June 6, 1956	June 6, 1956

INTERNATIONAL AGREEMENTS OTHER THAN TREATIES

Articles of agreement between the United States of America and other powers respecting the International Monetary Fund. Formulated at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 1 to July 22, 1944; signed at Washington December 27, 1945; instrument of acceptance by the United States of America deposited December 20, 1945; effective December 27, 1945.

December 27, 1945
[T. I. A. S. 1501]

ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

59 Stat. 512.

The Governments on whose behalf the present Agreement is signed agree as follows:

INTRODUCTORY ARTICLE

The International Monetary Fund is established and shall operate in accordance with the following provisions:

ARTICLE I

PURPOSES

The purposes of the International Monetary Fund are:

(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.

(ii) 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 as primary objectives of economic policy.

(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.

(v) To give confidence to members by making the Fund's resources available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its decisions by the purposes set forth in this Article.

ARTICLE II

MEMBERSHIP

Section 1. *Original members*

The original members of the Fund shall be those of the countries represented at the United Nations Monetary and Financial Conference whose governments accept membership before the date specified in Article XX, Section 2 (e).

Post, p. 1426.

Section 2. *Other members*

Membership shall be open to the governments of other countries at such times and in accordance with such terms as may be prescribed by the Fund.

ARTICLE III

QUOTAS AND SUBSCRIPTIONS

Section 1. *Quotas*

Each member shall be assigned a quota. The quotas of the members represented at the United Nations Monetary and Financial Conference which accept membership before the date specified in Article XX, Section 2 (e), shall be those set forth in Schedule A. The quotas of other members shall be determined by the Fund.

Post, p. 1426.

Section 2. *Adjustment of quotas*

Review every five years.

The Fund shall at intervals of five years review, and if it deems it appropriate propose an adjustment of, the quotas of the members.

Change in quotas.

It may also, if it thinks fit, consider at any other time the adjustment of any particular quota at the request of the member concerned. A four-fifths majority of the total voting power shall be required for any change in quotas and no quota shall be changed without the consent of the member concerned.

Section 3. *Subscriptions: time, place, and form of payment*

(a) The subscription of each member shall be equal to its quota and shall be paid in full to the Fund at the appropriate depository on or before the date when the member becomes eligible under Article XX, Section 4 (c) or (d), to buy currencies from the Fund.

Post, p. 1427.

(b) Each member shall pay in gold, as a minimum, the smaller of

(i) twenty-five percent of its quota; or

(ii) ten percent of its net official holdings of gold and United States dollars as at the date when the Fund notifies members under Article XX, Section 4 (a) that it will shortly be in a position to begin exchange transactions.

Post, p. 1427.

Each member shall furnish to the Fund the data necessary to determine its net official holdings of gold and United States dollars.

(c) Each member shall pay the balance of its quota in its own currency.

(d) If the net official holdings of gold and United States dollars of any member as at the date referred to in (b) (ii) above are not ascertainable because its territories have been occupied by the enemy, the Fund shall fix an appropriate alternative date for determining such holdings. If such date is later than that on which the country becomes eligible under Article XX, Section 4 (c) or (d), to buy currencies from the Fund, the Fund and the member shall agree on a provisional gold payment to be made under (b) above, and the balance of the member's subscription shall be paid in the member's currency, subject to appropriate adjustment between the member and the Fund when the net official holdings have been ascertained.

Post, p. 1427.

Section 4. *Payments when quotas are changed*

Increase in quota.

(a) Each member which consents to an increase in its quota shall, within thirty days after the date of its consent, pay to the Fund twenty-five percent of the increase in gold and the balance in its own currency. If, however, on the date when the member consents to an increase, its monetary reserves are less than its new quota, the Fund may reduce the proportion of the increase to be paid in gold.

Reduction in quota.

(b) If a member consents to a reduction in its quota, the Fund shall, within thirty days after the date of the consent, pay to the member an amount equal to the reduction. The payment shall be made in the member's currency and in such amount of gold as may be necessary to prevent reducing the Fund's holdings of the currency below seventy-five percent of the new quota.

Section 5. *Substitution of securities for currency*

The Fund shall accept from any member in place of any part of the member's currency which in the judgment of the Fund is not needed for its operations, notes or similar obligations issued by the member or the depository designated by the member under Article XIII, Section 2, which shall be non-negotiable, non-interest bearing and payable at their par value on demand by crediting the account of the Fund in the designated depository. This Section shall apply not only to currency subscribed by members but also to any currency otherwise due to, or acquired by, the Fund.

Post, p. 1420.

ARTICLE IV

PAR VALUES OF CURRENCIES

Section 1. *Expression of par values*

(a) The par value of the currency of each member shall be expressed in terms of gold as a common denominator or in terms of the United States dollar of the weight and fineness in effect on July 1, 1944.

(b) All computations relating to currencies of members for the purpose of applying the provisions of this Agreement shall be on the basis of their par values.

Section 2. *Gold purchases based on par values*

The Fund shall prescribe a margin above and below par value for transactions in gold by members, and no member shall buy gold at a price above par value plus the prescribed margin, or sell gold at a price below par value minus the prescribed margin.

Section 3. *Foreign exchange dealings based on parity*

Rates for exchange transactions.

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

(i) in the case of spot exchange transactions, by more than one percent; and

(ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. A member whose monetary authorities, for the settlement of international transactions, in fact freely buy and sell gold within the limits prescribed by the Fund under Section 2 of this Article shall be deemed to be fulfilling this undertaking.

Section 5. *Changes in par values*

(a) A member shall not propose a change in the par value of its currency except to correct a fundamental disequilibrium.

(b) A change in the par value of a member's currency may be made only on the proposal of the member and only after consultation with the Fund.

(c) When a change is proposed, the Fund shall first take into account the changes, if any, which have already taken place in the initial par value of the member's currency as determined under Article XX, Section 4. If the proposed change, together with all previous changes, whether increases or decreases,

Post, p. 1427.

(i) does not exceed ten percent of the initial par value, the Fund shall raise no objection,

(ii) does not exceed a further ten percent of the initial par value, the Fund may either concur or object, but shall declare its attitude within seventy-two hours if the member so requests,

(iii) is not within (i) or (ii) above, the Fund may either concur or object, but shall be entitled to a longer period in which to declare its attitude.

(d) Uniform changes in par values made under Section 7 of this Article shall not be taken into account in determining whether a proposed change falls within (i), (ii), or (iii) of (c) above.

(e) A member may change the par value of its currency without the concurrence of the Fund if the change does not affect the international transactions of members of the Fund.

(f) The Fund shall concur in a proposed change which is within the terms of (c) (ii) or (c) (iii) above if it is satisfied that the change is necessary to correct a fundamental disequilibrium. In particular, provided it is so satisfied, it shall not object to a proposed change because of the domestic social or political policies of the member proposing the change.

Section 6. *Effect of unauthorized changes*

If a member changes the par value of its currency despite the objection of the Fund, in cases where the Fund is entitled to object, the member shall be ineligible to use the resources of the Fund unless the Fund otherwise determines; and if, after the expiration of a reasonable period, the difference between the member and the Fund continues, the matter shall be subject to the provisions of Article XV, Section 2 (b).

Post, p. 1421.

Section 7. *Uniform changes in par values*

Notwithstanding the provisions of Section 5 (b) of this Article, the Fund by a majority of the total voting power may make uniform proportionate changes in the par values of the currencies of all members, provided each such change is approved by every member which has ten percent or more of the total of the quotas. The par value of a member's currency shall, however, not be changed under this provision if, within seventy-two hours of the Fund's action, the member informs the Fund that it does not wish the par value of its currency to be changed by such action.

Section 8. *Maintenance of gold value of the Fund's assets*

(a) The gold value of the Fund's assets shall be maintained notwithstanding changes in the par or foreign exchange value of the currency of any member.

Reduction in gold value.

(b) Whenever (i) the par value of a member's currency is reduced, or (ii) the foreign exchange value of a member's currency has, in the opinion of the Fund, depreciated to a significant extent within that member's territories, the member shall pay to the Fund within a reasonable time an amount of its own currency equal to the reduction in the gold value of its currency held by the Fund.

Increase in gold value.

(c) Whenever the par value of a member's currency is increased, the Fund shall return to such member within a reasonable time an amount in its currency equal to the increase in the gold value of its currency held by the Fund.

(d) The provisions of this Section shall apply to a uniform proportionate change in the par values of the currencies of all members, unless at the time when such a change is proposed the Fund decides otherwise.

Section 9. *Separate currencies within a member's territories*

A member proposing a change in the par value of its currency shall be deemed, unless it declares otherwise, to be proposing a corresponding change in the par value of the separate currencies of all territories

in respect of which it has accepted this Agreement under Article XX, Section 2 (g). It shall, however, be open to a member to declare that its proposal relates either to the metropolitan currency alone, or only to one or more specified separate currencies, or to the metropolitan currency and one or more specified separate currencies.

Post, p. 1428.

ARTICLE V

TRANSACTIONS WITH THE FUND

Section 1. *Agencies dealing with the Fund*

Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund or other similar fiscal agency and the Fund shall deal only with or through the same agencies.

Section 2. *Limitation on the Fund's operations*

Except as otherwise provided in this Agreement, operations on the account of the Fund shall be limited to transactions for the purpose of supplying a member, on the initiative of such member, with the currency of another member in exchange for gold or for the currency of the member desiring to make the purchase.

Section 3. *Conditions governing use of the Fund's resources*

Buying currency of another member.

(a) A member shall be entitled to buy the currency of another member from the Fund in exchange for its own currency subject to the following conditions:

(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;

Post, p. 1410.

(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 not cause the Fund's holdings of the purchasing member's currency to increase by more than twenty-five percent of its quota during the period of twelve months ending on the date of the purchase nor to exceed two hundred percent of its quota, but the twenty-five percent limitation shall apply only to the extent that the Fund's holdings of the member's currency have been brought above seventy-five percent of its quota if they had been below that amount;

Ante, p. 1405; *post*, pp. 1409, 1421.

(iv) The Fund has not previously declared under Section 5 of this Article, Article IV, Section 6, Article VI, Section 1, or Article XV, Section 2 (a), that the member desiring to purchase is ineligible to use the resources of the Fund.

(b) A member shall not be entitled without the permission of the Fund to use the Fund's resources to acquire currency to hold against forward exchange transactions.

Section 4. *Waiver of conditions*

The Fund may in its discretion, and on terms which safeguard its interests, waive any of the conditions prescribed in Section 3 (a) of

this Article, especially in the case of members with a record of avoiding large or continuous use of the Fund's resources. In making a waiver it shall take into consideration periodic or exceptional requirements of the member requesting the waiver. The Fund shall also take into consideration a member's willingness to pledge as collateral security gold, silver, securities, or other acceptable assets having a value sufficient in the opinion of the Fund to protect its interests and may require as a condition of waiver the pledge of such collateral security.

Section 5. *Ineligibility to use the Fund's resources*

Whenever the Fund is of the opinion that any member is using the resources of the Fund in a manner contrary to the purposes of the Fund, it shall present to the member a report setting forth the views of the Fund and prescribing a suitable time for reply. After presenting such a report to a member, the Fund may limit the use of its resources by the member. If no reply to the report is received from the member within the prescribed time, or if the reply received is unsatisfactory, the Fund may continue to limit the member's use of the Fund's resources or may, after giving reasonable notice to the member, declare it ineligible to use the resources of the Fund.

Section 6. *Purchases of currencies from the Fund for gold*

(a) Any member desiring to obtain, directly or indirectly, the currency of another member for gold shall, provided that it can do so with equal advantage, acquire it by the sale of gold to the Fund.

(b) Nothing in this Section shall be deemed to preclude any member from selling in any market gold newly produced from mines located within its territories. Newly mined gold.

Section 7. *Repurchase by a member of its currency held by the Fund*

(a) A member may repurchase from the Fund and the Fund shall sell for gold any part of the Fund's holdings of its currency in excess of its quota.

(b) At the end of each financial year of the Fund, a member shall repurchase from the Fund with gold or convertible currencies, as determined in accordance with Schedule B, part of the Fund's holdings of its currency under the following conditions: *Post*, p. 1433.

(i) Each member shall use in repurchases of its own currency from the Fund an amount of its monetary reserves equal in value to one-half of any increase that has occurred during the year in the Fund's holdings of its currency plus one-half of any increase, or minus one-half of any decrease, that has occurred during the year in the member's monetary reserves. This rule shall not apply when a member's monetary reserves have decreased during the year by more than the Fund's holdings of its currency have increased.

(ii) If after the repurchase described in (i) above (if required) has been made, a member's holdings of another member's currency (or of gold acquired from that member) are found to

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have increased by reason of transactions in terms of that currency with other members or persons in their territories, the member whose holdings of such currency (or gold) have thus increased shall use the increase to repurchase its own currency from the Fund.

(c) None of the adjustments described in (b) above shall be carried to a point at which

(i) the member's monetary reserves are below its quota, or

(ii) the Fund's holdings of its currency are below seventy-five percent of its quota, or

(iii) the Fund's holdings of any currency required to be used are above seventy-five percent of the quota of the member concerned.

Section 8. *Charges*

Service charge.

(a) Any member buying the currency of another member from the Fund in exchange for its own currency shall pay a service charge uniform for all members of three-fourths percent in addition to the parity price. The Fund in its discretion may increase this service charge to not more than one percent or reduce it to not less than one-half percent.

Handling charge.

(b) The Fund may levy a reasonable handling charge on any member buying gold from the Fund or selling gold to the Fund.

(c) The Fund shall levy charges uniform for all members which shall be payable by any member on the average daily balances of its currency held by the Fund in excess of its quota. These charges shall be at the following rates:

(i) *On amounts not more than twenty-five percent in excess of the quota*: no charge for the first three months; one-half percent per annum for the next nine months; and thereafter an increase in the charge of one-half percent for each subsequent year.

(ii) *On amounts more than twenty-five percent and not more than fifty percent in excess of the quota*: an additional one-half percent for the first year; and an additional one-half percent for each subsequent year.

(iii) *On each additional bracket of twenty-five percent in excess of the quota*: an additional one-half percent for the first year; and an additional one-half percent for each subsequent year.

(d) Whenever the Fund's holdings of a member's currency are such that the charge applicable to any bracket for any period has reached the rate of four percent per annum, the Fund and the member shall consider means by which the Fund's holdings of the currency can be reduced. Thereafter, the charges shall rise in accordance with the provisions of (c) above until they reach five percent and failing agreement, the Fund may then impose such charges as it deems appropriate.

Change in rates.

(e) The rates referred to in (c) and (d) above may be changed by a three-fourths majority of the total voting power.

(f) All charges shall be paid in gold. If, however, the member's monetary reserves are less than one-half of its quota, it shall pay in gold only that proportion of the charges due which such reserves bear to one-half of its quota, and shall pay the balance in its own currency. Charges payable in gold.

ARTICLE VI

CAPITAL TRANSFERS

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

(b) Nothing in this Section shall be deemed

(i) to prevent the use of the resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking or other business, or

(ii) to affect capital movements which are met out of a member's own resources of gold and foreign exchange, but members undertake that such capital movements will be in accordance with the purposes of the Fund.

Section 2. *Special provisions for capital transfers*

If the Fund's holdings of the currency of a member have remained below seventy-five percent of its quota for an immediately preceding period of not less than six months, such member, if it has not been declared ineligible to use the resources of the Fund under Section 1 of this Article, Article IV, Section 6, Article V, Section 5, or Article XV, Section 2 (a), shall be entitled, notwithstanding the provisions of Section 1 (a) of this Article, to buy the currency of another member from the Fund with its own currency for any purpose, including capital transfers. Purchases for capital transfers under this Section shall not, however, be permitted if they have the effect of raising the Fund's holdings of the currency of the member desiring to purchase above seventy-five percent of its quota, or of reducing the Fund's holdings of the currency desired below seventy-five percent of the quota of the member whose currency is desired. *Ante*, pp. 1405, 1407; *post*, p. 1421.

Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b), and in Article XIV, Section 2. *Post*, p. 1410. *Post*, p. 1420.

ARTICLE VII

SCARCE CURRENCIES

Section 1. *General scarcity of currency*

Report.

If the Fund finds that a general scarcity of a particular currency is developing, the Fund may so inform members and may issue a report setting forth the causes of the scarcity and containing recommendations designed to bring it to an end. A representative of the member whose currency is involved shall participate in the preparation of the report.

Section 2. *Measures to replenish the Fund's holdings of scarce currencies*

The Fund may, if it deems such action appropriate to replenish its holdings of any member's currency, take either or both of the following steps:

(i) Propose to the member that, on terms and conditions agreed between the Fund and the member, the latter lend its currency to the Fund or that, with the approval of the member, the Fund borrow such currency from some other source either within or outside the territories of the member, but no member shall be under any obligation to make such loans to the Fund or to approve the borrowing of its currency by the Fund from any other source.

(ii) Require the member to sell its currency to the Fund for gold.

Section 3. *Scarcity of the Fund's holdings*

(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 1 of this Article, shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation and any other pertinent considerations. The Fund shall also issue a report concerning its action.

(b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV, Sections 3 and 4, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question; and they shall be relaxed and removed as rapidly as conditions permit.

Ante, p. 1404.

(c) The authorization under (b) above shall expire whenever the Fund formally declares the currency in question to be no longer scarce.

Section 4. *Administration of restrictions*

Any member imposing restrictions in respect of the currency of any other member pursuant to the provisions of Section 3 (b) of this Article shall give sympathetic consideration to any representations by the other member regarding the administration of such restrictions.

Section 5. *Effect of other international agreements on restrictions*

Members agree not to invoke the obligations of any engagements entered into with other members prior to this Agreement in such a manner as will prevent the operation of the provisions of this Article.

ARTICLE VIII

GENERAL OBLIGATIONS OF MEMBERS

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions. *Post*, p. 1420.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Section 3. *Avoidance of discriminatory currency practices*

No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1, to engage in, any discriminatory currency arrangements or multiple currency practices except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force the member concerned shall consult with the Fund as to their progressive removal unless they are maintained or imposed under Article XIV, Section 2, in which case the provisions of Section 4 of that Article shall apply. *Ante*, p. 1406. *Post*, p. 1420.

Section 4. *Convertibility of foreign held balances*

(a) Each member shall buy balances of its currency held by another member if the latter, in requesting the purchase, represents

(i) that the balances to be bought have been recently acquired as a result of current transactions; or

(ii) that their conversion is needed for making payments for current transactions.

The buying member shall have the option to pay either in the currency of the member making the request or in gold.

(b) The obligation in (a) above shall not apply

(i) when the convertibility of the balances has been restricted consistently with Section 2 of this Article, or Article VI, Section 3; or *Ante*, p. 1409.

(ii) when the balances have accumulated as a result of transactions effected before the removal by a member of restrictions maintained or imposed under Article XIV, Section 2; or

Post, p. 1420.

(iii) when the balances have been acquired contrary to the exchange regulations of the member which is asked to buy them; or

(iv) when the currency of the member requesting the purchase has been declared scarce under Article VII, Section 3 (a); or

Ante, p. 1410.

(v) when the member requested to make the purchase is for any reason not entitled to buy currencies of other members from the Fund for its own currency.

Section 5. *Furnishing of information*

(a) The Fund may require members to furnish it with such information as it deems necessary for its operations, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on the following matters:

(i) Official holdings at home and abroad, of (1) gold, (2) foreign exchange.

(ii) Holdings at home and abroad by banking and financial agencies, other than official agencies, of (1) gold, (2) foreign exchange.

(iii) Production of gold.

(iv) Gold exports and imports according to countries of destination and origin.

(v) Total exports and imports of merchandise, in terms of local currency values, according to countries of destination and origin.

(vi) International balance of payments, including (1) trade in goods and services, (2) gold transactions, (3) known capital transactions, and (4) other items.

(vii) International investment position, *i.e.*, investments within the territories of the member owned abroad and investments abroad owned by persons in its territories so far as it is possible to furnish this information.

(viii) National income.

(ix) Price indices, *i. e.*, indices of commodity prices in wholesale and retail markets and of export and import prices.

(x) Buying and selling rates for foreign currencies.

(xi) Exchange controls, *i.e.*, a comprehensive statement of exchange controls in effect at the time of assuming membership in the Fund and details of subsequent changes as they occur.

(xii) Where official clearing arrangements exist, details of amounts awaiting clearance in respect of commercial and financial transactions, and of the length of time during which such arrears have been outstanding.

Furnishing of information.

(b) In requesting information the Fund shall take into consideration the varying ability of members to furnish the data requested.

Members shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Members undertake, however, to furnish the desired information in as detailed and accurate a manner as is practicable, and, so far as possible, to avoid mere estimates.

(c) The Fund may arrange to obtain further information by agreement with members. It shall act as a centre for the collection and exchange of information on monetary and financial problems, thus facilitating the preparation of studies designed to assist members in developing policies which further the purposes of the Fund.

Section 6. *Consultation between members regarding existing international agreements*

Where under this Agreement a member is authorized in the special or temporary circumstances specified in the Agreement to maintain or establish restrictions on exchange transactions, and there are other engagements between members entered into prior to this Agreement which conflict with the application of such restrictions, the parties to such engagements will consult with one another with a view to making such mutually acceptable adjustments as may be necessary. The provisions of this Article shall be without prejudice to the operation of Article VII, Section 5.

Ante, p. 1411.

ARTICLE IX

STATUS, IMMUNITIES AND PRIVILEGES

Section 1. *Purposes of Article*

To enable the Fund to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Fund in the territories of each member.

Section 2. *Status of the Fund*

The Fund shall possess full juridical personality, and, in particular, the capacity:

(i) to contract;
(ii) to acquire and dispose of immovable and movable property;
(iii) to institute legal proceedings.

Section 3. *Immunity from judicial process*

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

Section 4. *Immunity from other action*

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. *Immunity of archives*

The archives of the Fund shall be inviolable.

Section 6. *Freedom of assets from restrictions*

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. *Privilege for communications*

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

Section 8. *Immunities and privileges of officers and employees*

All governors, executive directors, alternates, officers and employees of the Fund

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity.

(ii) Not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members.

(iii) shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. *Immunities from taxation*

(a) The Fund, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to executive directors, alternates, officers or employees of the Fund who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held

(i) which discriminates against such obligation or security solely because of its origin; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

Section 10. *Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken.

ARTICLE X

RELATIONS WITH OTHER INTERNATIONAL ORGANIZATIONS

The Fund shall cooperate within the terms of this Agreement with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article XVII. Post, p. 1423.

ARTICLE XI

RELATIONS WITH NON-MEMBER COUNTRIES

Section 1. *Undertakings regarding relations with non-member countries*

Each member undertakes:

(i) Not to engage in, nor to permit any of its fiscal agencies referred to in Article V, Section 1, to engage in, any transactions with a non-member or with persons in a non-member's territories which would be contrary to the provisions of this Agreement or the purposes of the Fund; Ante, p. 1406.

(ii) Not to cooperate with a non-member or with persons in a non-member's territories in practices which would be contrary to the provisions of this Agreement or the purposes of the Fund; and

(iii) To cooperate with the Fund with a view to the application in its territories of appropriate measures to prevent transactions with non-members or with persons in their territories which would be contrary to the provisions of this Agreement or the purposes of the Fund.

Section 2. *Restrictions on transactions with non-member countries*

Nothing in this Agreement shall affect the right of any member to impose restrictions on exchange transactions with non-members or with persons in their territories unless the Fund finds that such restrictions prejudice the interests of members and are contrary to the purposes of the Fund.

ARTICLE XII

ORGANIZATION AND MANAGEMENT

Section 1. *Structure of the Fund*

The Fund shall have a Board of Governors, Executive Directors, a Managing Director and a staff.

Section 2. *Board of Governors*

(a) All powers of the Fund shall be vested in the Board of Governors, consisting of one governor and one alternate appointed by each member in such manner as it may determine. Each governor and each alternate shall serve for five years, subject to the pleasure of the member appointing him, and may be reappointed. No alternate may vote except in the absence of his principal. The Board shall select one of the governors as chairman.

Board of Governors. Delegation of powers; exceptions.

(b) The Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board, except the power to:

(i) Admit new members and determine the conditions of their admission.
(ii) Approve a revision of quotas.
(iii) Approve a uniform change in the par value of the currencies of all members.
(iv) Make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary or administrative character).
(v) Determine the distribution of the net income of the Fund.
(vi) Require a member to withdraw.
(vii) Decide to liquidate the Fund.
(viii) Decide appeals from interpretations of this Agreement given by the Executive Directors.

Meetings.

(c) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Executive Directors. Meetings of the Board shall be called by the Directors whenever requested by five members or by members having one quarter of the total voting power.

Quorum.

(d) A quorum for any meeting of the Board of Governors shall be a majority of the governors exercising not less than two-thirds of the total voting power.

(e) Each governor shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.

Post, p. 1418.

(f) The Board of Governors may by regulation establish a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Fund, may obtain a vote of the governors on a specific question without calling a meeting of the Board.

Rules and regulations.

(g) The Board of Governors, and the Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Fund.

Compensation.

(h) Governors and alternates shall serve as such without compensation from the Fund, but the Fund shall pay them reasonable expenses incurred in attending meetings.

(i) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and the salary and terms of the contract of service of the Managing Director.

Section 3. *Executive Directors*

(a) The Executive Directors shall be responsible for the conduct of the general operations of the Fund, and for this purpose shall exercise all the powers delegated to them by the Board of Governors.

(b) There shall be not less than twelve directors who need not be governors, and of whom

(i) Five shall be appointed by the five members having the largest quotas;

(ii) Not more than two shall be appointed when the provisions of (c) below apply;

(iii) Five shall be elected by the members not entitled to appoint directors, other than the American Republics; and

(iv) Two shall be elected by the American Republics not entitled to appoint directors.

Members.

For the purposes of this paragraph, members means governments of countries whose names are set forth in Schedule A, whether they become members in accordance with Article XX or in accordance with Article II, Section 2. When governments of other countries become members, the Board of Governors may, by a four-fifths majority of the total voting power, increase the number of directors to be elected.

Post, p. 1432.
Post, p. 1425.
Ante, p. 1402.

(c) If, at the second regular election of directors and thereafter, the members entitled to appoint directors under (b) (i) above do not include the two members, the holdings of whose currencies by the Fund have been, on the average over the preceding two years, reduced below their quotas by the largest absolute amounts in terms of gold as a common denominator, either one or both of such members, as the case may be, shall be entitled to appoint a director.

(d) Subject to Article XX, Section 3(b) elections of elective directors shall be conducted at intervals of two years in accordance with the provisions of Schedule C, supplemented by such regulations as the Fund deems appropriate. Whenever the Board of Governors increases the number of directors to be elected under (b) above, it shall issue regulations making appropriate changes in the proportion of votes required to elect directors under the provisions of Schedule C.

Post, p. 1426.
Post, p. 1434.

Alternates.

(e) Each director shall appoint an alternate with full power to act for him when he is not present. When the directors appointing them are present, alternates may participate in meetings but may not vote.

Term of office of directors.

(f) Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected for the remainder of the term by the members who elected the former director. A majority of the votes cast shall be required for election. While the office remains vacant, the alternate of the former director shall exercise his powers, except that of appointing an alternate.

Meetings.

(g) The Executive Directors shall function in continuous session at the principal office of the Fund and shall meet as often as the business of the Fund may require.

Quorum.

(h) A quorum for any meeting of the Executive Directors shall be a majority of the directors representing not less than one-half of the voting power.

Post, p. 1418.

(i) Each appointed director shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him. Each elected director shall be entitled to cast the number of votes which counted towards his election. When the provisions of Section 5 (b) of this Article are applicable, the votes which a director would otherwise be entitled to cast shall be increased or decreased

correspondingly. All the votes which a director is entitled to cast shall be cast as a unit.

(j) The Board of Governors shall adopt regulations under which a member not entitled to appoint a director under (b) above may send a representative to attend any meeting of the Executive Directors when a request made by, or a matter particularly affecting, that member is under consideration.

Committees.

(k) The Executive Directors may appoint such committees as they deem advisable. Membership of committees need not be limited to governors or directors or their alternates.

Section 4. *Managing Director and staff*

(a) The Executive Directors shall select a Managing Director who shall not be a governor or an executive director. The Managing Director shall be chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The Managing Director shall cease to hold office when the Executive Directors so decide.

(b) The Managing Director shall be chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Directors, the ordinary business of the Fund. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the staff of the Fund.

(c) The Managing Director and the staff of the Fund, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each member of the Fund shall respect the international character of this duty and shall refrain from all attempts to influence any of the staff in the discharge of his functions.

(d) In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

Section 5. *Voting*

(a) Each member shall have two hundred fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand United States dollars.

Ante, pp. 1406, 1407.

(b) Whenever voting is required under Article V, Section 4 or 5, each member shall have the number of votes to which it is entitled under (a) above, adjusted:

(i) by the addition of one vote for the equivalent of each four hundred thousand United States dollars of net sales of its currency up to the date when the vote is taken, or

(ii) by the subtraction of one vote for the equivalent of each four hundred thousand United States dollars of its net purchases of the currencies of other members up to the date when the vote is taken

provided, that neither net purchases nor net sales shall be deemed at any time to exceed an amount equal to the quota of the member involved.

(c) For the purpose of all computations under this Section, United States dollars shall be deemed to be of the weight and fineness in effect on July 1, 1944, adjusted for any uniform change under Article IV, Section 7, if a waiver is made under Section 8 (d) of that Article. *Ante*, p. 1405.

(d) Except as otherwise specifically provided, all decisions of the fund shall be made by a majority of the votes cast.

