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McNamara papers

PLO Observers Status  
1980 (Sept - Nov.)

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PLO Observers Status - Correspondence 02

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OFFICE OF THE PRESIDENT

7/6/1/18

Meeting on the PLO, November 4, 1980

Present: Messrs. McNamara, Stern, Qureshi, Thahane, Golsong

Mr. McNamara opened the meeting by expressing the view that the situation on this issue had become "miserable." He asked Mr. Golsong to report on the latest developments. Mr. Golsong explained that the first meeting of the Committee of Governors will take place in Manila on December 3. Of the nine Committee members, Yugoslavia, Indonesia, Pakistan and Nigeria are clearly in favor of granting the observer status to the PLO, while Belgium, France, Germany and New Zealand are against. Sweden is the ninth member of the Committee. Mr. Golsong said that the discussions of the Committee will center around the legal issues and, in particular, the interpretation of the By-Laws. Mr. Golsong further explained that the Committee will unfortunately start its work by considering the questions formulated in the memorandum presented by the Arabs. There is so far no presentation of the views of the other side. He added that Mr. Thahane had received an additional memorandum from Mr. El-Naggar, on behalf of Pakistan. The mood and the tendency of this memorandum are even more critical than those of the first one. Mr. El-Naggar has asked that this paper be distributed to the members as a Committee document. Mr. McNamara commented that certainly Pakistan did not write the memo but rather Mr. El-Naggar himself wrote it and this is contrary to the spirit of the formation of the Committee. Obviously, he added, Mr. El-Naggar has been the driving force behind this and there is no counterforce. Mr. Golsong said that Mr. El-Naggar's second memorandum reaches the conclusion that the work of the Committee should be retroactive-looking. He added that the first paper had attempted the same thing but, in discussions during the Annual Meeting, it had been agreed that it should not be so. However, Mr. El-Naggar had been able to put the issue back and there had been no reaction, especially from Mr. Bergsten.

Mr. Stern then asked what would happen next. Mr. Thahane answered that Mr. El-Naggar has now requested that the memo be circulated. He added that he had been in touch with Mr. Muldoon and agreement had been reached to buy some time by sending first the documentation from the Bank and the Fund to the Committee members and Mr. El-Naggar's memo will then be distributed later. He added also that Mr. El-Naggar has succeeded in being designated in the IMF as a temporary alternate for Pakistan in the Committee. Mr. McNamara said that this was again totally contrary to the spirit of the formation of the Committee. He then asked Mr. Thahane who would be Pakistan's representative in the Committee. Mr. Thahane said that he did not know, since the previous representative is no longer there, but probably the Finance Minister would be the one. He explained that Mr. Muldoon's personal position as Prime Minister makes it difficult for the Governors of the other countries not to attend themselves. Mr. Qureshi said that Mr. El-Naggar is scheduling a meeting in Pakistan. He added that Messrs. Abdulatif and Al-Ateeqy were recently in Pakistan, where they made a strong plea to the Pakistan Government to push for the PLO issue. Mr. Thahane then explained that not only Mr. El-Naggar is scheduling a trip but he also wants his Technical Assistant, a Pakistani national, to accompany him to Pakistan. Mr. McNamara said that this was unacceptable. Mr. Thahane then said that the matter is now before the Board and there is still the possibility of one ED objecting.

Mr. Thahane then turned to another point. He said that he had told Mr. Colby King that, since the U.S. had been a key participant in this affair, any document or memorandum representing their views should be put through to the Committee as soon as possible. He added that the U.S. can present a paper to the



Committee through somebody else who would be a participant in the Committee's work. However, the Bank is not in a position to do that on behalf of the U.S. Mr. Golsong said that he was not sure whether the U.S. could present a paper to the Committee on its own. Mr. McNamara commented that, on the issue of submitting papers to the Committee, differences should be made between participants and non-participants to the issue in discussion, and Committee versus non-Committee members.

Mr. Qureshi commented that, in his view, the meeting of the Committee will be basically a meeting of political people. In that respect, he said that it would be a mistake to think that the Committee's work will be looked upon as purely oriented on legal matters. Being politically oriented, therefore, there is the possibility of influence. He added that he thought it was very unfortunate that Mr. El-Naggar is pushing so much on this issue. It has indeed become a personal crusade for him. Mr. Qureshi added that he did not think that the purpose of the people on the Committee would be to push for an indictment of management or of the Board of Governors for past actions. On the contrary, their purpose will be to have enough to satisfy the Arabs. He then said that, in view of the split in the membership of the Committee, everything will come down to the position of Mr. Blix, the Swedish representative. He can easily influence the other Committee members to be more or less constructive-looking. Mr. Qureshi also said that the Bank can indeed influence the orientation of the forthcoming discussions. He finally suggested that Mr. McNamara ignore Mr. El-Naggar. Mr. Golsong said, however, that Mr. Blix will not be going to the Manila meeting, but rather a Swedish lawyer would be going in his stead.

After stating that the Bank would have to work closely with the Fund, Mr. McNamara said that the Bank should prepare its own White Paper on the whole issue. Mr. Thahane suggested that this ought to be initiated soon, under the form of a staff paper. The question would then be if and when to put this to the EDs. Mr. Stern agreed, saying that a paper could be put to the Board in January. The deadline for submission to the Board of Governors from the Committee's work is March 1.

Mr. McNamara then asked what were the relationships between the purpose of the Muldoon Committee and the decision with respect to the resolution on Section 5(b) of the By-Laws to be made by the Governors. Mr. Golsong said that the Committee is supposed to examine the problem of interpretation of Section 5(b). The central issue there is whether this interpretation should be forward- or backward-looking. Mr. Thahane said that this had been indeed the key question in the discussions of the Joint Procedures Committee during the Annual Meeting. He explained that Mr. El-Naggar was mainly interested in the issue of interpretation of Section 5(b). During the Annual Meeting, a compromise had been reached that the Committee's work would be to look to the future, not to look back. In particular, Mr. Bergsten had said that he could live with the Committee, provided that the results of its work would mean improvement for the future.

Mr. McNamara said that the first question was therefore how to interpret Section 5(b) for a better functioning for the future. The other question, addressed by the Board in the Resolution, is whether or not Section 5(b) should be changed. The latter is clearly outside the Committee's responsibility. Mr. Golsong agreed but he added, however, that the work of the Committee is expected to help in the decision on the Resolution. Mr. McNamara then said that the Bank's Counsel should have its own analysis of Section 5(b) prepared in a draft by December 1



for discussion later on with the Fund. Mr. Thahane suggested that a second draft could be prepared by December 8 to take advantage of the results of the first meeting of the Muldoon Committee. Mr. McNamara said that the final agreement with the Fund should take place by January 5. He expressed the view that the Committee is likely to come out with two main results: (a) the Chairman of the Annual Meeting can invite observers; and (b) the vote withdrawal procedures will need to be changed.

Mr. McNamara then asked whether Mr. Golsong should go to Manila for the meeting of the Committee. Mr. Thahane explained that, at this first meeting, it can be expected that the discussion will focus on identifying the various legal questions. Therefore, it would be important to get responses from our General Counsel. Mr. McNamara then decided that Mr. Golsong should definitely go and so instructed him.

Mr. Thahane expressed the opinion that it would be very useful to talk individually to the EDs from France, Germany and Belgium, who can be expected to have some influence. He further said that, unless the U.S. puts some input into the work of the Committee, they are not likely to get results. Mr. Qureshi agreed with Mr. Thahane and added that the Bank itself should provide for some influence. Mr. Golsong said that Mr. de Groote and Mr. Mentre are almost certain to attend the meeting.

