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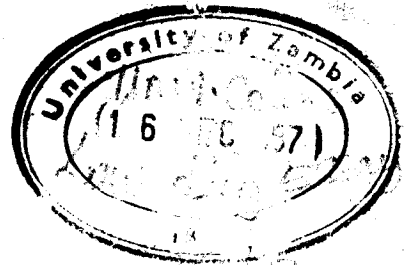
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**LEGAL IMPLICATIONS OF THE IMF IN THE THIRD WORLD -
THE ZAMBIAN EXPERIENCE**

By

Caroline Chuma Zulu

An Obligatory Essay Submitted to the University of
Zambia Law Faculty in Partial Fulfilment of the require-
ments for the degree of Bachelor of Laws.

Faculty of Law
University of Zambia
LUSAKA.

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DEDICATION

This Paper is dedicated to my parents,
Herbert and Florence Zulu.

Without you, this work would not
have been possible.

Thank you.

And to my brothers and sisters, Agatha,
Lekiwe, Sonny, Muta, Tandie, Gezile and Flora.

Thanks for being there.

ABSTRACT

This essay proposes to critically assess the role of the IMF in promoting the interests of the Industrialised countries in the third world and thereby eroding the economic rights of the latter. The basic argument of the author is that for any country to promote its own development effectively, it must exercise firm legal control over the factors which influence the economy e.g. prices, wages, foreign exchange controls etc.,. This argument is of course anathema to the IMF which counters it by imposing IMF conditionality.

To illustrate the basis of this argument, let us give a Chapter by Chapter run-down . Chapter One tackles the issue of how internal factors have retrogressed Zambia's economic development over the years since independence. The Chapter concludes by pointing out that despite these adverse internal factors, the erosion of the country's economic independence was inevitable due to the structure of the international economic order.

Chapter Two deals with the international legal, and economic mechanisms used to keep the economies of the third world within the grip of the industrialised states. It also looks at the international

battle launched by third world countries in order to assert their economic rights. This has been done in the form of a third world voice - UNCTAD, Producers Associations, United Nations Resolutions etc, all in a bid to even the odds.

Chapter Three looks at the IMF and how it has been used by the industrialised countries to counter the efforts of third world countries to regain their economic rights. By having worded the IMF's Articles of Agreement in such a way that it is answerable to no body but the industrialized countries, the work of the United Nations and its Resolutions has been rendered useless. The IMF keeps itself aloof and impervious to world opinion and this Chapter discusses how it has achieved this. Chapter Four questions the legality of the IMF's right to dictate policies to governments which affect the rights of a whole populace wherever an IMF stabilisation programme is launched. The argument centres on the premises that the IMF attempts to enforce its agreements illegitimately i.e. countries agree under duress and against their wills but are left only with Hobson's choice - which is no choice at all.

The third world is caught up in a catch-22 situation and the IMF debt trap is the worst. It is the contention of the author that though the IMF is legally constituted, its method of functioning is illegal since it erodes the economic rights of third world countries on the basis of 'conditionality'.

ACKNOWLEDGEMENTS

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ABBREVIATIONS

IMF	-	The International Monetary Fund
GNP	-	Gross National Product
UDI	-	Unilateral Declaration of Independence
U.N.	-	The United Nations
ILO	-	International Labour Organisation
JASPA	-	Jobs and Skills Programme for Africa
C.S.O.	-	Central Statistics Office
SDR	-	Special Drawing Rights
LDCs	-	Less Developed Countries
MEMACO	-	Metal Marketing Corporation of Zambia
LME	-	London Metal Exchange
CIPEC	-	Intergovernmental Council for Copper Exporting Countries
GATT	-	General Agreement on Tariffs and Trade
UNCTAD	-	United Nations Conference on Trade and Development
GSP	-	Generalised System of Preferences
OECD	-	Organisation for Economic Co-operation and Development

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INTRODUCTION

In 1985 Zambia faced an economic crisis, the consequences of which have indeed been formidable. It was in April of 1985 that the last IMF agreement was signed, in a bid to keep the economy afloat. The Government latched on to the idea of auctioning foreign exchange so as to get more money from the IMF. Thus on the 11th of October 1985, the Kwacha was delinked from its basket of currencies and allowed to float. In a desperate bid to prop up the ailing economy, the government was trying to adopt policies for promoting economic development, at a great risk to its economic independence. But there weren't any other options open to the country's leadership.

Demands were made by the IMF to which the government acceded. The IMF package was Zambia's Lifeline - it was do or die. But surprisingly it has turned out to be a case of do and die. The country was doomed whether it did or it did not run to the IMF.

This paper will attempt to illustrate this by bringing out the role of the International Monetary Fund in aiding the present economic order perpetuate underdevelopment in the third world. Thus the following legal issues will be tackled:-

- (1) The Rights of Developing Countries in the International Economic Order - do they exist?
- (2) The role of the International Monetary Fund in helping erode the economic rights of third world Countries.
- (3) IMF "Conditionality" in Zambia and the disowning of Zambia's agreement with the IMF, was she justified?

A brief outline of Zambia's economic history will be necessary in order to elucidate these legal issues more clearly.

CHAPTER ONE.

An Economic History of Zambia: 1964-85.

Police Conflict and Policy Co-ordination.

The chain of events which led to the IMF package runs back to the early years of independence. There were both internal and external factors which led to the 1985 situation and these will be considered simultaneously.

At Independence Zambia's economy was wholly supported by the dominant copper mines. Copper prices were very good and this gave rise to a spate of massive plans to Industrialise. Unhappily the young government of Zambia practised little foresight; yet it is the contention of the author that even had Zambia had the necessary foresight, the erosion of its economic rights and the advent of the IMF were inevitable. The international economic order would not have accommodated anything else.

Realising that other economic activities outside of the mining industry were negligible the Zambian government made efforts to set up other industries. Diversification of an economy needs capital. The Mines being the main source of government revenue, the government decided to gain if not total, certainly a large measure of control over the Copper Mines. The desire to gain economic control of the mines ushered in the era of the "Development Plans".

The First National Development Plan therefore brought about changes in the ownership structure of industry. The Matero Reforms of August 1969 gave the

state 51% shares in the Mines. The government, invested huge sums on large scale projects such as transport systems and networks; educational facilities at all levels and modern industry. Sadly, little was done in the way of agriculture and thus the rural areas were largely ignored. In November 1970 the state took 51% control, of the banks and most of the big companies which were still in private hands. The government preferred to be a majority shareholder as an alternative to total nationalization because the expertise and capital of the foreign technocrats still needed to be exploited. In this way it was hoped that the government could exert a greater influence in the development of Zambia.

Zambia is and has always been a foreign-exchange oriented economy. All that the colonisers left us was an economy dependant on the production and export of a primary commodity whose pricing and marketing was controlled by outside forces. With no other forms of industry from which to channel foreign exchange and thus furnish the country's needs too numerous to be supported, from the proceeds of the unpredictable copper industry the crisis began to set in. The key words; foreign exchange, copper and economic control. The Copper Mines had to have of necessity, a measure of governmental control, thus government participation.

"The major reason for the introduction of the policy of government participation is to ensure that mining rights operate **within** the framework of the overall economic and social goals of the country".¹

The **goals** and plans for development embodied very fine and high-sounding ideals which, most probably did not take into account the problem of setting and maintaining long term priorities in view of the economic, financial, administrative and political constraints which simultaneously held back action and implementation.

In the first few years of Zambia's independence the economy made striking progress with a GDP per capita that was among the healthiest in Africa and just below half that of South Africa and a copper mining industry large even by world standards, the forecast was for rapid growth and development. But the early promise has not been realised.² There are a number of factors which lead to such a state of affairs.

The years of economic decline began as a result of Zambia's number one economic headache i.e. that she is a land-locked country. When Southern Rhodesia declared unilateral independence from British rule, political considerations became a serious threat to the well-being of Zambia's economy. Because of UDI, Zambia was reluctant to have any dealings with the rebel colony and in 1973, Zambia closed her border with Rhodesia.

Meanwhile on the International scene there was a general condemnation of the Smith regime followed by imposition of economic sanctions on the rebel regime by the United Nations.

"Zambia which till then had been identified with the Southern African economic matrix had to find alternative partners, if only to avoid sanction busting. Petroleum supplies from the South were cut and Zambia's normal exports and imports were threatened. As a result of UDI there were among other things, shortages of consumer and capital goods, and increased prices to consumers. Zambia's hitherto dependable outlet to the outside world was blocked while the alternative ports, roads and transportation organisations were inherently incapable of carrying Zambian imports to maintain the national economy".³

Alternative trade routes had to be found for land-locked Zambia, thus with all the political resolve in the world and little economic forethought, Zambia firmly turned its back on the Southern trade route.

All in all, according to a U.N. estimate, by 1975 UDI had cost Zambia K560 million. By 1979 Zambia had lost K900 million because of the rerouting exercise resulting from the border closure.⁴ The rerouting exercise included the building of Tazara railway with the aid of the Chinese and the laying of the Tazara Pipeline from Dar-es-Salaam to Ndola.

The second factor which influenced the downhill trend of Zambia's economy were the low copper prices during the early seventies brought on by the oil crisis of 1973. From 1964 to 1969 the Zambian economy expanded rapidly and there was no exchange control for the First few years

but this lead inevitably to a build up of inflationary pressures. Therefore at the time the Mufulira Mine disaster occurred in 1970 and the copper output dropped, markedly, it took three years for the copper output to return to pre-1970 levels. But this coincided with the onset of the world recession and the dropping of copper prices.

According to the ILO/JASPA report,⁵ as a result of the plummeting of world copper prices in 1974, real GDP was reduced by 29% in the three years from 1974 to 1977 and by 35% over the five years until 1979. Furthermore, from the early seventies onward Zambia had to face up to the fresh problem of lagged revenue and a rising expenditure. In 1963 a tonne of copper was going at K460; by 1974^a tonne of copper was worth K2000; in 1976 the price had reached an all time low of K100 per tonne compared with K790 per tonne in 1975.

The Zambian economy is hard hit by copper prices depreciating because the production of essential commodities remains closely tied to the copper industry which cannot earn the country the necessary foreign exchange to keep the country running and this is the third factor retarding the economy.

"In 1975 Zambia's exports suffered a disastrous setback from K14161 million to K660 million while imports continued to increase; for the first time Zambia's traditional trade surplus from Copper had been transformed into a trade deficit".⁶

Inflation originating in industrial countries was being passed onto Zambia via the cost of imports. Thus in ^{the} foreign exchange sense Zambia was clearly living beyond her means from 1975 onwards. Zambia's actual import value exceeded the buying power of exports. Imports, therefore had to be sharply reduced and severely controlled because of dwindling foreign reserves. As a result of falling copper prices, Zambia's export earning, could not support the insurmountable costs of imports. It was not until 1979 that the money value of exports reached the 1974 level and by that time the apparent recovery turned out to be meaningless because over the five years the terms of trade had deteriorated tremendously.

In five years, from 1974 to 1979, Zambia's population had increased by well over 15% so that on a per capita basis the insufficiency of exports to pay for needed imports stood out even more sharply.

The Erosion of Zambia's International Buying Power.⁷

1974 - 79

Table 1

	1969-73. Average	1974.	1975.	1976.	1977.	1978.	1979
1. Value of Exports	75	100	57	87	78	75	125
2. Unit cost of imports	71	100	124	137	159	167	190
3. Buying Power of Exports in terms of Real Imports	106	100	46	61	49	45	66
4. Actual Import Value	105	100	94	67	62	51	53

-Based on Data in C.S.O. Monthly Digest of Statistics and BOZ, 1979 Report.

