"Special drawing rights"

The debate on the international monetary system in the 1960s led to the conviction that, sooner or later, it would be necessary, for a variety of reasons, to have the means to augment the liquidity that would be unconditionally and automatically available to members of the Fund. Members could not rely on the traditional reserve assets of gold and reserve currencies, and they should not rely on the reserve currencies, to provide sufficient liquidity of this kind to ensure a satisfactory expansion of international economic activity.

Once this conviction was widely held among official experts, they came to focus their attention on two main techniques by which the liquidity problem could be solved. One was the distribution of "units" or "reserve units" and the other was the distribution of "drawing rights." The experts recognized that the reactions of monetary authorities and the public might differ toward the two instruments, but they also realized that, with proper care in the fashioning of them, the choice of one instead of the other need not endanger the enterprise. With either instrument monetary authorities would be able to obtain convertible currencies when these were needed for the support of their own currency. A country could have access to these resources without having to demonstrate to some authority that its policies were sound or that it satisfied other criteria of a subjective character. In short, either instrument could be made to serve the fundamental objective of ensuring that resources would be available to a country unconditionally and automatically.

It would have been possible to transfer units through the Fund or through some other mechanism, but this option would not have existed with drawing rights. Transfer of drawing rights would have been possible only through the Fund, and this possibility was one of the virtues that recommended them "to those members that stress the desirability of building on the familiar drawing techniques of the Fund." The "familiar drawing techniques" were the transactions

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5 Ibid., par. 53. "... still/Doth the old instinct bring back the old names"—COLERIDGE, The Piccolomini, Act II, Scene IV (translated from the German of Schiller).
in which the Fund sells to a member in balance of payments difficulties the currencies of other members in return for the member's own currency. For these transactions the Fund has developed tranche policies under which it applies certain standards when examining a member's request to purchase the currencies of other members. The standards are graduated according to the cumulative use of the Fund's resources that would be outstanding if the request were fulfilled. For an amount that would not exceed a member's gold tranche, the standard was the most lenient of all, because the gold tranche represented a member's real economic contribution to the Fund. It was equal to the amount by which the member's gold subscription and the net use made by the Fund of its currency subscription exceeded any net use by the member of the currencies of other members purchased from the Fund. For a request to purchase an amount not exceeding the gold tranche, the Fund gave "the overwhelming benefit of any doubt." Legal reasons prevented the Fund at the time of the discussions on liquidity from giving complete assurance to members eligible to use the Fund's resources that their requests for gold tranche purchases would be honored, but it went as far as was possible in giving virtual assurance. The amendment of the Articles has now transformed virtual assurance into complete assurance.

What the advocates of drawing rights had in mind as the solution of the liquidity problem was that requests to purchase exchange from the Fund under the new facility would receive treatment of the kind that was being given to requests within the gold tranche. At

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6 Article V, Section 3. (References to particular Articles are to provisions of the Articles of Agreement of the International Monetary Fund.)
7 Selected Decisions, pp. 21–22 (footnote).
8 Ibid.; see also Annual Report, 1959, p. 22.
9 After the second decision on the compensatory financing of export fluctuations, the net use of the currencies of other members did not include purchases under that decision that were still outstanding, i.e., the gold tranche was calculated by assuming, in effect, that these purchases had not been made (Establishment of a Facility Based on Special Drawing Rights in the International Monetary Fund and Modifications in the Rules and Practices of the Fund: A Report by the Executive Directors to the Board of Governors Proposing Amendment of the Articles of Agreement (Washington, April 1968; hereinafter cited as Report on Amendment of the Articles), pp. 24–25; Selected Decisions, p. 50).
10 Article V, Section 3 (d); Article XIX (j); Joseph Gold, The Reform of the Fund, International Monetary Fund, Pamphlet Series No. 12 (Washington, 1969), pp. 7–26.
an early stage, these drawing rights would have been granted without amendment of the Articles, and this was one of the advantages claimed for them. \(^{11}\) At a later stage, amendment was contemplated for various reasons, and then the assurance that the new drawing rights could be exercised without challenge would have been made complete by an appropriate amendment. Participants in the scheme would have committed themselves to lend to the Fund in order to augment its holdings of currency for the specific purpose of enabling it to finance purchases when participants decided to exercise their new drawing rights. \(^{12}\)

The transactions of the Fund that were the model for schemes based on drawing rights are transactions of purchase and sale. A member buys the currencies of other members from the Fund and pays for the purchase with its own currency. For various reasons the transaction is not a loan, even though under the Fund's policies the transaction has to be reversed within three to five years at the outside. \(^{13}\) For example, it is not a loan because the purchasing member pays for the purchase. Moreover, the Fund may use in other operations and transactions the currency paid by the member, and the member's purchase will be deemed to be reversed to the extent that the Fund does make use of the currency. Both before and after amendment, the Articles speak only of purchase and repurchase in relation to these transactions and the reversal of them. There is no trace anywhere in the Articles of the language of loans or credits in connection with the exchange transactions of members with the Fund.