#### Bank Management/Board Relationships

Mr. McNamara expressed his concern over the initiative of Mr. de Groote at this morning's Board meeting to call for periodical informal Board meetings. He characterized this initiative as very unwise. He said that Mr. Thahane should be present in those meetings. He also observed that management and Board relationships are difficult, and there is indeed the need to watch out for this situation. He added that Mr. de Groote has never been an active participant in the Board. He mentioned that Mr. Looijen is proving difficult with his request for an investment committee. This would amount to having a part-time Treasurer on the Board, which he would strongly oppose. One individual should not be allowed to "swing the institution by the tail." He then reaffirmed that he did not want to see an investment committee or a budget committee of Board members.

Referring to the intervention of Mr. Kurth at this morning's Board meeting, Mr. Stern said that Mr. Kurth's points can be summarized as follows: first, the budget is inconsistent with the lending objectives; it is much too tight; and, second, the sectoral priorities and their relationships to the budget are not clear. Mr. Qureshi said that Mr. Kurth's concern is rather with the second point. Mr. Stern then said that the general feeling of Board members is that they are concerned with not being able to trace through the budget what they discuss during Board meetings. Mr. McNamara said that Mr. Lundstrom had expressed his concern about the different sectoral distributions. Mr. Qureshi noted that Mr. Lundstrom's point is quite different from Mr. Kurth's. What concerns Mr. Kurth is that Board members cannot correlate the budget with sectoral policy discussions. Mr. McNamara said that the first step is to determine output, and management should not allow cost considerations to determine the level of output. He said that, if the Board is concerned with this problem, the Bank can deal with it in the paper to be submitted in answer to Mr. Lundstrom's question. Mr. Qureshi repeated that Mr. Lundstrom's point is quite different from Mr. Kurth's. He said that the Board members want to have a continuing knowledge on how the lending



program and its structure is evolved so that they will understand at the time of the budget discussion. Mr. Golsong said that as a general philosophy the Germans and the French want a greater say in the internal policy-making of management. Mr. McNamara said that he understood and that he was totally opposed to that. Mr. Thahane commented that Mr. Kurth and Mr. Drake want to get into the way management decisions are being made. He added that it was not exactly clear why they wanted this but the worst should be assumed. Mr. Golsong said that the Arabs coming to the Board with added power would have the exact same position as the French and the Germans. For that matter, he said that Mr. McNamara should talk to high-level officials in both Germany and France.

#### Energy

Mr. McNamara said that he had received a call from Mr. Mentre wondering why Venezuela had not been invited to participate in the preliminary discussions on the energy affiliate with a limited number of countries. He added that Mr. Mentre had expressed his pleasure at the fact that France had been invited to those discussions. Mr. Qureshi said that he had received a very quick response from Mr. Abalkhail expressing strong views on the issues of: (a) voting rights; and (b) looking at alternative approaches.

OL  
November 14, 1980



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WBG ARCHIVES

XM80-33/1(Second Rev.)

FROM: Vice President and Secretary

October 30, 1980

DRAFT EXECUTIVE SESSION MINUTES OF SEPTEMBER 18, 1980

Attached are the draft minutes of the Executive Session of the meeting held on September 18, 1980, revised to take into account a further comment received from an Executive Director. The revision is in paragraphs 10 and 11. In the absence of objection (to be communicated to the Vice President and Secretary or Deputy Secretary by the close of business on October 31, 1980), these second revised draft minutes will be deemed approved and so recorded in the minutes of a subsequent meeting.

Distribution:

Executive Directors and Alternates  
President  
Senior Vice Presidents  
Vice President and General Counsel



## International Bank for Reconstruction and Development

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XM80-33(Second Rev.)

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VOTING BY MAIL: SECTION 13 OF THE BANK'S BY-LAWS

XM80-33(Second Rev.)

FROM: Vice President and Secretary

October 30, 1980

Minutes of Special Meeting of the Executive Directors  
of the Bank in Executive Session held in the  
Board Room on September 18, 1980 at 10:00 a.m.

## 1. There were present:

CHAIRMAN

Robert S. McNamara, President

EXECUTIVE DIRECTORS AND ALTERNATES ACTING AS EXECUTIVE DIRECTORS

J. Anson	J. Cardenas (Temp. Alternate)
J. de Groote	E.G. Drake
S. El-Naggar	J. Focerrada (Temp. Alternate)
O. Kabbaj (Alternate)	J.W. Keany
C.I. King	E. Kurth
A.I.J.A. Looijen	H. Lundstrom
A.H. Madinga	P. Mentre de Loye
S. Morioka	A. Razafindrabe
G. Rota	A. Sola
M. Syeduz-Zaman (Alternate)	Zain Azraai

ALTERNATES NOT ACTING AS EXECUTIVE DIRECTORS

Y.S.M. Abdulai	Aung Pe
R.J. Brown	R.M. Guimaraes
H-D. Hanfland	D. King
K. Nakajima	O.L. Poulsen
D.F. Smith	M. Stojiljkovic

OFFICERS AND STAFF PARTICIPATING

T.T. Thahane, Vice President and Secretary	H. Golsong, Associate General Counsel
S.H. Choi, Secretary's	

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VOTING BY MAIL: SECTION 13 OF THE BANK'S BY-LAWS

2. The Executive Directors considered a memorandum entitled "Voting by Mail: Section 13 of the Bank's By-Laws" (SecM80-711) prepared by the Legal Department, and, on a roll-call vote taken at the request of Mr. El-Naggar, decided, by majority of votes, that a Governor having voted on a mail vote under Section 13 of the By-Laws of the Bank could not withdraw that vote before the final date for voting.

3. Messrs. C. King, Keany, Kurth, Mentre de Loye, Looijen, Morioka, Rota, Anson and Sola, casting 194,476 votes, were in favor of this decision; Messrs. Kabbaj, El-Naggar, Cardenas, Madinga, Syeduz-Zaman, and Zain, casting 70,498 votes, were opposed to it. Messrs. de Groote, Drake, Lundstrom, Foncerrada and Razafindrabe (60,803 votes) abstained from voting.

4. Mr. El-Naggar stated that he had been requested by the Governments of Syria and Sudan to withdraw their votes on the resolution on Section 5(b) of the By-Laws of the Bank which had been cast by mistake. His constituency believed that member countries had an unquestionable right to withdraw their votes during the period prescribed by Section 13 of the By-Laws and that the votes of Syria and Sudan, and of all countries which declared that they wanted to withdraw their votes, should not be counted toward the quorum requirement.

5. Mr. El-Naggar stated that, as indicated in the memorandum prepared by the Legal Department, a vote without meeting was a very exceptional procedure not found in national deliberative bodies or in any international organizations other than the Bretton Woods institutions and the regional development banks that modelled their By-Laws on them. Voting without meeting deprived member countries of the opportunity to consult with each other that was afforded when the voting took place at a meeting. He believed that the framers of the Bank's By-Laws had attempted to compensate for this. Section 13 of the By-Laws described three distinct phases in the voting process: (a) an initial seven days after dispatch of the mailing in which member countries were not permitted to vote, unless this restriction was waived by the Executive Directors. This period provided member countries the time to receive the mailing itself; (b) a second phase was provided for consultation and voting; if after casting a vote, some new information came to light, member countries might change their votes or withdraw their votes; and (c) the third phase involved counting of the votes at the end of the voting period. Section 13 of the By-Laws stated: "...At the expiration of the period prescribed for voting, the Executive Directors shall record the results and the President shall notify all members. If the replies received do not include a majority of the Governors exercising two-thirds of the total voting power which are usually required for a quorum of the Board of Governors, the motion shall be considered lost". Therefore, the determination whether or not there was a quorum was made at the expiration of the voting period and not before.