Section 6. *Distribution of net income*

(a) The Board of Governors shall determine annually what part of the Fund's net income shall be placed to reserve and what part, if any, shall be distributed.

(b) If any distribution is made, there shall first be distributed a two percent non-cumulative payment to each member on the amount by which seventy-five percent of its quota exceeded the Fund's average holdings of its currency during that year. The balance shall be paid to all members in proportion to their quotas. Payments to each member shall be made in its own currency.

Section 7. *Publication of reports*

(a) The Fund shall publish an annual report containing an audited statement of its accounts, and shall issue, at intervals of three months or less, a summary statement of its transactions and its holdings of gold and currencies of members.

(b) The Fund may publish such other reports as it deems desirable for carrying out its purposes.

Section 8. *Communication of views to members*

The Fund shall at all times have the right to communicate its views informally to any member on any matter arising under this Agreement. The Fund may, by a two-thirds majority of the total voting power, decide to publish a report made to a member regarding its monetary or economic conditions and developments which directly tend to produce a serious disequilibrium in the international balance of payments of members. If the member is not entitled to appoint an executive director, it shall be entitled to representation in accordance with Section 3 (j) of this Article. The Fund shall not publish a report involving changes in the fundamental structure of the economic organization of members. Reports. *Ante*, p. 1418.

ARTICLE XIII

OFFICES AND DEPOSITORIES

Section 1. *Location of offices*

The principal office of the Fund shall be located in the territory of the member having the largest quota, and agencies or branch offices may be established in the territories of other members.

Section 2. *Depositories*

(a) Each member country shall designate its central bank as a depository for all the Fund's holdings of its currency, or if it has no central bank it shall designate such other institution as may be acceptable to the Fund.

Other assets in designated depositories.

(b) The Fund may hold other assets, including gold, in the depositories designated by the five members having the largest quotas and in such other designated depositories as the Fund may select. Initially, at least one-half of the holdings of the Fund shall be held in the depository designated by the member in whose territories the Fund has its principal office and at least forty percent shall be held in the depositories designated by the remaining four members referred to above. However, all transfers of gold by the Fund shall be made with due regard to the costs of transport and anticipated requirements of the Fund. In an emergency the Executive Directors may transfer all or any part of the Fund's gold holdings to any place where they can be adequately protected.

Transfers of gold.

Section 3. *Guarantee of the Fund's assets*

Each member guarantees all assets of the Fund against loss resulting from failure or default on the part of the depository designated by it.

ARTICLE XIV

TRANSITIONAL PERIOD

Section 1. *Introduction*

The Fund is not intended to provide facilities for relief or reconstruction or to deal with international indebtedness arising out of the war.

Section 2. *Exchange restrictions*

In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

Section 3. *Notification to the Fund*

Each member shall notify the Fund before it becomes eligible under Article XX, Section 4 (c) or (d), to buy currency from the Fund, whether it intends to avail itself of the transitional arrangements in

Post, p. 1427.

Section 2 of this Article, or whether it is prepared to accept the obligations of Article VIII, Sections 2, 3, and 4. A member availing itself of the transitional arrangements shall notify the Fund as soon thereafter as it is prepared to accept the above-mentioned obligations.

Ante, p. 1411.

Section 4. *Action of the Fund relating to restrictions*

Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other articles of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2 (a).

Ante, p. 1411.

Section 5. *Nature of transitional period*

In its relations with members, the Fund shall recognize that the post-war transitional period will be one of change and adjustment and in making decisions on requests occasioned thereby which are presented by any member it shall give the member the benefit of any reasonable doubt.

ARTICLE XV

WITHDRAWAL FROM MEMBERSHIP

Section 1. *Right of members to withdraw*

Any member may withdraw from the Fund at any time by transmitting a notice in writing to the Fund at its principal office. Withdrawal shall become effective on the date such notice is received.

Section 2. *Compulsory withdrawal*

(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article IV, Section 6, Article V, Section 5, or Article VI, Section 1.

Ante, pp. 1405, 1407, 1409.

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement, or a difference between a member and the Fund under Article IV, Section 6, continues, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the governors representing a majority of the total voting power.

Ante, p. 1405.

(c) Regulations shall be adopted to ensure that before action is taken against any member under (a) or (b) above, the member shall

be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing.

Section 3. *Settlement of accounts with members withdrawing*

When a member withdraws from the Fund, normal transactions of the Fund in its currency shall cease and settlement of all accounts between it and the Fund shall be made with reasonable despatch by agreement between it and the Fund. If agreement is not reached promptly, the provisions of Schedule D shall apply to the settlement of accounts.

Post, p. 1435.

ARTICLE XVI

EMERGENCY PROVISIONS

Section 1. *Temporary suspension*

(a) In the event of an emergency or the development of unforeseen circumstances threatening the operations of the Fund, the Executive Directors by unanimous vote may suspend for a period of not more than one hundred twenty days the operation of any of the following provisions:

(i) Article IV, Sections 3 and 4 (b) *Ante*, p. 1404.

(ii) Article V, Sections 2, 3, 7, 8 (a) and (f) *Ante*, pp. 1406, 1407, 1408.

(iii) Article VI, Section 2 *Ante*, p. 1409.

(iv) Article XI, Section 1 *Ante*, p. 1415.

(b) Simultaneously with any decision to suspend the operation of any of the foregoing provisions, the Executive Directors shall call a meeting of the Board of Governors for the earliest practicable date.

Extension of suspension.

(c) The Executive Directors may not extend any suspension beyond one hundred twenty days. Such suspension may be extended, however, for an additional period of not more than two hundred forty days, if the Board of Governors by a four-fifths majority of the total voting power so decides, but it may not be further extended except by amendment of this Agreement pursuant to Article XVII.

Termination.

(d) The Executive Directors may, by a majority of the total voting power, terminate such suspension at any time.

Section 2. *Liquidation of the Fund*

(a) The Fund may not be liquidated except by decision of the Board of Governors. In an emergency, if the Executive Directors decide that liquidation of the Fund may be necessary, they may temporarily suspend all transactions, pending decision by the Board.

(b) If the Board of Governors decides to liquidate the Fund, the Fund shall forthwith cease to engage in any activities except those incidental to the orderly collection and liquidation of its assets and the settlement of its liabilities, and all obligations of members under this Agreement shall cease except those set out in this Article, in Article XVIII, paragraph (c), in Schedule D, paragraph 7, and in Schedule E.

Post, pp. 1423, 1436.

(c) Liquidation shall be administered in accordance with the provisions of Schedule E.

by the Fund. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE XIX

EXPLANATION OF TERMS

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following:

Monetary reserves.

(a) A member's monetary reserves means its net official holdings of gold, of convertible currencies of other members, and of the currencies of such non-members as the Fund may specify.

Official holdings.

(b) The official holdings of a member means central holdings (that is, the holdings of its Treasury, central bank, stabilization fund, or similar fiscal agency).

(c) The holdings of other official institutions or other banks within its territories may, in any particular case, be deemed by the Fund, after consultation with the member, to be official holdings to the extent that they are substantially in excess of working balances; provided that for the purpose of determining whether, in a particular case, holdings are in excess of working balances, there shall be deducted from such holdings amounts of currency due to official institutions and banks in the territories of members or non-members specified under (d) below.

Convertible currencies.

(d) A member's holdings of convertible currencies means its holdings of the currencies of other members which are not availing themselves of the transitional arrangements under Article XIV, Section 2, together with its holdings of the currencies of such non-members as the Fund may from time to time specify. The term currency for this purpose includes without limitation coins, paper money, bank balances, bank acceptances, and government obligations issued with a maturity not exceeding twelve months.

Ante, p. 1420.

Currency.

Calculation of monetary reserves.

(e) A member's monetary reserves shall be calculated by deducting from its central holdings the currency liabilities to the Treasuries, central banks, stabilization funds, or similar fiscal agencies of other members or non-members specified under (d) above, together with similar liabilities to other official institutions and other banks in the territories of members, or non-members specified under (d) above. To these net holdings shall be added the sums deemed to be official holdings of other official institutions and other banks under (c) above.

(f) The Fund's holdings of the currency of a member shall include any securities accepted by the Fund under Article III, Section 5.

Ante, p. 1403.

(g) The Fund, after consultation with a member which is availing itself of the transitional arrangements under Article XIV, Section 2, may deem holdings of the currency of that number which carry specified rights of conversion into another currency or into gold to be holdings of convertible currency for the purpose of the calculation of monetary reserves.

Ante, p. 1420.

ARTICLE XVII

AMENDMENTS

(a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Fund shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having four-fifths of the total voting power, have accepted the proposed amendment, the Fund shall certify the fact by a formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying

(i) the right to withdraw from the Fund (Article XV, Section 1); *Ante*, p. 1421.

(ii) the provision that no change in a member's quota shall be made without its consent (Article III, Section 2); *Ante*, p. 1402.

(iii) the provision that no change may be made in the par value of a member's currency except on the proposal of that member (Article IV, Section 5 (b)). *Ante*, p. 1404.

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

ARTICLE XVIII

INTERPRETATION

(a) 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. If the question particularly affects any member not entitled to appoint an executive director it shall be entitled to representation in accordance with Article XII, Section 3 (j). *Ante*, p. 1418.

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

Submittal of disagreement to arbitration.

(c) Whenever a disagreement arises between the Fund and a member which has withdrawn, or between the Fund and any member during liquidation of the Fund, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Fund, another by the member or withdrawing member and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted

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(b) Each government shall become a member of the Fund as from the date of the deposit on its behalf of the instrument referred to in (a) above, except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and all governments whose membership is approved in accordance with Article II, Section 2, of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.

Post, p. 1432.

Ante, p. 1402.

Transmittal of funds for administrative purposes.

(d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one percent of its total subscription in gold or United States dollars for the purpose of meeting administrative expenses of the Fund. The Government of the United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Fund when the initial meeting has been called under Section 3 of this Article. If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.

(e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.

Post, p. 1432.

(f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 2.

Ante, p. 1402.

(g) By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.

Enemy occupation.

(h) In the case of governments whose metropolitan territories have been under enemy occupation, the deposit of the instrument referred to in (a) above may be delayed until one hundred eighty days after the date on which these territories have been liberated. If, however, it is not deposited by any such government before the expiration of this period the signature affixed on behalf of that government shall become void and the portion of its subscription paid under (d) above shall be returned to it.

(i) Paragraphs (d) and (h) shall come into force with regard to each signatory government as from the date of its signature.

Section 3. *Inauguration of the Fund*

(a) As soon as this Agreement enters into force under Section 1 of this Article, each member shall appoint a governor and the member having the largest quota shall call the first meeting of the Board of Governors.

Provisional executive directors.

(b) At the first meeting of the Board of Governors, arrangements shall be made for the selection of provisional executive directors. The governments of the five countries for which the largest quotas

(h) For the purpose of calculating gold subscriptions under Article III, Section 3, a member's net official holdings of gold and United States dollars shall consist of its official holdings of gold and United States currency after deducting central holdings of its currency by other countries and holdings of its currency by other official institutions and other banks if these holdings carry specified rights of conversion into gold or United States currency.

Ante, p. 1402.

(i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

Payments for current transactions.

(1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
(2) Payments due as interest on loans and as net income from other investments;
(3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;
(4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

ARTICLE XX

FINAL PROVISIONS

Section 1. *Entry into force*

This Agreement shall enter into force when it has been signed on behalf of governments having sixty-five percent of the total of the quotas set forth in Schedule A and when the instruments referred to in Section 2(a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

Post, p. 1432.

Section 2. *Signature*

(a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.[1]

Deposit of instruments of acceptance.

[1] [Instruments of acceptance have been deposited with the Department of State by the following countries: Belgium on Dec. 27, 1945; Bolivia on Dec. 27, 1945; Brazil on Jan. 14, 1946; Canada on Dec. 27, 1945; Chile on Dec. 31, 1945; China on Dec. 26, 1945; Colombia on Dec. 27, 1945; Costa Rica on Jan. 8, 1946; Czechoslovakia on Dec. 26, 1945; Dominican Republic on Dec. 28, 1945; Ecuador on Dec. 28, 1945; Egypt on Dec. 26, 1945; Ethiopia on Dec. 12, 1945; France on Dec. 27, 1945; Greece on Dec. 26, 1945; Guatemala on Dec. 28, 1945; Honduras on Dec. 26, 1945; Iceland on Dec. 27, 1945; India on Dec. 27, 1945; Iran on Dec. 29, 1945; Iraq on Dec. 26, 1945; Luxembourg on Dec. 26, 1945; Mexico on Dec. 31, 1945; Netherlands on Dec. 26, 1945; Norway on Dec. 27, 1945; Paraguay on Dec. 28, 1945; Peru on Dec. 31, 1945; Philippine Commonwealth on Dec. 21, 1945; Poland on Jan. 10, 1946; Union of South Africa on Dec. 26, 1945; United Kingdom of Great Britain and Northern Ireland on Dec. 27, 1945; United States of America on Dec. 20, 1945; Yugoslavia on Dec. 26, 1945.]

(i) The period of ninety days shall be extended so as to end on a date to be fixed by agreement between the Fund and the member.

(ii) Within the extended period the member may, if the Fund has begun exchange transactions, buy from the Fund with its currency the currencies of other members, but only under such conditions and in such amounts as may be prescribed by the Fund.

(iii) At any time before the date fixed under (i) above, changes may be made by agreement with the Fund in the par value communicated under (a) above.

(e) If a member whose metropolitan territory has been occupied by the enemy adopts a new monetary unit before the date to be fixed under (d) (i) above, the par value fixed by that member for the new unit shall be communicated to the Fund and the provisions of (d) above shall apply.

(f) Changes in par values agreed with the Fund under this Section shall not be taken into account in determining whether a proposed change falls within (i), (ii), or (iii) of Article IV, Section 5 (c).

Ante, p. 1404.

(g) A member communicating to the Fund a par value for the currency of its metropolitan territory shall simultaneously communicate a value, in terms of that currency, for each separate currency, where such exists, in the territories in respect of which it has accepted this Agreement under Section 2 (g) of this Article, but no member shall be required to make a communication for the separate currency of a territory which has been occupied by the enemy while that territory is a theater of major hostilities or for such period thereafter as the Fund may determine. On the basis of the par value so communicated, the Fund shall compute the par value of each separate currency. A communication or notification to the Fund under (a), (b) or (d) above regarding the par value of a currency, shall also be deemed, unless the contrary is stated, to be a communication or notification regarding the par value of all the separate currencies referred to above. Any member may, however, make a communication or notification relating to the metropolitan or any of the separate currencies alone. If the member does so, the provisions of the preceding paragraphs (including (d) above, if a territory where a separate currency exists has been occupied by the enemy) shall apply to each of these currencies separately.

Ante, p. 1426.

Beginning of exchange transactions.

(h) The Fund shall begin exchange transactions at such date as it may determine after members having sixty-five percent of the totel of the quotas set forth in Schedule A have become eligible, in accordance with the preceding paragraphs of this Section, to purchase the currencies of other members, but in no event until after major hostilities in Europe have ceased.

Post, p. 1432.

(i) The Fund may postpone exchange transactions with any member if its circumstances are such that, in the opinion of the Fund, they would lead to use of the resources of the Fund in a manner

are set forth in Schedule A shall appoint provisional executive directors. If one or more of such governments have not become members, the executive directorships they would be entitled to fill shall remain vacant until they become members, or until January 1, 1946, whichever is the earlier. Seven provisional executive directors shall be elected in accordance with the provisions of Schedule C and shall remain in office until the date of the first regular election of executive directors which shall be held as soon as practicable after January 1, 1946.

Post, p. 1432.

Post, p. 1434.

(c) The Board of Governors may delegate to the provisional executive directors any powers except those which may not be delegated to the Executive Directors.

Section 4. *Initial determination of par values*

(a) When the Fund is of the opinion that it will shortly be in a position to begin exchange transactions, it shall so notify the members and shall request each member to communicate within thirty days the par value of its currency based on the rates of exchange prevailing on the sixtieth day before the entry into force of this Agreement. No member whose metropolitan territory has been occupied by the enemy shall be required to make such a communication while that territory is a theater of major hostilities or for such period thereafter as the Fund may determine. When such a member communicates the par value of its currency the provisions of (d) below shall apply.

(b) The par value communicated by a member whose metropolitan territory has not been occupied by the enemy shall be the par value of that member's currency for the purposes of this Agreement unless, within ninety days after the request referred to in (a) above has been received, (i) the member notifies the Fund that it regards the par value as unsatisfactory, or (ii) the Fund notifies the member that in its opinion the par value cannot be maintained without causing recourse to the Fund on the part of that member or others on a scale prejudicial to the Fund and to members. When notification is given under (i) or (ii) above, the Fund and the member shall, within a period determined by the Fund in the light of all relevant circumstances, agree upon a suitable par value for that currency. If the Fund and the member do not agree within the period so determined, the member shall be deemed to have withdrawn from the Fund on the date when the period expires.

(c) When the par value of a member's currency has been established under (b) above, either by the expiration of ninety days without notification, or by agreement after notification, the member shall be eligible to buy from the Fund the currencies of other members to the full extent permitted in this Agreement, provided that the Fund has begun exchange transactions.

Territory occupied by enemy.

(d) In the case of a member whose metropolitan territory has been occupied by the enemy, the provisions of (b) above shall apply, subject to the following modifications:

contrary to the purposes of this Agreement or prejudicial to the Fund or the members.

(j) The par values of the currencies of governments which indicate their desire to become members after December 31, 1945, shall be determined in accordance with the provisions of Article II, Section 2. *Ante*, p. 1402.

DONE at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 2.

FOR AUSTRALIA:

FOR BELGIUM:
L. A. GOFFIN. *december 27. 1945*

FOR BOLIVIA:
V ANDRADE
December 27, 1945

FOR BRAZIL:
FERNANDO LOBO
27 dec 1945

FOR CANADA:
LESTER B PEARSON
Dec 27/45

FOR CHILE:
MARCIAL MORA M
Dec. 31 1945.–

FOR CHINA:
WEI TAO-MING
December 27, 1945

FOR COLOMBIA:
C. S. DE SANTAMARÍA
december 27th 1945.

FOR COSTA RICA:
F GUTIERREZ
December 27 – 1945

FOR CUBA:
GMO BELT
December 31, 1945

FOR CZECHOSLOVAKIA:
V. S. HURBAN
Dec. 27–1945

FOR THE DOMINICAN REPUBLIC:
EMILIO G GODOY
December 28–45.

FOR ECUADOR:
GALO PLAZA.
December 27. 45

FOR EGYPT:
ANIS AZER
December 27, 1945

FOR EL SALVADOR:

FOR ETHIOPIA:
G. TESEMMA.
Dec. 27, 1945

FOR FRANCE:
H BONNET
27 Decembre 1945

FOR GREECE:
C. P. DIAMANTOPOULOS
December 27. 1945

FOR GUATEMALA:
JORGE GARCÍA GRANADOS
27 de diciembre de 1945

FOR HAITI:

FOR HONDURAS:
JULIÁN R CÁCERES
December 27, 1945

FOR ICELAND:
THOR THORS
December 27, 1945

FOR INDIA:
G. S. BAJPAI.
27. 12. '45

FOR IRAN:
HUSSEIN ALA
December 28th 1945.

FOR IRAQ:
ALI JAWDAT *Dec 27–1945*

FOR LIBERIA:

FOR LUXEMBOURG:
HUGUES LE GALLAIS
December 27th 1945

FOR MEXICO:
A ESPINOSA DE LOS MONTEROS. *Dec 31st, 1945.*

FOR THE NETHERLANDS:
A. LOUDON *Dec. 27th 1945*

FOR NEW ZEALAND:

FOR NICARAGUA:

FOR NORWAY:
W. MUNTHE MORGENSTIERNE
December 27th 1945

FOR PANAMA:

FOR PARAGUAY:
CELSO R. VELÁZQUEZ
December 27, 1945

FOR PERU:
H FERNÁNDEZ DÁVILA
Dec 31, 1945–

FOR THE PHILIPPINE COMMONWEALTH:
CARLOS P. ROMULO
December 27, 1945

FOR POLAND:
OSKAR LANGE
December 27, 1945.

FOR THE UNION OF SOUTH AFRICA:
H T ANDREWS
December 27 1945–

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
HALIFAX. *Dec. 27. 1945.*

FOR THE UNITED STATES OF AMERICA:
FRED M. VINSON
Dec 27, 1945

FOR URUGUAY:
CÉSAR MONTERO B
Dec 27 1945

FOR VENEZUELA:

FOR YUGOSLAVIA:
STANOJE SIMIC *27 XII 1945*

SCHEDULE A

Quotas

	(In millions of United States dollars)
Australia	200
Belgium	225
Bolivia	10
Brazil	150
Canada	300
Chile	50
China	550
Colombia	50
Costa Rica	5
Cuba	50
Czechoslovakia	125
Denmark*	(*)
Dominican Republic	5
Ecuador	5
Egypt	45
El Salvador	2.5
Ethiopia	6
France	450
Greece	40
Guatemala	5
Haiti	5
Honduras	2.5
Iceland	1
India	400
Iran	25
Iraq	8
Liberia	.5
Luxembourg	10
Mexico	90
Netherlands	275
New Zealand	50
Nicaragua	2
Norway	50
Panama	.5
Paraguay	2
Peru	25
Philippine Commonwealth	15
Poland	125
Union of South Africa	100
Union of Soviet Socialist Republics	1200

*The quota of Denmark shall be determined by the Fund after the Danish Government has declared its readiness to sign this Agreement but before signature takes place.

Quotas—Continued

	(In millions of United States dollars)
United Kingdom	1300
United States	2750
Uruguay	15
Venezuela	15
Yugoslavia	60

SCHEDULE B

Provisions With Respect to Repurchase by a Member of Its Currency Held by the Fund

1. In determining the extent to which repurchase of a member's currency from the Fund under Article V, Section 7 (b) shall be made with each type of monetary reserve, that is, with gold and with each convertible currency, the following rule, subject to 2 below, shall apply: *Ante*, p. 1407.

(a) If the member's monetary reserves have not increased during the year, the amount payable to the Fund shall be distributed among all types of reserves in proportion to the member's holdings thereof at the end of the year.

(b) If the member's monetary reserves have increased during the year, a part of the amount payable to the Fund equal to one-half of the increase shall be distributed among those types of reserves which have increased in proportion to the amount by which each of them has increased. The remainder of the sum payable to the Fund shall be distributed among all types of reserves in proportion to the member's remaining holdings thereof.

(c) If after all the repurchases required under Article V, Section 7 (b), had been made, the result would exceed any of the limits specified in Article V, Section 7 (c), the Fund shall require such repurchases to be made by the members proportionately in such manner that the limits will not be exceeded. *Ante*, p. 1408.

2. The Fund shall not acquire the currency of any non-member under Article V, Section 7 (b) and (c).

3. In calculating monetary reserves and the increase in monetary reserves during any year for the purpose of Article V, Section 7 (b) and (c), no account shall be taken, unless deductions have otherwise been made by the member for such holdings, of any increase in those monetary reserves which is due to currency previously inconvertible having become convertible during the year; or to holdings which are the proceeds of a long-term or medium-term loan contracted during the year; or to holdings which have been transferred or set aside for repayment of a loan during the subsequent year. Monetary reserves. *Ante*, pp. 1407, 1408.

4. In the case of members whose metropolitan territories have been occupied by the enemy, gold newly produced during the five years after the entry into force of this Agreement from mines located within their metropolitan territories shall not be included in computations of their monetary reserves or of increases in their monetary reserves. Newly mined gold

SCHEDULE C

Election of Executive Directors

1. The election of the elective executive directors shall be by ballot of the governors eligible to vote under Article XII, Section 3 (b) (iii) and (iv).

Ante, p. 1416.

2. In balloting for the five directors to be elected under Article XII, Section 3 (b) (iii), each of the governors eligible to vote shall cast for one person all of the votes to which he is entitled under Article XII, Section 5 (a). The five persons receiving the greatest number of votes shall be directors, provided that no person who received less than nineteen percent of the total number of votes that can be cast (eligible votes) shall be considered elected.

Ante, p. 1418.

3. When five persons are not elected in the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only (a) those governors who voted in the first ballot for a person not elected, and (b) those governors whose votes for a person elected are deemed under 4 below to have raised the votes cast for that person above twenty percent of the eligible votes.

Votes cast by governor.

4. In determining whether the votes cast by a governor are to be deemed to have raised the total of any person above twenty percent of the eligible votes the twenty percent shall be deemed to include, first, the votes of the governor casting the largest number of votes for such person, then the votes of the governor casting the next largest number, and so on until twenty percent is reached.

5. Any governor part of whose votes must be counted in order to raise the total of any person above nineteen percent shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed twenty percent.

6. If, after the second ballot, five persons have not been elected, further ballots shall be held on the same principles until five persons have been elected, provided that after four persons are elected, the fifth may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

Ante, p. 1417.

7. The directors to be elected by the American Republics under Article XII, Section 3 (b) (iv) shall be elected as follows:

(a) Each of the directors shall be elected separately.

(b) In the election of the first director, each governor representing an American Republic eligible to participate in the election shall cast for one person all the votes to which he is entitled. The person receiving the largest number of votes shall be elected provided that he has received not less than forty-five percent of the total votes.

(c) If no person is elected on the first ballot, further ballots shall be held, in each of which the person receiving the lowest number of votes shall be eliminated, until one person received a number of votes sufficient for election under (b) above.

(d) Governors whose votes contributed to the election of the first director shall take no part in the election of the second director.

(e) Persons who did not succeed in the first election shall not be ineligible for election as the second director.

(f) A majority of the votes which can be cast shall be required for election of the second director. If at the first ballot no person receives a majority, further ballots shall be held in each of which the person receiving the lowest number of votes shall be eliminated, until some person obtains a majority.

(g) The second director shall be deemed to have been elected by all the votes which could have been cast in the ballot securing his election.

SCHEDULE D

Settlement of Accounts With Members Withdrawing

1. The Fund shall be obligated to pay to a member withdrawing an amount equal to its quota, plus any other amounts due to it from the Fund, less any amounts due to the Fund, including charges accruing after the date of its withdrawal; but no payment shall be made until six months after the date of withdrawal. Payments shall be made in the currency of the withdrawing member.

2. If the Fund's holdings of the currency of the withdrawing member are not sufficient to pay the net amount due from the Fund, the balance shall be paid in gold, or in such other manner as may be agreed. If the Fund and the withdrawing member do not reach agreement within six months of the date of withdrawal, the currency in question held by the Fund shall be paid forthwith to the withdrawing member. Any balance due shall be paid in ten half-yearly installments during the ensuing five years. Each such installment shall be paid, at the option of the Fund, either in the currency of the withdrawing member acquired after its withdrawal or by the delivery of gold.

3. If the Fund fails to meet any installment which is due in accordance with the preceding paragraphs, the withdrawing member shall be entitled to require the Fund to pay the installment in any currency held by the Fund with the exception of any currency which has been declared scarce under Article VII, Section 3. *Ante*, p. 1410.

4. If the Fund's holdings of the currency of a withdrawing member exceed the amount due to it, and if agreement on the method of settling accounts is not reached within six months of the date of withdrawal, the former member shall be obligated to redeem such excess currency in gold or, at its option, in the currencies of members which at the time of redemption are convertible. Redemption shall be made at the parity existing at the time of withdrawal from the Fund. The withdrawing member shall complete redemption within five years of the date of withdrawal, or within such longer period as may be fixed by the Fund, but shall not be required to redeem in any half-yearly period more than one-tenth of the Fund's excess holdings of its currency at

the date of withdrawal plus further acquisitions of the currency during such half-yearly period. If the withdrawing member does not fulfill this obligation, the Fund may in an orderly manner liquidate in any market the amount of currency which should have been redeemed.

5. Any member desiring to obtain the currency of a member which has withdrawn shall acquire it by purchase from the Fund, to the extent that such member has access to the resources of the Fund and that such currency is available under 4 above.

6. The withdrawing member guarantees the unrestricted use at all times of the currency disposed of under 4 and 5 above for the purchase of goods or for payment of sums due to it or to persons within its territories. It shall compensate the Fund for any loss resulting from the difference between the par value of its currency on the date of withdrawal and the value realized by the Fund on disposal under 4 and 5 above.

7. In the event of the Fund going into liquidation under Article XVI, Section 2, within six months of the date on which the member withdraws, the account between the Fund and that government shall be settled in accordance with Article XVI, Section 2, and Schedule E.

Ante, p. 1422.

SCHEDULE E

Administration of Liquidation

1. In the event of liquidation the liabilities of the Fund other than the repayment of subscriptions shall have priority in the distribution of the assets of the Fund. In meeting each such liability the Fund shall use its assets in the following order:

(a) the currency in which the liability is payable;
(b) gold;
(c) all other currencies in proportion, so far as may be practicable, to the quotas of the members.

Distribution of balance.

2. After the discharge of the Fund's liabilities in accordance with 1 above, the balance of the Fund's assets shall be distributed and apportioned as follows:

(a) The Fund shall distribute its holdings of gold among the members whose currencies are held by the Fund in amounts less than their quotas. These members shall share the gold so distributed in the proportions of the amounts by which their quotas exceed the Fund's holdings of their currencies.
(b) The Fund shall distribute to each member one-half the Fund's holdings of its currency but such distribution shall not exceed fifty percent of its quota.
(c) The Fund shall apportion the remainder of its holdings of each currency among all the members in proportion to the amounts due to each member after the distributions under (a) and (b) above.

Currency apportioned to other members.

3. Each member shall redeem the holdings of its currency apportioned to other members under 2 (c) above, and shall agree with the Fund within three months after a decision to liquidate upon an orderly procedure for such redemption.