The table above illustrates the massive decline in command over imports provided by copper exports compared with 1974 or 1969 - 73. The cumulative gap over the years 1974 to 1979 came to 2 $\frac{1}{3}$ years of potential imports lost, an average reduction over the period of nearly 50%. Actual imports (Line 4) were kept above what could be paid for exports and the adjustment was delayed by one year beginning only in 1976 with further tightening in 1978. In 1979 actual imports rose slightly but were for the first time for five years below what could be directly afforded as a result of the partial recovery of exports that year due to good copper prices and sales from stock. Imports were kept tightly restricted at little more than half the 1974 volume. Table 1 therefore illustrates that the actual import value had actually exceeded the buying power of Zambia's exports.

In 1978 payment arrears had reached such a critical level that access to new credit lines were being blocked and normal trade was under threat of being disrupted.

"In 1978 after four years of Import squeeze and unfavourably copper prices the situation had become critical. The gap filling improvisations, all of them in one way or another involving debts had reached a dead end. External debts had reached K1265 million. Because of the inadequate flow of concessional aid much of the borrowing had to be at fairly high interest rates..."⁸

TABLE II

Zambia's Rising Debt Burden: A Comparison between 1970 and 1978

	Debt Service as a %age of			
	GNP		EXPORTS OF GOODS AND SERVICES	
	1970	1978	1970	1978
Zambia	3.2	7.1	5.5	20.8
All Low Income Countries	1.2	1.7	12.3	11.7
All Middle Income Countries	1.5	2.9	9.3	13.8

SOURCE: World Bank Development Report 1980

Table II shows the big increase in Zambia's debt burden from 1970 to 1978 and the deterioration in Zambia's position relative to other countries over the same period.

Under such a dismal elimate the government had no choice but to sign an agreement with the IMF in April of 1978. The agreement was in effect a stand by arrangement in support of a stabilisation programme. Zambia obtained SDR 250 million,⁹ over two years.

"To this maybe added SDR 49million under the IMF compensatory financing facility for export shortfalls during 1977 to March 1978, SDR 18 million from the Trust Fund and SDR 18 million in SDR allocations. Rescheduling of SDR 36 million payments to IMF due in 1978 were also agreed, a total of SDR supports of SDR 355 million".¹⁰

In June of the same year addressing the IMF consultative Conference in Paris the then Minister of Finance Mr. John Mwanakatwe revealed that Zambia would need more than K1 billion in loans to meet its balance of payments arrears beyond 1979. Zambia was firmly and irrevocably in the throes of the debt trap.

A brief analysis of the state of affairs from 1964 to 1978 brings to light a number of facts. Firstly it must be acknowledged that no matter what the circumstances good or bad advantageous or not; enclave economic systems such as were left to us by the colonialists were designed to serve very narrow ends. We have since independence been required overnight to perform miracles but the climate of the International economic order has not been able to accommodate such development. The world recession which was triggered off by the 1973 oil price increases produced unending chain results. Transport costs went up yet to the chagrin of the third world world, despite production costs rising, the prices of primary commodities plummeted, prices of finished goods continued to rise. Western capital, which in a bid to protect jobs in the West had established markets for their finished products, was reluctant to invest in the setting up of similar industries in the developing countries. For that could have meant sharing of markets and that would have set industries in the West on the brink of tottering.

Thus there was no room to consider the problems of the third world. Countries such as Zambia were encouraged to channel investments into industries which by their very nature are capital intensive and designed to generate little additional employment and no threat to the markets of products from the West. An example of such projects are the petroleum refinery in Ndola ¹¹ or Livingstone Motor Assemblies.

Part of the blame has been put on Zambia's economic policies. The government's introduction of government participation in industry has tended to lead to wastefulness, inefficiency and low profit motivation. It has often been argued that parastatals are characterised by sheer extravagance, and misplacement of manpower and too much politicking. This has lead, it is argued to little or no reinvestment of profits.

It should be realized though that the government was merely too ambitious. Economic policies may have been in disarray but this was due to the unhealthy world economic climate. The Third National Development Plan laid stress on building "socialism within humanism"; subsidies on most essential commodities were still the order of the day and free education and health facilities as close to a welfare system as we could ever get. But the whole system has come tumbling down.

A look at the structure of the International Economic Order will illustrate why such a system in Zambia could not be sustained. Gradually, Zambia lost the right to do with

her economy as she pleased and it was not all due to internal factors:

Over this period i.e. from 1964 to 1978 Zambia's laws reflected the country's main economic policies i.e. that of protectionism in the interest of self reliance. In 1979 IMF influence began to evidence itself slowly in government policy. Slowly Zambia began to follow an outward looking economic policy e.g. the Chairman of the Finance and Economic Sub-Committee gave the go-ahead for parastatals to charge economic prices.¹²

On the 18th of December 1980 the then Governor of the Bank of Zambia admitted that the economy was in bad shape and not because of the country's socialist bent but simply because of external problems beyond the country's control. Mismanagement of the economy may have been a contributory factor, but it certainly was not a major nor the only factor which influenced the downhill trend of the economy.

Though Zambia had just completed the IMF stabilisation, programme worth half a billion dollars, her main priority had been the creation of a stable balance of payments situation and thus though she was then the first country to complete an IMF stabilisation programme, there was need for another programme as the situation had not improved. Thus on the 15th of October 1981, Zambia clinched an K800 million loan and it was thought that Zambia's flagging economy was headed for a major boost. Optimism ran high since Zambia had

suffered a K200million payments deficit in 1980. IMF conditionality began to apply and in December of that year the populace were warned that economic subsidies would be withdrawn. The basic components of any IMF stand-by Arrangement and Stabilization programme are:

- "
- (1) Abolition or liberalisation of foreign exchange and import controls.
 - (2) Devaluation of the Exchange rate.
 - (3) Domestic anti-inflationary programmes including:
 - (a) Control of the government deficit; curbs on spending; increases in taxes and in prices charged by public enterprises; abolition of consumer subsidies;
 - (b) Control of Bank credit; higher interest rates.
 - (c) Control of wage rises, so far as within the government's power;
 - (d) Discriminating of price controls.
 - (4) Greater hospitality to foreign investment.¹³

All these measures serve to do is to make the government lose grip of the earnings of its economy. Abolition of foreign exchange controls means that a country cannot legally exercise any control over the paid reserves of foreign exchange and with a country such as Zambia this did not prove to be much of a solution as will be seen presently. Equally, the abolition of import controls

means local industries suffer as more competitive products from outside flood the markets and with no control over foreign exchange people will import anything thus wasting foreign exchange. A country in essence loses legal control over its basic life blood.

Devaluation of the local currency means that prices go up as the Kwacha buys less or has less power than it used to have and thus production costs rise. With the cost of living affectively out of hand the IMF demands wage ceilings and removal of subsidies and dismantling of wage controls. What gives this organisation the right to cold-bloodedly de humanize a whole population to mere figures and to humiliate entire governments by dictating economic terms?

"Legally and formally, the Fund has no power to dictate changes in a country's domestic policies. In practise, it does this in the case of a cost drawings made beyond the First Credit Tranche. The anti-inflationary policies which it insists upon touch the very heart of national sovereignty by affecting government spending, taxation, and credit policy; infact because of its anti-inflation emphasis the entire Fund package is usually called a stabilisation programme".¹⁴

According to the IMF article 5(v) of the Agreement* a member is ineligible to obtain funds if IMF conditions are not met or if they are breached. Thus gradually, the Zambian populace was given a mouthful of what IMF conditionality was all about. In December, of 1982, all formal price controls were revoked, with the exception

of such staple foods as mealie meal, candles; wheat, flour and bread. Interest rates were decontrolled and by 1986, an Investment Act was passed repealing the Industrial Development in a bid to encourage foreign investment. Existing Companies could now no longer object to a new investment permit on the grounds that they would suffer.

The final commitment was made when Zambia adopted the Auctioning system on the 4th of October, 1985. The objectives of the Auction system were:

- "1. to improve the efficiency of foreign exchange allocation and remove opportunities for corruption.
2. to make the exchange rate responsible to the changing of pressures of supply and demand.
3. to discourage the importation of less necessary products and the wasteful use of essentials.
4. to ease the importation of essentials and increase the usage of Industrial capacity.
5. to divert the purchase of inputs towards domestic suppliers.
6. to stimulate new exports.
7. to speed up the disbursement of aid
8. to provide a stable and realistic exchange rate".¹⁵

The government adhered strictly to the IMF stabilisation package and appropriate structural and corresponding legal adjustments were made i.e. the decontrol of price and interest rates, devaluation of the currency, removal of fertiliser and maize subsidies, increased producer prices and liberalisation of agricultural marketing?

According to the IMF Articles of Agreement the IMF has given itself the right to oversee the international monetary system and the surveillance over the exchange rate policies of its members.¹⁶ Thus up to the last standby agreement with the IMF in 1985 the IMF did not give the government an inch of room to manoeuvre. For example when it was noted that some bidders at the auction imported quick-selling finished goods whose proceeds they intended to use at the auction floor for similar purposes the Bank of Zambia tried to intervene by rejecting such bids. This was in effect an attempt by the Central Bank to prioritize imports by such rejections yet the IMF objected to such an action by the Bank of Zambia and stated unequivocally that such rejections were unacceptable.¹⁷

This in essence proves that the IMF was more interested in short-term results i.e. balance of payments; repayments of debts and the reduction of the budget deficit. Long term developmental objectives have never been among the Fund's Projected aims and they have been at pains to stress this time and time again.

Yet though IMF programmes and policies purports to deal with specific (balance of payments) problems, they infact have profound effects on the whole economy e.g. political stability, social inequalities, depression of local industry; uncontrollable price increases, etc. For example the Zambian case. The devaluation of the Kwacha through weekly auctionings simply led to inflation and loss of purchasing power among the lower income groups. The envisaged encouragement of exports and disencouragement of imports never occurred.

The decontrol of prices led to sharp-falls in demand for goods and therefore many small enterprises closed down. With the Kwacha buying less production costs went up and thousands had to be laid off. Wage ceilings led to social unrest owing to a fall in real wages among the lower income groups. To compoind an explosive situation further restriction on government expenditure meant little could go to social welfare and health and education services. An attempt to remove subsidies on mealie meal led to outright riots. Furthermore the country had become more dependent than ever as the decontrol of prices led to foreign competition as foreign goods flooded the market.

This Chapter brings out the major point that national efforts to avert a national economic catastrophe did not work. Within Zambia's municipal legal framework, one can safely state that the problem transcends national boundaries. Chapter II will bring out

a the major factors why this is so.

At a national level little can be done to reverse the worsening situation. The IMF stabilisation programme could have provided a possible solution but because it ignored the structural problems Zambia was facing, it merely served to further erode Zambia's remaining economic footage.

Inevitably, the auctioning system ~~was~~ abolished after the Kwacha reached an all-time low of K21.02 to a single dollar.

FOOTNOTES

1. Ben Turok, Development in Zambia
(London, Zed Press, 1979) p. 51
2. Ibid. p. 71
3. J.M. Mulwila, Economic Independence: in Zambia and
the Role of Law in Economic Development
(LIM, University of Zambia, 1976) p. 99
4. Times of Zambia, (26th January, 1979) p.1
5. International Labour Office; Jobs and Skills Programme
for Africa, Basic Needs in an Economy under Pressure.
(Addis Ababa, United Printers, 1981) p. 3.
6. Ibid. p. 137
7. Ibid. p. 139
8. Ibid. p. 42
9. Special Drawing Rights (SDRs) may be taken as equivalent
to Kwacha. It was created in 1969 and has become the
IMF's official unit of account; its value is determined
by reference to a basket of currencies. It is also being
used as an accounting unit for transactions between govern-
ments by some other International Financial Institutions.
10. Ibid. ILO/SASPA Report p. 143.
11. Turok, supra at p. 8
12. Times of Zambia, supra.
13. Cheryl Payer, The Debt Trap: The IMF and The Third World
(New York and London, Monthly Review Press,
1974) p. 33.
14. Ibid. p. 36
- * The IMF Articles of Agreement
15. M. Sanderson, Why Zambia's Auction Failed (unpublished)
16. Article IV Section 3 of the Fund Agreement
17. M. Ndulo The Foreign Exchange Auction Regime. The
Zambian Experience (unpublished Paper)

CHAPTER TWO

"The Exercise of the right to permanent sovereignty over natural resources is an essential condition of development, from exploration to marketing".