6. He believed that, during the period of voting, member governments had four options: A member might cast an affirmative, negative, or abstention vote; a fourth option was not to participate in voting. These four options should be treated on an equal basis. It would be absurd to allow member governments to change their votes from one column to another but not to allow them to withdraw the votes. The Legal Department's memorandum noted that the provisions of Section 13 of the By-Laws mentioned "replies received" and that once a reply was received, this physical fact could not be disregarded. He disagreed with such an interpretation; a reply which was received, but withdrawn before the end of the voting period, was not a "reply received", and thus should be discarded from among the "replies received". Voting by mail was a unilateral act of a sovereign state, not a contractual act between a member and the Bank. A member should be allowed to withdraw a vote if it stated that it was mistakenly participating in the voting or that the vote had been cast by someone not qualified so long as it notified the Bank before the end of the voting period.

7. For these reasons, he believed that if the Executive Directors were to decide that the withdrawal of votes was not permissible, they would be acting not only contrary to the provisions of Section 13 of the By-Laws, but also to the general and elementary principles of law.

8. The staff stated that, as noted in paragraph 5 of the memorandum (SecM80-711), it had been the Bank's practice in connection with a vote without meeting to permit Governors to change their votes before the expiration of the voting period. This practice was similar to that in legislative bodies, including the General Assembly of the UN, namely, that once a quorum was ascertained and the voting begun, members were permitted to change votes until the time the results were finally recorded although it was not possible to challenge the quorum after the voting if this had not been challenged at the opening of the vote. This practice had been followed in the past without any problem.

9. Mr. El-Naggar stated that there was a fundamental difference between the UN General Assembly procedure which dealt with voting in a meeting and the case at hand in the Bank. He reiterated that the precedent in the Bank of allowing a change of votes during the period of voting should apply equally to withdrawal of a vote.

10. Mr. Zain, supported by many speakers, stated that, despite whatever differences there may be about the best course of action, he was fully conscious that the Chairman's actions in the present situation had been governed by an overriding concern to safeguard the health of the institution and to promote the welfare and development of the world's poor.

11. Mr. Zain said that there were two separate questions which should not be confused with one another. One was the question whether or not a Governor may withdraw a vote and the other was the effect of any such withdrawal on the necessary quorum. He considered the latter question immaterial on deciding on the former. He noted that the right of Governors to change



their votes was clearly recognized in the staff memorandum. As such, he believed that a Governor's right to withdraw a vote should not be denied, irrespective of the effect of such action on the quorum required, it was not for Directors to attribute any motive to a Governor's action or to query whether or not such a change was due to a "genuine mistake". He mentioned in passing that the issues raised by the question had been posed in the memorandum (SecM80-711) in a commendably dispassionate way.

12. Mr. Kabbaj, agreeing with Messrs. El-Naggar and Zain, stated that he saw no reason why a Governor should not be allowed to withdraw his vote.

13. Mr. Madinga said that it was difficult to understand why a Governor should not be allowed to withdraw his vote regardless of its effect on quorum requirement.

14. Mr. C. King stated that the memorandum prepared by the Legal Department was a balanced presentation and led him to conclude that under Section 13 of the By-Laws of the Bank, a Governor could not withdraw a valid reply received by the Bank on a mail vote. A similar decision had been taken earlier by the IMF Executive Board. Although the issue had arisen in the context of a controversial issue, the Executive Directors ought to examine it in the broader framework of the Bank's decision-making process and the efficient functioning of the institution.

15. Mr. King stated that, in his view, the key word in Section 13 of the By-Laws was "replies received"; if the number of replies or votes received failed to equal the requisite number, the motion was deemed lost; inferentially, if the number of replies or votes received equalled the requisite number, the motion was carried. The text stated nothing about replies received and not withdrawn. Therefore, in his view and in accordance with straight-forward, grammatical construction, votes or replies received were irretrievable, at least insofar as they were counted to establish a quorum. This was a practical and common sense approach. Under the US legislative procedure, it was permissible for a member to alter his vote up to the moment of announcing the results, but he could not withdraw that vote once it had been cast. The United Nations had adopted the rule that it was only necessary to have a quorum present at the moment the vote was put to the Assembly by the presiding officer and not necessarily throughout the whole period of vote taking. He believed that there was a tendency to interpret parliamentary rules to promote efficient operation of the body rather than to encourage obstructionism. There was a fundamental difference between switching a vote and withdrawing a vote, since the latter struck at the very legitimacy of the vote itself, thereby affecting the vote of all the other members as well as one's own.

16. In the ordinary parliamentary situation where the body in question met as a body in one physical location for the purpose of deliberating and casting votes, the procedure for establishing a quorum was quite distinct and separate from that for casting a vote. The first was accomplished by counting the members physically present and the second was accomplished by having those members present cast their votes. Although members were allowed



to change their votes, they could not change the fact that their presence constituted a quorum under the first procedure.

17. When voting without meeting in the Bank, the act of submitting a vote or reply served two purposes: (a) it served to establish a quorum and (b) it indicated how the Governor was voting on a particular proposition. Technically, therefore, a Governor might withdraw a vote solely for the purpose of substituting another vote for it, but in no circumstances could such an action serve to diminish the total number of votes or replies received for the purpose of establishing a quorum. If the rules were otherwise, there would be injected into the Bank's long-standing parliamentary procedures an element of uncertainty which would encourage the politicization of the voting process which, itself, would be out of harmony with the way in which the Bank had conducted its business.

18. Mr. Looijen stated that he was not addressing the issue in the context of the PLO's request, since his constituency was divided on that subject. The memorandum of the Legal Department was mostly based on a legalistic and literal interpretation of the By-Laws. It was also possible to ask what was the intention of the quorum requirement. He believed that a quorum was necessary to protect the members of an institution from being outvoted by a group of other members who, because of their numbers, could not be considered representative of the whole institution. In the case of a vote without meeting, it was also necessary to provide time for members to determine their positions and to obtain any necessary legal authorization for their votes.

19. Mr. Looijen stated that unlike Mr. El-Naggar, he did not believe that the option of not participating in the voting was on an equal footing with the options of voting -affirmative, negative or abstention- since, in the latter three courses of action, a member was actively participating in the possibility of influencing the institution. If that member discovered that he had made a mistake, he may change his vote. But allowing withdrawal of votes could frustrate the working of the institution, the more so as both sides could play the "quorum game". The Board should not facilitate such a frustration by giving a broad interpretation to the By-Laws.

20. Mr. Anson stated that the issue should be approached as a matter of general principle and not in relation to a particular case. He believed that if the wording of Section 13 was clear, it would not be necessary to pursue the motive of the draftsmen. On the latter question, however, he could not understand why the draftsmen introduced a seven days' delay if a Governor could withdraw at any time before the expiration of the voting period. In his view, it was clear from the wording of Section 13 that all replies received, even if they were subsequently regretted, ought to be counted. If the Executive Directors found this unsatisfactory they had the option, in due course, of proposing an amendment to the By-Laws.



21. Mr. Mentre stated that the term "replies received" was different from "votes cast". He added that in the interest of parallelism between the Bank and the Fund, the IMF Executive Board decision should be upheld and that the withdrawal of votes by Governors after having voted should not be allowed.

22. Mr. Kurth stated that he agreed with the views expressed by Messrs. Anson and Mentre and noted particularly the comments of Mr. Looijen concerning the use of the "quorum game".

23. Responding to Directors' queries, the Chairman stated that the result of voting on Section 5(b) of the By-Laws of the Bank would be made available as promptly as possible.

24. Mr. de Groote stated that he had abstained from voting because the instructions from his authorities compelled him to do so and also because his authorities felt that abstention was a positive attitude, reflecting their belief that the subject should not be dealt with in the Board meeting since it was essentially a political issue and should be dealt with by negotiation. His authorities felt that the "exercise in legal interpretation" on this issue was not in keeping with the dignity of the institution. He felt that it was a very dangerous course and urged that in the remaining few hours, those interested in the issue should try to act in the spirit of compromise.