It has become common in the practice of the Fund, however, to refer to the tranches beyond the gold tranche as "credit tranches." This usage reflects the judgment that transactions in these tranches have an effect comparable to the receipt of a loan by the purchasing member. Amounts purchased in the credit tranches are beyond a member's real economic contribution to the Fund, and it is unlikely that the Fund will sell the member's currency while it is still in difficulties. It has become common practice also to refer to all

\(^{13}\) Selected Decisions, p. 23.
purchases from the Fund, whether in the gold tranche or in the credit tranches, as "drawings." Therefore, a member's ability to make purchases from the Fund began to be called "drawing rights" at an early date in the history of the Fund. These terms also are strangers to the Articles, but they are now firmly established within the gate.

There has never been a formal decision of the Fund to adopt this terminology, and the reasons for its widespread use in the practice of the Fund cannot be ascertained. It may have been thought that the public would not be comfortable with the idea of the purchase and sale of currency. Another reason may have been the view that the word "drawings" gave a better impression of the economic significance of an exchange transaction with the Fund: one draws against a credit. The word is used, however, for all exchange transactions, whether they occur in the gold tranche or in the credit tranches. It is also possible that the word became established without any conscious sense of credit but simply because it vigorously conveys the idea of a draft on the Fund's pool of resources.

The terms "drawings" and "drawing rights" were not included in any texts submitted at the Bretton Woods Conference, and it is doubtful that "drawing rights" would have been received benignly by all negotiators. That term might have conveyed an impression of assured access to the Fund's resources, and although some negotiators advocated assured access, others resisted it. This difference of opinion was resolved by the Fund itself, which decided that it could challenge any aspect of the representation a member must make when requesting a purchase that the currency it seeks to purchase "is presently needed for making in that currency payments which are consistent with the provisions of the Agreement." In affirming its power to challenge these representations, the Fund laid the foundation for the conditional use of its resources, although it has been seen that the Fund decided later to give members the virtual assurance that it would not challenge requests to make purchases in the gold tranche.

15 Article V, Section 3 (a) (i); Selected Decisions, pp. 19–20.
As the negotiations on liquidity wore on, the opposition of some negotiators to the idea of "units" led to concentration on a plan that would preserve those characteristics of units which were regarded as essential but to which it would be harmless to attach the term "drawing rights" if that would promote a broader acceptance of the plan.\(^{16}\) In the Articles as amended the word "unit" is used not as the name of the new instrument of liquidity but in the definition of the "unit of value" of special drawing rights.\(^{17}\) The original proposal based on drawing rights, however, differed radically from the plan on which agreement was reached and to which the term "special drawing rights" was applied. The draft of a plan based on units, prepared in the Fund in February 1967, questioned the earlier supposition that a member would deposit with the supervising agency the equivalent in the member's currency of any units that were created and credited to its account. The draft pointed out that these currencies would serve no purpose except on the withdrawal of a member from the plan or in the liquidation of it. Therefore, if the plan made appropriate provision for these events, it could dispense with the deposit of currencies. With the abandonment of an assumption that had been associated with earlier proposals on drawing rights, it was possible to adapt this novel idea to a plan based on special drawing rights. It had been assumed in these earlier proposals that the Fund would hold common resources for both the original transactions of the Fund and for the new drawing rights, even if its resources might need to be augmented by special borrowing from members. At a later stage there emerged a general preference for segregated resources, and it was then possible to reach a third stage at which the idea was accepted that the Fund need not hold any resources at all in connection with the new drawing rights.

The word "drawing" was an allusion to the acquisition of currency by a participant, with an undertone of the grant of credit for any

\(^{16}\) "... (Sociate) let there be/Betwixt us two no more Logomachie"—HERRICK, To His Friend to Avoid Contention of Words.

\(^{17}\) Article XXI, Section 2. This has produced a certain awkwardness in references to amounts of special drawing rights, but nothing prevents a reference to a certain number of units of them.
ear that wished to detect it, but it is the participant designated by the Fund that is drawn on and not the Fund itself. The customary reference to drawing rights "in the Fund" eliminated any embarrassment that might have existed had the usage been drawing rights "on the Fund," although in the amendment it was unnecessary to employ either phrase. The word "special" was meant to give some impression of the novelty of the instrument, but also to distinguish the new drawing rights from the old. As a result, "special drawing rights" has become a technical term in the Articles, whereas its progenitor, the term "drawing rights," continues to be an informal expression.

There remains the word "right." It is well known that the word is a pantechnicon of legal benefits or advantages. It "is used generically and indiscriminately to denote any sort of legal advantage, whether claim, privilege, power, or immunity." The word was adopted because it was commonplace and not because analysis led to the conviction that it was appropriate.