(George Elien)

The Rights of Third World Countries in the International Economic Order.

Sovreignty means the Independence and supremacy of the State ¹ within the limits of its territorial frontiers and the independence of this power in relation to any other power, which is expressed in the state's exclusive and inalienable right to lay down and carry out its home and foreign policy independently, to discharge its functions, to implement the practical measures for organising its social life at home and its foreign relations on the basis of respect for the sovereignty of other states, for the principles and norms of international law accepted of its own free will. Chapter one laid stress on the fact that though Zambia has attained political independence, external influences have impeded her acquiring economic independence. Her state sovereignty has been infringed and it is the aim of the author to discuss these factors, the IMF among them. In a word, the system i.e. the International Economic Order has infringed the rights of states in the Third World to shape their own fate and destiny freely by directing their economies. This has been done in a number of ways which will shortly be discussed.

The features of sovereignty are:

- (a) Exclusive state power ⁱⁿ discharging the functions specified to the state.
- (b) indivisibility - that is full freedom of device in using the whole set of prerogatives of state power.
- (c) inalienability - which means the impossibility of ceding state power either to some foreign power or to some international body.²

It is the contention of the author that (b) and (c) above have been infringed because of the structure of the world economic order. Thus if the main features of sovereignty of a state are absent, it is necessary to identify the main tools used to erode them. The issue in question therefore, is sovereignty over natural resources. There has arisen controversy over the extent and legitimacy of the right to economic sovereignty due to certain factors which shall be the main subject of this Chapter.

The International document governing sovereignty over natural resources is the General Assembly Resolution of 1962 on Permanent Sovereignty over Natural Resources.³ Pertinent to this discussion, also is the Charter of Economic Rights and Duties of States⁴ and the Declaration and Programme of Action on the Establishment of a New International Economic Order.⁵ These instruments seek to protect a state's economic sovereignty and how effective they have been will be briefly discussed.

These instruments are in existence to-day chiefly because although a state is deemed to possess independence and sovereignty over its subjects and its affairs, within its territorial limits, the international community of states have accepted restrictions on the liberty of the state by mutual consensus. The United Nations has come to represent that community of states - a community which has undertaken obligations limiting their powers in matters of international policy. In essence, that the need to pass resolutions based on the principle of sovereignty over natural resources^{arose} illustrates that some states enjoy more power and independence than other states; power sufficient to undermine the economic and sometimes the political independence of other states.

According to Starke these resolutions together

"....reflect not only the idea of a state's sovereign control over its own resources, not to be surrendered but to be safeguarded even when foreign capital is imported to promote development, but also an insistance implicitly, if not expressly, that it is the responsibility of the international community to assist in maximising the exploitation and use of the natural wealth of developing countries, and so contribute to strengthening their capability to promote their economic development by their own efforts".⁶

The issue here really is whose idea of aid is to be employed to develop the third world economies. We shall return to this point presently. Complete sovereignty embraces both political and economic emancipation. Thus the General Assembly Resolution of 1962 on Permanent Sovereignty over Natural Resources states that:

"it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination".⁷

Similarly the Charter of Economic Rights and Duties of States has a similar article entrenched in its provisions which reads as follows:

"Every state has the right to engage in international trade and other forms of economic co-operation irrespective of any differences in political, economic and social system. No state shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other forms of economic co-operation, every state is free to choose the forms of organisation of its foreign economic relations and to enter into bilateral and multi-leteral arrangements consistent with its international obligations and with the needs of International economic co-operations".⁸

These provisions have largely not been adhered to because of the international structures which govern world trade. The mechanisms used are more especially prevalent in the production and marketing of raw materials. These are

- (1) The International Transport System
- (2) Trade Restrictions e.g. taxes, levies upon trade and on the other hand **dumping** and the unrestricted disposal of accumulated stocks that interfere with the industrial development of developing countries.
- (3) Commodity markets
- (4) Aid in the Form of
 - (i) Foreign Investment
 - (ii) Loans (mostly from International lending institutions).

The importance of the field of legal regulation of international economic matters has become more emphasised as a result of the precarious position of developing countries in the persisting world economic order.

1. Less Developed Countries* and the problem of Primary Commodities

- Most of the LDCs are primary commodity producers, a legacy from colonial times. Thus foreign currency is obtained from the export of agricultural goods and minerals (as in Zambia) in the form they are first traded internationally. Trade activities of individual LDCs are mostly with industrial countries. It is the latter who buy the primary commodities which still constitute the main exports of the less developed countries and who supply most of the finished products needed by LDCs. The historical pattern of trade has been such that Africa and the Americas, have been the traditional suppliers of raw materials for Western Europe's numerous industries.

The West saw it as their right to extract these raw materials and therefore no thought was given to develop the industries in the areas where the raw materials were coming from. As they saw it, they had absolutely no obligation to the rightful owners of the natural resources and the flagrant looting and plundering built a trade structure persistent to the latter half of the twentieth century. The colonisers exercised both political and economic control over the liquid and real economic resources of the colonies.

"The main liquid resources are foreign exchange and public and private savings and real resources consist of agricultural, mineral, transportation, communication, manufacturing, and commercial facilities and other assets".

Now that decolonisation has become a permanent and regular occurrence, the industrial powers have almost absolute control over the liquid and real economic resources of the world through the following mechanisms.

A. Transportation

The vast bulk of international trade in primary products involves ocean shipment. The structure, organisation, and operation of the world's shipping industry is extremely complicated involving a lot of technical and economic issues and unfortunately developing countries have little say in this area as few if any are ship owners. The shipping industry is controlled by private or public enterprises domiciled in the industrial countries. This is an industry which has remained remarkably impervious to public supervision. LDCs possess little influence in this area. Thus there is no check on matters such as freight rates and the criteria upon which they are established thus instances of over-charging are surely rampant. Zambia being landlocked suffers doubly in that she must transport her goods through other countries by road, pay storage costs at foreign ports for her goods and in addition risk being overcharged by ship owners.

Maritime transportation is appropriate as starters to improve trade conditions. LDCs must be allowed a measure of say in the shaping of freight rates and other shipping

regulations. As a result international transportation has become a subject of special interest to such international organisations as UNCTAD, which has demanded an examination and redrafting of international shipping legislation to take into account the interests of less-developed users. Transportation belongs to the line of economic activities the functioning of which has a decisive impact on the economy of a country as a whole.

"....industrial countries as well as international organisations interested in the destiny of LDCs....dare not ignore the importance of a maritime system providing satisfactory service at reasonable rates".

Transport costs are important because they are part and parcel of production costs and production exercises a decisive influence over the competitiveness of export products. An increase in costs will almost certainly imply a reduction in the volume of exports especially for an industry so capital intensive as mining. Initial input is so great that it would take only a minor disturbance as transport costs going up to reduce output drastically. Any significant increase or decrease of supply of a product has an impact on the world prices of the goods concerned. This is not the only factor i.e. (demand and supply) which controls the price of goods.

B. Commodity Markets

Another mechanism which has been used by the West to help them control the economies of LDCs is the concept of commodity markets. More often than not prices of primary

commodity exports are highly unstable . The impact of price fluctuation is very devastating on the budget and the balance of payments situation in developing countries. The main legal economic mechanisms which set prices for commodities are the commodity markets. Of special and more immediate interest in this paper is the London Metal Exchange.

Prior to the Second World War it was generally agreed that intergovernmental control over commodity markets was contrary to the principles of free trade.¹¹

It is important to note at this point that the instability experienced in international commodity markets is not a direct result of the special nature of demand and supply patterns experienced by all primary commodities. Developed countries and MNCs even manipulate commodity markets deliberately by entering into private agreements aimed at controlling the market of certain commodities. The assumption that the optimum allocation of resources would be attained through perfect competition in commodity markets plus a free resources mobility between countries led to a situation of imperfect or no competition at all.

Primary commodity markets are never ever quite freely competitive and always reflect intervention in one form or another by cartels, governments and intergovernmental commodity markets. The structure of international trade in primary commodities is such that there is a flow of primary commodities from the developing to the developed nations. These markets are of importance to developing countries because their livelihood depends on the whims of the day at a commodity

market. All primary commodities are alike in one important respect i.e. in the absence of any successful organised control over commodity markets and less over market prices which in most cases are very unstable. Large and frequent price changes for primary commodities from bad to worse; **yet** little fluctuation characterises prices of finished goods from the West i.e. the contrast between the prices of primary commodities and manufactures which is most noticeable.

Zambia's main primary commodity ~~export~~ **copper**, has its prices fixed on the London Metal Exchange. In order to assert herself internationally as a seller of copper Memaco was formed to market Zambia's copper. Yet although the country reasserted its right to market its own copper by the creation of MEMACO, the sales contracts it employs don't give it control over the pricing of its copper.¹² Any copper sales made by Zambia to its consumers always reflects as closely as possible the prices quoted on the London Metal Exchange. It follows therefore that instability in prices means instability in our own economy which leads us to the same conclusion - i.e. that we are not in control of our own economy.

The first important factor to note is that the rules of the London Metal Exchange bar the producers of copper from developing countries from taking part in the pricing of the commodity.¹³ Secondly the British government has allowed the exchanges to function autonomously with no legal machinery to oversee the administration

"Since the participants on the exchange price setting process are firms and companies which have an interest in the copper industry but not necessarily producers it is possible for the exchange to be used to the detriment of the producing countries particularly those in the developing world".¹⁴

According to the First Rule of Part I of the IME regulations, participation in the important functions of the exchange is limited to members of the exchange. A member firm is thus represented by a subscriber who is required to be a person over twenty-one years of age and must be the director of a firm which is incorporated in the United Kingdom. These directors must be domiciled in the U.K. as well or the majority of partners in the firm must be domiciled in the U.K. In this way LDCs are effectively excluded from the price making procedure. There is no legal avenue whatever to regulate possible abuses on the London Metal Exchange.¹⁵

Commodity markets are still very unstable despite the formation of private international arrangements such as cartels or the formation of Producers Associations such as CIPEC to stabilise commodity markets. The former serve only to disrupt the proper functioning of commodity markets and the latter (i.e. Producers Association) have been too weak to be really effective

".....In 1967 the four main exporters of copper formed the Intergovernmental Council of Copper Exporting Countries CIPEC with the aim of co-ordinating their copper policies. But CIPEC has accomplished little and the situation is little different from before CIPEC was formed. As a solution to a passing international problem, producer associations such as CIPEC is, have failed to penetrate the control centre of commodity markets".¹⁶

Thus even as a group of countries for purposes of joint action the copper producing countries still occupy a relatively weak position in negotiations with the London Metal Exchange and thus they are still unable to fully realise their rights.

C. Foreign Aid

The third factor influencing development in the third world is foreign aid in the form of investments and loans. Much as pumping money into an economy may be said to be good, the argument is really against the type of aid-giving. The main problem with foreign aid has been that more often than not, the effects of the borrowed funds do not equal the service of the debt. This may be due to a number of reasons e.g. the capital may have been pumped into capital intensive industries, the market may not be good or easily accessible etc. Developed countries give aid primarily because it is in their political and economic self-interest to do so. Thus the statement that foreign aid is meant to encompass;

"....all official grants and concessional loans in currency or in kind which are broadly aimed at transferring resources from developed to less developed nations on developmental and/or income distributional grounds"17

is not completely true because most foreign aid almost always is tied-aid i.e. conditions upon which the loan will be given. e.g. that the loan be spent on the purchase of goods, from the loaning country or that the loan be spent on the importation of capital intensive equipment from the loaning country which usually results in unemployment in the borrowing country.