4. If a member has not reached agreement with the Fund within the three-month period referred to in 3 above, the Fund shall use the currencies of other members apportioned to that member under 2 (c) above to redeem the currency of that member apportioned to other members. Each currency apportioned to a member which has not reached agreement shall be used, so far as possible, to redeem its currency apportioned to the members which have made agreements with the Fund under 3 above.

5. If a member has reached agreement with the Fund in accordance with 3 above, the Fund shall use the currencies of other members apportioned to that member under 2 (c) above to redeem the currency of that member apportioned to other members which have made agreements with the Fund under 3 above. Each amount so redeemed shall be redeemed in the currency of the member to which it was apportioned.

6. After carrying out the preceding paragraphs, the Fund shall pay to each member the remaining currencies held for its account.

7. Each member whose currency has been distributed to other members under 6 above shall redeem such currency in gold or, at its option, in the currency of the member requesting redemption, or in such other manner as may be agreed between them. If the members involved do not otherwise agree, the member obligated to redeem shall complete redemption within five years of the date of distribution, but shall not be required to redeem in any half-yearly period more than one-tenth of the amount distributed to each other member. If the member does not fulfill this obligation, the amount of currency which should have been redeemed may be liquidated in an orderly manner in any market.

8. Each member whose currency has been distributed to other members under 6 above guarantees the unrestricted use of such currency at all times for the purchase of goods or for payment of sums due to it or to persons in its territories. Each member so obligated agrees to compensate other members for any loss resulting from the difference between the par value of its currency on the date of the decision to liquidate the Fund and the value realized by such members on disposal of its currency.

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December 27, 1945
[T. I. A. S. 1502]

Articles of agreement between the United States of America and other powers respecting the International Bank for Reconstruction and Development. Formulated at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 1 to July 22, 1944; signed at Washington December 27, 1945; instrument of acceptance by the United States of America deposited December 20, 1945; effective December 27, 1945.

59 Stat. 512.

ARTICLES OF AGREEMENT OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

The Governments on whose behalf the present Agreement is signed agree as follows:

INTRODUCTORY ARTICLE

The International Bank for Reconstruction and Development is established and shall operate in accordance with the following provisions:

ARTICLE I

PURPOSES

The purposes of the Bank are:

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

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(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate post-war years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.

ARTICLE II

MEMBERSHIP IN AND CAPITAL OF THE BANK

Section 1. *Membership*

(a) The original members of the Bank shall be those members of the International Monetary Fund which accept membership in the Bank before the date specified in Article XI, Section 2 (e). *Post*, p. 1461.

(b) Membership shall be open to other members of the Fund, at such times and in accordance with such terms as may be prescribed by the Bank.

Section 2. *Authorized capital*

(a) The authorized capital stock of the Bank shall be $10,000,000,000, in terms of United States dollars of the weight and fineness in effect on July 1, 1944. The capital stock shall be divided into 100,000 shares having a par value of $100,000 each, which shall be available for subscription only by members.

(b) The capital stock may be increased when the Bank deems it advisable by a three-fourths majority of the total voting power. Increase in capital stock.

Section 3. *Subscription of shares*

(a) Each member shall subscribe shares of the capital stock of the Bank. The minimum number of shares to be subscribed by the original members shall be those set forth in Schedule A. The minimum number of shares to be subscribed by other members shall be determined by the Bank, which shall reserve a sufficient portion of its capital stock for subscription by such members. *Post*, p. 1466.

(b) The Bank shall prescribe rules laying down the conditions under which members may subscribe shares of the authorized capital stock of the Bank in addition to their minimum subscriptions.

(c) If the authorized capital stock of the Bank is increased, each member shall have a reasonable opportunity to subscribe, under such conditions as the Bank shall decide, a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank, but no member shall be obligated to subscribe any part of the increased capital.

Section 4. *Issue price of shares*

Shares included in the minimum subscriptions of original members shall be issued at par. Other shares shall be issued at par unless the Bank by a majority of the total voting power decides in special circumstances to issue them on other terms.

Section 5. *Division and calls of subscribed capital*

The subscription of each member shall be divided into two parts as follows:

(i) twenty percent shall be paid or subject to call under Section 7 (i) of this Article as needed by the Bank for its operations;

(ii) the remaining eighty percent shall be subject to call by the Bank only when required to meet obligations of the Bank created under Article IV, Sections 1 (a) (ii) and (iii).

Post, p. 1445.

Calls on unpaid subscriptions shall be uniform on all shares.

Section 6. *Limitation on liability*

Liability on shares shall be limited to the unpaid portion of the issue price of the shares.

Section 7. *Method of payment of subscriptions for shares*

Payment of subscriptions for shares shall be made in gold or United States dollars and in the currencies of the members as follows:

(i) under Section 5 (i) of this Article, two percent of the price of each share shall be payable in gold or United States dollars, and, when calls are made, the remaining eighteen percent shall be paid in the currency of the member;

(ii) when a call is made under Section 5 (ii) of this Article, payment may be made at the option of the member either in gold, in United States dollars or in the currency required to discharge the obligations of the Bank for the purpose for which the call is made;

(iii) when a member makes payments in any currency under (i) and (ii) above, such payments shall be made in amounts equal in value to the member's liability under the call. This liability shall be a proportionate part of the subscribed capital stock of the Bank as authorized and defined in Section 2 of this Article.

Section 8. *Time of payment of subscriptions*

(a) The two percent payable on each share in gold or United States dollars under Section 7 (i) of this Article, shall be paid within sixty days of the date on which the Bank begins operations, provided that

(i) any original member of the Bank whose metropolitan territory has suffered from enemy occupation or hostilities during the present war shall be granted the right to postpone payment of one-half percent until five years after that date;

(ii) an original member who cannot make such a payment because it has not recovered possession of its gold reserves which are still seized or immobilized as a result of the war may postpone all payment until such date as the Bank shall decide.

(b) The remainder of the price of each share payable under Section 7 (i) of this Article shall be paid as and when called by the Bank, provided that

(i) the Bank shall, within one year of its beginning operations, call not less than eight percent of the price of the share in addition to the payment of two percent referred to in (a) above;

(ii) not more than five percent of the price of the share shall be called in any period of three months.

Section 9. *Maintenance of value of certain currency holdings of the Bank*

Reduction in par value.

(a) Whenever (i) the par value of a member's currency is reduced, or (ii) the foreign exchange value of a member's currency has, in the opinion of the Bank, depreciated to a significant extent within that member's territories, the member shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of initial subscription, of the amount of the currency of such member which is held by the Bank and derived from currency originally paid in to the Bank by the member under Article II, Section 7 (i), from currency referred to in Article IV, Section 2 (b), or from any additional currency furnished under the provisions of the present paragraph, and which has not been repurchased by the member for gold or for the currency of any member which is acceptable to the Bank.

Post, p. 1445.

Increase in par value.

(b) Whenever the par value of a member's currency is increased, the Bank shall return to such member within a reasonable time an amount of that member's currency equal to the increase in the value of the amount of such currency described in (a) above.

(c) The provisions of the preceding paragraphs may be waived by the Bank when a uniform proportionate change in the par values of the currencies of all its members is made by the International Monetary Fund.

Section 10. *Restriction on disposal of shares*

Shares shall not be pledged or encumbered in any manner whatever and they shall be transferable only to the Bank.

ARTICLE III

GENERAL PROVISIONS RELATING TO LOANS AND GUARANTEES

Section 1. *Use of resources*

(a) The resources and the facilities of the Bank shall be used exclusively for the benefit of members with equitable consideration to projects for development and projects for reconstruction alike.

(b) For the purpose of facilitating the restoration and reconstruction of the economy of members whose metropolitan territories have suffered great devastation from enemy occupation or hostilities, the Bank, in determining the conditions and terms of loans made to such members, shall pay special regard to lightening the financial burden and expediting the completion of such restoration and reconstruction.

Section 2. *Dealings between members and the Bank*

Each member shall deal with the Bank only through its Treasury, central bank, stabilization fund or other similar fiscal agency, and the Bank shall deal with members only by or through the same agencies.

Section 3. *Limitations on guarantees and borrowings of the Bank*

The total amount outstanding of guarantees, participations in loans and direct loans made by the Bank shall not be increased at any time,

if by such increase the total would exceed one hundred percent of the unimpaired subscribed capital, reserves and surplus of the Bank.

Section 4. *Conditions on which the Bank may guarantee or make loans*

The Bank may guarantee, participate in, or make loans to any member or any political sub-division thereof and any business, industrial, and agricultural enterprise in the territories of a member, subject to the following conditions:

(i) When the member in whose territories the project is located is not itself the borrower, the member or the central bank or some comparable agency of the member which is acceptable to the Bank, fully guarantees the repayment of the principal and the payment of interest and other charges on the loan.

(ii) The Bank is satisfied that in the prevailing market conditions the borrower would be unable otherwise to obtain the loan under conditions which in the opinion of the Bank are reasonable for the borrower.

Post, p. 1452.

(iii) A competent committee, as provided for in Article V, Section 7, has submitted a written report recommending the project after a careful study of the merits of the proposal.

(iv) In the opinion of the Bank the rate of interest and other charges are reasonable and such rate, charges and the schedule for repayment of principal are appropriate to the project.

(v) In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower, and, if the borrower is not a member, that the guarantor, will be in position to meet its obligations under the loan; and the Bank shall act prudently in the interests both of the particular member in whose territories the project is located and of the members as a whole.

(vi) In guaranteeing a loan made by other investors, the Bank receives suitable compensation for its risk.

(vii) Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development.

Section 5. *Use of loans guaranteed, participated in or made by the Bank*

(a) The Bank shall impose no conditions that the proceeds of a loan shall be spent in the territories of any particular member or members.

(b) The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

(c) In the case of loans made by the Bank, it shall open an account in the name of the borrower and the amount of the loan shall be credited to this account in the currency or currencies in which the loan is made. The borrower shall be permitted by the Bank to draw on this

account only to meet expenses in connection with the project as they are actually incurred.

ARTICLE IV

OPERATIONS

Section 1. *Methods of making or facilitating loans*

(a) The Bank may make or facilitate loans which satisfy the general conditions of Article III in any of the following ways: *Ante*, p. 1443.

(i) By making or participating in direct loans out of its own funds corresponding to its unimpaired paid-up capital and surplus and, subject to Section 6 of this Article, to its reserves. *Post*, p. 1448.

(ii) By making or participating in direct loans out of funds raised in the market of a member, or otherwise borrowed by the Bank.

(iii) By guaranteeing in whole or in part loans made by private investors through the usual investment channels.

(b) The Bank may borrow funds under (a) (ii) above or guarantee loans under (a) (iii) above only with the approval of the member in whose markets the funds are raised and the member in whose currency the loan is denominated, and only if those members agree that the proceeds may be exchanged for the currency of any other member without restriction.

Section 2. *Availability and transferability of currencies*

(a) Currencies paid into the Bank under Article II, Section 7 (i), shall be loaned only with the approval in each case of the member whose currency is involved; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank. *Ante*, p. 1442.

Currencies received from borrowers or guarantors.

(b) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made with currencies referred to in (a) above shall be exchanged for the currencies of other members or reloaned only with the approval in each case of the members whose currencies are involved; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank.

(c) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made by the Bank under Section 1 (a) (ii) of this Article, shall be held and used, without restriction by the members, to make amortization payments, or to

anticipate payment of or repurchase part or all of the Bank's own obligations.

Other available currencies.

(d) All other currencies available to the Bank, including those raised in the market or otherwise borrowed under Section 1 (a) (ii) of this Article, those obtained by the sale of gold, those received as payments of interest and other charges for direct loans made under Sections 1 (a) (i) and (ii), and those received as payments of commissions and other charges under Section 1 (a) (iii), shall be used or exchanged for other currencies or gold required in the operations of the Bank without restriction by the members whose currencies are offered.

(e) Currencies raised in the markets of members by borrowers on loans guaranteed by the Bank under Section 1 (a) (iii) of this Article, shall also be used or exchanged for other currencies without restriction by such members.

Section 3. *Provision of currencies for direct loans*

Ante, p. 1445.

The following provisions shall apply to direct loans under Sections 1 (a) (i) and (ii) of this Article:

(a) The Bank shall furnish the borrower with such currencies of members, other than the member in whose territories the project is located, as are needed by the borrower for expenditures to be made in the territories of such other members to carry out the purposes of the loan.

(b) The Bank may, in exceptional circumstances when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, provide the borrower as part of the loan with an appropriate amount of that currency.

(c) The Bank, if the project gives rise indirectly to an increased need for foreign exchange by the member in whose territories the project is located, may in exceptional circumstances provide the borrower as part of the loan with an appropriate amount of gold or foreign exchange not in excess of the borrower's local expenditure in connection with the purposes of the loan.

(d) The Bank may, in exceptional circumstances, at the request of a member in whose territories a portion of the loan is spent, repurchase with gold or foreign exchange a part of that member's currency thus spent but in no case shall the part so repurchased exceed the amount by which the expenditure of the loan in those territories gives rise to an increased need for foreign exchange.

Section 4. *Payment provisions for direct loans*

Ante, p. 1445.

Loan contracts under Section 1 (a) (i) or (ii) of this Article shall be made in accordance with the following payment provisions:

Interest and amortization payments, etc.

(a) The terms and conditions of interest and amortization payments, maturity and dates of payment of each loan shall be determined by the Bank. The Bank shall also determine the rate and any other terms and conditions of commission to be charged in connection with such loan.

In the case of loans made under Section 1 (a) (ii) of this Article during the first ten years of the Bank's operations, this rate of commission shall be not less than one percent per annum and not greater than one and one-half percent per annum, and shall be charged on the outstanding portion of any such loan. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already made and to future loans, if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable. *Ante*, p. 1445.

(b) All loan contracts shall stipulate the currency or currencies in which payments under the contract shall be made to the Bank. At the option of the borrower, however, such payments may be made in gold, or subject to the agreement of the Bank, in the currency of a member other than that prescribed in the contract. Currency in which payments shall be made to Bank.

(i) In the case of loans made under Section 1 (a) (i) of this Article, the loan contracts shall provide that payments to the Bank of interest, other charges and amortization shall be made in the currency loaned, unless the member whose currency is loaned agrees that such payments shall be made in some other specified currency or currencies. These payments, subject to the provisions of Article II, Section 9 (c), shall be equivalent to the value of such contractual payments at the time the loans were made, in terms of a currency specified for the purpose by the Bank by a three-fourths majority of the total voting power. *Ante*, p. 1445. *Ante*, p. 1443.

(ii) In the case of loans made under Section 1 (a) (ii) of this Article, the total amount outstanding and payable to the Bank in any one currency shall at no time exceed the total amount of the outstanding borrowings made by the Bank under Section 1 (a) (ii) and payable in the same currency. *Ante*, p. 1445

(c) If a member suffers from an acute exchange stringency, so that the service of any loan contracted by that member or guaranteed by it or by one of its agencies cannot be provided in the stipulated manner, the member concerned may apply to the Bank for a relaxation of the conditions of payment. If the Bank is satisfied that some relaxation is in the interests of the particular member and of the operations of the Bank and of its members as a whole, it may take action under either, or both, of the following paragraphs with respect to the whole, or part, of the annual service: Relaxation of conditions of payment.

(i) The Bank may, in its discretion, make arrangements with the member concerned to accept service payments on the loan in the member's currency for periods not to exceed three years upon appropriate terms regarding the use of such currency and the maintenance of its foreign exchange value; and for the repurchase of such currency on appropriate terms.

(ii) The Bank may modify the terms of amortization or extend the life of the loan, or both.

Section 5. *Guarantees*

Guarantee commission.

(a) In guaranteeing a loan placed through the usual investment channels, the Bank shall charge a guarantee commission payable periodically on the amount of the loan outstanding at a rate determined by the Bank. During the first ten years of the Bank's operations, this rate shall be not less than one percent per annum and not greater than one and one-half percent per annum. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already guaranteed and to future loans if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.

(b) Guarantee commissions shall be paid directly to the Bank by the borrower.

(c) Guarantees by the Bank shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and by the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.

(d) The Bank shall have power to determine any other terms and conditions of the guarantee.

Section 6. *Special reserve*

The amount of commissions received by the Bank under Sections 4 and 5 of this Article shall be set aside as a special reserve, which shall be kept available for meeting liabilities of the Bank in accordance with Section 7 of this Article. The special reserve shall be held in such liquid form, permitted under this Agreement, as the Executive Directors may decide.

Section 7. *Methods of meeting liabilities of the Bank in case of defaults*

In cases of default on loans made, participated in, or guaranteed by the Bank:

(a) The Bank shall make such arrangements as may be feasible to adjust the obligations under the loans, including arrangements under or analogous to those provided in Section 4 (c) of this Article.

Ante, p. 1445.

(b) The payments in discharge of the Bank's liabilities on borrowings or guarantees under Section 1 (a) (ii) and (iii) of this Article shall be charged:

(i) first, against the special reserve provided in Section 6 of this Article.

(ii) then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus and capital available to the Bank.

Call of unpaid subscriptions of members.

(c) Whenever necessary to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to similar payments on loans guaranteed by it, the Bank may call an appropriate amount of the unpaid subscriptions of members in accordance with Article II, Sections 5 and 7. Moreover, if it believes that a default may be of long duration, the Bank may call an additional amount of such unpaid subscriptions not to exceed in any one year one percent of the total subscriptions of the members for the following purposes:

Ante, p. 1442.

(i) To redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default.

(ii) To repurchase, or otherwise discharge its liability on, all or part of its own outstanding borrowings.

Section 8. *Miscellaneous operations*

Additional powers of bank.

In addition to the operations specified elsewhere in this Agreement, the Bank shall have the power:

(i) To buy and sell securities it has issued and to buy and sell securities which it has guaranteed or in which it has invested, provided that the Bank shall obtain the approval of the member in whose territories the securities are to be bought or sold.

(ii) To guarantee securities in which it has invested for the purpose of facilitating their sale.

(iii) To borrow the currency of any member with the approval of that member.

(iv) To buy and sell such other securities as the Directors by a three-fourths majority of the total voting power may deem proper for the investment of all or part of the special reserve under Section 6 of this Article.

In exercising the powers conferred by this Section, the Bank may deal with any person, partnership, association, corporation or other legal entity in the territories of any member.

Section 9. *Warning to be placed on securities*

Every security guaranteed or issued by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government unless expressly stated on the security.

Section 10. *Political activity prohibited*

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

Ante, p. 1440.

ARTICLE V

ORGANIZATION AND MANAGEMENT

Section 1. *Structure of the Bank*

The Bank shall have a Board of Governors, Executive Directors, a President and such other officers and staff to perform such duties as the Bank may determine.

Section 2. *Board of Governors*

(a) All the powers of the Bank shall be vested in the Board of Governors consisting of one governor and one alternate appointed by each member in such manner as it may determine. Each governor and each alternate shall serve for five years, subject to the pleasure of the member appointing him, and may be reappointed. No alternate may vote except in the absence of his principal. The Board shall select one of the governors as Chairman.

Term of office.

Board of Governors. Delegation of powers; exceptions.

(b) The Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board, except the power to:

(i) Admit new members and determine the conditions of their admission;

(ii) Increase or decrease the capital stock;

(iii) Suspend a member;

(iv) Decide appeals from interpretations of this Agreement given by the Executive Directors;

(v) Make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary and administrative character);

(vi) Decide to suspend permanently the operations of the Bank and to distribute its assets;

(vii) Determine the distribution of the net income of the Bank.

Meetings.

(c) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Executive Directors. Meetings of the Board shall be called by the Directors whenever requested by five members or by members having one-quarter of the total voting power.

Quorum.

(d) A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.

(e) The Board of Governors may by regulation establish a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Bank, may obtain a vote of the Governors on a specific question without calling a meeting of the Board.

Rules and regulations.

(f) The Board of Governors, and the Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.

Compensation.

(g) Governors and alternates shall serve as such without compensation from the Bank, but the Bank shall pay them reasonable expenses incurred in attending meetings.

(h) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and the salary and terms of the contract of service of the President.

Section 3. *Voting*

(a) Each member shall have two hundred fifty votes plus one additional vote for each share of stock held.

(b) Except as otherwise specifically provided, all matters before the Bank shall be decided by a majority of the votes cast.

Section 4. *Executive Directors*

(a) The Executive Directors shall be responsible for the conduct of the general operations of the Bank, and for this purpose, shall exercise all the powers delegated to them by the Board of Governors.

(b) There shall be twelve Executive Directors, who need not be governors, and of whom:

(i) five shall be appointed, one by each of the five members having the largest number of shares;

(ii) seven shall be elected according to Schedule B by all the Governors other than those appointed by the five members referred to in (i) above. *Post*, p. 1467

For the purpose of this paragraph, "members" means governments of countries whose names are set forth in Schedule A, whether they are original members or become members in accordance with Article II, Section 1(b). When governments of other countries become members, the Board of Governors may, by a four-fifths majority of the total voting power, increase the total number of directors by increasing the number of directors to be elected. "Members." *Post*, p. 1466. *Ante*, p. 1441.

Executive directors shall be appointed or elected every two years. Term of office.

(c) Each executive director shall appoint an alternate with full power to act for him when he is not present. When the executive directors appointing them are present, alternates may participate in meetings but shall not vote. Alternates.

(d) Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected for the remainder of the term by the governors who elected the former director. A majority of the votes cast shall be required for election. While the office remains vacant, the alternate of the former director shall exercise his powers, except that of appointing an alternate. Vacancies.

(e) The Executive Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require. Meetings.

(f) A quorum for any meeting of the Executive Directors shall be a majority of the Directors, exercising not less than one-half of the total voting power. Quorum.

(g) Each appointed director shall be entitled to cast the number of votes allotted under Section 3 of this Article to the member appointing him. Each elected director shall be entitled to cast the Voting.

number of votes which counted toward his election. All the votes which a director is entitled to cast shall be cast as a unit.

(h) The Board of Governors shall adopt regulations under which a member not entitled to appoint a director under (b) above may send a representative to attend any meeting of the Executive Directors when a request made by, or a matter particularly affecting, that member is under consideration.

Committees.

(i) The Executive Directors may appoint such committees as they deem advisable. Membership of such committees need not be limited to governors or directors or their alternates.

Section 5. *President and staff*

(a) The Executive Directors shall select a President who shall not be a governor or an executive director or an alternate for either. The President shall be Chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The President shall cease to hold office when the Executive Directors so decide.

Duties of President.

(b) The President shall be chief of the operating staff of the Bank and shall conduct, under the direction of the Executive Directors, the ordinary business of the Bank. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff.

(c) The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(d) In appointing the officers and staff the President shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

Section 6. *Advisory Council*

(a) There shall be an Advisory Council of not less than seven persons selected by the Board of Governors including representatives of banking, commercial, industrial, labor, and agricultural interests, and with as wide a national representation as possible. In those fields where specialized international organizations exist, the members of the Council representative of those fields shall be selected in agreement with such organizations. The Council shall advise the Bank on matters of general policy. The Council shall meet annually and on such other occasions as the Bank may request.

(b) Councillors shall serve for two years and may be reappointed. They shall be paid their reasonable expenses incurred on behalf of the Bank.

Section 7. *Loan committees*

Ante, p. 1444.

The committees required to report on loans under Article III, Section 4, shall be appointed by the Bank. Each such committee shall

include an expert selected by the governor representing the member in whose territories the project is located and one or more members of the technical staff of the Bank.

Section 8. *Relationship to other international organizations*

(a) The Bank, within the terms of this Agreement, shall cooperate with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article VIII. *Post*, p. 1459.

(b) In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization.

Section 9. *Location of offices*

(a) The principal office of the Bank shall be located in the territory of the member holding the greatest number of shares.

(b) The Bank may establish agencies or branch offices in the territories of any member of the Bank.

Section 10. *Regional offices and councils*

(a) The Bank may establish regional offices and determine the location of, and the areas to be covered by, each regional office.

(b) Each regional office shall be advised by a regional council representative of the entire area and selected in such manner as the Bank may decide.

Section 11. *Depositories*

(a) Each member shall designate its central bank as a depository for all the Bank's holdings of its currency or, if it has no central bank, it shall designate such other institution as may be acceptable to the Bank.

Other assets in designated depositories.

(b) The Bank may hold other assets, including gold, in depositories designated by the five members having the largest number of shares and in such other designated depositories as the Bank may select. Initially, at least one-half of the gold holdings of the Bank shall be held in the depository designated by the member in whose territory the Bank has its principal office, and at least forty percent shall be held in the depositories designated by the remaining four members referred to above, each of such depositories to hold, initially, not less than the amount of gold paid on the shares of the member designating it. However, all transfers of gold by the Bank shall be made with due regard to the costs of transport and anticipated requirements of the Bank. In an emergency the Executive Directors may transfer all or any part of the Bank's gold holdings to any place where they can be adequately protected.

Transfers of gold.

Section 12. *Form of holdings of currency*

The Bank shall accept from any member, in place of any part of the member's currency, paid in to the Bank under Article II, Section 7 (i), *Ante*, p. 1442.

or to meet amortization payments on loans made with such currency, and not needed by the Bank in its operations, notes or similar obligations issued by the Government of the member or the depository designated by such member, which shall be non-negotiable, non-interest-bearing and payable at their par value on demand by credit to the account of the Bank in the designated depository.

Section 13. *Publication of reports and provision of information*

Annual report.

(a) The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three months or less a summary statement of its financial position and a profit and loss statement showing the results of its operations.

Other reports.

(b) The Bank may publish such other reports as it deems desirable to carry out its purposes.

(c) Copies of all reports, statements and publications made under this section shall be distributed to members.

Section 14. *Allocation of net income*

(a) The Board of Governors shall determine annually what part of the Bank's net income, after making provision for reserves, shall be allocated to surplus and what part, if any, shall be distributed.

(b) If any part is distributed, up to two percent non-cumulative shall be paid, as a first charge against the distribution for any year, to each member on the basis of the average amount of the loans outstanding during the year made under Article IV, Section 1(a)(i), out of currency corresponding to its subscriptions. If two percent is paid as a first charge, any balance remaining to be distributed shall be paid to all members in proportion to their shares. Payments to each member shall be made in its own currency, or if that currency is not available in other currency acceptable to the member. If such payments are made in currencies other than the member's own currency, the transfer of the currency and its use by the receiving member after payment shall be without restriction by the members.

Ante, p. 1445.

ARTICLE VI

WITHDRAWAL AND SUSPENSION OF MEMBERSHIP: SUSPENSION OF OPERATIONS

Section 1. *Right of members to withdraw*

Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office. Withdrawal shall become effective on the date such notice is received.

Section 2. *Suspension of membership*

If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of the Governors, exercising a majority of the total voting power. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same majority to restore the member to good standing.

While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all obligations.

Section 3. *Cessation of membership in International Monetary Fund*

Any member which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member.

Section 4. *Settlement of accounts with governments ceasing to be members*

(a) When a government ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur liabilities with respect to loans and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.

Repurchase of shares by Bank.

(b) At the time a government ceases to be a member, the Bank shall arrange for the repurchase of its shares as a part of the settlement of accounts with such government in accordance with the provisions of (c) and (d) below. For this purpose the repurchase price of the shares shall be the value shown by the books of the Bank on the day the government ceases to be a member.

Conditions.

(c) The payment for shares repurchased by the Bank under this section shall be governed by the following conditions:

(i) Any amount due to the government for its shares shall be withheld so long as the government, its central bank or any of its agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the government resulting from its subscription for shares under Article II, Section 5 (ii). In any event, no amount due to a member for its shares shall be paid until six months after the date upon which the government ceases to be a member.

Ante, p. 1442.

(ii) Payments for shares may be made from time to time, upon their surrender by the government, to the extent by which the amount due as the repurchase price in (b) above exceeds the aggregate of liabilities on loans and guarantees in (c) (i) above until the former member has received the full repurchase price.

(iii) Payments shall be made in the currency of the country receiving payment or at the option of the Bank in gold.

(iv) If losses are sustained by the Bank on any guarantees, participations in loans, or loans which were outstanding on the date when the government ceased to be a member, and the amount of such losses exceeds the amount of the reserve provided against losses on the date when the government

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ceased to be a member, such government shall be obligated to repay upon demand the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the repurchase price was determined. In addition, the former member government shall remain liable on any call for unpaid subscriptions under Article II, Section 5 (ii), to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

Ante, p. 1442.

(d) If the Bank suspends permanently its operations under Section 5 (b) of this Article, within six months of the date upon which any government ceases to be a member, all rights of such government shall be determined by the provisions of Section 5 of this Article.

Section 5. *Suspension of operations and settlement of obligations*

(a) In an emergency the Executive Directors may suspend temporarily operations in respect of new loans and guarantees pending an opportunity for further consideration and action by the Board of Governors.

Suspension of new loans and guarantees.

(b) The Bank may suspend permanently its operations in respect of new loans and guarantees by vote of a majority of the Governors, exercising a majority of the total voting power. After such suspension of operations the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation, and preservation of its assets and settlement of its obligations.

(c) The liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their own currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

Payment of claims.

(d) All creditors holding direct claims shall be paid out of the assets of the Bank, and then out of payments to the Bank on calls on unpaid subscriptions. Before making any payments to creditors holding direct claims, the Executive Directors shall make such arrangements as are necessary, in their judgment, to insure a distribution to holders of contingent claims ratably with creditors holding direct claims.

(e) No distribution shall be made to members on account of their subscriptions to the capital stock of the Bank until

(i) all liabilities to creditors have been discharged or provided for, and

(ii) a majority of the Governors, exercising a majority of the total voting power, have decided to make a distribution.