25. Mr. King reported that the US House of Representatives on September 17, 1980 considered H.R. 7244 concerning an SDR 25 billion quota increase in the IMF and adopted by a vote of 386 to 2 an amendment offered by Mr. Gillman of New York which read as follows:

"It is the policy of the United States that the Palestine Liberation Organization should not be given membership in the Fund or be given observer status, or any other official status at any meeting sponsored by or associated with the Fund. The United States' Executive Director of the Fund shall promptly notify the Fund of such policy.

"In the event that the Fund provides either membership, observer status or any other official status to the Palestine Liberation Organization, such action would result in a serious diminution of U. S. support. Upon review of such action, the President would be required to report his recommendations to the Congress with regard to any future U. S. participation in the Fund."



He said that his authorities had not supported this amendment. However, 59 US Senators had expressed a similar sentiment in a letter to the US Governor. His authorities were concerned about the turn of events. He expressed hope that in the few hours remaining, all parties concerned would act in a way to safeguard the interests of member countries, especially those who depended on this institution.

26. Mr. El-Naggar stated that he had hoped that the efforts of the last few days would produce a compromise acceptable to all parties concerned. His constituency had every right to be offended if they felt that the laws of the institution had been twisted to accommodate the political situation of a single member country. He recalled that he had discussed this with the Chairman. He had proposed, without avail, that Board consideration of the proposed draft resolution on Section 5(b) of the By-Laws be deferred until after the Annual Meetings and that consultations proceed. His constituency had no alternative, but to act on this issue as it had developed.

27. The Chairman responded that he did not wish to comment on the portion of Mr. El-Naggar's statement that related to him, but wished to state that his silence should not indicate his agreement with it. He said that he shared his feeling, and that of other Directors who stated that all the parties concerned should use the time available to press for some form of compromise that would protect the institution's ability to serve its developing country members.

#### ADJOURNMENT

28. The meeting adjourned at 11:25 a.m.



OFFICE OF THE PRESIDENT

716 / 1 / 16

Meeting on PLO, October 21, 1980

Present: Messrs. McNamara, Golsong, Thahane

Mr. McNamara opened the meeting by asking Mr. Thahane to present a brief summary of the situation with respect to the Committee of Governors established during the Annual Meeting to deal with the issue of the PLO application as Observer to the Meeting. Mr. Thahane explained that the first meeting of the Committee remains scheduled for the first week of December. He said that Singapore had declined the request by Mr. Muldoon, the Chairman of the Committee, that the meeting take place there. Mr. Muldoon has now approached The Philippines with the same request. Mr. Thahane explained that Mr. Muldoon is apparently experiencing difficulties with a Cabinet struggle in his Government, and he wants to keep the meeting close to his country. It has been agreed that letters of invitation to the meeting would be sent to the Committee members without any mention of the place of the meeting which would be forwarded later on. To Mr. McNamara who asked why a formal request had been sent to the Government of Singapore, Mr. Thahane replied that it was basically a gesture of courtesy, and Mr. Golsong added that it was also for security reasons.

With respect to the documentation that would form the basis of the work of the Committee, Mr. Thahane said that a dossier will be sent to all governments represented in the Committee around November 1. This dossier will cover all the relevant Board documents starting with the letter from Chairman Jamal inviting the PLO. It will also include Mr. McNamara's formal clarification that there was no direct Bank management decision in the whole process. The documents sent will basically be all approved minutes which had already been circulated to the Board. Mr. Thahane mentioned that he had received a request from Mr. El-Naggar, whom he had met with yesterday and who was apparently in a very good mood, for the transcripts of Board discussions. Mr. Thahane explained that Mr. El-Naggar wanted only part of the transcripts; he did not want the transcripts to be circulated to other Committee members, but rather that it was only to help him in the preparation of his own documentation. Mr. El-Naggar had made it clear that, if there were any difficulty in sending these transcripts to him, he would send an assistant to look at them. Mr. McNamara asked whether he was going to participate in the work of the Committee. Mr. Thahane said that certainly Mr. El-Naggar expects that Pakistan, which is a member of the Committee, may take him along to the meeting as an adviser. Messrs. McNamara and Golsong stated categorically that this was impossible. Mr. Thahane agreed that indeed the purpose of the Committee is to discuss the actions of the various participants in this whole affair, and certainly Mr. El-Naggar was one of those participants. Mr. Golsong stressed that the countries themselves had been selected as members of the Committee and not individual Governors. He further said that the U.S. has not asked to be present in the meeting of the Committee. Mr. McNamara commented that it was disgraceful for Mr. El-Naggar to ask to be present. Mr. Golsong said that Mr. El-Naggar is terribly one-sided in this whole affair as well as on several other problems. To illustrate this point, Mr. Golsong said that Mr. El-Naggar had expressed to him his belief that the U.S. is behind the present war in the Middle East.

Commenting on the possible role of the U.S. with respect to the present situation, Mr. Thahane said that the U.S. should make it clear that the Committee is made up of countries, not individuals, and that it is expected to be objective. In addition, if the U.S. has some points to make, it should make



its interests known early to some of the delegations in this Committee. Mr. Thahane expressed his fears that the U.S. Treasury might be relaxing after the turmoil of the Annual Meeting, and it might wait until it is too late to present its viewpoints. Mr. Golsong agreed and suggested that the U.S. Administration should make its position known in higher places; it might even need to go to the White House. Mr. McNamara commented that he may take some initiative in this respect, suggesting that he himself could talk to Secretary Miller, and he added that Messrs. Golsong and Thahane could talk to Mr. Colby King.

Mr. Thahane said that the Bank will prepare a brief, which would constitute a legal aide memoire, not to be circulated to anybody but rather to be used as an internal document. He explained that the Bank should not appear as being defensive, but rather it should be prepared to have answers ready when questions arise. Mr. Thahane explained that the Bank has some differences of opinion with the Fund with respect to the strategy to be adopted vis-a-vis the work of the Committee. The Fund is taking an attitude both apologetic and defensive, which the Bank disagrees with. Their legal counsel is not very combative, inasmuch as he had had a few open criticisms from Mr. Muldoon last year and from Mr. Jamal this year. Mr. Golsong said that in fact it would be better for everybody if he did not show up at the meeting. Mr. Thahane further explained that the Bank would prepare its full documentation in a chronological order on its own and the Fund would do the same. Mr. Golsong expressed his view that the Bank may have started the whole thing but, since then, its record is perfectly clean.

Turning to the recent complaint received from the Palestine Information Service with respect to an incident during the Annual Meeting, Mr. Thahane said that the Bank had prepared a short reply. He showed a draft of this reply to Mr. McNamara who said that it was perfect, and Mr. Thahane explained that it would be given to Mr. Benjenk to handle.

Mr. Golsong said that he had one more comment to make. He said that the only issue-oriented official piece of paper which would be available for the Committee is the memorandum prepared by the Arab representatives and presented to the Joint Procedures Committee at the Annual Meeting. He explained that there is nothing yet available to balance the views presented in this memorandum which are clearly biased. He said that the Bank cannot take too much visibility in all this, but it is necessary to have an approach to keep the whole thing as business-like as possible. He suggested that the U.S. should come up with a paper that would present a more balanced view. He further argued that the Europeans will not move. He thought that the U.S. could get support both from Nigeria and Indonesia. Mr. McNamara explained his decision for personally staying out of all this, essentially because he did not want to see Bank management perceived as the mastermind for some of the past and future developments. He further said that his only interest is to maintain the strength of the institution to fulfill its development function. Mr. Golsong commented that the Swedish representative in the Committee is a lawyer and a very close personal friend of his. He said that he (the representative from Sweden) would certainly listen to him if Mr. Golsong were to explain informally the Bank's view point on the issue and on the possible outcome of the Committee's work. In that respect, Mr. Golsong said that he already had some ideas as to what the outcome could look like. In fact, he said with a smile that he thought he could write the report now, in such a way that all parties could feel satisfied. Essentially, it would state that the



doubts expressed by the Arabs on the developments which had taken place since July 1980 and particularly what relates to the procedural aspects were perfectly legitimate. This would ensure moral support from all sides to the Arabs for legitimately questioning seemingly inadequate procedures. On the other hand, it would also justify and reinforce the claim of the U.S. that it was correct about its request concerning the revision of Section 5(b) of the By-laws.