Foreign aid is seen differently by both parties i.e. the borrower and the lender. Foreign aid is used to benefit the lending countries politically (e.g. cold war purposes) economically, and militarily which results in little interest to promote long term development projects in the borrowing countries since the suppliers of foreign aid are more interested in their own short-run interests. The developing countries on the other hand need foreign aid to finance needed industries and imports of capital and intermediate goods. Most LDCs have an acute shortage of foreign exchange for international monetary dealings and this is where the crux of the issue is. Is foreign aid really the crucial and essential ingredient in the development process? If it is then why are less developed countries still lagging so far behind despite receiving aid?

All that foreign aid has served to do in the LDCs is to enmesh them in debt with no hope of disentanglement in sight, at least if the present international economic order persists. Foreign aid has not been accompanied by a corresponding international and national policies to ensure any real form of development. Skyscrapers and other improvements in the modern industrial sector are not "development" in the real sense of the word. Clearly something is rotten in the international economic order. Rich nations have an obligation to support the economic and social development of the Third World because they are perpetuating an international economic system which will always provide for a "third world", for the haves and the have nots.

In order to appreciate the real essence of 'Foreign-aid' the paper will look at a major international loaning institution, its policy of aid and its function as an instrument of the powers that be. This institution is the International Monetary Fund.

2. Measures Taken on an International Level to Combat the Situation

A brief look has been taken at some of the mechanisms which have hindered the economic independence of LDCs on an international plane. Yet it is universally acknowledged both political and economic independence are an essential element of sovereignty over natural resources. This international acknowledgement has exhibited itself in the following United Nations Resolutions:-

- (1) The Resolution on Permanent Sovereignty over Natural Resources 1962.
- (2) The Charter of Economic Rights and Duties of States.
- (3) Resolution on the Establishment on a New International Economic Order.

These resolutions received more attention through the United Nations Conference on Trade and Development -UNCTAD. This being a brain child mainly of third world, countries it was thought that it would perhaps succeed where the General Agreement on Tarrifs and Trade had failed. -

GATT and UNCTAD

The GATT proved inadequate mainly because its policies were not really in keeping with the third world situation. For example the principle of non-discrimination based on the "most favoured nation" clause which stipulates that

"...Members should grant one another treatment at least as favourable as they grant to any other country". 18

implying no special treatment even though a problem peculiar to a particular country might justify more favourable treatment than another country. Most of the provisions of the GATT portray the same disconcern with the problems of LDCs.

"....the justice implied by the GATT rules appears, on closer examination to be one big illusion. If it means anything, justice based on equality and non-discrimination, should surely imply equal treatment of equals. In practically every matter that GATT was established to deal with however the developing countries were almost by definition, unequal to the industrialised countries. They are saddled with problems which are peculiar in kind and magnitude, to this historical epoch and which have no historical parallel in the economic development of the present industrialised countries". 19

Given this view of the systematic constraints facing less developed countries, the inception of an organisation such as UNCTAD to serve their needs was inevitable. Since its creation, UNCTAD has become an important intervenor on behalf of less-developed countries in their relations with industrialised states and the organizations they control. Of special importance is the amount of leverage that UNCTAD has managed to achieve with the IMF, an institution primarily controlled by the West. UNCTAD embraces and defines a common

third world view i.e. to promote international trade primarily between states at different levels of development for the purpose of accelerating economic development and thus narrowing the disparity between developing and developed countries. Of particular importance for the development of international law is UNCTAD's general objective of formulating new principles with a view to achieving international business exchanges on a mutually advanced basis. UNCTAD acted as a forum to dispel the myth that all countries are economic equals and therefore must trade without discrimination and has insisted that basic differences in economic strength between countries must be appreciated in world trade.

Thus where international trade is concerned UNCTAD has made some progress for example, the General Preference Scheme ²⁰ Agreement for LDCs' exports of manufactured and some semi-manufactured goods to the developed countries, UNCTAD has also -- looked into the redrafting of international shipping legislation to take into account the problems of LDCs. UNCTAD has also demanded that at least 1% of the developed nations GNP be given as aid to developing nations but this has proved quite insufficient for reasons already gone into. Really this has all been achieved because of problems common to a large number of states who have come together and confronted the developed nations with their joint demands. But for problems peculiar to a particular country such as a country's balance of payments problems, can UNCTAD or the UN indeed provide effective support? What relationship is there, between the United Nations and the IMF as the major international Monetary body in the World?

UNCTAD's work has been made a lot easier by the various resolutions, passed by the United Nations General Assembly in that its major policies have been mapped out and adopted by a large majority of nations. Yet despite such a majority adoption, the fact that the major developed countries have objected both on principle and on policy grounds to the content matter of these resolutions, the legality of United Nations General Assembly has been a source of unending debate. For example at its inception Resolution 1803 of 1962 on Permanent Sovereignty over Natural Resources was rejected by the capitalist powers who voted against the resolution mainly on the ground that it did not recognise the rights of private investors under international law including treaties and other international agreements. This was in fact an outright rejection of the force of legality of a General Assembly Resolution. In other words, under international law what recourse can one have to remedy an injustice if a general assembly resolution can be so casually cast aside.

The Third world crisis, according to UNCTAD's Secretary General has its root cause undoubtedly in the weakness of the international economic system and its institutions.

"The per capita income in the third world rose only from \$175 to \$300 between 1952 - 1972 in LDCs whereas it rose from \$200 to \$4000 in the developed world for the same period in developed countries".²¹

Thus the blame was thrust squarely on the shoulders of the developed nations who put up such a weak rejection to Resolution 1803 which in any case recognises the rights of private investors by stating

".....in the conduct of the full survey of the status of the Permanent Sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of states under International Law..."²²

In a word, developing countries acknowledged that a State's sovereign right to its natural resources is limited by its obligations and responsibilities under international law.

The need for a more pertinent document related to the international economic order was still needed. Mexican President Luis Echeverria in a speech before the 3rd session of the U.N. Conference on Trade and Development, "pointed out the necessity for a juridical grounding of the world's economic order", which has been manifested by the content of the resolution passed since Resolution 1803. There was indeed a need for "....an instrument which would define and protect the economic rights of all countries particularly the LDCs".²³ Thus the Charter of Economic Rights and Duties of States* was adopted on the 12th of December, 1974. According to President Echeverria, the Charter was intended to "reinforce the previous legal foundations of international economy removing economic co-operation from the "realm of good will" and rooting it in the field of Law by transferring consecrated principles of solidarity among men to the sphere of relations among nations".²⁴

The legal force of the Charter remains a debatable issue since it is a resolution of the General Assembly but it has been stated by Munansangu that notwithstanding the Charter's contested legal force, it marked the **beginning** of the process of implementation of the demands and claims of developing countries. The Charter is a juridical instrument. It may **not/be** compulsory but **albeit** contains the most basic principles which should obtain between states e.g. Article 4 of the Charter which states, "Every State has the right to engage in international trade...." Economic cooperation is the main idea of the Charter.

"The forms of economic co-operation and the achievement of international trade take place in the conditions of the state's full freedom to organise their external business relations".²⁵

The Charter of Economic Rights and Duties is important for the principles of international law it brings out and those it has attempted to fashion. It is not binding on all countries since its obligatory force was rejected by the developed nations. There was a clash between the proponents of the existing order and the proponents of a new International Economic Order.

General Assembly Resolutions lack the force of law of treaty provisions. Secondly they are passed by an international organ which though constituting the world's majority of nations, lacks legislative powers. But it can be argued that their gradual acceptance and general applicability will give them the force of customary international law. Yet one day is not soon enough and we are faced with monstrous problems

which must be seen to now. In so far as they restore existing principles of international law, there is a pinch of legal force in General Assembly Resolutions.

"....the authoritativeness of the resolutions cannot be dismissed out of hand as they reflect the expectations of the international community."²⁶

Thus Resolutions 1803 (XVII) , 3201 (S-VI) , and 3281 (XXIX) cannot be outrightly rejected even though to-day's economic order and its juridical principles cannot be changed overnight. But as a guideline towards that New International Economic Order we envision, resolutions of the General Assembly provide a proper guideline and in some ways a check on the arbitrariness^{of} some states and hopefully international organisations.

3. The United Nations and the IMF

The International Monetary Fund is an international monetary institution founded at Brettonwoods Newhampshire in July of 1944. Its creation was spurred by a growing concern to provide for the stability of currencies and of international monetary exchange. It is associated with the United Nations having the status of a specialised agency.

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

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialised agencies".²⁷

The relationship between the United Nations and specialised agencies is further explained and consolidated under Article 63 which states,

- "1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
2. It may co-ordinate the activities of the specialised agencies through consultations with and recommendations to such agencies and through recommendations to the General Assembly and to the members of the United Nations".²⁸

Thus there is a legal basis provided for the relationship between the United Nations and other international institutions created by intergovernmental agreements. It is important to note that the stress is on there being a relationship of mutual co-ordination in matters of policy but the United Nations may only make recommendations,²⁹ which as such do not necessarily have to be accepted by the specialised agency.

This is because, as in the case of an institution such as the IMF, it is an autonomous body having a juridical personality created by international treaty which is contained in its articles of agreement. Article IX(2) of the Fund's Articles of Agreements states,

"The fund shall possess full juridical personality"

and thus can acquire and dispose of property, sue and be sued and enter into contracts. This of course is justified in that the IMF would not be able to function effectively if it was not endowed with legal personality.* Its relationships with other international organisations are governed by Article X of the Articles of Agreement which lays stress on the fact that the Fund shall cooperate within the terms of the Articles of Agreement in its relationship with any general international organisation such as the United Nations and with public international organisations having specialised responsibilities in related fields.

Article 63 has been complied with and an agreement between the United Nations and the International Monetary Fund came into force on November 15th 1947. Article I (2) of the Articles of Agreement reiterates the fact that the Fund by reason of the nature of its international responsibilities and the terms of its Articles of Agreement cannot function effectively other than as an independent international organisation. The fund is not subject to the dictates of the U.N. It may send representatives to attend meetings of the General Assembly³⁰ or any other United Nations subsidiary body merely for purposes of consultation or general Fund interest.³¹ The U.N. may also send representatives to the Board of Governors meeting of the Fund without voting, merely to have the U.N. point of view heard in pertinent matters.³²

Yet even though the IMF is not obliged to commit itself to UN recommendations, as an international institution endowed with international legal personality it is subject to the dictates of international law and not merely international

monetary law for monetary law affects the rights and livelihood of nations and as Starke has stated:

"It will be apparent that there is a large measure of interdependence between international economic law and international monetary law.....
.....as reflected in S.1 of Article IV as amended of the Articles of Agreement of the IMF, a stable system of exchange rates is a pre-requisite for the development of stable underlying economic and financial conditions and in their turn stable economic and financial policies provide a good basis for stable monetary conditions".³³

What is building up to be part and parcel of future international Economic Law are

- (a) The Declaration of Permanent Sovereignty over Natural Resources (Resolution 1803 (XVII)).
- (b) The Resolution on the Establishment of a New International Economic Order (Resolution 3201(S-VI)).
- (c) The Charter of Economic Rights and Duties of States (Resolution 3281 (XXIX)).

Although resolutions of the General Assembly are not binding in strict terms, they all the same assert the rights of developing countries to a fair and honest deal in the world of international trade. All the three resolutions mentioned have one major point in common; they demand that the economic problems of states - all states be the basis for a progressive international economic system. Even the IMF has a similar provision in its articles. Article IV(3) (b) states inter alia;

"...These principles shall respect the domestic, social and political policies of members and in applying these principles the Fund shall pay due regard to the circumstances of members".