Distribution of assets.

(f) After a decision to make a distribution has been taken under (e) above, the Executive Directors may by a two-thirds majority vote make successive distributions of the assets of the Bank to members until all of the assets have been distributed. This distribution shall

be subject to the prior settlement of all outstanding claims of the Bank against each member.

(g) Before any distribution of assets is made, the Executive Directors shall fix the proportionate share of each member according to the ratio of its shareholding to the total outstanding shares of the Bank.

(h) The Executive Directors shall value the assets to be distributed as at the date of distribution and then proceed to distribute in the following manner:

(i) There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories, insofar as they are available for distribution, an amount equivalent in value to its proportionate share of the total amount to be distributed.

(ii) Any balance due to a member after payment has been made under (i) above shall be paid, in its own currency, insofar as it is held by the Bank, up to an amount equivalent in value to such balance.

(iii) Any balance due to a member after payment has been made under (i) and (ii) above shall be paid in gold or currency acceptable to the member, insofar as they are held by the Bank, up to an amount equivalent in value to such balance.

(iv) Any remaining assets held by the Bank after payments have been made to members under (i), (ii), and (iii) above shall be distributed *pro rata* among the members.

(i) Any member receiving assets distributed by the Bank in accordance with (h) above, shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

ARTICLE VII

STATUS, IMMUNITIES AND PRIVILEGES

Section 1. *Purposes of Article*

To enable the Bank to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member.

Section 2. *Status of the Bank*

The Bank shall possess full juridical personality, and, in particular, the capacity:

(i) to contract;

(ii) to acquire and dispose of immovable and movable property;

(iii) to institute legal proceedings.

Section 3. *Position of the Bank with regard to judicial process*

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions

shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Section 4. *Immunity of assets from seizure*

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. *Immunity of archives*

The archives of the Bank shall be inviolable.

Section 6. *Freedom of assets from restrictions*

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. *Privilege for communications*

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. *Immunities and privileges of officers and employees*

All governors, executive directors, alternates, officers and employees of the Bank

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. *Immunities from taxation*

(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Section 10. *Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Bank of the detailed action which it has taken.

ARTICLE VIII

AMENDMENTS

(a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Bank shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having four-fifths of the total voting power, have accepted the proposed amendment, the Bank shall certify the fact by a formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying

(i) the right to withdraw from the Bank provided in Article VI, Section 1; *Ante*, p. 1454.

(ii) the right secured by Article II, Section 3 (c); *Ante*, p. 1441.

(iii) the limitation on liability provided in Article II, Section 6. *Ante*, p. 1442.

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

ARTICLE IX

INTERPRETATION

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an executive director, it shall be entitled to representation in accordance with Article V, Section 4 (h).

Ante, p. 1452.

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board, the Bank may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

Submittal of disagreement to arbitration.

(c) Whenever a disagreement arises between the Bank and a country which has ceased to be a member, or between the Bank and any member during the permanent suspension of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Bank, another by the country involved and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Bank. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE X

APPROVAL DEEMED GIVEN

Whenever the approval of any member is required before any act may be done by the Bank, except in Article VIII, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

Ante, p. 1459.

ARTICLE XI

FINAL PROVISIONS

Section 1. *Entry into force*

This Agreement shall enter into force when it has been signed on behalf of governments whose minimum subscriptions comprise not less than sixty-five percent of the total subscriptions set forth in Schedule A and when the instruments referred to in Section 2 (a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

Post, p. 1466.

Section 2. *Signature*

Deposit of instruments of acceptance.

(a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in

accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.[1]

(b) Each government shall become a member of the Bank as from the date of the deposit on its behalf of the instrument referred to in (a) above, except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and all governments whose membership is approved in accordance with Article II, Section 1 (b), of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.

Post, p. 1466.

Ante, p. 1441.

(d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one percent of the price of each share in gold or United States dollars for the purpose of meeting administrative expenses of the Bank. This payment shall be credited on account of the payment to be made in accordance with Article II, Section 8 (a). The Government of the United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Bank when the initial meeting has been called under Section 3 of this Article. If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.

Transmittal of funds for administrative expenses.

Ante, p. 1442.

(e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.

Post, p. 1466.

(f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 1 (b).

Ante, p. 1441.

(g) By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.

(h) In the case of governments whose metropolitan territories have been under enemy occupation, the deposit of the instrument

Enemy occupation.

[1] [Instruments of acceptance have been deposited with the Department of State by the following countries: Belgium on Dec. 27, 1945; Bolivia on Dec. 27, 1945; Brazil on Jan. 14, 1946; Canada on Dec. 27, 1945; Chile on Dec. 31, 1945; China on Dec. 26, 1945; Costa Rica on Jan. 8, 1946; Czechoslovakia on Dec. 26, 1945; Dominican Republic on Dec. 28, 1945; Ecuador on Dec. 28, 1945; Egypt on Dec. 26, 1945; Ethiopia on Dec. 12, 1945; France on Dec. 27, 1945; Greece on Dec. 26, 1945; Guatemala on Dec. 28, 1945; Honduras on Dec. 26, 1945; Iceland on Dec. 27, 1945; India on Dec. 27, 1945; Iran on Dec. 29, 1945; Iraq on Dec. 26, 1945; Luxembourg on Dec. 26, 1945; Mexico on Dec. 31, 1945; Netherlands on Dec. 26, 1945; Norway on Dec. 27, 1945; Paraguay on Dec. 28, 1945; Peru on Dec. 31, 1945; Philippine Commonwealth on Dec. 21, 1945; Poland on Jan. 10, 1946; Union of South Africa on Dec. 26, 1945; United Kingdom of Great Britain and Northern Ireland on Dec. 27, 1945; United States of America on Dec. 20, 1945; Yugoslavia on Dec. 26, 1945.]

referred to in (a) above may be delayed until one hundred and eighty days after the date on which these territories have been liberated. If, however, it is not deposited by any such government before the expiration of this period, the signature affixed on behalf of that government shall become void and the portion of its subscription paid under (d) above shall be returned to it.

(i) Paragraphs (d) and (h) shall come into force with regard to each signatory government as from the date of its signature.

Section 3. *Inauguration of the Bank*

(a) As soon as this Agreement enters into force under Section 1 of this Article, each member shall appoint a governor and the member to whom the largest number of shares is allocated in Schedule A shall call the first meeting of the Board of Governors.

Provisional executive directors.

(b) At the first meeting of the Board of Governors, arrangements shall be made for the selection of provisional executive directors. The governments of the five countries, to which the largest number of shares are allocated in Schedule A, shall appoint provisional executive directors. If one or more of such governments have not become members, the executive directorships which they would be entitled to fill shall remain vacant until they become members, or until January 1, 1946, whichever is the earlier. Seven provisional executive directors shall be elected in accordance with the provisions of Schedule B and shall remain in office until the date of the first regular election of executive directors which shall be held as soon as practicable after January 1, 1946.

Post, p. 1466.

Post, p. 1467.

(c) The Board of Governors may delegate to the provisional executive directors any powers except those which may not be delegated to the Executive Directors.

(d) The Bank shall notify members when it is ready to commence operations.

DONE at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 1 (b).

Ante, p. 1441.

FOR AUSTRALIA:

FOR BELGIUM:
L. A. GOFFIN, *december 27. 1945*

FOR BOLIVIA:
V ANDRADE
December 27, 1945

FOR BRAZIL:
FERNANDO LOBO
27 Dec 1945

FOR CANADA:
LESTER B PEARSON
Dec 27/45.

FOR CHILE:
MARCIAL MORA M
Dec. 31 1945.—

FOR CHINA:
WEI TAO-MING
December 27, 1945

FOR COLOMBIA:

FOR COSTA RICA:
F GUTIERREZ
December 27 – 1945.

FOR CUBA:
GMO BELT
December 31, 1945

FOR CZECHOSLOVAKIA:
V. S. HURBAN
Dec 27 – 1945.

FOR THE DOMINICAN REPUBLIC:
EMILIO G GODOY
December 28 – 45.

FOR ECUADOR:
GALO PLAZA
December 27 – 45

FOR EGYPT:
ANIS AZER
December 27, 1945

FOR EL SALVADOR:

FOR ETHIOPIA:
G. TESEMMA
Dec. 27, 1945.

FOR FRANCE:
H BONNET
27 Decembre 1945

FOR GREECE:
C. P. DIAMANTOPOULOS
December 27. 1945.

FOR GUATEMALA:
JORGE GARCÍA GRANADOS
27 de Diciembre de 1945

FOR HAITI:

FOR HONDURAS:
JULIÁN R CÁCERES
December 27, 1945

FOR ICELAND:
THOR THORS
December 27, 1945

FOR INDIA:
G. S. BAJPAI.
27. 12. '45

FOR IRAN:
HUSSEIN ALA
December 28th 1945.

FOR IRAQ:
ALI JAWDAT *Dec 27 – 1945*

FOR LIBERIA:

FOR LUXEMBOURG:
HUGUES LE GALLAIS
December 27th 1945

FOR MEXICO:
A. ESPINOSA DE LOS MONTEROS, *Dec. 31st, 1945.*

FOR THE NETHERLANDS:
A. LOUDON
Dec. 27th 1945.–

FOR NEW ZEALAND:

FOR NICARAGUA:

FOR NORWAY:
W. MUNTHE MORGENSTIERNE
December 27th 1945.

FOR PANAMA:

FOR PARAGUAY:
CELSO R. VELÁZQUEZ
December 27, 1945–

FOR PERU:
H FERNÁNDEZ DÁVILA
Dec 31, 1945.–

FOR THE PHILIPPINE COMMONWEALTH:
CARLOS P. ROMULO
December 27, 1945

FOR POLAND:
OSKAR LANGE
December 27, 1945

FOR THE UNION OF SOUTH AFRICA:
H T ANDREWS
December 27 1945

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
HALIFAX.
Dec. 27. 1945.

FOR THE UNITED STATES OF AMERICA:
FRED M. VINSON
Dec. 27, 1945

FOR URUGUAY:
CÉSAR MONTERO B.
Dec. 27 1945

FOR VENEZUELA:

FOR YUGOSLAVIA:
STANOJE SIMIC *27 XII. 1945.*

SCHEDULE A

Subscriptions	(millions of dollars)
Australia	200
Belgium	225
Bolivia	7
Brazil	105
Canada	325
Chile	35
China	600
Colombia	35
Costa Rica	2
Cuba	35
Czechoslovakia	125
*Denmark	
Dominican Republic	2
Ecuador	3.2
Egypt	40
El Salvador	1
Ethiopia	3
France	450
Greece	25
Guatemala	2
Haiti	2
Honduras	1
Iceland	1
India	400
Iran	24
Iraq	6
Liberia	.5
Luxembourg	10
Mexico	65
Netherlands	275
New Zealand	50
Nicaragua	.8
Norway	50
Panama	.2
Paraguay	.8
Peru	17.5
Philippine Commonwealth	15
Poland	125
Union of South Africa	100
Union of Soviet Socialist Republics	1200

* The quota of Denmark shall be determined by the Bank after Denmark accepts membership in accordance with these Articles of Agreement.

Subscriptions—Continued

	(millions of dollars)
United Kingdom	1300
United States	3175
Uruguay	10.5
Venezuela	10.5
Yugoslavia	40
Total	9100

SCHEDULE B

Election of Executive Directors

1. The election of the elective executive directors shall be by ballot of the Governors eligible to vote under Article V, Section 4(b). *Ante*, p. 1451.

2. In balloting for the elective executive directors, each governor eligible to vote shall cast for one person all of the votes to which the member appointing him is entitled under Section 3 of Article V. The seven persons receiving the greatest number of votes shall be executive directors, except that no person who receives less than fourteen percent of the total of the votes which can be cast (eligible votes) shall be considered elected. *Ante*, p. 1451.

3. When seven persons are not elected on the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only (a) those governors who voted in the first ballot for a person not elected and (b) those governors whose votes for a person elected are deemed under 4 below to have raised the votes cast for that person above fifteen percent of the eligible votes.

4. In determining whether the votes cast by a governor are to be deemed to have raised the total of any person above fifteen percent of the eligible votes, the fifteen percent shall be deemed to include, first, the votes of the governor casting the largest number of votes for such person, then the votes of the governor casting the next largest number, and so on until fifteen percent is reached.

5. Any governor, part of whose votes must be counted in order to raise the total of any person above fourteen percent, shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed fifteen percent.

6. If, after the second ballot, seven persons have not been elected, further ballots shall be held on the same principles until seven persons have been elected, provided that after six persons are elected, the seventh may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

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SCHEDULE B. Election of Executive Directors

December 28, 1945
[T. I. A. S. 1503]

Agreement between the United States of America and Honduras respecting a military mission. Signed at Washington December 28, 1945; effective December 28, 1945.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF HONDURAS

In conformity with the request of the Government of the Republic of Honduras to the Government of the United States of America, the President of the United States of America has authorized the appointment of officers and enlisted men of the United States Army to constitute a Military Mission to the Republic of Honduras under the conditions specified below:

TITLE I

Purpose and Duration

ARTICLE 1. The purpose of this Mission is to cooperate with the Ministry of War, the Chief of Staff of the Republic of Honduras and with the personnel of the Honduran Army, with a view to enhancing the efficiency of the Honduran Army and Air Forces.

ARTICLE 2. This Mission shall continue for a period of four years from the date of the signing of this Agreement by the accredited representatives of the Government of the United States of America and the Government of the Republic of Honduras, unless previously terminated or extended as hereinafter provided. Any

ACUERDO ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA Y EL GOBIERNO DE LA REPÚBLICA DE HONDURAS

De conformidad con la solicitud del Gobierno de la República de Honduras al Gobierno de los Estados Unidos de América, el Presidente de los Estados Unidos de América ha autorizado el nombramiento de oficiales y personal subalterno del Ejército de los Estados Unidos que constituyan una Misión Militar en la República de Honduras de acuerdo con las condiciones estipuladas a continuación:

TÍTULO I

Objeto y Duración

ARTÍCULO 1. El objeto de esta Misión es cooperar con el Ministerio de la Guerra, con el Jefe del Estado Mayor de la República de Honduras y con el personal del Ejército hondureño en el propósito de aumentar la eficencia del Ejército y la Fuerza Aérea hondureños.

ARTÍCULO 2. Esta Misión continuará por un período de cuatro años a partir de la fecha de la firma de este Acuerdo por los representantes acreditados del Gobierno de los Estados Unidos de América y del Gobierno de la República de Honduras, a menos que se dé por terminado antes o se prorrogue en la forma que se

enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act.'"

Page 7, line 15, strike out "subparagraph" and insert "paragraph."

Page 7, line 16, strike out "subparagraph" and insert "paragraph."

Page 7, line 19, strike out "subparagraph" and insert "paragraph."

Page 7, line 21, after "organization" insert "entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

Page 7, line 1, strike out "subparagraph" and insert "paragraph."

Page 8, line 10, strike out "subparagraph" and insert "paragraph."

Page 8, strike out all in line 15 after "Territories" down to and including "Government" in line 17.

Page 8, line 25, after "fingerprinting", insert "and."

Page 9, line 1, strike out "and selective training and service."

Page 9, strike out lines 17, 18, and 19, and insert "inserting in lieu thereof a comma and the following: 'and (7) a representative of a foreign government in or to an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, or an alien officer or employee of such an international organization, and the family, attendants, servants, and employees of such a representative, officer, or employee.'"

Page 10, line 14, after "as", insert "a representative of a foreign government in or to an international organization or."

Page 10, line 15, strike out "officer" and insert "representative, officer."

Page 10, line 19, strike out "act" and insert "title."

Page 11, line 5, strike out "act" and insert "title."

Page 11, line 12, strike out "act" and insert "title."

Page 11, lines 17 and 18, strike out "immediate families residing with them" and insert "families, suites, and servants."

Page 11, line 18, strike out "act" and insert "title."

Page 11, line 23, strike out "act" and insert "title."

Page 12, after line 4, insert:

"SEC. 10. This title may be cited as the 'International Organizations Immunities Act.'

"TITLE II

"SEC. 201. Extension of time for claiming credit or refund with respect to war losses.

"If a claim for credit or refund under the internal revenue laws relates to an overpayment on account of the deductibility by the taxpayer of a loss in respect of property considered destroyed or seized under section 127 (a) of the Internal Revenue Code (relating to war losses) for a taxable year beginning in 1941 or 1942, the 3-year period of limitation prescribed in section 322 (b) (1) of the Internal Revenue Code shall in no event expire prior to December 31, 1946. In the case of such a claim filed on or before December 31, 1946, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 322 (b) (2) or (3) of such code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section.

"SEC. 202. Contributions to pension trusts.

"(a) Deductions for the taxable year 1942 under prior income-tax acts: Section 23 (p) (2) of the Internal Revenue Code is amended by striking out the words 'January 1, 1943' and inserting in lieu thereof 'January 1, 1942', and by striking out the words 'December 31, 1942' and inserting in lieu thereof 'December 31, 1941.'

"(b) Effective date: The amendment made by this section shall be applicable as if it had been made as a part of section 162 (b) of the Revenue Act of 1942.

"SEC. 203. Petition to The Tax Court of the United States.

"(a) Time for filing petition: The second sentences of sections 272 (a) (1), 732 (a), 871 (a) (1), and 1012 (a) (1), respectively, of the Internal Revenue Code are amended by striking out the parenthetical expression appearing therein and inserting in lieu thereof the following: '(not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day).'

"(b) Effective date: The amendments made by this section shall take effect as of September 8, 1945."

The SPEAKER. Is there objection to the request of the gentleman from Virginia [Mr. ROBERTSON]?

Mr. MICHENER. Mr. Speaker, reserving the right to object, certainly these are formidable-sounding amendments. The bill comes from the Ways and Means Committee. The gentleman from New York [Mr. REED], and other members of the committee on this side are present. I hope the amendments will be thoroughly explained to the House.

Mr. ROBERTSON of Virginia. Mr. Speaker, the amendments sound formidable, but the meaning is simple when you get below the surface.

The essence of the amendments, except the three amendments put on as tax riders to this bill, limit the scope of the bill as passed by the House last month. It will be recalled that I explained when I called the bill up in November that the emergency for this legislation grew out of the prospects that the headquarters for UNO will probably be in this country. We do not know whether it will be Boston, San Francisco, Chicago, or "Tuskeehoma."

There is every evidence that the headquarters will be here, and when these foreign employees come we want to be in position to extend them what might be called southern hospitality. In other words, this legislation is absolutely essential to carry out the agreements we have made and which other nations have already extended to similar organizations. The Senate made these restrictions. We thought the language of the bill limited these privileges to these international organizations that had been specifically sanctioned by the Congress. The Senate thought we ought to make that plain, and one amendment makes that provision: They do not get the benefits, these tax exemptions and other perquisites, unless the Congress has sanctioned the organization. The next amendment provides that if some organization starts functioning here and goes beyond the scope for which it was created, let us say starts into business over here, the President by Executive order can withdraw the privileges from the employees of that foreign organization.

Mr. RANKIN. Ought not that to be written into law? Why should we wait for the Executive? Should not that be written into law, that if they come here and engage in other business these privileges should cease?

Mr. ROBERTSON of Virginia. We have written it into law. Somebody has got to act in all law enforcement and we designate the President because he handles our foreign affairs under the Constitution; he acts for the Congress and the American people. It is written into this law and he is directed to withdraw from them these privileges if he finds they are violating the terms under which they were permitted to enter and to do business presumably for some international organization. It is a very hypothetical case, though, that representatives of Great Britain, for instance, who would be assigned to headquarters of the UNO would open up a shipping business in Boston or San Francisco. They just do not operate that way.

Mr. RANKIN. I do not know. I saw in the papers the other day that the British Empire owns stock in General Motors, almost a controlling interest. I do not know whether that is true or not, but under the common law of England one corporation cannot own stock in another, and I do not believe the United States Government could own stock in a British corporation. Unless there is a great deal of hurry about this proposition——

Mr. ROBERTSON of Virginia. Well, there is.

Mr. RANKIN. Why?

Mr. ROBERTSON of Virginia. Simply because we are going to recess today, as the gentleman well knows, and we do not propose to come back until the 14th of January. In the meantime final action has got to be taken as to whether UNO will have its headquarters here or somewhere else. Everybody thinks it would be very fine to have the headquarters of this international organization in this country.

I communicated with the State Department today and was told that it was highly essential for us to complete action on this.

Here is a report that is unanimously presented by the Senate Finance Committee, the distinguished Senator from Ohio [Mr. TAFT] reporting for that committee. These amendments were unanimously adopted by the Senate. They restrict what we have already voted for, and the vote in the House on our bill was unanimous.

Mr. RANKIN. I still contend that it should be written into the law that if they come here and then violate their exemptions and engage in other business here or engage in any kind of propaganda against this Government that they should automatically have these privileges withdrawn and be subjected to taxation.

Mr. ROBERTSON of Virginia. The law does take care of that as fully as we know how to put it in the law.

Mr. FOLGER. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. FOLGER. The Congress has spoken. All that this does is to give the

President the power to enforce it when it becomes necessary.

Mr. RANKIN. It does not make it the law.

Mr. FOLGER. That is the gist of it, is it not?

Mr. ROBERTSON of Virginia. Absolutely. It is provided that the President shall withdraw from such organization or its officers and employees their exemptions or immunities provided they do something they are not supposed to do. The situation is fully taken care of.

Mr. ROBSION of Kentucky. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. ROBSION of Kentucky. I wish to inquire if the gentleman or his committee has taken any testimony as to how many organizations now in existence outside of UNO would come under the provisions of this bill?

Mr. ROBERTSON of Virginia. If UNRRA had to extend relief to us it would come under it. It also applies to certain foreign agencies of UNRRA. If the International Food and Agricultural Organization, which we have joined, should set up headquarters here, it would come under this. The only agency that we know of which would immediately function under this is UNO, but any international organization of which we are a member by action of the Congress and in which we participate, will come within the provisions of this act.

Mr. ROBSION of Kentucky. There are quite a number of them already. This provides for additional organizations that may be formed?

Mr. ROBERTSON of Virginia. I tried to explain that all of these amendments limited provisions that were unanimously passed by the House. It does not add any new organizations, it does not add any new powers. The language was deemed to be a little too broad in the items I have explained and the Senate limited them. I am asking that we accept the limitations adopted by the Senate. Those limitations, as I said, had the unanimous endorsement of the Senate committee, the Senate, the State Department, the Treasury Department, and the tax suggestions are approved by our committee and by our staff on internal revenue taxation.

Mr. ROBSION of Kentucky. But it does provide for the creation of additional organizations?

Mr. ROBERTSON of Virginia. It does not.

Mr. ROBSION of Kentucky. I mean for the recognition of such organizations?

Mr. ROBERTSON of Virginia. It limits what we have already done. The original bill provided that when there is an international organization which we have joined by act of Congress, we should extend to them the privileges of immunity in general that we extend to the diplomatic corps. One thing we did in this bill that the Senate took out was this: We gave them freedom from State and local taxation. That was taken out by the Senate committee and I am asking the House to agree to that. It limits what we have undertaken to do. Another thing, it takes out the provision in our bill about selective service because that is covered by section 5 of our Selective Service Act.

Mr. ROBSION of Kentucky. I hope the gentleman will not feel a little overanxious and irritated by these questions. You see, there is no report printed, there is no report before us, and we do not have the opportunity to know what is contained in this report. I should like to ask another question. Is there any estimate in the gentleman's mind as to how many persons this will grant these extraordinary privileges to in this country? How many persons?

Mr. ROBERTSON of Virginia. That question was asked last month when we had the bill before us and our answer was that we had no way of knowing how many persons, but we had no reason to believe that any foreign nation would send over here more persons than they needed to do the job, because they had to sustain them and pay them while they are here.

Mr. ROBSION of Kentucky. We went through that experience. It developed just before the war that Japan had 1 consul and 250 vice consuls with keen eyes, with keen minds, and with diplomatic immunity going about the people in this country and over in Hawaii. Who is going to be able to follow all of these organizations and all of these people with diplomatic immunities and find out where they are and what they are doing?

Mr. ROBERTSON of Virginia. The Senate thought that our bill was not strict enough on that score, so it put this first amendment in that if they brought more people over here than they ought to bring over here and they got to doing something which we did not approve, the President would withdraw these privileges from them.

Mr. ROBSION of Kentucky. It has only been a short time ago when the newspapers were full of reports that people came here without diplomatic immunity as visitors, and that they had engaged in business, and that their profits had amounted to $800,000,000, and escaped taxes.

Mr. ROBERTSON of Virginia. That was an entirely different category. They came over here not as representatives of their government engaged in an international organization of which we were members. They came over here as aliens on some kind of a temporary visa. Our tax laws did not reach them, and they participated, with a lot of others, in gambling on the stock market in New York, in which they made a good deal of money, I understand. But this bill has nothing to do with that.

Mr. ROBSION of Kentucky. They did not have diplomatic immunity?

Mr. ROBERTSON of Virginia. They did not have any kind of immunity.

Mr. ROBSION of Kentucky. Yet they were able to accomplish this merely as aliens; that which they did accomplish. Now, will all of this group coming in here be immune?

Mr. ROBERTSON of Virginia. I can say to my distinguished colleague that he has raised an entirely separate issue that is now being investigated by the Bureau of Internal Revenue as to whether these folks are taxable under existing law, and if not, whether legislation can be enacted to apply to them. The Ways and Means Committee expects to receive a report from the Bureau of Internal Revenue on this matter.

Mr. ROBSION of Kentucky. It has this to do with it: They did not have the authority that will be granted to these maybe thousands and thousands of people going over this country, some of them friendly, and perhaps some of them otherwise, to pry into and go about things——

Mr. ROBERTSON of Virginia. I just tried to explain to my colleague that this bill, if agreed to, would limit tax relief to the salaries paid by these organizations, and if they go into business they would not be exempt as to such income.

Mr. ROBSION of Kentucky. They would have to be caught first.

Mr. ROBERTSON of Virginia. Well, do you not have to catch any violator first?

Mr. MUNDT. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield to the gentleman from South Dakota.

Mr. MUNDT. I believe that the gentleman said that the reason for urgency in connection with this bill was because the United Nations had accepted the invitation of this country to locate their international capital in the United States.

Mr. ROBERTSON of Virginia. That is correct.

Mr. MUNDT. As I recall, he listed the invitation of Boston and Tuskahoma and a couple of other Johnny-come-lately invitations——

Mr. ROBERTSON of Virginia. I did not mean to eliminate any great area like that which the gentleman represents.

Mr. MUNDT. I am sure if the United States uses sagacity they will adopt the Black Hills suggestion. The bill also covers that?

Mr. ROBERTSON of Virginia. Absolutely.

Mr. HOFFMAN. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield to the gentleman from Michigan.

Mr. HOFFMAN. I thought I heard something about limiting the number of persons who were to come over. Should there not also be something in the legislation which would limit the kind of people who should be permitted to come here and be immune from our laws? I make that inquiry because I have in my hand here a letter dated December 10 written from Detroit in which it says, among other things:

> The enclosed is a statement by William Z. Foster, chairman of the Communist Party, urging support for the General Motors strike.

It is signed by Carl Winter, chairman of the Michigan Communist Party. Now are you going to let all those fellows come over here from Russia or any other place and join up with Thomas,

who has asked Attlee to aid in the General Motors strike, and let those people go on and do anything they want to?

Mr. ROBERTSON of Virginia. No. I tried to explain that if they come over to aid in the General Motors strike, they lose their immunity, but I do not think that we could tell Russia that they could not bring Communists over here to represent them.

Mr. HOFFMAN. Does the gentleman think that those Communists should be permitted to come over here and take part in these strikes?

Mr. ROBERTSON of Virginia. Absolutely not.

Mr. HOFFMAN. How are you going to stop it if this thing goes through?

Mr. ROBERTSON of Virginia. Because we put in a provision that they lose their immunity if they do anything outside of the purposes of the organization that they represent.

Mr. HOFFMAN. If and when the President makes a finding.

Mr. ROBERTSON of Virginia. That is right.

In conclusion I wish to summarize the substantive amendments as follows:

First. The benefits of the bill are extended only to those international organizations in which the United States participates with the sanction of Congress. That was our intention.

Second. The President is authorized in the light of functions performed by any particular international organization to withhold or withdraw from such organization, or its officers or employees, any of the privileges, exemptions, and immunities provided for in the title, or to condition or limit the enjoyment by any organization, or its officers or employees, of any of such privileges, exemptions or immunities. This will permit the adjustment or limitation of the privileges in the event that any international organization should engage, for example, in activities of a commercial nature. Provision is also made for withdrawal of the benefits of the title from organizations which abuse such benefits.

Third. The bill omits the provision of the House bill which provided that international organizations shall be entitled to the same exemptions and immunities from State and local taxes as is the United States Government. There is considerable doubt as to the authority of the Federal Government to extend such exemptions and immunities so far as State or local taxes are concerned.

Fourth. The House bill exempted from the provisions of selective training and service persons designated by foreign governments to serve as their representatives in or to international organizations, and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, or employees residing with them, other than nationals of the United States. The Senate bill omits reference to selective training and service, since this matter, so far as aliens are concerned, is already provided for in section 5 of the Selective Service Act.

The Senate bill also adds a separate title providing certain tax amendments of an administrative nature. It was necessary to act on these amendments before December 31, 1945,

Fifth. The first tax amendment extends the time for filing claims for refund or credit with respect to war losses for the years 1941 and 1942. In a previous act we had extended this period to December 31, 1945, with respect to the year 1941. Since the whole war-loss matter is going to be studied by our committee and changes recommended it was deemed advisable to grant a further extension for both 1941 and 1942 through December 31, 1946.