Mr. McNamara asked which countries were represented in the Committee. Mr. Thahane replied that they are Belgium, France, Germany, Indonesia, New Zealand, Nigeria, Pakistan, Sweden and Yugoslavia. Mr. McNamara said that the U.S. could get France or Germany to take the lead in getting support from some of the other countries, e.g., Indonesia, Pakistan and Nigeria. Mr. Thahane suggested that the U.S. could work with Germany on this. Mr. Golsong, however, said that France is currently more open than Germany on this issue.



716 11/15

## OFFICE MEMORANDUM

CONFIDENTIAL

TO: Mr. Moeen A. Qureshi  
FROM: Saad S. El-Fishawy *Saad El Fishawy*  
SUBJECT: Bank Relations with Arab Members of OPEC

DATE: October 8, 1980

DECLASSIFIED *file*

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WBG ARCHIVES

In the aftermath of the dispute over the question of the PLO Observers' status, it is important to realize the extent of alienation and ruffled feelings it has caused in the Arab camp in general, and among those who are members of OPEC in particular.

The fact that there was no reason for them to take issue with the Bank or its management, since neither was a party to the dispute, but was rather caught in between the principal parties: the Arab group on one side and the OECD, led by the U.S.A. on the other, was almost predeterminately overlooked. No amount of clarification, explanation, emphasis or citing of supporting proof and evidence to the contrary could change this attitude. A lot of effort was made on this front, but they were simply in no mood to listen.

Each of the representatives of the Arab members of OPEC expressed his dissatisfaction with the turn the PLO issue took, and the slow progress in the area of Arab adequate representation in the decision-making positions of the Bank, in his own way:

Al-Ateeqy was true to himself by being extremely candid and even blunt.

Al-Hamad was particularly furious since he feels that for over ten years he has worked hard to introduce the Bank to the area, and oftentimes in the face of suspicious and unfriendly currents.

Al-Nowais said that the UAE did not want to become a member of IDA and did not intend to participate in IDA VII. (They were already reluctant to participate in IDA VI and did not show up in the first meeting of the Deputies. Whereupon I visited Abu Dhabi and met with the then Minister of Foreign Affairs, Ahmad Khalifa Al-Sweidi, and secured his commitment to participate in IDA VI in the same share as in IDA V.) I made it clear to Mr. Al-Nowais that it is purely in the interest of the UAE to become a member of IDA since they have already made their contribution (which he unequivocally stood by). Thereby UAE would acquire votes commensurate with its contribution. However, he was not to be convinced.

Abalkhail, in his soft but firm way, indicated that the situation has to improve before resuming a constructive dialogue.



Recommended Course of Action

I suggest that after a cooling off period, say until mid-November (also by then the Haj and the Eid Adha period would be over) we approach Kuwait, Saudi Arabia, UAE and Qatar to initiate discussions on the specific features of the proposed energy affiliate. This proposal got the endorsement of Minister Aba Alkhail in his speech during the Annual Meetings. It is, of course, noteworthy that in the speech he was not only representing Saudi Arabia, but also the other Arab countries. In order to assure the active cooperation of the Arab OPEC countries in this regard, we should:

- 1) Take into full consideration their views on the formulation of the affiliate. Minister Aba Alkhail alluded in his speech to certain aspects which they want to see reflected in the affiliate. He said that "the proposed affiliate should reflect the economic realities of the present world in its capital and voting structure."
- 2) Consult with the Arab OPEC group on the important features of the affiliate before taking a firm position on any.

In the course of these discussions I would prepare the ground for a "goodwill visit" by you to the area. By then, hopefully, concrete progress on the pending issues would have been made and we could hope to resume smooth relations.

cc: Messrs. McNamara  
Stern



716/1/14

Meeting on PLO Issue, September 30, 1980

Present: Messrs. McNamara, Benjenk, Golsong, Qureshi, Stern, Thahane

Mr. Golsong reported on the current situation in the Joint Procedures Committee with respect to the PLO problem. The U.S. Delegation is using delaying tactics to postpone any decision at least until tomorrow. The G-5 are firm in maintaining the resolution which had been voted on by the Governors, and they are certainly not ready to give in to Mr. El-Naggar's resolution as expressed in his memorandum on legal issues which he had circulated to the JPC members. At most, they are willing to "consider" it but they feel that any discussion would have to take place at the Board of Executive Directors level. Mr. Golsong expressed his fear that the floor of the General Assembly may have to take a stand on two conflicting resolutions. Mr. McNamara commented that the By-Laws are very difficult to interpret and, in addition, the Bank and the Fund have different views on their interpretation. He felt that a decision to establish a committee of interpretation of the By-Laws should be left to the Board of Governors.

Mr. Golsong explained that the French Delegation had suggested the creation of a committee of independent experts on the legal issues. In particular, they want more detailed rules for the process of voting without meeting. Mr. Golsong said that this was not acceptable and had no chance of being accepted in the committee. He added that the Board of Governors itself would need to look into these issues anyway.

In response to a question by Mr. McNamara, Mr. Golsong answered that nothing is likely to come out of the JPC and the whole issue will probably be put to the floor of the Plenary Session. This is where difficulties will certainly arise since there are no rules there to deal with this particular problem. Mr. McNamara, however, said that a vote on the floor is by weighted voting.

Mr. Thahane said that, in his discussion with Chairman Jamal, they had agreed that, if a new proposal came from the floor, it should simply not be considered in the Plenary Session, since the JPC is supposed to deal with the problem. The formal reporting of the JPC (where the UK is now reporting member) is scheduled for Friday morning.

Mr. Benjenk asked what the scenario could be for tonight. Mr. McNamara answered that the only thing to say is to express concern about the legal aspects. Mr. Thahane commented that, in order to gain time and reduce the pressures somewhat, we could accept the creation of a committee whose rules would need to be defined. He said that he sensed that there were two major objections on the Arab side to sending the issue to the Board of Executive Directors. First, there is a certain suspicion regarding the role of Bank management with respect to the Board, and, second, the Board operates according to weighted vote. Mr. Benjenk argued that it may be assumed that the Arab side is looking for a face-saving device. Mr. Qureshi commented that they had probably arrived at three decisions. First, they want to show their disapproval of the respective roles of management and of the U.S. This is evident through their boycott of all social events during the Annual Meeting, although it may have brought some



division in their ranks since some believe this tactic is childish; second, they recognize that they have lost in what they expected from their resolution and they realize that it is too late now to withdraw the resolution; and third, they therefore see no alternative to keeping the issue alive, but with the intention of not making "too big a fuss." In his view, the objective now should be to enable them to find a device for keeping things as benign as possible. It is to be assumed that they do not want to have a floor fight.

Mr. McNamara asked who are "they." Several speakers agreed that Messrs. El-Naggar and Al-Hamad were the key persons. Mr. Nabulsi has had a moderating role in the whole affair.



Palestine Liberation Organization  
Washington, D.C. Office



منظمة التحرير الفلسطينية  
مكتب واشنطن

716/1/13

President  
World Bank, Monetary Fund  
Washington, D.C.

October 7, 1980

Dear Sir:

We strongly object to the attempts of some American employees at the Press Section of the World Bank Secretariat to prevent Palestinian spokesmen, officially registered at the annual meetings through the Arab League, from meeting and talking to the Press.