FOOTNOTES

1. G. Elian, The Principle of Sovereignty over Natural Resources. (London, Sijthoff and Noordhoff, 1979) p. 5.
2. ibid.
3. General Assembly Resolution 1803(XVII) of 1962 on Permanent Sovereignty over Natural Resources
4. General Assembly Resolution 3281(XXIX) of 12th December 1974 - The Charter of Economic Rights and Duties of States.
5. General Assembly Resolution 3201(S-VI) of 1 May 1974 on the Declaration and Programme of Action on the Establishment of a New International Economic Order.
6. J.G. Starke, Introduction to International Law (London, Butterworths, 1984) p. 122
7. Resolution 1803(XVII) supra
8. Resolution 3281 (XXIX), supra, Article 4
- * Less developed countries will be referred to as LDCs
9. R.T. Rhodes, Imperialism and Development p. 119
10. H. Bachman, The External Relations of Less-developed Countries (New York, Fredrick A. Praeger Publishers, 1968) p. 64.
11. A.K. Koul, The Legal Framework of UNCTAD IN WORLD TRADE. (London, Sijthoff and Tripathi, 1977) p.75
12. F. Ng'andu (Ph.D Thesis, University of London, 1985) p
- ** The London Metal Exchange will be referred to as the LME
13. F. Ng'andu supra p. 67
14. Ibid.
15. Ibid.
16. Ibid.
17. M.P. Todaro, Economic Development in the Third World (New York and London, Longman 1981) p. 408
18. See Article 1 of the General Agreement on tariffs and Trade.
19. F. Ng'andu, UNCTAD, Its Role and Limitations (Unpublished paper)
20. The Generalised System of Preferences is the creation of a group of preferences for developing countries by developed countries on the basis of Unequal treatment for unequal parties. It guarantees preferential treatment for exports of developing countries markets in the Industrialised countries.

21. M.M.M. Munansangu, Sovereignty over and Just Prices for Natural Resources with Emphasis on African States (S.J.D. University of Zambia, 1983) p. 122.
22. Resolution 1803(XVII) supra
23. G. Elian supra p. 129
- * Resolution 3281 (XXIX) supra 2315th Plenary Meeting
24. M. Munansangu supra p. 153
25. G. Elian supra lp. 120
26. M. Munansangu, supra, p. 229
27. The United Nations Charter, Chapter IX, Article 57.
28. Ibid. Chapter X Article 63.
29. Ibid. Article 59 of the Charter.
- * See Advisory Opinion on Reparation for Injuries suffered in the service of the United Nations /1949/ ICJ at 182.
30. Agreement between the United Nations and the IMF (November 15, 1947) Article II Section 2
31. Ibid. Article II (3)
32. Ibid. Article II (3)
33. J.G. Starke, supra p. 370

CHAPTER THREE

THE IMF

Legal Framework, Policies and Problems.

The establishment of the International Monetary Fund and the World Bank took place at the Bretton Woods Conference in New Hampshire USA in July of 1944. It was the International Monetary and Financial Conference of the United and Associated Nations but is after referred to as the Bretton Woods Conference. Forty-four governments were represented at Bretton Woods and these included the Union of Soviet Socialist Republics; three African Countries i.e. Egypt, Ethiopia and Liberia and four Asian countries i.e. India, Iran, Iraq and the Phillippines.

It is important to note that though a few third world countries were respesented, they were not sufficiently aware of their rights in the world economic and monetary order and thus could not effectively present their case. Secondly, even had they been aware of their rights, they nevertheless were given no freedom of manouvre. The reason being that Egypt and Iran were effectively under British control; Ethiopia had not yet recovered from the Italian occupation; Iranian territory was occupied by British and Soviet Troops; India (whose territory included present day Bangladesh, & Pakistan), was not yet independent. Territories under American control were the Phillippines, and Liberia. The latter

though independent was very much under the thumb of the United States.

The Articles of Agreement of the IMF were drawn up at the Bretton Woods Conference and they came into force on the 27th of December, 1945 after twenty-nine countries deposited their signatures representing 80% of the Fund's quotas. Article XIII(1) of the Fund's Articles of Agreement states that the principle office of the Fund shall be located in the territory of the member having the largest quota, and that agencies or branch offices may be established in the territories of other members. Thus the IMF has its headquarters in Washington D.C. capital city of the U.S.A. The IMF became operational on 1st March, 1947.

The objectives of the IMF are clearly stated in Article 1 of the Fund's Articles of Agreement as

- "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 Balance of Payments of Members".¹

It is evident from these purposes that the balance of payments seems to be the chief concern of the IMF. Provided a member drops extensive trade restrictions and other measures which bode ill with the capitalistic bent of the IMF aims to provide its members with the time needed to tackle internal measures in order to correct balance of payments disequilibria. And this means that development ideals which conflict with this aim will be frowned upon by the Fund.

"Even though Article 1, Section (ii), of the Articles of Agreement of the IMF makes reference to 'the development of the productive resources of all members,' the Fund is not a development Agency. Development is instead the major concern of the IMF's sister institution, the International Bank for Reconstruction and Development (IBRD) and its affiliates. The Fund and its representatives have consistently denied any responsibility for aiding development".²

In a speech to the Washington Chapter of the Society for International Development the Fund's Deputy Managing Director re-emphasised that the activities of the IMF are limited to the granting of credit, 'in support of internationally acceptable policies of payments adjustments; to those members who on account of their balance of payments have a temporary need for Finance.'³

The Membership of the IMF comprises of 146 countries 23 of which are OECD countries and the Group of 77 which consists of 114 third world countries. But despite third world countries being in the majority, it is the developed nations who control and direct the policies of the IMF. This is the reason why the IMF view of third world development problems has remained essentially narrow.

1. The Decision-Making structure of the IMF

This is directly related to the quota policy of the Fund Agreement and its not until one understands the concept of quotas that the decision-making process begins to make sense. The quota system affects the total resources of the Fund, the drawing rights of individual members and their voting power. Article II(2) states that membership to the

IMF is subject to Fund conditions and one of these conditions is contained under Article III (i) the essence of which section is to the effect that quotas of other than original members shall be determined by the Fund. Authority to determine the quota is vested in the Board of Governors.⁴ The quota system plays a key role in the functioning of the fund by determining members' ^bobligatory contributions and limits of each member's borrowing. It is the distribution of these quotas which is the basis for the power structure of the IMF. The hierarchy in international monetary matters is the same as that of international trade with the industrialised countries firmly in control.

Quotas are worked out by deducting the 250 basic votes* to which each member country is entitled from the total member of votes it holds and multiplying the result by SDR 100,000.**

Quotas range from the USA's SDR 8.4 billion to Maldives Islands SDR 0.0009 billion (900,000). The seven biggest quota holders are all industrialised countries. These are the USA, Great Britain, West Germany, France, Japan, Canada and Italy and together they have half of the total.⁵

According to Article III of the Fund agreement quotas are allocated to new members as they join and are subject to general review at intervals of five years or at the request of a member concerned,⁶ but of course such action must fall in with the wishes of the largest quota holders.

For the amendment of the Articles of Agreement there must be agreement among all members of the fund i.e. three-fifths of the members having four-fifths of the total

voting power. Total agreement is only necessary in the following instances of proposed amendments:-

- "(a) the right to withdraw from the fund
(Article XV, sect. 1)
- (b) the provision that no change in a member's quota shall be made without its consent
- (c) 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))"⁷

The introduction of the SDR system was as a result of a 1968 amendment of the articles of agreement. Majority requirements for decisions not involving amendments to the fund's articles do not specify a minimum number of Members, they are based on voting power alone, and it is here that the power plays are often enacted because the major quota holders can on their own veto any decision.

Apart from the quota system the majority quota holders have entrenched their hold of the helms of power in the IMF in other ways. For example a look at the permanent organs of the IMF will illustrate this fact. The permanent organs of the IMF are the Board of Governors and the Executive Board and the Managing Director and his staff which are governed by Article XII of the Fund's Articles of Agreement. The Board of Governors is the highest body and it is composed of one governor * from each member country and there is also provision for an alternate who votes only in the absence of his principle.⁸ The Board of Governors meets only once a year thus has to delegate most of its duties

to the Executive Board except the ones listed under Section 2(b) of Article XII. The Executive Board is responsible for conducting the business of the Fund and for this purpose is in permanent session at the IMF headquarters.

Normally the Executive Board consists of twenty executive directors plus the chairman. Five executive directors are appointed by the five member countries with the largest quotas.⁹ While the rest are elected for two year terms by the remainder of the Fund's member. Even on the Executive Board the decision making depends on the quota system. For the remaining 15 directors, a group of countries comes together and elects a director. Each of the elective directors casts the votes of the group of countries which elected him. Voting power on the Executive Board is on the basis of member countries voting power and not on the number of executive directors.¹⁰ But for day to day business this method is not often used.

"In most instances, the decisions of the Executive Board of Governors are taken without any formal or roll-call vote. In the Executive Board, the Managing Director 'will ordinarily ascertain the sense of the meeting in lieu of formal or roll call vote'.¹¹

Each of the elective directors, casts the votes of the group of countries which elected him; the quorum for a meeting is a majority of Executive Directors having not less than half of total voting power.

"Each appointed Director may cast two hundred and fifty votes plus one additional vote for each part of the appointing member's quota equivalent to US. \$100,000. Each elected director may cast the number of votes which counted towards his election i.e. two hundred and fifty votes for each member which elected him plus one additional vote for each part of the quota of the electing members' equivalent to U.S. \$100,000."¹²

For the day to day ordinary and administrative duties of the Fund provision has been made in the Articles of Agreement for the Managing Director and his staff. The Managing Director has always been a West European while his deputy is always American. The Articles confer directly on the Managing Director the task of making proposals after consultations with members concerning allocations and cancellations of SDRs.

Individual Staff members have to make an affirmation in writing upon appointment ~~by the~~ fund which includes a statement that a member of staff "will accept no instruction in regard to the performance of[his] duties from any government or authority external to the Fund". This is contained under Rule 10 of the Rules and Regulation of the Fund. Yet it is obvious that Fund policy reflects the views of the industrialised countries.