Sixth. Another amendment corrects an error in the Revenue Act of 1942 with respect to pension trusts which omitted reference to the year 1942 and thereby created a hiatus in the statute. It is necessary to correct this situation now to prevent unnecessary paper work on the part of the Bureau of Internal Revenue.

Seventh. The last amendment deals with the period for filing petitions with The Tax Court of the United States. A taxpayer at the present time must file his petition with The Tax Court within a period of 90 days. Where the ninetieth day falls on Sunday or a legal holiday such Sunday or legal holiday is not counted as the ninetieth day. Due to the fact that the Government does not now conduct business on Saturday, it is necessary to amend the statute so that where the ninetieth days falls on Saturday, Saturday will not be counted as the ninetieth day.

All of these tax amendments have the approval of the Treasury Department and the joint staff. The Tax Court of the United States is particularly interested in having the last amendment referred to adopted as soon as possible.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

DECLARATION OF RECESS

Mr. RAMSPECK. Mr. Speaker, I ask unanimous consent that it be in order at any time today for the Chair to declare a recess, subject to the call of the Chair.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

Mr. MICHENER. Mr. Speaker, reserving the right to object, will the gentleman outline, if he can, the expected program for the rest of the day?

Mr. RAMSPECK. There is no further business so far as I know to be transacted by the House except to pass the sine die adjournment resolution when it comes over from the Senate.

Mr. MICHENER. As I understand, the Senate has passed the resolution fixing the 14th of January as the return date.

Mr. RAMSPECK. That is my understanding that they have adopted it, and the only thing left now is the sine die resolution.

Mr. HOFFMAN. Reserving the right to object, Mr. Speaker, does the gentleman mean that cuts off special orders?

Mr. RAMSPECK. Not at all.

Mr. MICHENER. I certainly would object if I thought the gentleman from Michigan or anybody else wanted to speak.

Mr. HOFFMAN. Certainly the gentleman from Michigan would not want to speak.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

EXTENSION OF REMARKS

Mr. FARRINGTON asked and was given permission to extend his remarks in the RECORD in two instances and include in one an article from Life by Charles J. V. Murphy and in the other a letter by Mr. Abe Fortas, Under Secretary of the Interior.

Mrs. LUCE asked and was given permission to extend her remarks in the RECORD in two instances and include in one a letter from a friend in Austria and in the other some facts about the workings of UNRRA abroad.

Mr. BENNETT of Missouri asked and was given permission to extend his remarks in the RECORD on the subject of the work of one of his committees.

Mr. HALE asked and was given permission to extend his remarks in the RECORD and include an editorial from the Honolulu Star-Bulletin of November 12 last.

Mr. WOLCOTT asked and was given permission to extend his remarks in the RECORD and include an editorial from the New York Times in respect to the death of the outstanding economist, Dr. Edwin C. Kemmerer.

Mr. MUNDT asked and was given permission to extend his remarks in the RECORD and include an editorial on the subject of the program of loans to foreign countries.

Mrs. ROGERS of Massachusetts. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include an article which appeared in Yank magazine giving a description of the benefits to be given by Canada to the Canadian GI's. It shows there are some things, I think, whereby we can improve on what we are doing for our own GI's.

The SPEAKER. Is there objection to the request of the gentlewoman from Massachusetts?

There was no objection.

INTERNATIONAL INFORMATION PROGRAM

Mrs. BOLTON. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks and include an article.

The SPEAKER. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

Mrs. BOLTON. Mr. Speaker, the Foreign Affairs Committee recently held hearings on a bill, H. R. 4982, which would authorize the Department of State to continue to carry on an international information program.

Mr. WOLCOTT. Mr. Speaker, I yield 5 minutes to the gentleman from Iowa [Mr. TALLE].

Mr. TALLE. Mr. Speaker, I should like to call the attention of the Members of the House to page 15 of the hearings on this bill. On that page you will find, in one short paragraph, a simple and clear statement of the purpose and intent of the bill now under consideration. The Secretary of the Treasury made an excellent statement before the House Banking and Currency Committee with reference to the pending legislation. I call the attention of the House to that paragraph in the Secretary's statement which you will find on page 15, and which I will now read:

> The International Finance Corporation has been proposed as one way of encouraging new foreign private investment.

I read further:

> The International Finance Corporation is to serve as a catalyst in stimulating private investment.

I read further:

> It is not another type of government-to-government aid. Instead, by assisting private ventures on a business basis, the IFC will give concrete expression to the basic American conviction that economic development is best achieved through the growth of private enterprise.

That is the end of the paragraph and which I quoted from Secretary Humphrey's statement. I want to read to you now what I said about that paragraph during the hearing:

> I certainly would like to give my blessings to that statement, and if we do not follow a policy of that sort we will not encourage borrowers to stand on their own feet.

There is one more point which I want to emphasize. Members are invited to turn to page 26 of the hearings. It is pointed out there that the management of this new corporation will be identical with the management of the World Bank. In this connection, may I emphasize that the World Bank has made a profit during every year of its operation except the first one.

Inasmuch as some time was needed for organizing, for getting the bank established, and for getting operations started, no one expected it to make a profit the first year. During every year since the first year the International Bank for Reconstruction and Development has made a profit. We are therefore assured of good management. Of course, all of us know that it is the quality of management more than anything else that means success or failure of a business institution.

This bill should be enacted into law.

I yield back the remainder of my time, Mr. Speaker.

Mr. SPENCE. Mr. Speaker, I yield such time as he may desire to the gentleman from Illinois [Mr. O'HARA].

Mr. O'HARA of Illinois. Mr. Speaker, I am referring the attention of my colleagues to page 32 of the hearings of our committee on the pending bill and of the reply of the Secretary of the Treasury to my questioning in which he stated that it was his hope that this new instrumentality of the Federal Government, if authorized, would succeed to the point where it could successfully market its securities as has been the case with the International Bank.

If this bill is passed, as I expect, we will have three financial instrumentalities in the world field; namely, the Export-Import Bank, which is our own bank, and which has done a tremendous job; the International Bank in which a number of nations, ours included, participate; and this new corporation.

The International Bank has a right to market its debentures, which it has been doing on a rather large scale. Of course, most of the sales of such securities are made in this country.

The United States makes the largest contribution to the International Bank, much larger than any other nation. Then when its debentures are sold the actual contribution of the capital of our country is vastly increased in proportion to that of the other participating nations. This is because the great bulk of the debentures of the International Bank are sold in the United States.

As to the new financial corporation contemplated by this bill, I was interested in learning from the Secretary of the Treasury that it was contemplated that the same course would be followed here. That means that with the two international instrumentalities in this field, under international direction and control, and I am referring to the International Bank and the new proposed corporation, first, the largest contribution is made by the United States Government, and, second, further capital will come almost exclusively from private investors in the United States.

I am for this bill. I am for point 4 in all of its aspects and developments. I think it furnishes the only certain path to world peace. But I think I should point out here that extreme caution should be taken against unwarranted issues of debentures so that the investors of our country—who furnish the only real market for such issues—will not through an unexpected collapse in foreign economies suffer disastrous losses somewhat comparable to those in the late twenties, when we had large investments in Latin America, all of which investments went sour.

The Export-Import Bank is our own bank. It has proved a tremendous success. Our committee was very much concerned that this proposed new corporation should not develop into an instrumentality to undermine the Export-Import Bank. I think our committee would have adopted unanimously the amendment offered by the gentleman from Georgia [Mr. BROWN], unless the assurance was given that there was no such intention and that the sole purpose of this legislation is to make available in countries needing development the risk capital that can be furnished neither by the Export-Import Bank nor the International Bank. We were assured that applications for loans would be cleared with the two existing banks.

I hope that the bill will pass and that the new corporation will supplement the good work of the Export-Import Bank and exercise prudence in the issue of debentures.

Mr. WOLCOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. GROSS].

Mr. GROSS. Mr. Speaker, I am opposed to this legislation, but I do want to commend the committee for one provision which has apparently been written into it. I read from the report, on page 8:

> The officials and employees, including Governors and Directors, will be immune from legal process with respect to their official acts, and will receive the same treatment as comparable employees in the diplomatic service of their own country.

Mr. Speaker, I am glad to see this committee of Congress protecting the constitutional rights of American citizens who may be abroad. This is quite contrary to the infamous Status of Forces Agreement by which American servicemen and their dependents can be tried in the civil courts of foreign countries and incarcerated in foreign prisons. I compliment the committee upon protecting the constitutional rights of American citizens who may be abroad in connection with the administration of this program.

Mr. SPENCE. Mr. Speaker, I yield such time as he may desire to the gentleman from New York [Mr. MULTER].

Mr. MULTER. Mr. Speaker, I ask unanimous consent to extend my remarks at this point.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. MULTER. Mr. Speaker, many times during the course of this session I have tried to correct the statements on the floor and in the press which have referred to the forward-looking and progressive program of the Democratic Party as the Eisenhower program. This bill which we are now about to consider is another part of the Democratic program adopted by Mr. Eisenhower and presented to us as his program. We, in the Democratic Party are happy to find the Republicans espousing, supporting, and implementing the Truman point 4 program. If this bill passes and is properly administered, it will be another feather in the cap of the Democratic Party.

Mr. ASHLEY. Mr. Speaker, I believe the House should approve the bill authorizing membership of the United States in the International Finance Corporation. The purpose of this Corporation, as the report of the Committee on Banking and Currency stated, is "to encourage the growth of private enterprise in its member countries, particularly the less developed areas."

Mr. Speaker, the conditions of misery which stalk millions of human beings in the underdeveloped areas of the world should be enough to generate support for this measure on the part of the richest nation on earth. There can be no disagreement that increased investment and development, such as this proposal contemplates, would bring great benefits to people in these areas by raising their standards of living.

Yet this proposal is justified, not only by the instinctive American feeling for

the downtrodden and oppressed, but also by the very tangible advantages, economic and political, which will come to the United States by a stepping-up of investment in these regions. No longer can there be any doubt that a central string on the harp of Communist propaganda in such areas is the economic backwardness which has so long characterized them. In Asia, particularly, the poverty which surrounds human life often combines with the sense of frustration among native leaders to produce fertile soil for dreams of a world freed from "imperialist exploitation." The Communists naturally do not hesitate to paint this dream in bright and glowing colors. I believe, Mr. Speaker, that America should make clear to the people of such areas that political freedom and economic well-being are not mutually exclusive. One of the best ways in which we can encourage these twin goals is by supporting the proposal now before us to provide venture capital for productive activities where member nations do not find it possible to finance their development requirements from their own resources.

Another reason for American participation in the International Finance Corporation is clearly stated in the committee report: "the United States could anticipate increasing consumption of American agricultural and industrial products."

The International Finance Corporation can operate only in collaboration with private investors and for this reason would not be in competition with private investment. At the present time neither the International Bank for Reconstruction and Development nor the Export-Import Bank can adequately meet the need for increased private investment in the economically backward areas. The IFC can supplement the activities of these two organizations by supplying venture capital and can channel experienced management into those fields where it is required.

Three methods of achieving the IFC goal of stimulating private investment in underdeveloped areas are set forth in the committee report as follows:

> Investing in productive enterprise, in association with private investors without Government guaranties of repayment where sufficient private capital is not available on reasonable terms;
>
> Serving as a clearinghouse to bring together investment opportunities, private capital, and experienced management;
>
> Creating conditions conducive to and otherwise stimulating the productive investment of private capital.

Mr. Speaker, it is by such practical measures as membership in the International Finance Corporation that we can best help lift the level of human life in the underdeveloped areas of the world and at the same time serve and strengthen the cause of freedom.

Mr. SPENCE. Mr. Speaker, we have no further requests for time.

The SPEAKER. The question is on the motion of the gentleman from Kentucky that the rules be suspended and the bill be passed.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TWENTY-YEAR AMORTIZED RESIDENTIAL REAL-ESTATE LOANS

Mr. SPENCE. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1189) to permit national banks to make 20-year real-estate loans, 9-month residential-construction loans, and 18-month commercial-construction loans, as amended.

The Clerk read as follows:

Be it enacted, etc., That the first paragraph of section 24 of the Federal Reserve Act, as amended (U. S. C., 1952 edition, title 12, sec. 371), is amended to read as follows:

"SEC. 24. Any national banking association may make real estate loans secured by first liens upon improved real estate, including improved farmland and improved business and residential properties. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by a mortgage, trust deed, or other instrument upon real estate, which shall constitute a first lien on real estate in fee simple or, under such rules and regulations as may be prescribed by the Comptroller of the Currency, on a leasehold (1) under a lease for not less than 99 years which is renewable or (2) under a lease having a period of not less than 50 years to run from the date the loan is made or acquired by the national banking association, and any national banking association may purchase any obligation so secured when the entire amount of such obligation is sold to the association. The amount of any such loan hereafter made shall not exceed 50 percent of the appraised value of the real estate offered as security and no such loan shall be made for a longer term than 5 years; except that (1) any such loan may be made in an amount not to exceed 66⅔ percent of the appraised value of the real estate offered as security and for a term not longer than 10 years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize 40 percent or more of the principal of the loan within a period of not more than 10 years, (2) any such loan may be made in an amount not to exceed 66⅔ percent of the appraised value of the real estate offered as security and for a term not longer than 20 years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than 20 years, and (3) the foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of title II, title VI, title VIII, section 8 of title I, or title IX of the National Housing Act or which are insured by the Secretary of Agriculture pursuant to title I of the Bankhead-Jones Farm Tenant Act, or the act entitled 'An act to promote conservation in the arid and semi-arid areas of the United States by aiding in the development of facilities for water storage and utilization, and for other purposes', approved August 28, 1937, as amended. No such association shall make such loans in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of 60 percent of the amount of its time and savings deposits, whichever is the greater. Any such association may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such association may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such association is located."

SEC. 2. The first sentence of the third paragraph of section 24 of the Federal Reserve Act, as amended (U. S. C., 1952 edition, title 12, sec. 371), is amended by striking "six" and inserting in lieu thereof "nine."

The SPEAKER. Is a second demanded?

Mr. WOLCOTT. Mr. Speaker, I demand a second.

Mr. SPENCE. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. SPENCE. Mr. Speaker, this bill would authorize national banks to make 20-year amortized mortgage loans, and would authorize them to make 9-month construction loans instead of 6 months as is now provided.

National banks now have the authority to make unamortized mortgage loans for 5 years. They can now make amortized loans maturing in 10 years if 40 percent is required to be paid under their amortization provision. This would only extend the privileges that the national banks have had. It would not enlarge the lines of credit, but it would merely authorize the national banks to make 20-year amortized loans. Almost all lending institutions now have that privilege.

The Senate bill provided for 18-month construction loans on industrial properties. The House committee struck that provision out. National banks are anxious to have the authority given them in the bill. The savings-and-loan associations which have been engaged in the same activities as defined in this bill and are now making amortized mortgage loans having maturities of 20 years and more are not opposed to it.

I know of no opposition to the bill.

Mr. WOLCOTT. Mr. Speaker, I have no requests for time.

The SPEAKER. The question is on the motion of the gentleman from Kentucky that the rules be suspended and the bill be passed.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill was passed.

A motion to reconsider was laid on the table.

The title was amended so as to read: "An act to permit national banks to make 20-year real estate loans, and 9-month residential construction loans."

Mr. SPENCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks in the RECORD on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Similar examples involving the east coast and the New Orleans area could be cited.

From the beginning, with respect to both domestic and foreign air travel, the United States has refused to sanction either limitations on capacity or agreements for division of traffic. Instead, it has properly insisted on reasonable competition and reciprocal rights so far as these air routes are concerned.

During the last 10 years the United States has successfully negotiated, on the basis stated, some 45 bilateral air-route agreements with various countries, including most of our Central and South American neighbors. For the reasons stated, Mexico represents our outstanding failure.

Let me emphasize, also, Mr. President, that while these negotiations have dragged on and on, foreign airlines are obtaining lucrative portions of the Latin American air traffic. It is estimated that CMA carries from 20 to 25 percent of all air traffic between the United States and Mexico. Air France obtained in 1946 a CAB certificate to fly nonstop from New York to Mexico City. This certificate was based upon an overall United States-France bilateral agreement. Air France also received a Mexican certificate for that same flight into Mexico City in 1953. Since that time, Air France has been flying nonstop from New York to Mexico City, with a very adverse affect upon the American flag carriers who fly from New York to Mexico City, with a compulsory stop at Dallas.

Recently, Lufthansa, the West German government airline, has received United States approval to fly several Latin American routes, further reducing the volume of traffic which is still available to United States flag carriers.

It is a puzzle to me that, excluding one flight from Dallas to Mexico City, no United States flag carrier is permitted to fly nonstop from any major United States city to Mexico City. Instead, two foreign carriers have a monopoly on this important traffic—CMA and Air France.

How long must our American cities and our American citizens wait before they are permitted to fly American flag carriers into Mexico? Already, New Orleans has waited 11 years, and the end of the waiting is not in sight. Must we continue to see this expanding air traffic flow to foreign carriers, because the flights of American airlines are blocked by the unreasonable attitude of the Mexican Government.

Mr. President, air commerce is an integral part of our foreign commerce. Our Nation is growing. The Latin American lands are being developed. Yet it is impossible for an American businessman to board an American carrier and fly direct to Mexico City. The growth of the great port of New Orleans, the gateway to the Mississippi Valley, is being hampered by the unreasonable attitude displayed by the government of Mexico with respect to air routes into that country. Meanwhile, the citizens of that city and of the Mississippi Valley must wait. We are told that negotiations are in progress. These negotiations have occupied nearly a decade. It is time they bore some fruit. We cannot forever await a change of heart in our Mexican neighbors. We cannot afford to sit by too long and see foreign air carriers gobble up the most attractive air routes, the biggest part of the traffic, and gain a stranglehold on air commerce between the United States and Mexico.

The time has come for some down-to-earth bargaining between the government of Mexico and the Government of the United States. Let us stop playing ring around the rosy with this important matter. We need these routes; we deserve these routes; and, Mr. President, it is high time we had them.

PARTICIPATION IN INTERNATIONAL FINANCE CORPORATION

Mr. SMATHERS. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 509, Senate bill 1894.

The ACTING PRESIDENT pro tempore. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 1894) to provide for the participation of the United States in the International Finance Corporation.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Florida.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Banking and Currency, with amendments, on page 2, line 8, after the word "governor", to strike out "executive"; in line 9, after the word "and", to strike out "alternate" and insert "alternates"; and in line 12, after the numeral "4", to strike out "The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U. S. C. 286b), with respect to the International Bank for Reconstruction and Development shall apply with respect to the Corporation." and insert "The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U. S. C. 286b), shall apply with respect to the Corporation to the same extent as with respect to the International Bank for Reconstruction and Development." so as to make the bill read:

Be it enacted, etc.—

SHORT TITLE

SECTION 1. This act may be cited as the "International Finance Corporation Act."

ACCEPTANCE OF MEMBERSHIP

SEC. 2. The President is hereby authorized to accept membership for the United States in the International Finance Corporation (hereinafter referred to as the "Corporation"), provided for by the Articles of Agreement of the Corporation deposited in the archives of the International Bank for Reconstruction and Development.

GOVERNOR, EXECUTIVE DIRECTOR, AND ALTERNATES

SEC. 3. The governor and executive director of the International Bank for Reconstruction and Development, and the alternate for each of them, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U. S. C. 286a), shall serve as governor, director, and alternates, respectively, of the Corporation.

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

SEC. 4. The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U. S. C. 286b), shall apply with respect to the Corporation to the same extent as with respect to the International Bank for Reconstruction and Development. Reports with respect to the Corporation under paragraphs 5 and 6 of subsection (b) of section 4 of said act, as amended, shall be included in the first report made thereunder after the establishment of the Corporation and in each succeeding report.

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

SEC. 5. Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States (a) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Corporation; (b) accept any amendment under article VII of the Articles of Agreement of the Corporation; (c) make any loan to the Corporation. Unless Congress by law authorizes such action, no governor or alternate representing the United States shall vote for an increase of capital stock of the Corporation under article II, section 2 (c) (ii), of the Articles of Agreement of the Corporation.

DEPOSITORIES

SEC. 6. Any Federal Reserve bank which is requested to do so by the Corporation shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

SEC. 7. (a) The Secretary of the Treasury is authorized to pay the subscription of the United States to the Corporation and for this purpose is authorized to use as a public-debt transaction not to exceed $35,168,000 of the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that act are extended to include such purpose. Payment under this subsection of the subscription of the United States to the Corporation and any repayment thereof shall be treated as public-debt transactions of the United States.

(b) Any payment of dividends made to the United States by the Corporation shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTIONS

SEC. 8. For the purpose of any action which may be brought within the United States or its Territories or possessions by or against the Corporation in accordance with the Articles of Agreement of the Corporation, the Corporation shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When the Corporation is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES AND PRIVILEGES

SEC. 9. The provisions of article V, section 5 (d), and article VI, sections 2 to 9, both inclusive, of the Articles of Agreement of the Corporation shall have full force and effect in the United States and its Territories and possessions upon acceptance of member-

ship by the United States in, and the establishment of, the Corporation.

Mr. FULBRIGHT. Mr. President, I am glad that the Senator from Connecticut [Mr. PURTELL] requested that S. 1894 not be passed on the consent calendar. United States participation in the International Finance Corporation is a matter of sufficient importance to warrant discussion on the floor of the Senate, even though I do not anticipate that it will be controversial.

The IFC would be an international organization, with about 50 members, closely affiliated with the International Bank. It would have a capital of $100 million, of which the United States would contribute $35,168,000. Its purpose would be to further economic development in its member countries, particularly the less well developed areas, by encouraging the growth of productive private enterprise—by investing its funds in private businesses, along with private investors, by serving as a clearinghouse to bring together investment opportunities, private capital, and experienced management, and by helping to create conditions conducive to the flow of private capital into productive private enterprises.

IFC would differ from the International Bank in two respects: First, its investments would partake of the nature of venture capital, though it could not invest in capital stock or manage the companies it had invested in; and second, a guarantee of the investment by the government of the member country would not be required or permitted, and, of course, IFC could not make loans direct to governments.

The less developed areas of the world suffer from low incomes, low standards of living, distressing conditions of health, sanitation, and education. The result is that many of the people in those areas are restless, discontented, and susceptible to unfriendly influences.

The need for increased development in these areas has long been recognized. The International Bank for Reconstruction and Development has had this as one of its functions since its establishment in 1945 and many of its loans have been directed to this purpose. The Act for International Development, enacted in 1950, contains congressional findings which specifically recognize this need, though the point 4 program authorized by that act involved only technical assistance.

The Export-Import Bank has also long been making loans for developmental purposes, many of which have been of great benefit to the country involved as well as to the United States suppliers and exporters who have directly benefited.

It has also been recognized for a long time that the many programs which have been set up to encourage development of this sort have not been directed with sufficient emphasis to the problem of private investment and private productive enterprises. Many of the programs, of course, are the kind that governments normally conduct—health and education programs or highway construction.

In some cases, however, the emphasis on public grants and loans has resulted in pushing the government of the country involved into projects which private enterprises should carry out or would carry out in this country.

The emphasis on grants and public loans has also resulted in not giving enough attention to the smaller commercial and industry type of enterprise, which in many cases is more suited to the area.

The first specific proposal for an organization of the sort of IFC was made in 1951 by the International Development Advisory Board, the so-called Rockefeller Report. Since that time the idea has been considered by the International Bank, the United Nations, and many other American and foreign groups.

The United States was not favorable to early versions of the proposal which would have authorized IFC to buy capital stock and to have engaged in managing the companies it invested in.

More recently, however, the proposal has been revised to eliminate these features. In December of 1954, the General Assembly of the United Nations adopted a resolution endorsing the concept of IFC and requesting the International Bank to take steps to bring IFC into being, and in April the Bank sent the proposed Articles of Agreement to its members.

On May 2 of this year the President sent a message to Congress recommending enactment of legislation to authorize United States participation in IFC.

The purpose and need for IFC are set forth clearly in the President's message, as follows:

> The entire free world needs capital to provide a sound basis for economic growth which will support rising standards of living and will fortify free social and political institutions. Action to that end by cooperating nations is essential.
>
> In its own enlightened self-interest, the United States is vitally concerned that capital should move into productive activities in free countries unable to finance development needs out of their own resources.
>
> Government funds cannot, and should not, be regarded as the basic sources of capital for international investment. The major purpose of the new institution, consequently, will be to help channel private capital and experienced and competent private management into productive investment opportunities that would not otherwise be developed. Through the corporation we can cooperate more effectively with other people for mutual prosperity and expanding international trade, thus contributing to the peace and the solidarity of the free world.

As I indicated earlier, IFC will carry out this needed purpose in several ways.

In the first place, it will participate in the financing of productive private enterprises, in association with private investors, without a Government guaranty, in cases where sufficient private capital is not available.

During the hearings there was considerable discussion of the kinds of investments IFC could make. The articles of agreement specifically prohibit it from buying capital stock or managing the enterprises it invests in. Other than this, IFC is given complete freedom as to the form of its investments. IFC could, of course, make ordinary fixed-interest loans with a definite repayment schedule. Such loans would differ from a loan of the International Bank to a private enterprise only in not having to be guaranteed by the Government.

This would not be the ordinary kind of investment which IFC would be expected to make. Ordinarily it would provide what Secretary Humphrey described as "intermediate money"—between the prior lien money of the lenders and the pure equity money of the holder of the capital stock.

The articles provide that the terms of the investments shall take into account the requirements of the enterprise, the risks being undertaken by the Corporation and the terms and conditions normally obtained by private investors for similar financing.

One specific kind of paper suggested would be a debenture, convertible by a subsequent private holder to capital stock. It would be possible to provide that the interest in such a debenture would be a share of the profits, if earned.

It might also be possible for IFC to devise some arrangement comparable to that of a special or limited partner in an unincorporated partnership, having a share in the profits or losses, and a share in the earnings.

It is probably fruitless to discuss whether such an investment should be called "equity capital," "risk capital," or "venture capital." IFC is free to make any arrangements it wishes, so long as is does not itself buy capital stock or engage in management.

It is expected that IFC will turn over its investments frequently, by sale to private investors, in some cases to private investors who have already invested in the enterprise.

The dollars invested by the United States in IFC can be expected to go a long way in encouraging private investment. In the first place there will be $2 of foreign money for each $1 of United States money in IFC. In the second place, IFC can only invest in association with private investors, and Secretary Waugh stated at the hearing that the present plan was to limit IFC to 25 percent of the money in any one enterprise. On this basis, our contribution to an enterprise would not be more than about 8 percent of the total financing.

These investments by IFC would be beneficial in themselves. But I think their value as examples of the benefits of such productive enterprises might be even more effective. There is a great deal of American, Canadian, Swiss, and other private money available for investment in less-developed areas. There is also a great deal of money in the less-developed areas, but most of it is either spent in unproductive ways or is invested in Europe or here.

If the owners of these private funds were shown examples of profitable productive enterprises in the less-developed areas, a substantial part of these private funds would undoubtedly be made available for similar enterprises.

IFC would assist in private investment in other ways than by its own investments.

IFC would have, through the background of the International Bank experience, an intimate knowledge of the possibilities for investment in less developed areas, a close contact with the world's capital market, and a wide knowledge of where management know-how could be reached. With these assets, and its impartial status as an international organization with no particular ax to grind, it can serve as a clearing-house to bring together money, management, and opportunities, which might frequently be able to proceed without any financing from IFC.

In addition to this, IFC is directed to assist in improving the investment climates in its member countries, by improving the laws and practices which now impede foreign investment. Other agencies are now engaged in this effort, but not with such special emphasis on the needs of the private investor.

Any country which signs the articles of agreement makes a commitment to put its own house in order, to make such changes in its investment or tax or other laws and practices as may be needed to encourage foreign private investment. Furthermore, as a matter of ordinary human nature, it seems clear that a country will be more likely to take action to improve its laws and practices when an organization of which it is a member suggests it than when an agency of another nation suggests it.

This would be especially true if a businessman in a country wanted financing through IFC and was unable to get it because of his own country's laws. The businessman and the country's representatives to IFC could be expected to put a great deal of proper and effective pressure on the country to make the necessary changes.

I do not believe it is necessary to discuss the mechanics or structure of the IFC or the specific provisions of Senate bill 1894 at length. The report contains a full analysis of the articles of agreement and the bill.

The IFC has the same structure as the International Bank, and would have the same governors and directors. Like the Board, it would be able to borrow money in the capital markets, though it is not expected to do so at the start. It would have the same powers and immunities as the bank.

The United States representatives to IFC, Secretary Humphrey and Mr. Overby at the moment, would work through the National Advisory Council on International Monetary and Financial Problems, as do the representatives to the fund and the bank.

And, as in the case of the Bretton Woods Agreements Act, Senate bill 1894 provides that the executive branch cannot agree for the United States to major changes in the articles of agreement without the specific approval of the Congress.

Section 5 of S. 1894 provides that unless Congress by law authorizes such action, the executive branch shall not (a) subscribe to additional shares of stock, (b) accept any amendment to the articles, (c) make any loan to IFC, or (d) vote for an increase of capital stock.

United States participation in IFC has been strongly urged by the President and by Secretary Humphrey. Reasonable organizations, such as the American Bankers Association, and the Farm Bureau, have urged United States participation.

IFC is expected to strengthen the free world by promoting private enterprises in less developed areas. Such development would reduce the need for expensive foreign assistance through grants and public loans. It would also make these areas better customers for American agricultural and industrial products.