Both Mr. John Merriam and Mr. S. Callis in collaboration with American security agents prevented the Palestinian spokesmen from meeting Press representatives although they were officially registered through the League of Arab States. In addition, Palestinian spokesmen were prevented from using the facilities of the conference available to delegates and guests. This is a grave violation of the normal conduct and rights of all delegates and guests to conduct their businesses at the annual meetings. It is a violation of the right of guests to freely speak to Press representatives.

The World Bank and Monetary Fund are independent international agencies, open to all officially registered representatives. American employees of the Secretariat must respect this fact, and respect the principle of freedom of assembly and speech.

It was most disgraceful for American officials, that in front of representatives of all the international press, denied Palestinian officials their right to freedom of speech.

We urge you to take immediate action on this matter.

Sincerely,

Hatem Hussaini  
Director, Palestine Information Office

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United Nations  
Washington, D.C. Office

October 7, 1980

President  
World Bank, Monetary Fund  
Washington, D.C.

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We urge you to take immediate action on this matter.

Sincerely,

Hafeez Huseini  
Director, Palestine Information Office

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THE APPLICATION OF THE  
PALESTINE LIBERATION ORGANIZATION  
FOR OBSERVER STATUS

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OUTLINE OF LEGAL ISSUES  
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Memorandum

By

The Arab Executive Directors in the  
World Bank and International Monetary Fund

Contents

- I. Legal Issues Related to Section 5(b) of the By-Laws.
- II. Legal Issues Related to Section 13 of the By-Laws.
- III. The Interpretation of the By-Laws.

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September 28, 1980



I. LEGAL ISSUES RELATED TO  
SECTION 5(b) OF THE BY-LAWS

The Palestine Liberation Organization's application for observer status in the Bretton Woods Institutions has raised many legal issues which remain unsettled. Most of these issues are related to the interpretation of Section 5(b) and Section 13 of the By-Laws of the World Bank and the International Monetary Fund. The wording of Section 5(b) on the invitation of observers is plain enough. It reads:

"The Chairman of the Board of Governors, in consultation with the Executive Directors, may invite observers to attend any meeting of the Board of Governors."

For over 30 years since the birth of the Bretton Woods Institutions, the meaning of this provision was never called into question. Such a completely uneventful history was only matched by the great controversy related to it in the last three months. In a letter dated July 5, 1980 the Chairman of the 1980 Annual Meetings, H.E. Amir Jamal, exercising his authority under Section 5(b), took the decision to invite PLO as observer in 1980 Annual Meetings. It should be realized that Chairman Jamal's decision was only a phase in a long series of events. In particular, he had before him:

- (a) The Report of the Informal Working Party of Governors stating the case for and against the admission of PLO as observer in 1980 Annual Meetings.
- (b) A resolution unanimously adopted by the Group of Seventy Seven in Belgrade in September 1979 supporting the PLO application for observer status.



- (c) Consultations held pursuant to Section 5(b) in the summer of 1979 in which the majority of votes in the Executive Boards of the two Institutions was against inviting PLO as observer in the 1979 Annual Meetings.

Upon receipt of Chairman Jamal's letter of July 5, both the President of the World Bank and the Managing Director of the Fund notified him that they intend to hold consultations with the Executive Directors as required by Section 5(b) of the By-Laws. However, in the last week of July 1980 the Executive Boards of the two Institutions approved, by a majority of votes, a draft resolution for consideration by the Board of Governors. The operative part of the draft resolution reads as follows:

- (a) That the Executive Directors shall consider the exact scope of Section 5(b) and make such proposals for amendment as they believe necessary and that they shall report to the Board of Governors by March 1, 1981; and
- (b) That pending the outcome of action pursuant to paragraph 1 of this Resolution, attendance at the 1980 Annual Meeting or any meeting of the Board of Governors thereafter, shall be limited to those observers who were invited to the 1979 Annual Meetings.

The idea underlying the draft resolution was plainly to frustrate and overrule Chairman Jamal's decision of July 5 to add PLO to the list of observers in 1980 Annual Meetings.

This situation gave rise to a number of legal questions.



Question One

Was Chairman Jamal acting within the bounds of his authority in asking the Managements of the Bank and the Fund to add PLO to the list of observers before consultations with the Executive Directors in connection with the 1980 Annual Meetings?

In support of Chairman Jamal's decision, it should be pointed out that in this particular case his decision was not taken ab initio, but was preceded by the Report of the Informal Working Party of Governors, the resolution of the Group of 77 and consultations held with Executive Directors under Section 5(b) in connection with the 1979 Annual Meetings. Given these considerations, it is understandable that Chairman Jamal took his decision without further consultation with Executive Directors. He was fully aware of the negative outcome of last year's consultation. A repetition of the process would presumably have produced the same negative result, and, therefore, would not have added a new element in the situation.

*Consultation every year*

Question Two

In case the Chairman of the Annual Meetings takes a different view from the Executive Directors as to the advisability of having a certain organization, institution or country as observer, is it his view or that of the Executive Directors which shall prevail under Section 5(b) of the By-Laws?

In the course of the deliberations of the Informal Working Party of Governors, the Legal Counsel of both the Bank and the Fund took the position that "in consultation with" in Section 5(b) did not mean "in agreement with" and that "the ultimate authority to



invite observers has been placed in the Chairman." (The Report of the Informal Working Party of Governors, p. 5.)

Question Three

To what extent was the meeting and decision of the Executive Directors in the World Bank on July 25 and in the Fund on July 30 equivalent to "consultation" as envisaged in Section 5(b) of the By-Laws?

It is possible to argue that the meeting and decision of the Executive Board regarding the draft resolution on observers do constitute consultation in the sense of Section 5(b). By limiting the list of observers to those who were invited to the 1979 Annual Meetings, the Executive Directors have implicitly rejected the PLO application for observer status since PLO was not on the list of observers in 1979. Under this interpretation the President of the Bank and the Managing Director of the Fund should have issued the invitation to PLO for the following reasons:

- (a) Consultation in the sense of Section 5(b) was completed.
- (b) The result of consultation was conveyed to Chairman Jamal in a cable dated July 31, 1980 sent by the President of the Bank and the Managing Director of the Fund (Document SecM80-622 dated July 31, 1980) informing him of the draft resolution and quoting its full text.
- (c) Chairman Jamal continued to maintain his position as explicitly stated in his cable of August 5 to both the



President of the Bank and the Managing Director of the Fund. Chairman Jamal concludes his cable of August 5 by the statement that

"I therefore request under By-Law 5(b) that the PLO be added to the 1979 list of observers and invitations issued accordingly." (Document SecM80-616 dated August 6, 1980).

Instead of issuing the invitation to PLO and other observers as directed by Chairman Jamal, the President of the Bank and the Managing Director of the Fund cabled back to the Chairman on August 8, 1980:

"I have distributed to the Executive Directors for their information copies of your cable concerning invitations to observers received on August 5 stop Would it not be embarrassing to all parties if an invitation was issued now while voting on the resolution forwarded on July 31 to the Governors for a vote by mail is in progress stop." (Document SecM80-631 dated August 11, 1980)

It should be noted that this cable does not invoke the necessity of consultation with the Executive Directors as the reason for not issuing the invitation to PLO. There is an implicit admission that consultation was in fact completed as required by Section 5(b). An entirely different argument was advanced for not acting on the request of the Chairman of the Annual Meetings. According to this cable, the point is made that it may be politically embarrassing to all parties to issue the invitation to PLO while voting on the draft resolution is in progress.