TABLE III
Structure and Administrative Framework of the IMF

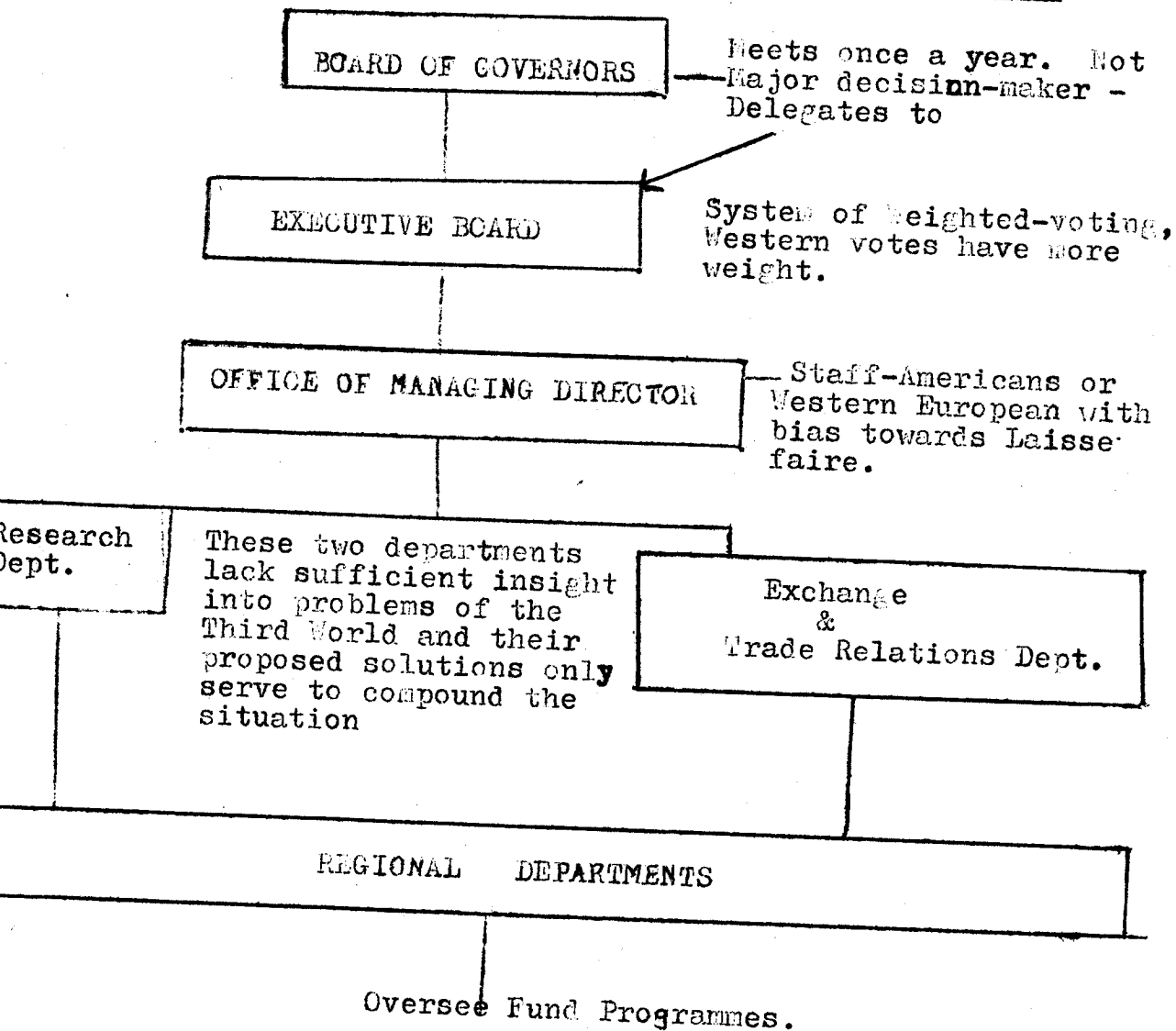


TABLE IV

VOTING POWER IN THE IMF. (Votes in Exec Board)

COUNTRY	VOTES BY COUNTRY ¹	TOTAL VOTES	PER CENT OF THE FUND TOTAL
United States of A.	84 300		19.5
United Kingdom	295500		6.95
Fed. Rep. of Germany	21 810		5.14
France	19 440		4.58
Japan	16 840		3.97
Saudi Arabia	6 250		1.47
Costa Rica	666		
El Salvado	680		
Guatemala	760		
Honduras	590		
Mexico§	5600		
Nicaragua	590		
Spain§	5820		
Venezuela	6850	21550	5.08
Cyprus	590		
Israel	2300		
Netherlands§/§§	9736		
Romania	2700		
Yugoslavia	3020	18340	4.32
Bahamas	580		
Barbados	420		
Canada§	13 820		
Grenada	280		
Ireland§§	18 000		
Jamaica	990	17 890	4.21
Greece§§	2 100		
Italy§	12 650		
Malta	450		
Portugal	1 970	17 170	4.04

COUNTRY	VOICES BY COUNTRY 1	TOTAL VOTES	PERCENTAGE OF FUND TOTAL
Australia §	8 150		
Korea Rep. of	1 850		
New Zealand §§	2 570		
Papua New Guinea	550		
Phillipines	2 350		
Seychelles	263		
Solomon Island	271		
Western Samoa	280	16 284	3.84
Baharain	450		
Iraq	1 660		
Jordan	556		
Kuwait	2 600		
Lebanon	370		
Libya	2 100		
Maldives	259		
Palastan	3 100		
Qatar	650		
Somalia	480		
Syrian Arab Republic	880		
United Arab Emirates	1 450		
Yemen Arab Rep.	380		
Yemen Pples Dem. Rep.	660	15 589	3.67
Austria	3 550		
Belgium	9 150		
Luxemburg	566		
Turkey	2 250	15 510	3.65
Bangladesh	1 770		
India	11 700		
Sri Lanka	1 440	14 910	3.51
Afghanistan	700		
Algeria	3 100		
Ghana	1 310		
Iran §/§§	6 850		
Morocco	1 750		
Omar	450		
Tunisia	880	15 040	3.54
Brazil	6 900		
Colombia	2 180		
Dominican Rep.	800		
Guyana	500		
Haiti	480		
Panama	700		
Peru	1 890		
Surinam	500		
Trinidad & Tobago	1 070	15 020	3.54

COUNTRY	VOTES BY COUNTRY 1	TOTAL VOTES	PERCENT OF FUND TOTAL
Argentina	5 600		
Bolivia	700		
Chile	2 420		
Ecuador	950		
Paraguay	480		
Uruguay	1 090	11 240	2.65
Denmark	3 350		
Finland	2 870		
Iceland	540		
Norway	3 200		
Sweden	4 750	14 710	3.46
Burma	980		
Fiji	430		
Indonesia	5 050		
Lao Pds Rep.	410		
Malaysia	2 780		
Nepal	440		
Singapore	740		
Thailand	2 060		
Vietnam	1 150	14 040	3.31
Botswana	340		
Burundi	480		
Ethiopia	610		
Gambia	340		
Guinea	550		
Kenya	940		
Lesotho	320		
Liberia	620		
Malawi	440		
Nigeria	3 850		
Sierra Leone	560		
Sudan	1 130		
Swaziland	370		
Tanzania	800		
Uganda \$\$	750		
Zambia	1 660	13 760	3.24
Benin	410		
Cameroun	700		
Central African Rep.	410		
Chad	410		
Comoros	273		
Congo	420		
Equitorial Guinea	350		
Gabon	550		
Guinea Bassau	289		
Ivory Coast	1 010		
Malagasy	590		
Mali	520		

COUNTRY	VOTES BY COUNTRY ↓	TOTAL VOTES	PERCENT OF FUND TOTAL
Mauritania	420		
Mauritius	520		
Niger §§	410		
Rwanda	480		
Sao Tome & Principe	270		
Senegal	670		
Togo/Upper Volta	850		
Zaire	1 770	11 322	2.67
TOTAL		410 515	96.68

KEY:

§ Country providing Executive Director
 §§ Country providing Alternat@ Director

1. Quotas can be worked out from this column bz deducting the 250 'basic' votes and multiplying the result bz SDR 100 000.

- This table shows the distribution of Voting Power in the IMF.

Source: Development Dialogue, Background Notes on the IMF, Page 98.
 also (IMF Annual Report 1979).

Third world countries have attempted to penetrate the power structure by forming a group to bring the third world view into proper perspective within the IMF. This group is known as the Group of 24 (G. 24) which is an offshoot of the Group of 77 of the United Nations Conference on Trade and Development, UNCTAD. Of course this group really exerts little influence when compared to its opposite number which is represented by the five major quota holders within the IMF. Nonetheless the Group of 24 has acted as a go between in IMF - UNCTAD representations since October 1971. Members of the Group of 24 are drawn equally from the three regional constituencies of the Group of 77. IMF Executive and Alternate Directors from third world countries attend group of 24 meetings but they are unable to make effective representations at Executive Board meetings of IMF, because they lack the necessary number of votes; even if they far exceed in number, Executive Directors from the West. The Group of 24 acts as a third world pressure group on the IMF albeit a very weak one.

Through the quota system the Western countries have succeeded in keeping a firm grip over policy making and access to resources within the IMF and thus effectively run their own economy at the expense of third world economies which they effectively mismanage through the International Monetary Fund.

As can be seen from Table III the Board of Governors can not usually decide the policy issues, which affect each and every country requiring IMF aid. Under Article XII of the Agreement their duties are of a distinctly general nature and

because voting is restricted for example;

Country 'A' is entitled to 250 basic votes plus a single vote for each one hundred thousand US dollars so if country 'A' has contributed \$900,000 then she is entitled to 259 votes.

For developing countries who cannot contribute much in hundreds of thousands of American dollars, they have very little say in policy making. Even where a number of countries come together and elect an executive director, they still cannot gather sufficient votes. If one takes a look at Table IV, the United States on its own has 19.5% of total fund votes yet no other grouping of countries has made up even as much as 6% of the votes. All of the groupings hold votes ranging from 2% to just under 6% of total votes, per groupings whereas the United States on its own has 19.5% of the votes; the United Kingdom has 6.95% of the votes; Germany has 5.14% of the votes; Japan has 3.97% and France holds 4.58% of the votes.

There is thus sufficient reason to fear that a third world view when dealing with third world countries is of little consequence since decision making is effectively controlled by the West. IMF staff all belong to Western industrialised countries and their view of the debt problem of LDCs is very narrow and shallow. The Articles of Agreement themselves have helped accommodate the impassive attitude of the IMF's.

"The Articles of Agreement did not make any distinction between developed and less-developed countries.... a more specific and direct commitment to development in the Articles of Agreement would have encouraged a rather more active approach to dealing with the problems which face LDCs." 13

From the Articles of Agreement it is evident that IMF policies were not designed to concern themselves with the developmental problems of the third world. The IMF view of the world economy was essentially and still is static since little consideration is given to the dynamic potentialities for assisting development and this is exhibited in the distribution of the Fund's financial resources.

2. Financial Resources of the IMF: - Sources and Allocation

The chief source of the Fund's monetary resources are members' subscriptions and secondly borrowing from its more affluent members. The individual subscriptions of members are determined by quotas.¹⁴ The first, twenty-five per cent of a member's quota is payable in SDRs or hard currencies designated by the Fund. The balance of seventy-five per cent may be paid in the member's own currency. The first twenty-five per cent paid in hard currency is referred to as the Reserve Tranche. The Tranches are particular categories of credit open to a borrowing country and they are usually the initial categories. The tranches are the initial opening to credit within the IMF system.

In IMF terminology a member drawing a loan is said to purchase SDRs or hard currencies with its own currency and the repayment of the loan is referred to as a repurchase of the member country's own currency from the IMF. After the Reserve Tranche which is 25% of the Member's quota, there are the first and second Credit Tranches each equivalent to 25% of the member's quota

respectively. In order to borrow from these last two categories the intending borrower must present an economic program demonstrating that it will make reasonable efforts to overcome its balance of payments difficulties.

"Thus the IMF, whilst seeing it as its duty to provide financial assistance when a country's balance-of-payments is temporarily in disequilibrium (deficit) expects and in the case of drawings in the higher tranches of a member's total drawing rights, can insist that the member pursue the Monetary and fiscal policies that the Fund itself deems necessary for removing the deficit within a reasonable period of time".¹⁵

The IMF insistence that a member country follow a particular monetary and fiscal policies if it ~~wants~~ to draw from the higher tranches has officially been coined IMF 'Conditionality'. This in essence means that in order to have access to credit within the IMF the borrowing member must obtain the agreement of the IMF to a stabilisation plan for a period of two to three years duration. The stabilisation affects such sectors and policies relating to prices, incomes, public spending, exchange rates, reserve levels, external debt and import control. It is only when these necessary conditions have been established by the Fund that providers of commercial credit readily release financial resources to the borrowing state.

Once an agreement has been cemented, credit is made available by the IMF under a stand-by arrangement on which ~~phased~~ drawings maybe made. Failure to adhere to any of the IMF conditions results in the ~~suspension~~ of access to the stand-by until it is renegotiated. The Chief credit facilities available are the following:

(a) Extended Fund Facility

It was established in 1974 in order to provide balance of payments support for longer periods and in a greater amount than under the credit tranches. This facility aims to help members overcome the structural imbalance of payments maladjustments. A three year recovery period is provided for and a member is entitled to borrow anything upto 140% of its quota. This is a considerable and more flexible improvement over the regular stand-by facility in the credit tranches which normally provided for adjustment in a one year period and for drawing up to 100% of the borrower's quota. It goes hand in hand with stringent IMF conditionality. The first countries to try this facility were Peru, Jamaica and Portugal and in all three instances it failed miserably. Repayment may be made 4 to 10 years after drawing.