I urge that the Senate pass S. 1894, because I think it is one of the measures which holds the greatest hope for improvement in our international economic relations.

Mr. PURTELL. Mr. President, will the Senator yield?

Mr. FULBRIGHT. I yield.

Mr. PURTELL. I express to the Senator from Arkansas my appreciation for his comprehensive explanation of the bill. My objection was not to S. 1894, but rather to having it considered on the Consent Calendar. I appreciate the Senator's explanation.

Mr. FULBRIGHT. I thank the Senator from Connecticut. I agree with him that the bill is of sufficient importance that it should be considered aside from a call of the calendar, in connection with which the 5-minute rule prevails.

Mr. MORSE. Mr. President, unless there is further discussion of the pending measure, I respectfully urge that it be passed. I do not know of any other Senator who wishes to speak on the bill, unless the Senator from Indiana intends to do so.

Mr. CAPEHART. Yes; I do.

I simply wish to say that I am a co-author of the bill, along with the able junior Senator from Arkansas [Mr. FULBRIGHT].

I had prepared an amendment which I intended to submit to the bill. However, I shall not submit it, but shall refer to it briefly.

Mr. President, we are now preparing to provide $35 million to be used, along with the contributions of other countries, to establish an International Finance Corporation, which for all practical purposes will be a subsidiary of the International Bank. The governors of the International Bank and the governors of the International Finance Corporation will be the same.

I desire to suggest to the Congress that we should at least give the Export-Import Bank, which is an international bank created by Congress, the right to do exactly what we are now proposing to give the International Bank the right to do, through the International Finance Corporation. I do not know why it would not be well for us to do so because then there would be two organizations doing the same thing, and thus a little competition would be afforded. Furthermore, in that event, we would be doing business through a 100-percent American-owned bank—a bank entirely owned by the taxpayers of the United States.

I cannot quite understand why there is greater interest in turning over $35 million to an international organization, in which we shall own only one-third of the stock, than there is in permitting our own wholly owned Export-Import Bank to engage in the same activities. Yet I find opposition to permitting our own organization to do that; in fact, so much opposition that I shall not even submit the amendment.

But I do not understand the reasoning of those who favor giving an international organization the right to do—in using 35 million United States dollars—something which we refuse to give our own institution the right to do. I think we shall live to see the day when we shall regret it. At the present time it is proposed that we invest $35 million in the International Finance Corporation although we do not know whether it will be successful. I presume the assumption is that, if the International Finance Corporation is successful, we shall put more money into it. I presume that the further assumption is that, if the International Finance Corporation is not successful, we shall have parted with the $35 million, although I do not assume that all of it will be a loss. However, I think someday we shall wonder why we did not set up a subsidiary of our own Export-Import Bank to do this work, instead of helping to establish the International Finance Corporation to do the same thing.

I am hopeful that the International Finance Corporation will be a success. I am not opposed to permitting the International Bank to have the International Finance Corporation as a subsidiary. I am merely calling to the attention of the Senate the fact that we should do the same thing as regards the Export-Import Bank. We should put that organization in a similar position, so as to enable it to make loans and invest in exactly the same sort of securities, under the same conditions, and in the same way, that it is now advocated that the International Finance Corporation be allowed to do.

Mr. MORSE. Mr. President, will the Senator from Indiana yield to me for a question?

The PRESIDING OFFICER (Mr. MCNAMARA in the chair). Does the Senator from Indiana yield to the Senator from Oregon?

Mr. CAPEHART. I yield.

Mr. MORSE. Does not the Senator from Indiana believe that if we can proceed with an arrangement similar to the one he is suggesting, whereby American investors will be backed up by the United States Government—which is what the present proposal amounts to, in the last analysis—we shall have an instrumentality for demonstrating to the rest of the world, where the fight has to be won, the superiority of our own system, as compared to the great dangers inherent in some form of economic totalitarian control?

Mr. CAPEHART. I think there is no question that it would do a great deal of good along that line. I am no more

opposed than is the Senator from Oregon to the creation of the International Finance Corporation; but I feel that we should permit our own International Bank, which is the Export-Import Bank, to do exactly the same thing.

Mr. MORSE. That is the point I am making. I am not opposed to having our Export-Import Bank do it, either, because I think we are paying entirely too much monopolistic attention, shall I say, to military defense, and too little attention to economic defense.

Mr. CAPEHART. I certainly agree with the able Senator from Oregon.

Mr. MORSE. In my opinion the greatest economic defense we can have is to be achieved by building up investment opportunities abroad, so that, through such investments, we can be instrumental in raising the standard of living of peoples in areas of the world where the fight for freedom must be won. I see no reason why we should not do so by means of a two-barreled approach. I see no reason why we should not do so both through the organization it is now proposed to set up and also—on the domestic front—by granting similar power to the Export-Import Bank, so that American investors will be encouraged to make investments abroad. By providing adequate safeguards, I think we can best avoid the danger of having American investors who make investments abroad adopt exploiting tactics, which all too frequently in the past have been characteristic of such investments.

Mr. CAPEHART. Mr. President, in my opinion the Export-Import Bank now has authority, under the law, to do what we are about to authorize the International Finance Corporation to do.

Mr. MORSE. Yes; but the Export-Import Bank does not seem to want to do it.

Mr. CAPEHART. Some members of the Export-Import Bank do. I think it is only necessary for the administration to make up its mind that the bank has the right to do it. In my opinion, there is no question at all that the bank now has such a right; and I think the bank should be doing more in that field.

A moment ago the Senator from Oregon referred to raising the standard of living in other countries. Certainly that cannot be done until a proper economic atmosphere is created, by means of the establishment of factories and processing plants where the people of other countries will be able to find employment, and then will be able to purchase the products of the factories. In other words, if we are to raise the standard of living in so-called backward countries, it will be necessary to establish in those countries factories and processing plants which will produce articles to be sold to the people of those countries themselves, and the same factories will provide employment for those people, who thus will have funds with which to make such purchases. In that way the products of those factories will be purchased by the people of the countries in which the factories are located, instead of being exported to other countries, to be sold there.

In short, the only way to raise the standard of living in a given country is to increase employment opportunities there and to make it possible for the people of the country to purchase the commodities they need to have in order to raise their standard of living. Certainly the standard of living in any country cannot be raised merely by giving employment to the people of that country and then loading the commodities produced there into ships to be taken to other countries and sold.

Mr. MORSE. Mr. President, as the Senator from Indiana has heard me say very often in the committee, what we must really do is make it possible to export American investments.

Mr. CAPEHART. Yes; to export American investments and American know-how and the American ability to produce goods in processing plants. That is the field in which we are most proficient, anyway.

Capital on the part of the peoples of other countries is also required. The International Finance Corporation will provide some capital. It will help the situation. I am not opposed to it, but I wonder why the administration has not advocated doing the same thing with our own institution, the Export-Import Bank.

Mr. MORSE. Mr. President, I congratulate the Senator from Indiana and the Senator from Arkansas [Mr. FULBRIGHT] for this bill. I suggest that we had better put our heads together and introduce an additional bill whereby we extend the same principle to the Export-Import Bank.

Mr. CAPEHART. I am hopeful that those responsible for the operation of the Export-Import Bank—both those making the policies and those who operate it from day to day—will read the RECORD of what has been said here today.

Mr. BARRETT obtained the floor.

Mr. MORSE. Mr. President, will the Senator from Wyoming yield long enough to dispose of the pending bill, with the understanding that he will retain the floor?

Mr. BARRETT. I yield with that understanding.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The amendments were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1894) was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Senator from Wyoming may yield, with the understanding that as soon as action is concluded on 2 or 3 small measures, he will regain the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BARRETT. And with the further understanding that the proceedings with reference to the bills referred to will not interrupt the continuity of my speech.

Mr. JOHNSON of Texas. That is understood.

EXTENSION OF RENEGOTIATION ACT OF 1941

Mr. MORSE. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 587, House bill 4904.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 4904) to extend the Renegotiation Act of 1941 for 2 years.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Finance with amendments, on page 1, after line 6, to strike out:

SEC. 2. (a) Subsection (d) of section 102 of the Renegotiation Act of 1951 (50 U. S. C., App., sec. 1212 (d)) is hereby amended by inserting after "title" each place it appears "or would be subject to this title except for the provisions of section 106."

(b) The amendments made by subsection (a) shall apply to contracts with the Departments and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after December 31, 1953.

On page 2, after line 4, to insert:

SEC. 2. (a) Section 106 (a) (8) of such act (50 U. S. C., App., sec. 1216 (a) (8)) is hereby amended as follows:

(1) By inserting after "a standard commercial article" in the first sentence thereof "or a standard commercial service";

(2) By inserting after "such article" each place it appears in the first and second sentences thereof "or such service";

(3) By striking out "and" at the end of subparagraph (C);

(4) By redesignating subparagraph (D) to be subparagraph (G); and

(5) By inserting after subparagraph (C) the following:

"(D) the term 'service' means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

"(E) the term 'standard commercial service' means a service which is customarily performed by more than two persons for civilian, industrial, or commercial requirements, or is reasonably comparable with a service so performed;

"(F) the term 'reasonably comparable' means of the same or a similar kind, performed with the same or similar materials, and having the same or a similar result, without necessarily involving identical operations; and".

(b) The amendments made by subsection (a) shall apply to contracts with the departments and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after December 31, 1953.

SEC. 3. (a) Section 106 (a) of such act (50 U. S. C., App., sec. 1216 (a)) is hereby amended—

(1) by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; or"; and

(2) by adding at the end thereof a new paragraph as follows:

"(9) any contract, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility, other than a contract for the construction of housing financed with a mortgage or mortgages insured under the provisions of title VIII of the National Housing Act, as now or hereafter amended."

CHARTER OF THE UNITED NATIONS

Report to the President

ON THE RESULTS OF THE

SAN FRANCISCO CONFERENCE

BY THE CHAIRMAN OF THE UNITED STATES DELEGATION,

THE SECRETARY OF STATE

JUNE 26, 1945

DEPARTMENT OF STATE
Publication 2349
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by Article 43 which provides that the Security Council is to be a party to the agreements concerning the availability of armed forces. International practice, while limited, supports the idea of such a body being a party to agreements. No other issue of "international personality" requires mention in the Charter. Practice will bring about the evolution of appropriate rules so far as necessary.

PRIVILEGES AND IMMUNITIES

The United States, in common with all other states of the world, has traditionally granted to the diplomatic representatives of other states certain privileges and immunities. These privileges and immunities have been found over the course of several hundred years to be necessary in order to enable diplomatic representatives to carry out their missions as representatives of states. The laws of the United States have provided for such appropriate treatment for foreign diplomatic officials ever since 1790. It has also been usual to give a special status to an official representing his government at an international conference and in those cases the official has customarily received appropriate consideration from the government of the state in which the conference is held. In recent years, with the trend in international relations to entrust various international tasks to intergovernmental organizations, the need has been felt for according certain privileges and immunities to the officials and representatives of such organizations when engaged on their official duties.

The exact nature of the privileges and immunities to which international organizations and their officials are entitled is not yet sufficiently clear due to the fact that the practice is relatively new and has necessarily varied from one organization to another dependent upon their respective functions. Therefore, Article 105 stipulates that the Organization itself, the representatives of the Members and the officials of the Organization shall have the "necessary" privileges and immunities.

A comparable stipulation is contained in Article 7 of the Covenant of the League of Nations and in 1926 an agreement was entered into between the League and the Swiss Government, since the seat of the League was in Switzerland. The Statute of the Permanent Court of International Justice accords diplomatic privileges and immunities

to the judges when engaged on the business of the Court, and in conformity with that provision an agreement was reached with the Netherlands Government. Likewise, the officials of the International Labor Organization were accorded similar status both in Switzerland and later in Canada when the Office moved to Montreal.

Several United Nations conferences which have already been held and which have either established or proposed the establishment of international organizations, have made provision in one way or another for the privileges and immunities of the organizations and their officials. This has been true in regard to the conferences which dealt with the Food and Agriculture Organization, UNRRA, the International Monetary Fund, the International Bank for Reconstruction and Development, and the Provisional International Civil Aviation Organization.

Although this matter of detail was also left to one side in the Dumbarton Oaks discussions, it was naturally included in the Charter in order to insure the smooth functioning of the Organization free from interference by any state. This Article supplements Chapter XV which contains the basic principles concerning the international Secretariat. The United Nations, being an organization of all of the member states, is clearly not subject to the jurisdiction or control of any one of them and the same will be true for the officials of the Organization. The problem will be particularly important in connection with the relationship between the United Nations and the country in which it has its seat. The problem will also exist, however, in any country in which the officials of the United Nations are called upon from time to time to perform official duties. The United States shares the interest of all Members in seeing that no state hampers the work of the Organization through the imposition of unnecessary local burdens.

It would have been possible to make the simple statement that all of these officials and representatives would have diplomatic privileges and immunities but it is not necessarily true that these international officials will need precisely the same privileges and immunities as are needed by the diplomatic representatives of individual states. It accordingly seemed better to lay down as a test the necessity of the independent exercise of the functions of the individuals in connection with the Organization.

The provisions of Article 105 relate only to the Organization itself, and to its officials, and not to other public international organizations which may be brought into relationship with it. This is true because the statutes or agreements under which these other organizations are set up presumably will provide for the status of their respective officials.

The operation of this provision may not be automatic. It will depend upon the laws and governmental system of each state whether additional legislation will be required in order to enable each Member to carry out the obligations which this Article places upon it. Some states may take care of the matter by administrative regulation or under existing laws; others may feel the need for enacting additional legislation. Article 105 authorizes the General Assembly to make recommendations to Members regarding the implementation of the Article in the several countries, or, should it seem wiser, to propose conventions to the Members for this purpose. This Article of the Charter suggests the general rule and the general obligations, leaving it to experience to suggest the elaboration of the details.

So far as the United States is concerned, legislation will be needed to enable the officials of the United States to afford all of the appropriate privileges and immunities due the Organization and its officials under this provision. Such legislation would deal with such exemption from various tax burdens and other requirements as is commonly granted to representatives of foreign governments. The enactment of legislation and its application to such persons would not be for the purpose of conferring a favor upon any individuals. It would rather be for the purpose of assuring to the Organization the possibility that its work could be carried on without interference or interruption. The according of such privileges and immunities is merely one aspect of cooperating with the Organization itself.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID H. LEMPERT, Plaintiff, v. SUSAN RICE, U.S. Ambassador to the United Nations, UNITED NATIONS, UNITED NATIONS DEVELOPMENT PROGRAMME, Defendants.	Civil Action No. 12-01518 (CKK)

REPLY IN SUPPORT OF STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

INTRODUCTION

Pursuant to 28 U.S.C. § 517, the United States of America respectfully submits this reply in further support of its Statement of Interest, which was filed in response to the Court's request for the United States' views on whether the United Nations ("UN") is immune from suit in this action. *See* Statement of Interest of the United States (ECF No. 18). Plaintiff contends that the UN and the UN Development Programme ("UNDP") breached his alleged employment contract and committed the torts of fraud and harassment. As explained in the Government's Statement of Interest, Plaintiff's lawsuit should be dismissed because the UN Defendants are immune from suit under the Convention on Privileges and Immunities of the United Nations.

Plaintiff's Response to the Government's Statement of Interest, ECF No. 22, and his Opposition to Ambassador Rice's Motion to Dismiss, ECF No. 20, present a number of baseless arguments in support of his contention that the UN is not immune from suit. Below, the United States responds to Plaintiff's arguments that the UN has impliedly waived its immunity under the General Convention by not providing settlement procedures that Plaintiff deems to be adequate; that the UN is required to submit to service, answer the allegations in his Complaint, and provide

"sworn testimony"; that the International Organizations Immunities Act and the Foreign Sovereign Immunities Act limit the UN's immunity in commercial cases; and, finally, that the UN's actions violate the due process requirements of the U.S. Constitution. Consistent with the Government's interest in defending its treaty obligations, the United States respectfully submits that the UN is immune from suit and that the Court should dismiss Plaintiff's lawsuit against the UN for want of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

I. The UN Is Immune From "Every Form of Legal Process" Under the General Convention Unless The UN Itself Expressly Waives Its Own Immunity.

Plaintiff repeatedly, and mistakenly, argues that the UN's immunity is qualified, and further that the UN has somehow impliedly or constructively waived its immunity. *See, e.g.*, Opp. to SOI at 6, 13. That is not the case. The Convention on Privileges and Immunities of the United Nations, *adopted* Feb. 13, 1946 21 U.S.T. 1418, 1 U.N.T.S. 16 ("General Convention"), plainly states that "[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity." General Convention, art. II, sec. 2 (emphasis added). The U.S. Government[1] and an unbroken line of U.S. judicial decisions have interpreted this language to mean precisely what it says: namely, that the UN, including the UNDP, is absolutely immune from all legal process unless the UN, and the UN alone, "expressly" waives its immunity in a particular case. *See Boimah v. United Nations General Assembly*, 664 F.Supp. 69, 71 (E.D.N.Y.1987) ("Under the [General] Convention the United

[1] The Government's interpretation of the General Convention is entitled to deference. *See Kolovrat v. Oregon*, 366 U.S. 187, 194 (1961) ("While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight.").

Nations' immunity is absolute, subject only to the organization's express waiver thereof in particular cases."); *Brzak v. United Nations*, 551 F. Supp. 2d 313, 318 (S.D.N.Y. 2008) ("[W]here, as here, the United Nations has not waived its immunity, the General Convention mandates dismissal of Plaintiffs' claims against the United Nations for lack of subject matter jurisdiction."), *aff'd*, *Brzak v. United Nations*, 597 F.3d 107, 112 (2d Cir. 2010); *Sadikoglu v. UN Development Programme*, No. 11-Civ-0294 (PKC), 2011 WL 4953994 at * 3 (S.D.N.Y. Oct. 14, 2011) (ruling that "because UNDP — as a subsidiary program of the UN that reports directly to the General Assembly — has not waived its immunity," the General Convention "mandates dismissal . . . for lack of subject matter jurisdiction"); *see also* SOI at 4-5. Therefore, because the UN has not waived its immunity, Plaintiff's suit against the UN should be dismissed.

Ignoring the clear language of Article II, Section 2 of the General Convention, Plaintiff contends that the General Convention provides only qualified immunity for the UN. *See, e.g.*, Response to SOI at 12; Opp. to MTD at 22-23. Specifically, he argues that, pursuant to Section 29 of the General Convention, the UN's alleged failure to provide an adequate settlement mechanism for his contract dispute has resulted in a constructive waiver of the UN's immunity. *Id*. Plaintiff is mistaken. Section 29 merely requires the UN to "make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party." General Convention, art. VIII, sec. 29(a). "[N]othing in this section," however, "or any other portion of the [General Convention] refers to or limits the UN's absolute grant of immunity as defined in article II [of the General Convention] — expressly or otherwise." *Sadikoglu*, 2011 WL 4953994 at *5. For this reason, the United States District Court for the Southern District of New York ruled in the *Sadikoglu* case, which

also involved a contract dispute, that "any purported failure of UNDP to submit to arbitration or settlement proceedings does not constitute a waiver of its immunity." *Id.* Similarly, the Second Circuit in *Brzak* rejected the argument "that purported inadequacies with the United Nations' internal dispute resolution mechanism indicate a waiver of [ ] immunity[;] crediting this argument would read the word 'expressly' out of the [General Convention]." *Brzak*, 597 F.3d at 112. As these decisions demonstrate, when the UN does not expressly waive its own immunity in a particular case, as it has not done here, then it is immune under the General Convention "from every form of legal process[,]" General Convention, art. II, sec. 2, including this lawsuit. In any event, the fact that Plaintiff has not been able to resolve his dispute with the UN does not establish that the UN's dispute resolution mechanisms are inadequate. Further, the UN has stated that it has had extensive discussion with Plaintiff concerning his grievances and remains open to continued discussions. *See* February 26, 2013 Letter from Patricia O'Brien, Under-Secretary-General for Legal Affairs, to Ambassador Rice (Exhibit A).

Plaintiff incorrectly asserts that the Secretary-General has a duty to waive the UN's immunity under the General Convention. Opp. to MTD at 24-25; Resp. to SOI at 11. In support, he quotes from Article 20 of the General Convention, which states that the Secretary-General "shall have the right and the duty to waive the immunity of <u>any official</u> in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations." Resp. to SOI at 11 (quoting General Convention, art. V, sec. 20). This section addresses the Secretary-General's authority to waive the immunity of UN

officials, rather than the UN itself, and is clearly discretionary.[2] In addition, the waiver concerning the UN's own immunity does not set forth any "duty" of the Secretary-General. As recognized in the numerous cases cited above, the UN's immunity is absolute, subject to only express waiver by the UN itself, which has not occurred here.

II. Because The UN Is Immune, Plaintiff Is Mistaken That The UN Is Required To Submit To Service Of Process, Answer Plaintiff's Complaint Or Provide Sworn Testimony.

Plaintiff argues that the UN has failed to provide "good cause" for refusing to submit to service of process, Resp. to SOI at 9, and that the UN is obligated to answer his Complaint and provide sworn testimony in response to his allegations, *id*. at 7-8. Plaintiff's position is at odds with every U.S. judicial decision addressing the UN's immunity under the General Convention.

The General Convention's extension of the UN's immunity to "every form of legal process" quite clearly includes service of process. *See Askir v. Boutros-Ghali*, 933 F. Supp. 368, 369 (S.D.N.Y. 1996) (dismissing suit against UN on the basis of immunity where plaintiff sought an order directing the U.S. Marshal to serve the UN). Nor is there any requirement for the UN to answer Plaintiff's Complaint, provide sworn testimony, or take any other affirmative steps in order to enjoy immunity from suit. Under Article II, Section 2 of the General Convention, unless the UN affirmatively waives its immunity from suit in a particular case, it is absolutely immune. Here, there are no allegations and no evidence whatsoever that the UN has waived its immunity. *See, e.g.*, *De Luca v. United Nations Org.*, 841 F. Supp. 531, 533

[2] It is apparent from the language of this section of the General Convention, in particular the use of the phrase "in his opinion," that the Secretary-General's decision concerning the immunity of UN officials is entirely discretionary. *Cf. Drake v. FAA*, 291 F.3d 59, 70 (D.C. Cir. 2002) (decision expressly left open to the "opinion" of an administrator is committed to agency discretion by law" and thus excluded from review under the Administrative Procedure Act).

(S.D.N.Y.1994) ("Plaintiff has not alleged that the U.N. has expressly waived its immunity in this instance and no evidence presented in this case so suggests. Finding the U.N. to be immune from plaintiff's claims, we dismiss them.").[3]

Furthermore, the United Nations in fact has expressly invoked its immunity and has requested that the United States take steps to protect its immunity in this litigation. *See* SOI at 4 (citing February 26, 2013 Letter from Patricia O'Brien, Under-Secretary-General for Legal Affairs, to Ambassador Rice (Exhibit A) ("[W]e wish to advise that the United Nations expressly maintains its privileges and immunities" with respect to plaintiff's lawsuit, and that "we respectfully request the Government of the United States to take the appropriate steps to ensure that the privileges and immunities of the United Nations are maintained in respect of this legal action.")). Because the UN has not expressly waived its immunity, but, to the contrary, has expressly invoked its immunity, dismissal is clearly warranted. *See Brzak*, 551 F. Supp. 2d at 318 ("[W]here, as here, the United Nations has not waived its immunity, the General Convention mandates dismissal of Plaintiffs' claims against the United Nations for lack of subject matter jurisdiction.").

III. Plaintiff Is Wrong That The UN's Immunity Is Governed By The International Organizations Immunities Act, Or That This Statute Incorporates A "Commercial Activities Exception" to Immunity.

Plaintiff argues that the UN's immunity is governed by the International Organizations Immunities Act of 1945 ("IOIA), 22 U.S.C. §§ 288 *et seq*., and that this statute, through the

[3] Contrary to Plaintiff's assertion, Resp. to SOI at 21, *De Luca* does not support plaintiff's position. In *De Luca*, the court dismissed the suit against the UN with prejudice even though the plaintiff had "leveled some rather serious charged against both the UN and the individual defendants . . . ." 841 F. Supp. at 535.

Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. §§ 1330, 1602 *et seq*., creates a "commercial activities exception" that precludes the UN from enjoying immunity in a contract dispute. *See* Resp. to SOI at 9-10; Opp. to MTD at 25-26. This argument is wrong for at least two reasons. First, as the United States explained in its Statement of Interest, the UN is immune pursuant to the General Convention; therefore, its immunity from suit is not dependent upon any immunity that may also be provided by the IOIA. *See* SOI at 6 (citing *Brzak*, 597 F.3d at 112) ("[W]hatever immunities are possessed by other organizations [under the IOIA], the [General Convention] unequivocally grants the United Nations absolute immunity without exception."); *Sadikoglu*, 2011 WL 4953994 at *4 (rejecting argument that the IOIA limits the immunity of the UNDP because the UNDP's immunity derives from the General Convention). This is a clear case of the specific applicability of the General Convention to the UN trumping the general applicability of the IOIA to international organizations.

Second, the D.C. Circuit has squarely rejected the argument that the IOIA incorporates a commercial activities exception to immunity. *Atkinson v. Inter-American Development Bank*, 156 F.3d 1335, 1340-1 (D.C. Cir. 1998). In *Atkinson*, the Court held that the immunity provided by the IOIA is "absolute" and subject only to limitation by Executive Order. *Id*. at 1341. In short, the D.C. Circuit has determined that the IOIA does not incorporate a commercial activities exception; moreover, that question has no bearing on whether the UN is immune under the General Convention, which it clearly is given the lack of an express waiver by the UN.

The cases cited by Plaintiff fail to support his claim that the UN is not immune in cases involving commercial disputes. Specifically, he cites a D.C. Circuit decision that addressed whether the International Finance Organization was immune under the IOIA, where the

organization expressly waived its immunity from suit in its charter document. Resp. to SOI at 15 (citing *Osseiran v. International Finance Corp.*, 552 F.3d 836, 838-39 (D.C. Cir. 2009)). This case did not address and has no relevance to whether the UN is immune under the General Convention. Plaintiff also relies on a Third Circuit decision holding that the IOIA, via the FSIA, incorporates a commercial activities exception to immunity. Resp. to SOI at 15 (citing *Oss Nokalva, Inc. v. European Space Agency*, 617 F.3d 756, 766 (3rd Cir. 2010)). Not only is this ruling directly contrary to the D.C. Circuit's *Atkinson* decision, 156 F.3d at 1341, *see supra*, the case did not address nor did it imply that the UN's immunity is anything but absolute under the General Convention.

In contrast to Plaintiff's arguments to the contrary, the United States has offered clear support in its Statement of Interest for the proposition that the UN is immune under the General Convention in all classes of cases, including breach of contract claims. *See* SOI at 5-6 (citing *Sadikoglu*, 2011 WL 4953994 at *2-3 (finding UNDP immune under General Convention with respect to breach of contract claim)).

Plaintiff also erroneously argues that, because the President may waive an international organization's immunity under the IOIA, Ambassador Rice has the power to waiver the UN's immunity. Opp. to MTD at 20-21. Again, this argument fails to recognize that the UN is immune pursuant to the General Convention, and that under the General Convention only the UN may waive its own immunity. General Convention, art. II, sec. 2.

IV. The UN Is Not Subject To The Due Process Requirements Of The United States Constitution.

Finally, Plaintiff claims that the UN does not enjoy immunity from suit because he has alleged that he is entitled under the Due Process Clause of the Fifth or Fourteenth Amendments

to have his claims against the UN heard.[4] *See, e.g.*, Resp. to SOI at 8. Unsurprisingly, Plaintiff offers no authority or case law in support of his claim. It is beyond dispute that the United Nations is not subject to the due process requirements of the United States Constitution. *See, e.g., McGehee v. Albright*, 210 F. Supp. 2d 210, 216 n.4 (S.D.N.Y. 1999) (noting that the United Nations "is not subject to the due process requirements of the United States Constitution"). Moreover, to the extent Plaintiff is arguing that the UN's immunity from suit violates his right to due process, that argument was rejected conclusively in *Brzak*, where the Second Circuit stated, with equal applicability here: "If appellants' constitutional argument were correct, judicial immunity, prosecutorial immunity, and legislative immunity, for example, could not exist. Suffice it to say, they offer no principled arguments as to why the continuing existence of immunities violates the Constitution." 597 F.3d at 114. Therefore, absent an express waiver in a particular case, the UN is immune from all lawsuits in U.S. Courts, presenting any type of legal claim, including claims purportedly brought under the Constitution.

CONCLUSION

For the reasons stated above and in the United States' Statement of Interest, the UN, including the UNDP, enjoys absolute immunity, and the Court therefore lacks subject matter jurisdiction over this action against the UN Defendants.

[4] Plaintiff apparently confuses procedural due process with substantive due process, since he argues that the UN's actions relating to his employment grievance are subject to "strict scrutiny," which is the standard for U.S. Governmental actions that infringe upon fundamental rights. Resp. to SOI at 14. In contrast, the standards for assessing whether U.S. governmental actions deny procedural due process with respect to property interests are set forth in *Mathews v. Eldridge*, 424 U.S. 319, 341-48 (1976). Of course, as noted above, the UN is not subject to either the procedural or substantive requirements of the Due Process Clause.

Dated: June 10, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nicholas Cartier, counsel of record for the Defendant, hereby certify that on June 10, 2013, I placed a copy of the foregoing in the mail in a prepaid envelope to the following person and address: "David H. Lempert, c/o Walter Schwartz, 110 Crestview Place, Ardsley, NY 10502."