#### Question Four

Given that consultation as required by Section 5(b) was completed and that the Chairman of the Annual Meetings persisted in his position that the invitation to PLO be issued, were the President of the Bank



and the Managing Director of the Fund acting in accordance with their responsibility as defined in the Articles of Agreement and the By-Laws in failing to issue the invitation to PLO as requested by the Chairman on the ground of a possible political embarrassment?

However, it is possible to take the position that the meeting and decision of the Executive Boards of the Bank and the Fund on July 25 and July 30 do not constitute consultation in the sense of Section 5(b) and that such consultation never in fact took place. This interpretation gives rise to another question.

#### Question Five

Given that the Chairman of the Annual Meetings declared his intention or decision to invite PLO to the Annual Meetings, is it permissible for the President of the Bank and the Managing Director of the Fund to nullify or frustrate the authority of the Chairman under Section 5(b) by simply declining to hold consultations?

As mentioned earlier, the draft resolution on observers proposes to limit observers in the 1980 Annual Meetings to those who were invited in the 1979 Annual Meetings. In the circumstances of the case such a limitation raises a question regarding the demarcation line between the power of the Chairman under Section 5(b) of the By-Laws and the power of the Board of Governors under the Articles of Agreement.

#### Question Six

In deciding to invite PLO to the 1980 Annual Meetings, the Chairman was acting within his legally constituted authority as laid down in Section 5(b) of the By-Laws, is it permissible to



frustrate the Chairman's authority by seeking a resolution from the Board of Governors excluding the PLO from the list of observers?

It is recognized, of course, that according to Article V, Section 2 of the Articles of Agreement "all the powers of the Bank shall be vested in the Board of Governors." It is also recognized that according to the preamble to the By-Laws:

"In the event of a conflict between anything in these By-Laws and any provision or requirement of the Articles of Agreement, the Articles of Agreement shall prevail."

However, it is submitted that these provisions refer to the hierarchy of different organs in the decision-making structure, and that they cannot be invoked by revoke a decision duly taken in accordance with the existent provisions. If this interpretation is correct, it follows that Chairman Jamal's decision to invite PLO pursuant to Section 5(b) cannot be revoked by a resolution from the Board of Governors limiting 1980 observers to those invited in 1979 unless and until Section 5(b) is amended by due process.

On September 19, 1980 the Boards of Governors of the Bank and the Fund adopted the draft resolution on observers in a vote without a meeting. Thus the Boards of Governors resolved that the observers in 1980 Annual Meetings shall be limited to those invited in 1979.

On September 20 Chairman Jamal sent a cable to the Bank and the Fund which reads as follows:

"I do not consider proper that invitation be issued to any observer for the 1980 Meeting if invitation is denied to PLO. I propose accordingly that no observers be invited. Presently, I am visiting Saudi Arabia. Regards." (Document SecM80-735, dated September 24, 1980).



These developments on September 19 and September 20 created a situation of conflicting injunctions:

- (a) The injunction of Chairman Jamal in his letter of July 5, 1980 and in his cable of August 5, 1980 that PLO be placed on the list of observers. This means that observers in the 1980 Annual Meetings shall be those invited in 1979 plus PLO.
- (b) The injunction of the Board of Governors in its resolution of September 19 that observers in 1980 shall be limited to those invited in 1979. This means that PLO is excluded from the list of observers in 1980 Annual Meetings.
- (c) The injunction of Chairman Jamal in his cable of September 20 that neither PLO nor other observers in 1979 shall be invited to the 1980 Annual Meetings.

#### Question Seven

Given Chairman Jamal's decision on July 5 to invite PLO along with other observers, the Board of Governors' resolution on September 19 that other observers, but not PLO, be invited and Chairman Jamal's decision on September 20 that neither PLO nor other observers be invited, which of the three conflicting injunctions should be given effect?

The resolution adopted by the Board of Governors on September 19 limiting observers in the 1980 Annual Meetings to those invited in 1979 has no purpose whatsoever except to exclude a single organization; namely, the Palestine Liberation Organization, from the list of observers.



Question Eight

Is it proper for the Executive Boards of the Bretton Woods Institutions to propose a resolution, and for the Boards of Governors to adopt it, with no purpose except to exclude PLO from the list of observers, thereby nullifying a decision taken by the Chairman in the exercise of his legally constituted authority under Section 5(b) of the By-Laws? Is this purpose such as to constitute abuse of power vested in the decision-making organs and, for this reason, invalidates the resolution adopted by the Boards of Governors on September 19, 1980?



## II. LEGAL ISSUES RELATED TO SECTION 13 OF THE BY-LAWS

As mentioned earlier, the draft resolution on observers was adopted by the Boards of Governors in a vote without meeting. The procedure for voting without meeting is set out in Section 13 of the Bank By-Laws, which reads as follows:

"Whenever, in the judgment of the Executive Directors, any action by the Bank must be taken by the Board of Governors which should not be postponed until the next regular meeting of the Board and does not warrant the calling of a special meeting of the Board, the Executive Directors shall present to each member by any rapid means of communication a motion embodying the proposed action with a request for a vote by its Governor. Votes shall be cast during such period as the Executive Directors may prescribe, provided that no Governor shall vote on any such motion until 7 days after despatch of the motion unless he is notified that the Executive Directors have waived this requirement. At the expiration of the period prescribed for voting, the Executive Directors shall record the results and the President shall notify all members. If the replies received do not include a majority of the Governors exercising two-thirds of the total voting power which are usually required for a quorum of the Board of Governors, the motion shall be considered lost." 1/

It may be recalled that the Executive Boards took the decision to propose the draft resolution on observers on July 25 in the Bank and July 30 in the Fund. According to the procedure prescribed in Section 13, the draft resolution was despatched on July 31, 1980 for a vote by the Governors without meeting during the period from August 8, 1980 to September 9, 1980.

On August 1, i.e. one week before the beginning of the voting period, the Executive Director representing the Arab countries in

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1/ The corresponding provisions in Section 13 of IMF By-Laws are substantively similar though spelled out in separate paragraphs.



World Bank sent a memorandum to Mr. McNamara and all the Executive Directors, which reads as follows:

"I have been instructed by my authorities to communicate to you and the Executive Directors the following statement: 'The Governors of Kuwait, The Kingdom of Saudi Arabia and the United Arab Emirates, as well as other Arab Governors of the World Bank, are greatly disturbed by the decision of the Executive Directors on July 25 concerning observers to Annual Meetings. It is their considered view that the draft resolution recommended to the Board of Governors for a vote without meeting represents a serious deviation from the proper consultation procedure as laid down in Section 5(b) of the By-Laws. In their view, the obvious intent of the draft resolution is to overrule the positive decision of His Excellency A.H. Jamal, Chairman of the 1980 Annual Meetings, and to exclude the Palestine Liberation Organization from the observership in 1980 Annual Meetings and thereafter. As such the draft resolution constitutes, according to them, an abuse of the authority vested in the decision-making organs of the Bretton Woods institutions. This action by the Executive Board, insofar as it circumvents the By-Laws, has no precedent in the history of the World Bank, and, if adopted by the Board of Governors, would compromise its credibility in the future. For these reasons the Arab Governors have decided to ignore it by not participating in voting. They will cast neither an affirmative, nor a negative, nor an abstention vote. They hope that Governors who share the same view will do likewise so that the necessary quorum will not be achieved.'"

In this memorandum the Arab Governors made it known to the Management of the Bank and all Executive Directors well before the beginning of the voting period that they intend to fight the draft resolution by not participating in voting so that the draft resolution will fail for lack of quorum. They also expressed the hope that Governors who share the same view with respect to the draft resolution will do likewise. The same position was taken by the Arab Executive Director in the Fund.