(b) Supplementary Financing Facility

The Supplementary financing facility became operational in 1979 and it was created in order to supplement drawings from the upper credit tranches or the Extended Fund Facility or both and therefore it too carries **conditionality**. The member entitled to a maximum of 140% drawing rights and the stabilisation programme may extend over three years with repayment being made three to seven years after drawing.

(c) Compensatory Financing Facility

The facility was established in 1963 and it was

created with the intention to assist primary commodity exporters, who get into balance of payment difficulties owing to temporary shortfalls in export earnings for reasons beyond the borrower's control. The only condition for access is that the member should co-operate with the fund in exploring solutions to its balance of payments problems. This facility is only subject to minimal conditionality since drawings on this facility may exceed 100% of its quota. The repayment period is three to five years.

(d) Buffer Stock Financing Facility

The Buffer Stock Financing Facility was initiated in order to finance Buffer Stocks within International Commodity Agreements. There are only two conditions to be fulfilled in order for a member to have access to this facility.

- (1) The International commodity Agreement must be within the United Nations or else meet certain criteria.
- (2) Drawings may be made up to fifty per cent of the quota and the conditionality and repayment period are the same as for the compensatory financing facility. Both have special purposes and are subject

to minimal conditionality.

(e) Stand-by-Arrangements

A Stand-by-Arrangement is entered into after consultations between the fund and the borrowing country. The grant of a stand-by arrangement requires no formalities other than the member's memorandum which sets forth the policies and intentions of the member.¹⁶ It becomes effective when the Executive Directors of the Fund make the decision to grant the arrangement.

"The essential purpose of a stand-by arrangement is to assure a member of the Fund that, subject to such conditions as are in the arrangement the Member, if it wishes can use the financial resources of the Fund to a stated amount during a stated period."

It is often hoped that evidence of a stand-by arrangement with the IMF will encourage other countries and lending institutions to provide credit to the borrowing country. Stand-by arrangements though are not expressly provided, for by the fund's articles of agreement but it is has been found to be a rather more flexible instrument of financial assistance than the other IMF facilities.

There is always continuous consultation between the Fund and the member during the period of the Stand by arrangement and reports are submitted to Fund on the member's progress in such matters, as exchange regimes, credit or fiscal situation etc. The period of the stand-by Arrangement is left to the Fund's discretion.

If the member's use of the stand-by arrangement is inconsistent with the Articles of the Fund's Agreements then Article V Section 5 of the Articles applies i.e. 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..or may after giving reasonable notice to the member declare it ineligible to use the resources of the Fund".¹⁷

Conversely the member may withdraw from being a party to such a stand-by arrangement by operation of law.

"....when a member is compelled by economic or other developments to depart from its stated policy and intentions".¹⁸

The member therefore prefers to take the initiative in informing the Fund that it wishes to withdraw, from the stand-by arrangement until such a time as the member requests a revised programme. This is what happened in the case of Zambia when she broke her stand-by arrangement with the IMF. Zambia and the IMF failed to agree on the exchange rate because the IMF demanded that no administrative mechanisms be used to control the rate which had reached K20.05 to a dollar.¹⁹ Zambia's currency had devalued by 700 per cent and the populace feeling the bite, was threatening the political stability of the state.

The following Chapter will look at IMF, conditionality and what implications it has had in the third world, legal and otherwise. According to Normal Girvan in his article, 'Swallowing the IMF Medicine in the Seventies;' a 1978 study found that in attempting to improve a borrowing country's balance of payments by making facilities more accesible and stand-by arrangement with maximum conditionality available, little success was recorded. While there had been improvement in fourteen out of twenty-one cases, in only three had the programme been put into effect. In the other eleven the improvement was due to factors independent of the countries' control. In some three other cases the balance of payments had deteriorated despite the full implementation of the stand-by programme.²⁰

The IMF's indiscriminate and unfeeling use of maximum conditionality and Article V Section 5 have caused undue hardships and a large majority of developing countries have sold their economic independence. It is still a wonder that the IMF continues to promote stabilisation programmes based on the premise that any individual country's deficit is due to excess money supply and an overhauled exchange rate. It is even more painful to observe that third world countries still have to draw heavily from the IMF's conditional credit facilities.

3. The Role of the Central Bank in the Implementation of the Fund Agreement

Zambia has made provision for the implementation of the Bretton Woods Agreement under Chapter 625 of the Laws of Zambia. Section 3(c) of the Act states that the Government of Zambia agrees to deposit an instrument with the Fund stating that the government of Zambia undertakes in accordance with its laws the obligations of a participant in the Special Drawing Account. These obligation include the fact that

- (a) certain provisions of the Fund's agreements must have the force of Law.²¹
- (b) pursuant to Section 2 of Article XIII of the Fund agreement, the Bank of Zambia is authorised to be the depository in Zambia for all holdings of Zambian currency of the Fund and for all Special Drawing Rights due to Zambia.²²

As such, the Governor of the Bank must be kept up to date with the Fund's policies and as such he sits on the Fund's Board of Governors when they meet every year.

FOOTNOTES

1. The International Monetary Fund Articles of Agreement Article I.
2. G. Bird The International Monetary System and the Less Developed Countries (London, Macmillan, 1982) p. 11
3. IMF Survey I, 1 March, 1976
4. The Fund Agreement Supra Article XII Section 2(b)(i)
Ibid. Article XII Section 5a
5. Development Dialogue, Background Information on the IMF 1980, p. 95
6. Article III Sections 1 and 2 of the Fund Agreement
7. Article XVII)(b) on Amendments
- * Usually the equivalent of a Central Bank Governor or Minister of Finance.
8. Article XII Section 2. of the Fund Agreement
9. Ibid. Article XII Section 3(b)(i)(USA, UK, FRG, FRANCE and JAPAN)
10. Ibid. Article XII Section 5(a)
11. H. Aufricht, The IMF, Legal Bases, Structure, Functions (London, Stevens & Sons, 1964) p. 43
12. Ibid, p.30
13. G. Bird supra p. 16
14. Article III Section 2 of the Fund Agreement
15. G. Bird supra p. 14
16. J. Gold The Law and Practise of the IMF with Respect to Stand-by Arrangements (The International and Comparative Law Quarterly (Vol. 12, 1963)
17. Article V Section 5 of the Fund Agreement
18. T. Gold Supra
19. Zambia Daily Mail, Wednesday May 6, 1987 p. 1
20. N. Girvan, Swallowing the IMF Medicine in the Seventies (Development Dialogue, 1980)
21. The Bretton Woods Agreement Act Chapter 625 of the Laws of Zambia Section 5(i)
22. ibid. Section 6(1) and (2).

CHAPTER FOUR

Is the IMF losing legitimacy?

The IMF has performed its functions perfectly for the Western World. They have effectively been put in charge of third world economies again and we needs must, to a fault, dance to their tune. The IMF stabilisation package demands huge sacrifices and it is these sacrifices which keep the economies of the Western World running. We have sold our economic rights for very bad potage.

I. Shortfalls of the IMF Stand-by Arrangement Stabilisation Package

It is through the conditionality attached to credit mechanisms that the IMF has based its legal right to run the economies of its borrowers. Maximum leverage has been used in instances where easy credit terms have been exhausted and there is more of an urgent need for refinancing as happened in the case of Zambia as she continually returned to the IMF for credit. Thus the greater a country's dependence on outside financing the greater its vulnerability to the IMF stabilisation programme. ¹

The Stabilisation programmes specified in 'Letters of Intent' or memorandums must include intentions of reduced government expenditure particu -

larly on welfare services, reduced real wages, liberalised price controls, the encouragement of private foreign investment and reduction of consumer good subsidies. All these measures are aimed at encouraging financial discipline through painful adjustment such as the ones listed above. But by insisting on the abolition of imports regulation and liberalisation of foreign exchange controls the IMF has ended up frustrating the very type of financial discipline and production adjustments which are badly needed.² Third world countries have inevitably been thrown back into the very economic pattern they have been attempting to escape from.

"Therefore the Fund does not advise nations on how to reduce their imports and stand on their own feet economically but coaches them on how to qualify for increased quantities of new credit".

Thus the IMF stabilisation programme fulfils no positive objective because of the conditionality. The stand-by arrangements should instead be conditional on the local economic climate of the borrowing country but sadly, the IMF is concerned only with recovering the debts from the third world and supplying them with nothing but a colonial hangover.

II. Is the IMF a Neutral Body?

Any claim that the IMF may have to any such pretensions can be safely discarded. The very fact that the

Letter of Intent must contain uniform intentions no matter which borrowing country in the third world needs the money, shows that the fund does not apply itself to the specific problems of the Member. Yet, developed countries may borrow on quite any terms they wish when need arises.

The IMF has ignored the structural and inevitable nature of payments disequilibria that result from the development process in the existing international economic order. Is indifference a sign of neutrality? From the onset its Articles of Agreement were not drafted with the intent of tackling the developmental problems of the third world e.g. shock deficits arising out of a sudden and unforeseen adverse turn in import costs or export incomes. This is because at the time of the Bretton Woods Conference the international economic system was qualitatively and quantitatively different from what it is now. Thus it is irrational illogical and narrow - minded of the IMF to still feel it can only deal with short-term disequilibria. There is no such thing as far as third world countries are concerned; their problems are neither temporary nor due to internal shortfall but rather because of the structure of the international economic order which has eroded their economic rights.

Whatever happens, the economies of developed countries must be protected at the expense of developing nations and the IMF ensures this. The IMF has proved to be a basically political institution in that it has effectively managed to reproduce colonial relationship between third world countries and the West and also among the populace of the borrowing country. This is effectively done by the censoring of policies which could at best promote basic transformation in the economic structure of a borrowing country. The Fund's policies conceived to achieve stabilisation have in fact contributed to the destabilisation process by imposition of the laissez-faire ideology and the imposition of anything on a people does not connote neutrality on the party imposing itself. The IMF prescriptions are designed by and for developed capitalist nations and are inappropriate for developing economies of any kind and as such it would be unrealistic to expect any favourable outcome. Conditionality takes away the government's right to mitigate the hardships experienced by its people when a stabilisation package deal is in force. Does neutrality involve the removal of people's basic rights to live above the poverty line.?

Hopes that more financial help will trickle in after a stand-by arrangement are usually dashed because most major lenders belong to the IMF anyway

thus the IMF cannot be anything but biased against third world developmental problems if its main providers of financial resources have a capitalist bent as they all do. The five major quota holders in the IMF are able to direct the management of the International Monetary System in the way they wish.

III. The Role of the IMF in Restoring Dependent Development

1. Devaluation

Devaluation raises the price of imports and intermediate products; this is in turn reflected in the production cost thereby increasing the price of exports if the industry is able to cope up with production costs. Jobs are at stake and so is the survival of the industry. In effect devaluation chokes local industries.