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID H. LEMPERT,
c/o Walter Schwartz
110 Crestview Place
Ardsley, NY 10502
(A U.S. citizen residing overseas, with most recent U.S. residence in the District of Columbia)
Plaintiff,

v.

SUSAN E. RICE,
U.S. AMBASSADOR TO THE UNITED NATIONS,
Washington, D.C.
Defendant

UNITED NATIONS and UNITED NATIONS DEVELOPMENT PROGRAMME,
Washington, D.C.
Defendant.

Case: 1:12-cv-01518
Assigned to: Kollar-Kotelly, Colleen
Assign Date: 9/13/2012
Description: Contract

PLAINTIFF'S OPPOSITION TO DEFENDANT SUSAN RICE'S MOTION FOR DISMISSAL

Plaintiff responds to Defendant Susan Rice's Motion for Dismissal of this case, filed with the court on May 3, 2013 on her behalf by the Office of the Acting Assistant Attorney General of the U.S. Department of Justice (hereinafter referred to as "DoJ"), with a profound sense of disappointment and sadness at DoJ's approach. Plaintiff reiterates concerns Plaintiff voiced in Plaintiff's Opposition to Defendant Susan Rice's Motion for Extension of Time to Respond to Complaint and for Offering of Views of the

United States with Regard to Immunity of the Defendants, filed with the court on March 31, 2013, on potential conflicts of interest in filings on behalf of Defendants[1].

In Plaintiff's view, DoJ's approach does not recognize the duties that do extend to all public officials and that Plaintiff details in this memorandum[2]. Indeed, DoJ, Defendant Susan Rice, the Court and the Plaintiff have taken a common oath to the U.S. constitution to protect our country, our laws and our interests in common goals.

Plaintiff believes DoJ's motion disregards the constitutional due process rights of the Plaintiff, particularly the Fifth Amendment and linked Fourteenth Amendment due process right that is at the basis of this case and the Court's subject matter jurisdiction.

Plaintiff believes DoJ's motion takes a selective and dismissive approach to laws in a manner that could be viewed as protective of Defendant Susan Rights as an individual citizen, in a way that seeks to override the responsibilities of the Office of U.S. Ambassador Susan Rice and of other offices, including DoJ, in enforcing those laws and responsibilities to all citizens. Plaintiff views this approach in conflict of interest with

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[1] Plaintiff notes that DoJ simultaneously also filed a Statement of Interest with the court at the court's request that essentially asserts defenses for the Defendant United Nations and United Nations Development Programme ("UN/UNDP"). That Statement opposes even the authority of this court to serve that Defendant so that Defendant UN/UNDP may respond directly to both Plaintiff and the Court and under oath as it has had to do in several other cases cited by DoJ. DoJ links that Statement of Interest and its unsworn exhibit from a United Nations lawyer to its Motion for Dismissal on behalf of Defendant Susan Rice. Since the Court has yet to rule on the Plaintiff's Motion to Serve Defendant United Nations and United Nations Development Programme, Plaintiff is unable to respond directly to that Statement unless so invited or ordered by the Court. Plaintiff simply notes for the Court in this Response the interlinkages between the two Defendants and their ability to work in concert to jeopardize Plaintiff's constitutional rights.

[2] See DoJ's *Motion*, page 7 for statements denying the existence of duties for protection of Plaintiff's constitutional rights to due process, that Plaintiff has clearly placed in his pleadings.

upholding rights of all U.S. citizens and U.S. interests in general so as to "establish Justice" and promote the "general Welfare"[3].

Plaintiff finds DoJ's motion a mischaracterization or misrepresentation of several of Plaintiff's sworn statements in ways that disregard Plaintiff's vested property interests, his exhaustive efforts to seek administrative remedies, and his documentation of the violence of and inattention to his rights and actions that form the basis of subject matter jurisdiction and statement of his claims.

Plaintiff finds DoJ's motion to disregard certain portion of laws or other laws or common law principles that should be well known to DoJ in a way that Plaintiff believes overrides the responsibilities of DoJ in assuring fair enforcement of the law.

Though Plaintiff has sued Defendant Susan Rice, Plaintiff does not believe that this lawsuit is in any way adverse to the interests of the DoJ, to the Department of State or to the office of the U.S. Ambassador to the United Nations or to the stated legal purposes of the Defendant United Nations and United Nations Development Programme (hereinafter referred to as "UN/UNDP") that Plaintiff believes have been undermined in this case by activities of certain individuals.

Plaintiff will offer substantiation and authorities for these beliefs in this memorandum in asserting again the reasons for pleading that the court recognize its jurisdiction over the Defendants and his claim and act to protect his rights by enforcing the constitutional duty of Defendant Susan Rice and the legal duties of both Defendants under U.S. laws and international treaties.

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[3] Preamble, *U.S. Constitution.*

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INTRODUCTION

Plaintiff's pleadings have clearly focused attention on the duties of Defendant Susan Rice to protect Plaintiff's Constitutional Fifth Amendment and related Fourteenth Amendment rights and have petitioned the court to order clear common law and statutory remedies to satisfy Plaintiff's claims where those rights have been violated. The pleadings and sworn statements of the Plaintiff easily meet the requirements of the Federal Rules of Civil Procedure 12(b)(1) for subject-matter jurisdiction and 12(b)(6) for statement of claims upon which relief can be granted. DoJ's Motion to Dismiss does not wish to recognize these theories of relief and seeks to distort the record and the law in an effort to evade the duties of said Defendant.

Jurisdiction in this cased is based on common law grounds relying on the principles in the case of *Bivens v. Six Unknown Agents* 403 U.S. 388 (1971) and based on principles in 42 U.S. Code §1983; a case in which Plaintiff sought redress from a named government official for her violation of a fundamental right. In this case, Plaintiff's asserts his right to due process of law to which he is guaranteed by the Fifth Amendment and Fourteenth Amendment to the U.S. Constitution and to which the Defendant has a sworn duty under Article VI: to the protection of his vested property interest in a contract, the taking of his time by fraud, and losses he has suffered due to harassment. Plaintiff has specifically named Susan Rice as Defendant and not the U.S. Department of State. Plaintiff has not specifically sought to use the *Federal Tort Claims Act* 28 U.S.C. § 2679

or other acts[4] in order that he may focus his recovery on this theory of Constitutional duties and rights. Though Plaintiff has not mentioned the *Bivens* case in the pleadings because it is an established common law remedy (originally based on statutory principles of the *Civil Action for Deprivation of Rights*, 42 U.S. Code §1983[5]), Plaintiff has mentioned the relevant constitutional claim and has met all common law elements of the *Bivens* approach to stating a claim and to establishing the Court's jurisdiction over that claim in a way that is easily recognizable to this Court and to the Defendant. Plaintiff's theory of recovery was also known to DoJ before DoJ's submission of the Motion to Dismiss even though DoJ's Motion does not acknowledge this well-known theory for subject matter jurisdiction and the claims that follow from it[6].

DoJ seeks to dismiss the case on the grounds that Plaintiff has not pursued other statutory remedies using a theory of recovery other than that offered by *Bivens*. Had Plaintiff pleaded those statutes as his basis for recovery rather than sought relief under a *Bivens* theory, Plaintiff fears that DoJ's motion would then have been one seeking to dismiss Plaintiff's claim on grounds of conflicting remedies where statutory remedies could be considered exclusive; creating additional burdens on Plaintiff and on this court.[7]

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[4] The *Tucker Act*, 28 U.S.C. § 1491 and the *Little Tucker Act*, 28 U.S.C. § 1346(a)

[5] Under that act, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (42 U.S. Code §1983)

[6] In discussions with DoJ attorney.

[7] Not all courts have allowed all other claims to be made simultaneously with a *Bivens* type claim, which essentially forces the Plaintiff to use this theory as his primary theory of recovery and to simply open the use of other theories and recoveries to the court's discretion by not completely closing the door to that discretion. Nevertheless, even where there may be inconsistencies in a pleading or alternate theories, a pleading is still

Though some courts may seek to deny Plaintiff remedies if both a *Bivens* and statutory approaches are pleaded, Plaintiff's understanding of the statutes and of case law is that in crafting remedies *Bivens* allows the court to consider all remedies and to look at statutory remedies as a guide. The plain meaning of Statute 28 U.S.C. § 2679, the *Federal Tort Claims Act: Exclusiveness of Remedy*, appears to suggest that Plaintiff may assert both in a way that would essentially recognize Defendant Susan Rice as liable under a *Bivens* theory as an individual denying Plaintiff's Constitutional rights (a tort claim) or whether said Defendant's rights constitute government action for which there may be accountability in tort (and/or contract) in connection with the actions of second Defendant, UN/UNDP. Rather than introduce this complexity, in the interests of protecting the efficiency of this Court and its discretion, Plaintiff clearly asserted the *Bivens* approach and has left it open to the court to determine whether it will expand theories of recovery beyond the tests that Plaintiff meets for demonstrating Defendant Susan Rice's liability to Plaintiff in tort given her duties to Plaintiff.

There should be no dispute here over the question whether Defendant Susan Rice has a duty to Plaintiff. Nor should there be any dispute as to whether Plaintiff has met the test of asserting a claim for how Defendant's actions have specifically violated those duties. In *Bivens* claims, the courts have been clear that Federal officials may become personally liable for constitutional deprivation by direct participation, failure to remedy wrongs after learning about them, creation of a policy or custom under which constitutional practices occur or gross negligence in managing subordinates who cause violations. (*Gallegos v. Haggerty*, Northern District of New York, 689 F.Supp. 93

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sufficient if one of these statements and theories is sufficient, according to the Federal Rules of Civil Procedure, Rule 8.

(1988)) This theory of liability would also make the Defendant liable for the array of claims that Plaintiff makes in this case for damage and equitable recoveries through established common law remedies of contract, fraud and related torts (harassment), as well as punitive damages.

In this case, Defendant seeks to assert that Plaintiff lacks either a clear claim for damages or an injunctive remedy tied to an established theory of recovery but that is also in error given the latitude of remedies under Bivens approaches. The only real question here for the Court should be which specific remedy the courts should choose in order to make Plaintiff whole and to assure appropriate policy outcomes.

In addition to damage remedies offered by *Bivens* theories, the courts also have complementary statutory remedies. The courts may look at statutes to determine how to shape remedies. In this case the very statutes that DoJ claims shield the Defendants from any duties at all are in fact the very ones (those involving international organizations) that introduce and that have been used by the courts to establish the public policy criteria for overseeing the activities of international organizations.

Plaintiff has presented the key statute by which the Court may offer equitable remedies in ways that protect U.S. long term interests and can resolve other matters similar to the one in this case. It is the International Organizations Immunities Act ("IOIA"), 22 U.S.C. § 288. Related powers and tests are also presented in the *General Convention on the Privileges and Immunities of the United Nations* ("General Convention") 21 U.S.T. 1418, 1 U.N.T.S. 16 (Feb. 13, 1946) and the more recent *Foreign Sovereign Immunity Act of 1976* ("FSIA") 28 U.S.C. §§ 1330, 1602, et seq. These specifically provide not just a complementary approach to recovery in this case but also

clearly define the duties of Defendants and the balancing tests that the court may use. These statutes represent efforts by Congress to guide the Executive Branch in its protection of fundamental rights with regard to organizations like the United Nations and their legal purposes and must be considered in context with those fundamental rights just like any other statute.

DoJ has deliberately misstated the reach of these laws by suggesting that they somehow nullify the U.S. constitution or the role of the courts through some "absolute" immunization of Defendants. The statutes do not mention the word "absolute immunity"[8] anywhere because they do not offer it and can not claim to offer it. "Absolute" immunity violates the protection standard for fundamental rights and the actual goals of the statutes. It can only be offered as a bright line rule for very specific types of cases that have already passed the court test of "strict scrutiny", where there is already protection of due process and clear evidence that public policy is being promoted[9].

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[8] This language of "absolute immunity" comes from court decisions in which the court in fact applied balancing tests based on whether plaintiffs already had access to some form of internal due process and where the United Nations had to answer in U.S. courts. DoJ relies on the cases of *Brzak v. United Nations*, 597 F.3d 107 (2d Cir. 2010) and *Boimah v. United Nations General Assembly*, 664 F.Supp. 69, 71 (E.D.N.Y.1987). Use of the term "absolutely immunity" by DoJ is deliberately misleading. It appears to be an attempt to evade rights protections and balancing tests that are the duty of the Executive Branch and within the purview of the courts. In fact, these "Immunity" statutes reference several conditions and exceptions to immunity.

[9] DoJ's Statement of Interest in fact acknowledges this power of the courts but simultaneously seeks to weaken it ("While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight" *Kolovrat v.Oregon*, 366 U.S. 187, 194 (1961)). DoJ seeks to tell the Court what DoJ wants these treaties to mean and claims that such determinations are "absolute" when they are balancing tests that must also meet "strict scrutiny" tests where fundamental rights are at risk.

Immunity statutes present the balancing tests and conditions whereby the executive branch has the power and in some cases the duty, and where the Secretary General of the UN has the duty and power, to waive immunity in ways that must be consistent with legal protections. If the Executive branch does not exercise its powers and duties under those acts in ways that protect fundamental rights, including Fifth Amendment and Fourteenth Amendment Due Process rights, then it is the duty of the courts to apply strict scrutiny to the executive action and the laws and to assure that privileges of immunity exercised by international organizations are asserted only in their "least restrictive" means so as to protect fundamental rights (*United States v. Carolene Products Company,* 304 U.S. 144 (1938)).

In short, DoJ's motion is backwards in its presentation and incorrect in its interpretations. It does not recognize the Constitutional and case law basis for action or the duties of Defendant Susan Rice, nor the discretion of the court in considering statutory remedies. It chooses the minimalist statutory remedies that Plaintiff left to the discretion of the court, asks why Plaintiff did not specifically assert them, claims that Plaintiff needed to start with those procedures, and falsely blames the Plaintiff for not bringing his claims to the notice of government. The motion seeks: to condone Defendant's inaction and actions in concert with Defendant UN/UNDP that have created direct and measurable harms that Plaintiff has detailed, to evade constitutional duties, to evade case law principles and to deny statutory provisions and remedies.

The two sections that follow include a clear focus on Plaintiff's sworn statements in evidence of subject matter jurisdiction and support of his claim, then presents the standard of review for Defendant Susan Rice's duties, actions and inactions, that are the

basis for subject matter jurisdiction and the basis for claims on which said Defendant is liable, demonstrating how Plaintiff has easily met the standards required for this case to go forward.

BACKGROUND: PLAINTIFF'S SWORN STATEMENTS IN EVIDENCE OF SUBJECT MATTER JURISDICTION AND IN SUPPORT OF CLAIM

DoJ has correctly stated the legal standard regarding Plaintiff's burden of proof in order to meet the test of subject matter jurisdiction and to assert his claims. When ruling on a defendant's motion to dismiss under 12(b)(6) for failure to state a claim for legal relief, "a judge must accept as true all of the factual allegations contained in the complaint." *Atherton v. District of Columbia Office of the Mayor*, 567 F.3d 672, 681 (D.C. Cir. 2009)

However, after correctly recognizing that the presumption is in Plaintiff's favor for a case to go forward, DoJ then mischaracterizes the record as presented to this court of sworn statements and of claims presented to Defendant Susan Rice and to the U.S. State Department in materials that are fully referenced in Plaintiff's pleadings and that are easily available to DoJ.

Plaintiff has clearly alleged: 1) a vested property right to due process; 2) that no due process procedures were available to Plaintiff within the UN/UNDP, meaning that the only possible access to such processes were therefore the responsibility first of Defendant Susan Rice as U.S. Ambassador to the United Nations; 3) that U.N. lawyers are unable to act constructively in this case due to conflicts of interest that may amount to asserting fraudulent claims in violation of UN regulations; 4) that Plaintiff has informed Defendant Susan Rice of his property rights and of Defendant's duty regarding those

rights, noting that Defendant's denial of these would lead to legal action; and 5) that any protection of the wrongdoing that has denied in harm to Plaintiff is counter to the goals and purposes of the UN and U.S. membership in the UN and, therefore, of U.S. law, given that the U.S. is a party to the UN through treaty.

Plaintiff again restates and swears again to the following factual allegations.

1. Plaintiff recognizes his relationship with UN/UNDP as that of a hired contractor with a vested one-year contract that was recognized both by UN Volunteers Lao Country Office, within the mission of UN/UNDP Lao P.D.R., and by the UN Volunteers Headquarters. Plaintiff was selected for work. All of the necessary clearances were completed for Plaintiff to begin work including a medical clearance, a security certificate, joint signatures of the UN "Compact" and approval by the Lao Ministry of Justice. Plaintiff received his pre-departure briefing and arrived in country to start work. His arrival constituted the start of his contract according to the "Conditions of Services Agreement. Plaintiff's property rights in his contract were vested given that these conditions were met. UNDP was obligated to arrange his visa and to formally sign his contract and began payments.

Plaintiff was not simply an "applicant" and bringing a "job dispute" to Defendant. Plaintiff views such statements by DoJ as a gross mischaracterization of Plaintiff's vested interest.

2. In not recognizing Plaintiff's contract, UN/UNDP also refused any and all formal internal processes for resolution that would have been given to employees on a recognized contract. No opportunities existed for any kind of due process independent review to arbitrate Plaintiff's vested property interest in his employment contract.

3. Plaintiff and his attorney spent weeks, if not months, in exchanges with the UN's legal department seeking a recognition of his claims and an investigation. Plaintiff has noted in pleadings that the UN legal office continually maintained the claim that the Lao government had denied Plaintiff's visa; essentially defending what Plaintiff believed was a false statement and an example of misconduct by UN employees, without conducting any investigation. The Lao Government's Ministry of Foreign Affairs told Plaintiff that the UN/UNDP's statements were a fabrication that falsely put blame on the Lao government for apparent misconduct by UNDP officials. They noted that such refusal did not occur and could not have occurred under Lao laws given that Plaintiff was already cleared for a visa and would have received it if the UN/UNDP had requested it. Plaintiff has resided continually in Lao P.D.R. to this date. Immediately after Plaintiff and his attorney requested a copy of what several UN/UNDP officials described as a formal (written) request to the Lao government and its (written) denial, and noted that the lawyers in UN's legal department may have been party to misconduct, communication immediately ended. Plaintiff believes that UN lawyers had to recuse themselves due to conflict of interest. Lawyers from that office have not responded to Plaintiff or his attorney for nearly three years and have never indicated any willingness to change position, investigate the matter, find a process or achieve any resolution despite Plaintiff's requests.

4. Plaintiff's November 11, 2011 letter titled "Hoping to Avoid a Lawsuit", noted very clearly in Plaintiff's pleadings, was sent directly to the Deputy Chief of Mission in the U.S. Embassy, a State Department official. That letter includes the following specific wording from the Plaintiff: "In order to win the case, I will have to sue BOTH the U.N.

and Ambassador Rice (possibly the U.S. State Department as well) because I will have to trigger my constitutional right to sue for breach of contract against the U.N. and will need to force Ambassador Rice's office to fulfill its legal requirements to protect me. As I explained to you when we met, I would prefer to do everything possible other than to have to sue Ambassador Rice and the UNDP. I have never wanted to go to this extreme. But this is now the only option that seems left to me, as displeasing as it is." That letter also estimated damages. After a lack of diplomatic resolution, Plaintiff then sent a copy of this letter to several members of the State Department's Legal Counsel's office, giving them full notice of his intent to sue if resolution were not achieved and clearing noting that his complaint was based on due process Constitutional 5th Amendment grounds and government duties to protect those Constitutional rights. Plaintiff notes in his pleading that he sent copies of this letter to David Pozen of the U.S. State Department's Office of Legal Counsel as well as indirectly to Harold Koh, Director of the office in April and May of 2012, also clearly noting his reliance on the State Department for protection of his 5th Amendment Due Process rights.

5. Plaintiff has discovered and alleged serious violations of United Nations regulations by officials of the UN/UNDP that appear to undermine the UN charter and the very basis of the UN system. Plaintiff has noted in pleadings that UN officials have apparently made false allegations against a Member State by blaming Lao P.D.R.'s Ministry of Foreign Affairs for apparent misconduct by UN officials. Plaintiff has noted that UN officials, apparently without the knowledge of the Australian Ambassador to Lao P.D.R. and possibly in misrepresentations to the Australian government had induced that government to fund a position that had already been contracted to Plaintiff so that funds

could be diverted elsewhere within UN/UNDP. Plaintiff noted apparent misuse of the UN legal department and investigation procedures to hide misconduct directed against UN Member states in promotion of individual interests of officials. Plaintiff noted apparent retaliation in actions that could be constituted as "whistleblowing" to protect UN procedures and interests.

ARGUMENT

STANDARD OF REVIEW

I. The International Organizations Immunities Act and the United States Constitution Create Jurisdiction Over Plaintiff's Claims Against Defendant Susan Rice, Including Plaintiff's Demand for Injunctive Relief

Defendant Susan Rice as a government official has a clear duty to Plaintiff in the protection of his fundamental rights. She has the powers of her office and law to exercise that duty. She is personally liable to Plaintiff for deprivation of those rights as a result of her actions and inactions that meet the court established test: direct participation, failure to remedy wrongs after learning about them, creation of a policy or custom under which constitutional practices occur or gross negligence in managing subordinates who cause violations; the test established in *Gallegos v. Haggerty*, Northern District of New York, 689 F.Supp. 93 (1988).

As U.S. Ambassador to the United Nations, Defendant Susan Rice has taken a constitutional oath to support the U.S. Constitution (Article VI) and to uphold Amendment V; that Plaintiff not be "nor be deprived of life, liberty, or property, without

due process of law; nor shall private property be taken for public use, without just compensation" and the related Amendment XIV. A member of the executive branch Defendant Susan Rice is obligated under the Constitution to ensure that "the laws be faithfully executed" (Article II, Section 3) and to promoting the Constitution's goals to "establish Justice" and "promote the general Welfare, and secure the Blessings of Liberty" (Preamble).

Defendant Susan Rice also has specific recognized responsibilities by virtue of her position as U.S. Ambassador to the United Nations in fulfilling those Constitutional duties. These are stated on the website of the U.S. Mission to the United Nations. Part of her responsibilities are "to ensure United Nations programs and activities are efficient, effective and properly managed"[10]. Her recognized responsibility is also to "to advance United States foreign policy interests at the United Nations"[11]. Under Defendant's direction, the U.S. in fact launched a specific program that is supposed to address the very concerns that have confronted the Plaintiff in this case and that recognizes them as Defendant's specific responsibilities to U.S. citizens and interests. The goals include: "Effective oversight arrangements, Effective and transparent procurement, Credible

[10] This is found on the State Department's Website at: usun.state.gov/about/un_reform. Another page notes that "The United States brings to its dealings with the UN high expectations for its performance and accountability. In cooperation with other governments, we are pursuing substantial and sustained improvements across the full range of management and performance challenges, including financial accountability, efficiency, transparency, ethics and internal oversight, and program effectiveness. Recognizing that important work on all of these issues has been undertaken, we seek further progress and reform to address flaws in the institutions, to meet the unprecedented demands made on it, and to sustain confidence in and support for the UN. usun.state.gov/issues/c31.

[11] usun.state.gov/about/pol

whistleblower protections, Conflict of interest program, and Independent and effective ethics function."[12]

Upon notice of violation of Plaintiff's interests with regards to the UN in this case, Plaintiff and his attorney made it very clear to Defendant Susan Rice that they were requesting her to fulfill her duties to Plaintiff and to exercise the powers and duties of her office to protect Plaintiff's due process rights given that said Defendant, by virtue of her position is the official directly responsible for such protection and the person to whom Plaintiff must turn within the Executive branch. Plaintiff made it clear to Defendant on several occasions that there were no mechanisms available within the United Nations that enabled him to receive due process from any office and that this is why he turned to her office as his only resort for administrative redress. He noted that he had no right to any impartial hearings or proceedings within the UN. No processes awarded him protections that are recognized as constituting due process by U.S. courts (See *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

Plaintiff identified several different statutory and diplomatic options by which Defendant Susan Rice could act to fulfill her duties and responsibilities. These range from: simple assertion of Plaintiff's rights to UN officials and requests that they resolve them in ways consistent with harms to Plaintiff and the lack of due process mechanisms available to Plaintiff to the exercise of Defendant Susan Rice's authority under the International Organizations Immunities Act ("IOIA") 22 U.S.C. § 288 to directly provide due process procedures to Plaintiff for pursuing his claim through the U.S courts. There are other possibilities in between, including Defendant Susan Rice directly contacting the

[12] usun.state.gov/about/ un_reform/ /tran_acc_init/index.htm

U.N. Secretary General and advising him of his duties with regards to the Plaintiff under the *General Convention on the Privileges and Immunities of the United Nations* ("UN General Convention"), 21 U.S.T. 1418, 1 U.N.T.S. 16 (Feb. 13, 1946).

For this case to go forward, Plaintiff has only the burden to demonstrate that there are several available options that Defendant could have taken in exercise of her duty and that Defendant showed no good faith effort to investigate them or to attempt to act and therefore bears responsibility for the harm that resulted from her action or inaction. Though DoJ claims that Defendant Susan Rice is impotent in the face of violation of Plaintiff's rights by the UN/UNDP and misconduct, this is her stated responsibility and she clearly does have such powers (as evidenced below).

The plain meaning of the International Organizations Immunities Act ("IOIA") gives Defendant Susan Rice, through exercise of the powers of the Executive Branch, the discretionary authority to create an exception to sovereignty of the U.N. in a way that would immediately offer Plaintiff the right to due process through the impartial forum of the U.S. courts but she has made no attempt to exercise it and to determine the real extend of her authority. That act is very clear. It authorizes use of an "appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter (including the amendments made by this subchapter) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity". (22 U.S.C. § 288). DoJ refuses to even acknowledge this power but it exists and the reason it must exist is to protect U.S. citizens and U.S. interests when those interests are threatened by actions of an

international organization or by individuals acting within that organization, as in this case. The U.S. constitution is the higher standard of protection and is not to be trumped by all outside actions. This is the mechanism available to Defendant Susan Rice. Indeed, why would such a law be necessary if immunities were "absolute"? The IOIA is necessary for fundamental rights protections. The standard under Defendant's discretion is also stated in the law. The determination can "be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this subchapter or for any other reason." In this case, Plaintiff has alleged such abuses.

Statutes and treaties that have followed the IOIA do not repeal it (the IOIA is not repealed) not do they repeal the duties of the Executive branch in protecting the U.S. Constitution and fundamental rights (they cannot without a Constitutional Amendment) or nullify the role of the Courts in protecting those rights or in recognizing the jurisdiction of the courts in suits between a U.S. citizen and "foreign states" (Article III, Section 2). In fact, the UN General Convention on the Privileges and Immunities of the United Nations (UN General Convention) provides a way for Defendant Susan Rice to very diplomatically create a limited waiver of UN immunity for this case to go forward in U.S. courts with the blessing of the U.S. Secretary General, rather than by just asserting the right under her powers under the IOIA. But she has also failed to assert that authority.

Under the UN General Convention, immunity is conditioned on the UN protecting due process rights of parties, like the Plaintiff, with whom it contracts in exercise of its "legal capacity" under the U.N. Charter (for the "fulfillment of its purposes") *Charter of*

the United Nations, June 26, 1945 59 Stat. 1031 (1945) (Articles 104, 105). Under Article VIII of the Convention, Settlement of Disputes, the organization recognizes its duty to "make provisions for appropriate modes of settlement of: (a) disputes arising out of contract or other disputes of a private law character to which the United Nations is a party." *U.N. General Convention*, Section 29.

In this case, however, UN/UNDP has offered Plaintiff no such forum because it does not recognize its contract or its responsibilities to Plaintiff. Nor has Defendant Susan Rice exercised the powers of her office to create any alternative process that would be available to U.S. citizens like the Plaintiff to protect constitutional rights. By not doing so, her actions suggest that the alternative that Defendant Susan Rice must promote is the availability of the U.S. courts[13].

Certainly, neither Defendant Susan Rice nor the UN/UNDP could claim that independent discussions now by Plaintiff with the UN/UNDP legal office is an "appropriate mode" of due process, given that its lawyers appear to have a conflict of interest and may have furthered UN/UNDP misconduct on this case. Such discussions in no way meet the recognized court standards for meeting due process requirements. Due process is recognized as including the right not just to a neutral decisionmaker, but the power of cross examination and access to opposing evidence among other factors. (views of Judge Henry Friendly: Strauss, Peter. "DUE PROCESS". Legal Information Institute, http://www.law.cornell.edu/wex/due_process. Retrieved 8 March 2013). Yet, this appears to be what DoJ is trying to claim in its Statement of Interest, using a letter that Defendant Susan Rice appears to have forwarded to DoJ for such a purpose, or at least

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with no note to the court that she recognized such statements as in no way reflecting the actual availability of due process.

Without an existing due process forum available to the Plaintiff through the UN/UNDP, both the *UN General Convention* and court rulings make it relatively easy for Defendant Susan Rice to convince the UN Secretary General to endorse Plaintiff's access to a remedy through U.S. courts in this case. Indeed, the Secretary General would have the duty to respond favorably to a request from Defendant Susan Rice to offer Plaintiff the forum of the U.S. courts. Article 21 of the UN General Convention requires the UN "to co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article." *UN General Convention*, Article 21. Plaintiff is not aware of any reason why Defendant Susan Rice, DoJ or UN/UNDP would claim in this case that U.S. Courts could not offer a fair and impartial forum where no other forum exists, (though the Court might imply that inference in DoJ's motion).