On September 5, 1980, i.e. four days before the expiry of the voting period, a memorandum was circulated by the Secretary of the



Bank enclosing a request from the U.S. Executive Director to extend the voting period from September 9 to September 23, 1980; later changed to September 19, 1980 (Document R80-272 dated September 5, 1980). The American Executive Director gave no reason for the extension request except to state that it was for further consultation. A similar request was made by the American Executive Director in the Fund. The real reason for the extension request was obviously the fact that the number of countries participating in voting were far short of the quorum requirement and that the draft resolution was about to be defeated for lack of quorum. On the request of the U.S. Executive Directors, the Bank and Fund Boards met on September 8 and September 9 and decided, by a majority of votes and in the face of strong objection by the Arab Executive Directors and some others, to extend the voting period to September 19, 1980.

#### Question Nine

Given the provisions of Section 13 of the By-Laws and the declared intention of the Arab Governors to fight the draft resolution on the basis of quorum requirement, was the decision of the Board to extend the voting period from September 9 to September 19, 1980 consistent with the provisions of Section 13 of the By-Laws?

If the extension of the voting period under these circumstances was inconsistent with Section 13 of the By-Laws, what is the impact of such an interpretation on the validity of the resolution adopted by the Board of Governors on September 19, 1980?



During the voting period some countries, including some Arab countries, participated by mistake in voting on the draft resolution. When they realized that what was expected of them was not to participate at all so that the draft resolution may fail for lack of quorum, they advised the Management of the Bank and the Fund, while the voting period was still running, that they wish to withdraw their votes. The Executive Boards of the World Bank and Fund met on September 17 and September 18 to consider the request of these countries. The Executive Boards decided by a majority of votes, against the opposition of the Arab Executive Directors, that while the voting period is still running, member countries are entitled to change their votes from positive to negative, or from negative to positive, or from either to abstention, or vice versa, but they are not allowed to withdraw their votes. In other words, once they are in, they cannot get out.

#### Question Ten

In the case of voting without meeting, is it consistent with the provisions of Section 13 that once a country casts a vote it cannot withdraw it during the voting period while it can change its vote from positive to negative, from negative to positive, from either to abstention, and vice versa?

If it is ruled that countries are entitled during the voting period to change their votes from one column to another as well as to withdraw their votes altogether, what impact such an interpretation would have on the validity of the resolution adopted by the Boards of Governors on September 19, 1980 in case withdrawal of a certain number of countries would bring down the participating countries to a level below quorum?



### III. THE INTERPRETATION OF THE BY-LAWS

Questions related to the interpretation of the Articles of Agreement are provided for in Article IX of the Articles of Agreement of the World Bank. Paragraphs (a) and (b) of that Article read as follows:

"(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision .....

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

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Fund?

The corresponding provisions in IMF are set out in Article XXIX which, in addition to the provisions contained in Article IX of the Bank's Articles of Agreement, calls for setting up a Committee on Interpretation:

"Any question referred to the Board of Governors shall be considered by a Committee on Interpretation of the Board of Governors. Each Committee member shall have one vote. The Board of Governors shall establish the membership, procedures, and voting majorities of the Committee. A decision of the Committee shall be the decision of the Board of Governors unless the Board of Governors, by an eighty-five percent majority of the total voting power, decides otherwise. Pending the result of the reference to the Board of Governors the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Board."

Two observations would seem to be in order:

(1) Article IX of the Bank's Articles of Agreement and Article XXIX of the Fund's Articles of Agreement deal with the interpretation of the Articles of Agreement, not that of the By-Laws. It is laid down that "In any case where the Executive Directors have given a decision under (a) above,



any member may require that the question be referred to the Board of Governors, whose decision shall be final." There is little doubt, how-

*it's not clear  
whether the  
Executive Board  
can  
refer the  
question to  
the Board of  
Governors  
or not*  
ever, that questions of interpretation of the By-Laws are subject to the same procedure. Thus, in cases where the decision of the Executive Board gives rise to differences about the proper interpretation of the By-Laws any member may require that the question be referred to the Board of Governors whose decision is final.

*with regard  
to interpretation -*  
(2) Reference to the Board of Governors of interpretation questions is made upon the request of any member countries. It requires neither a majority of member countries nor a majority of votes.

*in the  
context of  
the  
Bank's  
Articles of  
Agreement*  
Accordingly, the Arab Governors request that the legal questions raised in this memorandum be referred to the Board of Governors for consideration by a Committee on Interpretation pursuant to Article XXIX of IMF Articles of Agreement and Article IX of the Bank's Articles of Agreement.

It is clear that the legal questions raised in this memorandum have a significance which goes far beyond the specific issue of PLO observance in the Bretton Woods Institutions. What is at issue is simply the principle of legality in the management of the Bank and the Fund. The history of the present case clearly shows that the Executive Boards have been largely influenced in their interpretational decisions by political rather than legal considerations. Consequently, they gave political interpretations of the By-Laws, which could have a damaging effect on the integrity of the Bretton Woods Institutions. It is hoped that in setting up the Committee on Interpretation every safeguard will be taken to ensure the objectivity of interpretation.



# The World Bank

1818 H Street, N.W.  
Washington, D.C. 20433, U.S.A.



With the compliments of  
**Secretary's Department**

September 29, 1980

Mr. Koch-Weser:

Attached for information,

T. T. Thahane

*M. PLO file*



716/1/11

September 27, 1980

Informal Notes of Meeting Between Mr. McNamara  
and Chairman Jamal - Saturday, September 27, 1980

1. Mr. McNamara began by pointing out that the Chairman's decision not to invite observers was good and balanced. He indicated that the situation has been difficult and the process of compromise has been made more difficult by the disclosure of the results of the voting. The situation is that the resolution has been adopted and the parties appear less willing to compromise.
2. Mr. Jamal wanted to know what Mr. McNamara's views were with respect to the treatment of the subject. His one objective was not to have the meetings disrupted by this particular issue.
3. Mr. McNamara pointed out that, although his ability to pursue certain things has been handicapped by being identified, unfortunately, with the West, he had only one objective, namely, to expand the lending capacity of the World Bank in order to help the developing countries. He went on to outline the elements of the problem which may have a bearing on the PLO question. There was a need to increase the lending because of higher than expected inflation rates, the entry of China which has increased the population served by the Bank by 40 percent, the need for more structural adjustment lending, and for financing energy investments. The OECD countries are facing difficult situations and cannot be expected to provide easily the additional amounts that may be needed. Politically, they would have to show to their Parliaments, even to get marginally more funds, that the OPEC countries were also supportive. Thus, if the lending program is to be increased by say, even 50 percent, then political support of the Arabs is essential, and it is from this standpoint that it would be important that all Governors focus on the need to build political support for the institution by all concerned. The treatment of the subject in a way that will not cause disruption will be helpful, and the decision to keep out observers has helped.
4. Mr. McNamara went on to say that perhaps after the meetings, because we now have the review period, there would still be time to discuss and explore various possibilities of a compromise. There is certainly not much to be gained by confrontation through public discussion.
5. Mr. Jamal indicated that he wanted, at this stage, to establish the facts and consult with all the parties concerned, certainly the U.S., Germany, Saudi Arabia, and Kuwait, in order to emphasize that this is a situation in which one cannot have winners and losers. More specifically, he has already pointed out to the Saudis in his meeting with the Minister of Finance of Saudi Arabia, that they would have to handle this matter in a way that would not alienate developing countries, or in a manner in which the developing countries would not find themselves falling between two stools.



6. Lastly, he would keep in touch and call on the Secretaries and the lawyers if the need arises. He wondered whether the present conflict between Iran and Iraq has not introduced a new awareness about the precarious nature of the region and whether this new situation may not be causing some re-examination of positions.

7. Mr. McNamara agreed that that conflict indicates clearly the explosiyness of the region and, hence, the need for the oil importing countries to develop their energy resources. This was in the interest of the OECD countries as well as in the interest of OPEC, which has been stressing this point for a number of years.