2. Demand for Suspension of all subsidies

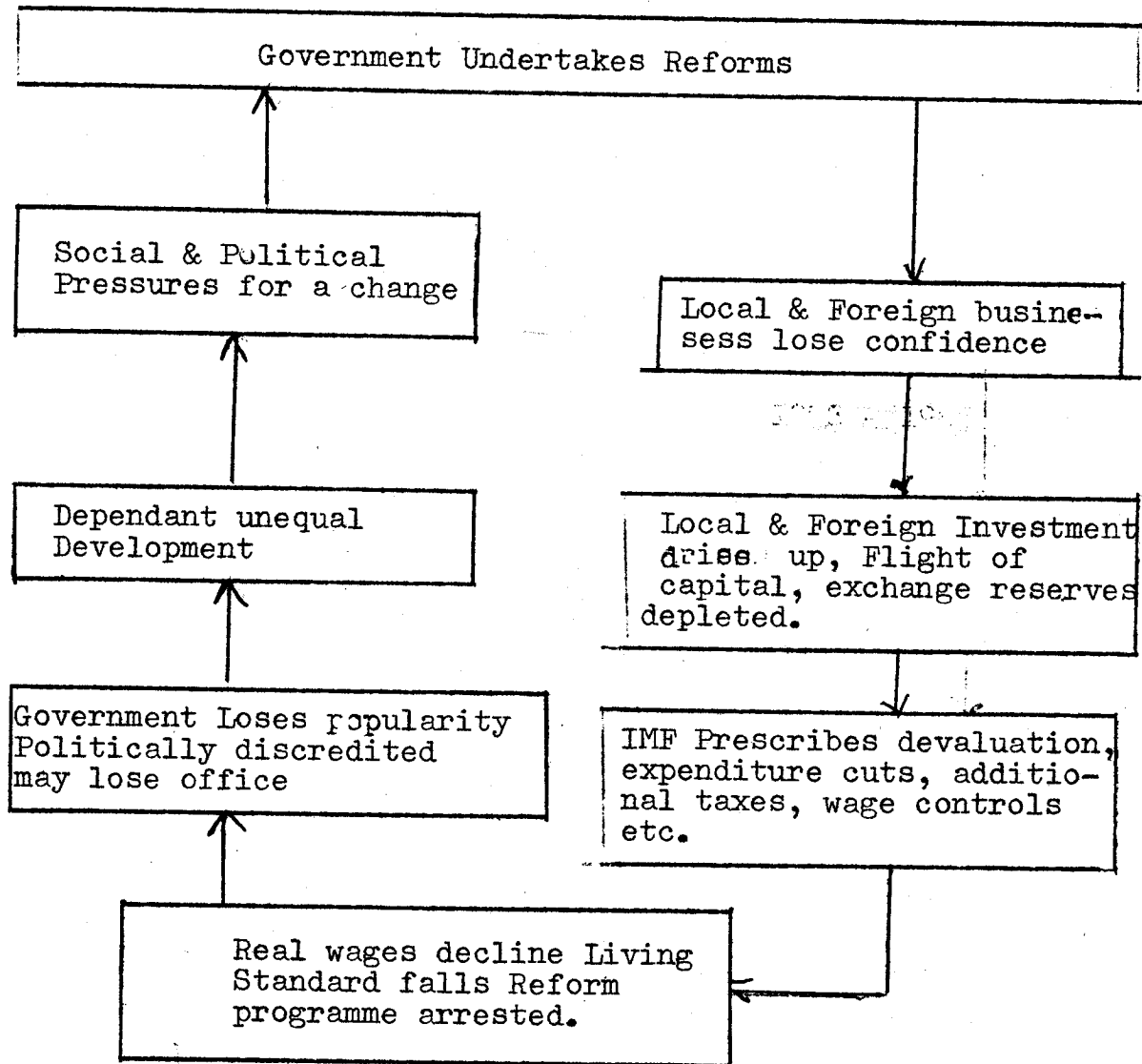
Wages do not keep pace with abrupt prices rises and thus real wages decrease. Lower income groups are the hardest hit - leads to political and social unrest since basic needs are not being met.

3. Cutting Government Expenditure

Based on the assumption that private enterprise is always good, and that it is more efficient and thus more profit motivated. Evidently an attack on such

establishments as parastatals in Zambia. But it has been stated that the IMF overlooks the fact that even in industrialised countries public expenditure is indispensable for the meaningful promotion of private expenditure. The state can carry on enterprises too risky or costly for private individuals to go into but nevertheless necessary for the livelihood of the people.

TABLE V:-Role of the IMF in Restoring Dependent Development.



The IMF & The Third World: Norman Girvan, Richard Bernal & Wesley Hughes.

Source: Development Dialogue pp. 152.

IV. The Legitimacy of the IMF and its Policies

'The IMF is dead;' ⁴ so begins an article by Cheryl Payer. In 1976 three Latin American countries turned their backs on IMF stabilisation programmes. Brazil and Peru announced that they didn't want any IMF programme in the foreseeable future.

"And Argentina which made a stunning turn-around in just a few months' time from bankers' nemesis to bankers' favourite, was in compliance with the IMF only because it had designed its own stabilisation programmes and sold it to the Fund, rather than vice versa. The Argentina stabilisation programme, although rubber-stamped by the IMF contains one important element which the Fund has not countenanced elsewhere: a heavy emphasis on price controls". ⁵

It is evident that had the Fund attempted to draw up structural policies which reflected in their stabilisation programmes development needs of people living in different material conditions its legitimacy would not have been so readily challenged. Third World states have persistently and insistently questioned the adequacy and legitimacy of monetary rules and mechanisms in whose design the majority of them did not participate. And even then, despite the opportunity given by the negotiation of amendments to the articles, the concept of third world development problems; treatment which is suited to them, remains absent from the statutes of the IMF.

"In the world community there is no political authority empowered to act as governments do within nation states. Accordingly any international institution draws its effective authority primarily from its efficient operation deemed satisfactory by the community at large. A formal International agreement provides a legal base; it cannot by itself guarantee successful functioning". 6

Payer writes that by 1984 the functioning of the IMF was already being questioned. Because of its unrealistic policies of conditionality the debt problem was merely being worsened and twenty countries (many in Africa) were not repaying their fund debts. In 1985 it was even being questioned whether the fund could ensure repayments of the much larger debts/^{to} commercial banks.

The IMF had been too long insensitive to the interests of the majority of its members by not including them in matters of mutual interest to them. The IMF had effectively eroded the economic foundations of a lot of third world countries and itself as well; furthermore it has proved unable to set up a new system because of the many interests of capitalist countries at stake. It has too long allowed third world countries to suffer the consequences of policies emanating from the West. The ideological content of IMF conditionality infringes the principles of national sovereignty as set out in the Charter of Economic Rights and Duties, accepted by the General Assembly. Nations have been forced to

surrender their powers of decision-making to the IMF whose decisions, have been in contradiction to development objectives.

It can thus legitimately be stated that since the IMF made no provision for the real and justified needs of all its members it failed in two respects;

- (1) As an international institution
- (2) As a monetary institution .

It is impossible to separate monetary and development policies and expect to run a workable system. The ~~real~~ reason why many third world countries keep their ties with the IMF is because of the fear that they may lose out on other sources of credits since the IMF approval is supposed to encourage other international financial institutions to continue giving a member credit. The other major reason is that membership of the World Bank is open only to members of the IMF and at present a wider role for the World Bank is being proposed by the Reagan Administration.⁷ Article III of the World Bank's Charter states that

"Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development".⁸

The New International Economic Order Resolution 3201(S - VI) passed in 1974 also called for international monetary reform. The IMF was present when this General Assembly recommendations were addressed directly to it. At the time, supposedly, they thought it was all nonsense. It is doubtful that the IMF thinks similarly thirteen years later. Protected by the United States, the IMF holds itself aloof from the United Nations System, acting as though the United Nations resolutions have no bearing whatsoever on its actions.

The International Monetary Fund has not relieved the third world debt burden. By eroding third world economic rights the fund has increasingly worsened the debt problem. Third World countries are forced to open up their markets to imports in exchange for the foreign exchange which inevitably returns to the lenders since most of the imports come from major donor countries in the IMF. Thus IMF aid is also a form of tied-aid, being used to export inflation and unemployment to third world countries.

V. Future Perspectives for Zambia

Debt Service has been limited to 10 percent of net export earnings. Inflation has been curbed slightly by the stabilisation of the exchange rate (now fixed at K8 to one US dollar). Prices are now

being regulated by law. It is important to note that to leave prices, the exchange rate and other factors in the hands of private enterprise or the free market and to be motivated by the search for profits in a developing economy such as ours is to lure ourselves towards economic suicide.

Thus the fact that the government has put legal knots on major economic factors is very welcome. If ~~Argentina's~~ economic recovery worked despite price controls we should also be able to come to terms with ourselves and work out a satisfactory recovery programme with legal regulatory mechanisms. Efforts must be made to diversify the export base by promoting non-traditional exports in order to maximise foreign exchange earnings.

Regional trade must be encouraged and the SADCC arrangement given as much support as possible. It is essential that forward looking economic policies begin at a regional level especially for a land-locked country such as Zambia.

On an international level the best possible solution would be to overthrow the uneven system of primary commodity export on the part of third world countries. They should be enabled to process their own raw materials locally and to participate in the international marketing, transport and distribution of these products.⁹

Lending institutions such as the World Bank and Regional Development Banks should increase lending on soft terms. It would also be advisable if Developing countries would establish a legal financial institution perhaps under the ambit of UNCTAD to establish and extend payments of credit arrangements among third world countries so as to facilitate trade and ease the balance of payments problems. Of primary importance should be the stabilisation of prices and earnings of commodity exports and expanded domestic processing of commodities.

The role of the IMF as the major financial institution of the world should be lessened unless the interests of industrial countries stop being the Fund's terms of reference.

VI. Suggested points of Improvement of Relations between the IMF and Third World Countries.

1. The IMF should lend to developing countries under conditions of minimum conditionality. i.e. provisions should be made within the Articles of Agreement for developing countries to borrow from the fund on softer terms. There should also be a provisal in the Articles for the automatic provision of interest subsidies on the use of SDRs and other IMF credit facilities which are at present higher than most developing countries can afford to pay.

2. Minimum conditionality is used in the sense that there should be flexibility in terms of performance of the country's economy, repayment obligations and other necessary structural changes which would need to be made. Provision for this should be made in the 'Letter of Intent.'

The Fund must make itself very aware of the influence of outside factors on the economy of a developing country and as such must make itself as broad-minded as possible. The acknowledgements of the existence of such factors and their influence by the Fund would increase its credibility and respect both to itself and its agreements which have come under immense criticism for obvious reasons.

3. Development aid goes hand in hand with balance-of-payments financing and therefore there should be more active co-ordination between

- (a) The Fund and UNCTAD

- (b) The Fund and the World Bank.

The Fund can not exist in a vacuum; it belongs to a community and as such must function as part and parcel of it.

4. The Articles of Agreement should make a provision which submits disputes between the Fund and its members to an independent arbitrator. The facilities of the Fund and stand-by arrangements must work within the framework of some law.

CONCLUSION

Zambia, being a third world country is vulnerable to external forces. Thus even though she has disowned her stabilisation agreement with the IMF it would not be in her best interests to sever all links with the IMF. She had every legal right to reject the stabilisation package due to the economic and social as well as political unrest within the country.

It must be stated though that the idea of an IMF stabilisation deal is not wrong in itself if only it could be implemented in such a way as to take into account the conditions pertaining in a country. Thus, measures besides the stabilisation programme would have been necessary in order to cope with external constraints which frustrated the stabilisation measures in Zambia.

Law is the main media through which the state regulates economic development in a developing country and not the dictates of supply and demand policies. The law must not be allowed to lose grip over the use of foreign exchange, prices and go all out for a general liberalization policy. The state must through law establish a conducive legal structure capable of inducing desired development for example if strict legal control over the use of foreign exchange had been allowed

by the IMF during the auctioning period foreign resources could have been channeled to priority projects and industries necessary to channel the economy away from copper export dependence.

No-one questions the right of the IMF to place conditions upon its lending for certainly it must be assured of getting its money back. But the IMF conditions do not allow the money to stay in the economy long enough to channel development, which would be in the interest of the IMF since a more affluent third world would be less of a headache to them. Yet, it is not just a matter of faulty or inadequate analysis on the part of the IMF but really whose interests they are willing to serve the third world's or the West's - needless to say we know what the answer to that must be.

There is an enormous need for research by the Zambian government into how they can best sell their own kind of stabilisation package to the IMF which will induce development through maintenance of legal control over the basic economic mechanisms in the country.

FOOTNOTES

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2. C. Payer Supra, p. 210
3. Ibid. p. 46.
4. C. Payer, The World Bank: A New Role in the Debt Crisis
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5. Ibid.
6. Development Dialogue supra, p. 51
7. C. Payer The Third World Quarterly supra p. 662
8. The World Bank Charter Article III Section 4(vii)
9. Willy Brandt. North-South: A Programme for Survival
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