The Secretary General has a duty under the UN General Convention to waive sovereignty here, given the interests of justice in protecting UN purposes that Plaintiff has alleged have been violated and the clear interest in the UN's ability to contract with third parties. Article 20 states this duty. "The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council

shall have the right to waive immunity." *UN General Convention*, Article 20. Note that this is not simply a "right". This is also a "duty".

In fact, in this case, Defendant Susan Rice's appeal to the Secretary General for this formal waiver would be nothing more than a mere courtesy for diplomatic protocol purposes because U.S. courts not only already recognize this duty but already go so far as to recognize an *implied waiver* as already existing in the area of contract rights of third parties with international organizations, where no internal processes exist offering due process. *Oss Nokalva Inc. v. European Space Agency*, 617 F. 3d 712 (2010).

In *Oss Nokalva*, the court found that the European Space Agency had already waived its immunity in contracting and breaching its contract because "[o]utside parties would be hesitant to do business with ESA if there were no expectations of fair play." Certainly the same justification applies here on an action is based on commercial activity with direct ties to the United States. *FSIA* 28 U.S.C. § 1605(a)(2). Indeed, what American lawyer would agree to go half way around the world to work for the United Nations if it believed it could be defrauded of work for months, left stranded on arrival with a breached contract and then harassed, including being pressured to agree to covering up what happened by falsely blaming the problem on the government of a sovereign state where he was hired to promote "rule of law"? What American lawyer would contract for work with the UN if that job could be "sold" to another government at any time without any remedy?

The State Department itself, the Department where Defendant Susan Rice works, long recognized this obligation and the courts have now formally agreed in applying the IOIA and the Foreign Sovereign Immunities Act (FSIA) both to foreign sovereigns

individually and collectively in international organizations under the court's ruling of *Oss Nokalva*. In a 1980 letter, a State Department Legal Adviser noted that "The [FSIA] amended [U.S.] law by codifying a … theory of immunity … in U.S. courts.... By virtue of the FSIA, ... *international organizations are now subject to the jurisdiction of our courts in respect of their commercial activities*...." Letter from Roberts B. Owen, Legal Adviser, State Department, to Leroy D. Clark, General Counsel, Equal Employment Opportunity Commission (June 24, 1980) (emphasis added), *reprinted in* Marian L. Nash, *Contemporary Practice of the United States Relating to International Law*, 74 Am. J. Int'l L. 917, 917-18 (1980). *Oss Nokalva Inc. v. European Space Agency*, 617 F. 3d 712 (2010)

Nevertheless, despite these powers and court decisions, DoJ claims that the Defendant Susan Rice is bound or incapacitated by earlier court decisions that DoJ claims do not allow her to use any such legal authority for any reason. In fact, the situation is the reverse. Because the issue here is protection of Plaintiff's fundamental rights, the courts must apply a strict scrutiny test to any attempts that would restrict Defendant's authority to protect and assert those rights. The standard of review here is high. The presumption is in Plaintiff's favor. The test will weigh Plaintiff's rights against any "compelling state interest" in restricting those rights and in the means used and in determining when excuses that cause harms are in fact inexcusable. *United States v. Carolene Products Company*, 304 U.S. 144 (1938).

In this case as in many of the cases where the UN has had to answer and assert its claim to immunity in U.S. courts, the state interest that Defendant Susan Rice must claim is the legitimate promotion of the UN and its objectives and the inability to use the least

restrictive alternative that already exists, such as Defendant's authority to simply grant Plaintiff a "limited waiver" of Defendant UN/UNDP's immunity under the IOIA so that he may pursue his claims in protection of his fundamental rights. Here, not only is Plaintiff seeking to protecting his rights but he notes an additional factor in the balancing test that must also be taken in his favor.

Plaintiff has alleged that the acts by the UN are in violation of UN charter (ultra vires of that charter) and constitute egregious misconduct for which the UN/UNDP and the U.S. government have a legitimate interest and duty to investigate and stop as part of its commitment to justice and accountability. It is hard to believe that either Defendant Susan Rice or the UN/UNDP would argue that blaming a sovereign government for misconduct or (allegedly) defrauding a Member State and playing countries off of each other to protect the interests of officials is the legitimate purpose of the UN. It would also be hard to believe that they would claim that undermining the sanctity of contract and rights protections are part of the UN mission because they are in fact direct contradiction to the UN's mission. Indeed, the very purpose of the UN is to act "in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace" (*UN Charter*, Article 1) and "To develop friendly relations among nations" (UN Charter, Article 2). Both are under threat here.

Indeed, by claiming that sovereign immunity of UN is "absolute" and that neither Defendant has any duty to promote the purposes of the UN or to challenge violations of those purposes, DoJ is implying that the UN may violate its own charter and cause any harm it wishes with impunity and that Defendant Susan Rice has no duty or responsibility

at all to the Constitution or to the law. Neither the courts nor the statutes recognize immunity as a license for lawbreaking.

In this case, not only do such powers exist for Defendant to protect Plaintiff's constitutional rights, and not only has Plaintiff asserted that Defendant has made every effort to avoid exercising them, but it appears now in documents brought to this court by DoJ on behalf of the Defendant, that Defendant Susan Rice, has also worked in concert with Defendant UN/UNDP to condone and to increase the harms to Plaintiff. Indeed, beyond the evidence that Plaintiff has already submitted to the court in his complaint, the Court can view DoJ's Statement of Interest as a means by which Defendants appear to be acting in concert to evade process and to increase costs and harms to Plaintiff.

The Court itself may already infer that Defendant Susan Rice has violated her duty to Plaintiff simply by examining DoJ's Statement of Interest and the attached letter from UN/UNDP's Legal Office to Defendant Susan Rice that is now Exhibit A, alongside DoJ's Motion to Dismiss.

Defendant Susan Rice knows directly from several communications from Plaintiff and Plaintiff's lawyers and again from the pleadings in this case that there is evidence suggesting conflict of interest and misconduct by the UN/UNDP's legal office on this matter. This was the basis of Plaintiff's request to Defendant Susan Rice to act on his behalf. Defendant Susan Rice also knows directly from UN/UNDP's lawyers in Exhibit A, a letter not from the Secretary General but from Patricia O'Brien, the UN's Undersecretary General for Legal Affairs, that the UN/UNDP had not only not been formally served on this complaint but that it was seeking to insulate itself even from court process and was requesting Defendant Susan Rice's help in doing so. One can infer the

citation of Section 18 (a) of the General Convention that "[o]fficials of the United Nations shall … be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity" as an attempt to immunize UN/UNDP's lawyers from oversight of their own misconduct that Plaintiff has alleged.

Defendant Susan Rice knows from Plaintiff's pleadings that UN/UNDP lawyers have ended communications with Plaintiff on what Plaintiff understands as their recusal in the matter due specifically to their conflict of interest. DoJ is certainly aware, given its Statement of Interest, that UN/UNDP has evaded process in this case, has refused any communication at all with Plaintiff on this court case, and that this has led Plaintiff to Motion for Court Service of Defendant UN/UNDP and Sanctions Against Said Defendant for Refusal of Service (on April 13, 2013). Defendant is also aware from that motion that Defendant UN/UNDP's belief in immunity is not considered "good cause" for evading service and the sanctions that ensure under Rule 4 of the Federal Rules of Civil Procedure (and Form 5, mandated by FRCP 4) d)). Defendant is also aware that the determination on a UN/UNDP waiver is not a decision by an individual who may have a conflict of interest at the UN but is the duty of the Secretary General (*UN General Convention*, Article 20) and is subject to determinations of the U.S. courts and precedents finding implied waivers that would apply to this case (*Oss Nokalva*).

Yet, rather than bring this letter to the attention of the Court and Plaintiff when it was received (on or around February 26, 2013) and rather than advise UN/UNDP to follow FRCP 4, this letter is now part of DoJ's Statement of Interest that asserts the interests of UN/UNDP lawyers and other officials in evading Rule 4. Indeed, it appears that Defendant Susan Rice, DoJ and lawyers at UN/UNDP are acting in concert in an

attempt to violate Plaintiff's rights with Defendant Susan Rice exercising no independent duty to ensure compliance with the law and protection of Plaintiff's rights.

That belief is further suggested by statements in DoJ's Motion to Dismiss that "plaintiff needed to resolve his contract dispute with the entity alleged to have improperly denied him a job" and not with Defendant Susan Rice (page 8) and by presentation of letters from the UN/UNDP lawyers that infer the availability of some unspecified remedy from UN/UNDP. This appears to be an attempt by Defendant Susan Rice to "whipsaw" Plaintiff between two actors while simultaneously working to undermine any due process remedies from either. Exhibit A, the letter from Patricia O'Brien, the Under Secretary General for Legal Affairs of the UN, closes with an unsworn statement that "the Organization [sic] has extensively discussed Mr. Lempert's grievances with him and remains available to continue these discussions, if necessary, in a manner consistent with the privileges and immunities enjoyed by the Organization and its officials under the applicable legal instruments", whatever that may mean. Plaintiff has sworn in his complaint that the only communications he has received from the UN are those he characterizes as denial of process, harassment or pressure to condone wrongdoing and misconduct that Plaintiff views as in violation of the law and the UN mission. Plaintiff has noted the absence of communications from UN/UNDP lawyers and the refusal of UNDP to answer two requests from the U.S. State Department to resolve this matter. Plaintiff therefore believes that the Court could find that the acts of Defendant Susan Rice and DoJ in presenting a Statement of Interest that claims immunity even from process on behalf of Defendant UN/UNDP could be viewed as an attempt to undermine Plaintiff's rights by creating an inference that some due process remedy is available to the Plaintiff

from the UN/UNDP where Defendant Susan Rice knows of none and has worked to assure that no such right is available. Some might view that as a coordinated attempt not merely to evade the Court's reach, in legitimizing a violation of FRCP Rule 4, but to potentially defraud this Court.

There are more than enough grounds here for subject matter jurisdiction.

II. Defendant Susan Rice is Liable For the UN/UNDP's Alleged Breach of Contract and For the Torts of Fraud and "Harassment"

Most of DoJ's arguments for dismissal based on lack of grounds in Plaintiff's claims are inapplicable to this suit and should be disregarded because Plaintiff's claims for recovery against Defendant Susan Rice seek redress for violation of Plaintiff's constitutional rights on a *Bivens* theory of recovery against said Defendant, based on principles of private civil actions for civil rights claims under 42 U.S. Code § 1983, rather than for divisible statutory claims in contract and tort against the U.S. government. Defendant Susan Rice is jointly and severally liable for contract and tort damages for her actions in concert with Defendant UN/UNDP and Plaintiff can ask for remedies that make Plaintiff "whole", including equitable remedies.

Plaintiff meets the standard of claims for a *Bivens* action and has asked for appropriate relief in both monetary and equitable remedies which are appropriate to this harm. Plaintiff has met the standards for appropriate administrative notifications to Defendant Susan Rice and to the U.S. government for this type of claim to go forward. Plaintiff has also offered sufficient evidence in the pleadings that can directly link Defendant Susan Rice to all of the harms for which he has asserted claims, with substantiation of claims of harassment and tort to be offered at trial with expert testimony

and constructive notice of how officials like Susan Rice use or do not use their powers in concert with other agencies (in this case, UN/UNDP and apparently other government actors) to create specific harms to individual citizens like the Plaintiff in evasion of Constitutional duties.

Even though Plaintiff believes there is a very simple and quick remedy in this case that Defendant(s) could have exercised at any point and still can at any time to resolve this matter, as a legal case this is difficult for everyone involved. The approach that Plaintiff has taken in this case in a arguing *Bivens* theory and stating claims is one that seeks to make it easiest for the Court and the parties to find remedies.

This case can be complex because of multiple interests (and potential for conflicts among those interests), multiple officials with different responsibilities, and different legal theories of duties and recoveries. The "just" result and the harms may be clear but the legal solution raises many issues of interest balancing and allocation of responsibility and action. In a *Bivens* type case, Defendant Susan Rice is the named defendant but she is represented by DoJ, who also simultaneously is tasked by this court to offer a Statement of Interest of the U.S. Government (28 U.S.C. § 517: *Interests of US in Pending Suits*) without clearly stating which "interests of the U.S." are to be presented and how, though clearly recognizing that they are plural (*interests*) and not a single "interest" of a particular official or department or of the administrative branch. Though DoJ has not presented the full range of interests to this court that are also to be considered in the structuring of remedies in addressing Plaintiff's claims, such "interests" also include those of assuring the specific purpose and mission of the UN/UNDP, of the constitutional due process rights of Plaintiff and all other U.S. citizens who contract and interact with

the UN/UNDP and interact with Defendant Susan Rice, and of government accountability and responsibility (which Defendant Susan Rice recognizes on her website, noted above). These are different from the interests of specific individuals who fill different roles like Defendant Susan Rice and even those whom DoJ may choose to protect and with whom Defendant Susan Rice interacts, such as specific UN/UNDP lawyers and they are also specifically relevant to the claims made under a *Bivens* theory, using a private right of action approach.

In choosing to make claims using a *Bivens* theory and in offering evidence as a basis for the claim on how Defendant Susan Rice and Defendant UN/UNDP can and do work in concert (but without full transparency of that process) in a way that makes them jointly and severally liable for interrelated claims in contract and tort, Plaintiff seeks to make it easy for the Court to reach the "just" solution in this case in a manner that not only will save time for the Court and the Parties but will best protect multiple interests.

The purpose of remedies under a private right of action under *Bivens* and the civil action approach on which it is based is to compensate the Plaintiff for harms and to create incentives for Defendants to protect others from future similar harms. In a theory of private rights of action, the Plaintiff essentially stands in the position of a "private attorney general" enforcing the law where a violation of an official duty has occurred. In this case, Plaintiff seeks remedies that would make him whole, including both monetary damages and protection of his future interests in work with the UN/UNDP and U.S. government; both the property interests that are to be protected and the additional protections that are offered by the due process protections of the Fifth and Fourteenth Amendments that Defendants have denied him. Plaintiff's interests can only be fully

protected by remedies that also create incentives for due process reforms that include investigations of wrongdoing. In tort cases, courts routinely follow common law principles recognizing that punitive damages and equitable relief are important elements in remedies to correct systematic failures that have led to harms such as the denial of rights. In this case, the Court can identify both individual fault in the actions and inactions of Defendant Susan Rice, as well as systematic failures in oversight at Defendant UN/UNDP and in Defendant Susan Rice's role in that oversight and the Plaintiff has the right under a *Bivens* theory to ask for such remedies as would address these failures.

Plaintiff has met the requirements for a *Bivens* claim. He has alleged that he "was deprived of a constitutional right" (5th and 14th Amendment due process) "by a federal agent" (Susan Rice) "acting under color of federal authority" (in her position as U.S. Ambassador to the United Nations) *Ali v. Cassanta*, 2007 U.S. Dist. LEXIS 37298 (D. Conn. May 21, 2007).

The courts fully recognize such claims in assertion of Fifth Amendment due process rights *Young v. Pierce*, DC Tex. 544 F.Supp. 1010 (1982). As a victim of a constitutional violation, Plaintiff has the right to recover damages against the official in federal court despite the absence of any statute conferring such a right. *Bivens v. Six Unknown Agents,* 403 U.S. 388 (1971).

Plaintiff has given clear administrative notice to the Defendant Susan Rice and to the U.S. State Department including its legal office, on several occasions, with a statement of his constitutional claim and a statement of the amount.

Since the origin of *Bivens* claims is in the enforcement of fundamental rights, the remedies that Plaintiff may seek may also be analogous to those of a "private attorney general" enforcing Constitutional rights with remedies calculated to compensate for the harm in ways that can include damages or injunctive relief. The Court has wide latitude to consider the appropriate remedies, limited only by the existence of specific statutes providing alternate remedies (*Carlson v. Green*, 446 U.S. 14 (1980)). Yet, even where alternative remedies may exist, the Supreme Court has ruled that even with "an explicit congressional prohibition against judicial remedies for those in petitioner's position" the court may consider alternative remedies (*Davis v. Passman*, 442 U.S. 228 (1979).)

This case, like others based on civil rights violations and *Bivens* theory of recovery, is really a tort case with remedies including those available in tort: damages (in this case measured by the vested property right of Plaintiff's contract), property rights lost due to fraud, harassment, and punitive damages that the courts may choose to award as well as equitable relief.

In this case, the existence of alternative remedies such as the Federal Tort Claims Act and Plaintiff's decision not to begin to seek recovery in tort under that act and its requirements does not preclude Plaintiff from seeking the same recoveries under a tort theory from Defendant Susan Rice, including one in which she can be found jointly and severally liable with Defendant UN/UNDP (28 U.S.C. § 2679). That statute specifically allows for non-exclusive remedies and recognizes that exclusiveness of the remedy "does not extend or apply to a civil action against an employee of the Government—(A) which is brought for a violation of the Constitution of the United States." If the court were to find that the United States or other officials could be considered liable for the same

actions that Plaintiff pleads here, the Court could extend claims to the U.S. Government under that Act in an effort to fashion an appropriate remedy.

DoJ, not Plaintiff, raises the question of whether Plaintiff needs to seek contract damages from the United States rather than Defendant Susan Rice directly under the Tucker Act in order to claim contract damages as part of a recovery 28 U.S.C. § 1491 (*Tucker Act*) and 28 U.S.C. § 1346(a) (*Little Tucker Act*) and also raises questions on the theory of contract liability here. While Plaintiff does not wish to preclude the court from considering such a theory of recovery if the Court believes it is not inconsistent with Plaintiff's *Bivens* approach and would provide an appropriate remedy, Plaintiff is not claiming that Defendant Susan Rice has breached his contract. He is claiming that Susan Rice is liable for damages of the breach on a tort theory due to her violation of Plaintiff's due process rights to seek such damages against Defendant UN/UNDP with her duty to assist in such recovery. In this case, the theory of responsibility is closest to one of "tortuous interference with contract" in which Defendant Susan Rice's actions and inactions have contributed to inability to protect Plaintiff's contract rights. Though the Court here may wish to entertain the theories of whether Susan Rice, as the U.S. Ambassador to the UN, can assume the contract responsibilities of an organization to which the U.S. is a member, whether her responsibility for oversight of UN spending and accountability of its funds creates a "Master-Agent" relationship with UN agencies such as UNDP, or whether the responsible party in the US may (also) be the "U.S. government", these determinations are not essential to Plaintiff's claim to seek contract damages from Defendant Susan Rice in this case under a *Bivens* claim.

The theory of recovery that Plaintiff has chosen for Defendant Susan Rice is indeed the one best suited to the facts of this case given that both Defendants appear to be working in concert with each other in ways that undermine the stated duties of both to protect Plaintiff's due process rights.

Plaintiff has based his claim on a theory of "joint and several" liability of both Defendants because both, together, have the ability to resolve this matter as well as to grant appropriate due process procedures and remedies that will make Plaintiff whole. Yet, neither has taken any responsibility and as court documents now show, they are working together to defeat Plaintiff's access to any remedy. Defendant Susan Rice claims that Defendant UN/UNDP is responsible for Plaintiff's harms but at the same time she acts in concert with DoJ to protect UN/UNDP from even having to respond to court process, knowing at the same time that UN/UNDP offers no due process remedies or procedures to Plaintiff. Meanwhile, in response to attempts to serve process on Defendant UN/UNDP, Defendant UN/UNDP's lawyers, who themselves may be guilty of misconduct, seek help from Defendant Susan Rice in immunizing themselves from this Court and in evading any scrutiny or solutions (as argued above).

While DoJ questions how Defendant Susan Rice's inactions and simple transfer of Plaintiff's requests for Constitutional protections back to Defendant UN/UNDP without any mention of Plaintiff's rights or UN duties can substantiate Plaintiff's tort claim against Defendant Susan Rice, DoJ is treating both the Court and the Plaintiff as outsiders who do not know how officials in the executive branch send signals to each other of their indifference to citizen claims in ways that can be calculated to cause known harm and to avoid responsibilities.

At trial, Plaintiff will present experts to the Court explaining how administrators use the "buck" system for transferring citizen requests in ways that signal requests are to be evaded, with knowing consequences of harm to those citizens that amounts to harassment. Plaintiff will detail for the court how other requests or lack of response or misdirection are also used by executive agencies for the specific purpose of avoiding duties and increasing costs to citizens seeking protections of their rights. Plaintiff will also demonstrate how administrative agencies use inaction and transfer of matters to evade responsibilities to citizen protections. In this case, Plaintiff will show how Defendant Susan Rice's actions and inactions can easily be interpreted as signaling a lack of interest in exercising her duty to protect Plaintiff's rights as well as a coordinated action with Defendant UN/UNDP to continue harms. Plaintiff will also show that my not exercising other available options and forms of communication that Defendant Susan Rice's inaction was also a cause of harm. Indeed, in Plaintiff in making a tort claim may present wrongful "omission" as a basis for recovery (under both 28 U.S.C. § 2679 b) as well as in the Civil Action for Deprivation of Rights, 42 U.S. Code §1983) and the courts must protect the right to present such evidence as the basis of these tort claims. In this case, the court can also choose to take constructive notice of how Defendant Susan Rice's communications with Defendant UN/UNDP "on behalf" of the Plaintiff signaled a lack of attention and therefore an endorsement of the continuing harms and denial of rights that Plaintiff and his lawyer had consistently reported to both Defendants.

In seeking claims against both Defendants on a theory of joint and several liability due to actions in concert, it is not the responsibility of Plaintiff to show that each Defendant is directly responsible for each and every harm. The doctrine of joint and

several liability is specifically suited to cases like this one where the harms would not occur "but for" the actions of both Defendants but where the specific responsibilities and liabilities must be apportioned somehow between the Defendants and where lack of transparency may prevent Plaintiff from knowing the specific share of responsibilities of each Defendant in contributing to the full harm.

Here, it is clear that Defendant Susan Rice is jointly and severally liable with the Defendant UN/UNDP. "But for" her inaction in protecting Plaintiff's constitutional right to due process and asserting her authorities in seeking redress with the Defendant UN/UNDP, Plaintiff would have a remedy to immediately receive redress from UN/UNDP for the harms caused and access to due process.

Though DoJ seeks to find that Plaintiff did not do enough to bring his claims to the attention of government, Plaintiff clearly sought assistance from Defendant Susan Rice and from the State Department's Office of Legal Counsel in order to assert his claims, and if there is any fault to be asserted here, it must be against Defendant for not fulfilling her duty to Plaintiff when he brought his claims to her and asked for her help, only to be treated with silence.

It is ironic that in Defendant Susan Rice's Motion to Dismiss, DoJ stresses the need for Plaintiff to first present his claims and seek redress from a federal agency in following the principles for administrative claims under 28 U.S.C. § 1491. In this case, that agency was the office of Defendant Susan Rice, the UN Ambassador to the United Nations, and the U.S. State Department. Plaintiff sought all of the administrative remedies available that Defendant is empowered to provide, with the help of a lawyer. Plaintiff asked, waited, waited, asked again, waited, asked again, waited, asked again,

then asked the State Department's lawyers, and other offices in the State Department, and then sought help through Congress. Plaintiff exhausted every available remedy which he knew and to which he was directed and has documented all of this in the Pleadings. All of this came with continuing expense, continuing harm to Plaintiff and with no resolution and no results. Through her inaction and signaling to Defendant UN/UNDP and through documents to this court that demonstrate an unwillingness to exercise her duty to protect Plaintiff's constitutional rights, Defendant Susan Rice has exacerbated the harms to Plaintiff.

Defendant Susan Rice cannot have it both ways. Either the UN is separate and U.S. has review powers that enable Plaintiff to immediately protect his due process rights without any action from her, or Defendant Susan Rice is a contributory agent to the harm in violation of those rights given her indifference to his requests for protection.

Finally, Defendant Susan Rice's Motion to Dismiss asks why it is that Plaintiff is seeking a "full, thorough and independent investigation" of the misconduct alleged in his Complaint and on what grounds, and implicitly raising the question of whether this applies to Defendant Susan Rice. The answer is simple. Plaintiff seeks his full due process rights, both for protection of his future property interests in employment with the UN/UNDP and U.S. and for improvement in an apparently failing oversight system that is Defendant Susan Rice's responsibility to assure. A *Bivens* claim as a "private right of action" is partly equivalent to the claim of a "private attorney general" acting on behalf of the United States to require actions that the Attorney General of the United States should guarantee but has failed to assure. In this case, DoJ has failed to require Defendant Susan Rice to work with the UN/UNDP to hold officials accountable and to establish appropriate systems of due process. The UN General Convention and the duties of Susan Rice's office both recognize this

responsibility (cited above). But here, they and DoJ are acting to evade this remedy rather than to enact it.

Establishing independent investigation procedures and assuring that they are followed when an affected party like Plaintiff requests them is exactly what a due process remedy requires of Defendants. In this case, Plaintiff has a vested property right expectation not merely in this contract but in fair procedures by which he may seek future contracts. The contract that he was awarded and that was breached had the opportunity for renewal. In this case, not only has Plaintiff suffered loss of his contract and harassment, but the very individuals who breached his contract have never faced any independent review of their conduct. Plaintiff believes that their individual actions violate UN regulations and also believes that these individuals have the power to cause continuing harm to Plaintiff and to others (in ways that would harm U.S. interests and the interests of the U.N.). The only way to assure a full remedy for Plaintiff is to assure that such investigative procedures are in place and that such investigations are conducted with due diligence. Plaintiff has documented these requests, the lack of attention to them and the inability of current procedures to meet the standards of protection and due process to which he is entitled.

Plaintiff's claims and theory of recovery against Defendant Susan Rice are clear. They are justified by the law. They are supported by the pleadings. Plaintiff has asked for remedies that are within the powers of this Court and that promote judicial efficiency. The Court must uphold these claims and order the Defendant Susan Rice to answer.

CONCLUSION

Plaintiff asserts that the facts presented in the complaint are evidence of bureaucratic oversight failures both within the administrative systems of Defendant

UN/UNDP and in U.S. oversight of U.S. interests within the administrative systems of Defendant UN/UNDP which are the duties of Defendant Susan Rice (and now, also, of DoJ).

In Plaintiff's view, the facts as presented by Plaintiff lead to the conclusion that the bureaucracy with the UN/UNDP has failed. UN/UNDP officials sought to expand funds under their control, apparently by defrauding one foreign government (Australia) with complete disregard for Plaintiff, a professional with whom they had already contracted. Such activity appears to be that of playing countries against each other for bureaucratic interests and outside of the purposes for which the UN was chartered.

When Plaintiff discovered what had happened and offered solutions to UN/UNDP, rather than correct the problem, apparently Defendant UN/UNDP sought to cover it up through additional misconduct, blaming another country. As Plaintiff has alleged, even UN lawyers appear to have become party to the misconduct.

Plaintiff sought help from Defendant Susan Rice, which is the appropriate government channel for resolving such matters with Defendant UN/UNDP. Defendant Susan Rice has the authority to resolve the problem and the Constitutional duty and stated responsibility to do so in protection of Plaintiff's Fifth and Fourteenth Amendment due process rights. Plaintiff has presented evidence that Defendant Susan Rice had many opportunities to resolve this matter, possibly even with just a phone call or Diplomatic note and could have done this at any time. She also has the power and the duty to make due processes available to Plaintiff for protection of Plaintiff's rights. For both Defendants, the amount at issue is relatively minor compared to their budgets and this is a relatively small and simple matter for them to resolve but they have chosen not to.

In considering Plaintiff's claims, the Court also has the opportunity to examine the actions of the Defendants before this Court. Why would Defendant Susan Rice and the DoJ exert the effort to not only try to dismiss this case against Defendant Susan Rice but work in concert with Defendant UN/UNDP to suggest that UN/UNDP can even evade service under FRCP 4 despite its provisions? Why claim that neither has power and then act to assure that the courts do not require them to use the powers that they have a duty to use? Why is it that instead of acting to resolve the matter and enforce the law, DoJ appears to be protecting inaction and continuing the harms?

Plaintiff believes that the Motion to Dismiss and the action of Defendant and/or DoJ in concert with UN/UNDP lawyers to seek to evade process could be viewed as attempts to set a precedent that would place both Defendants above the law and to nullify the role of the courts in oversight of activities of both Defendants.

This court has the power to direct the Executive Branch to act in orders to the Defendant or to the DoJ or both and pleads that the Court exercise that authority.

Plaintiff draws the attention of the court to the opinion of Justice Louis Brandeis in a case that established the precedent for protecting the rights of citizens as Plaintiffs to maintain their actions against a U.S. government official. "Decency, security and liberty alike demand that government officials shall be subjected to the rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the

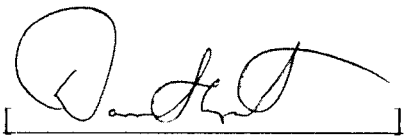
law, it invites every man (*sic*) to come a law unto himself (*sic*). It invites anarchy. (*United States v. Olmstead*, 277 U.S. 438 (1928))

In contracting with U.S. citizens, the UN/UNDP must respect U.S. constitutional standards and it is the duty of Defendant Susan Rice (and DoJ) to protect those standards. For all of the above reasons, this case must go forward.

Plaintiff David Lempert, acting as his own attorney Pro Se, avers, on personal knowledge as to himself, and on information and belief as to all others, all of the above statements.

May 13, 2013

Respectfully submitted,

[]
(electronic sign.)

David H. Lempert, Pro Se
California Bar Number 124761

CERTIFICATE OF SERVICE

Plaintiff David Lempert, acting as Attorney Pro Se, certifies that a copy of this Opposition to Defendant Susan Rice's motion has been mailed to attorney for the Defendant, Mr. Nicholas Cartier, U.S. Department of Justice, P.O. Box 883, Washington, DC 20001 by an agent of Plaintiff at the same time that this document has been mailed to the Court.