The main components of what is most likely to be regarded as the "right" in special drawing rights entitle a participant wishing to transfer its special drawing rights because it has a need to use reserves (1) to have the Fund, without challenging the participant's need, designate another participant to receive special drawing rights, (2) to have the designated participant provide currency convertible in fact in return for the special drawing rights, and (3) to have the currency convertible in fact that the transferee provides converted by the issuer into the currency convertible in fact that the transferor wants if that currency is not the one provided

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19 Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (New Haven, 1964), p. 71. In an essay first published in 1913 (*Yale Law Journal* 16–59), Hohfeld arranged fundamental legal conceptions into "jural opposites" and "jural correlatives." It is sufficient to state the correlatives, i.e., those conceptions that are related in the sense that if A has a particular benefit, B has a corresponding burden:

| right (claim) | privilege | power | immunity |
| duty | no-right | liability | disability |

21 Article XXV, Section 4.
by the transferee. In the abnormal circumstances of the termination of participation or the liquidation of the Special Drawing Account, the Fund is bound to accept special drawing rights from a participant in satisfaction of the obligations that it must discharge in the settlements on these occasions as a result of the allocation of special drawing rights to it. The Fund is also bound to redeem further special drawing rights held by the participant with resources provided by other participants. In other and more normal circumstances, the Fund must accept special drawing rights from participants in discharge of certain specified forms of obligation to the Fund.

When tested by Hohfeld's classic analysis of legal conceptions, "special drawing rights" appear to be a combination of benefits for a participant and correlative burdens for other participants and the Fund that would be classified in more than one way. For example, each participant has a "power" to transfer its special drawing rights to designated participants, to which the correlative is the "liability" of all other participants to be designated as transferees. A participant has a "right" or "claim" against the Fund entitling the participant to have the Fund designate a transferee, and the Fund has a "duty" to designate, in order to ensure that the participant is able to use its special drawing rights. Once the Fund has designated a transferee, the transferor has a "right" or "claim" against the transferee to currency convertible in fact, and the transferee has a "duty" to provide it. In view of the complex legal incidents of special drawing rights, it is not particularly revealing to say, for example, that special drawing rights are like gold because gold is not the "obligation" of anyone, or to say that they are unlike currency because currency is the "obligation" of the issuer. No simple formulation, whether drafted affirmatively or negatively, can give an instantaneous impression of the legal characteristics of special drawing rights or of the

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22 Article XXXII (b).
23 Article XXX and Schedule H.
24 Article XXXI and Schedule I.
25 Article XXV, Section 7 (b). The operations and transactions referred to do not exhaust the list of those in which special drawing rights can be used.
ways in which they resemble or differ from gold or currency.

Awareness of the difficulty of capturing the legal characteristics of special drawing rights in a single word or phrase, and of the possibility of misunderstanding that might result from the use of language familiar in other legal contexts, led the drafters to avoid any reference in the Articles to special drawing rights as "obligations issued by the Fund" or "obligations issued by the Fund which shall be discharged in accordance with the provisions of this Agreement." Some were tempted to use language of this kind in order to emphasize that special drawing rights were governed by a multilateral treaty and that an international institution had regulatory powers in connection with them under that treaty. The temptation was not very strong for those who disliked the flavor of currency, and therefore of a new international money, in the word "issued." Others feared that such language, however guarded, might create the misapprehension that obligations issued by the Fund meant obligations of the Fund, or that special drawing rights resembled the marketable paper issued by banks. The desideratum of emphasis on the multilateral character of special drawing rights, as distinguished from the bilateral character of individual transactions involving them, was satisfied by asserting the duty of an international organization to designate transferees and in this way guarantee that transferors would be able to use their holdings in bilateral transactions.28

There were partisans of more dramatic terminology than "special drawing rights." One suggestion was that the new instrument should be called a "drawing unit reserve asset," which would have yielded the imaginative acronym "dura." This recalls the advocacy by Keynes, White, and others of an international currency or unit of account to be called "grammor," "monad," "bancor," or "unitas." 29 Even modest proposals such as "reserve drawing rights," "special reserve drawing rights," or "special drawing rights for reserve

28 Article XXV, Section 5 (a). See also Gold, Special Drawing Rights (cited fn. 20), pp. 30–31 and 60–66.
purposes” did not succeed. Those who urged the use of “reserve” intended to offset the effect of “drawing,” but because the objection to “reserve” could not be overcome, it had to be jettisoned as part of the compromise that is discussed below.

“Supplement to Existing Reserve Assets”

Most of the provisions dealing with special drawing rights have been added to the Articles in what amounts, in effect, to a separate chapter beginning with these words:

To meet the need, as and when it arises, for a supplement to existing reserve assets, the Fund is authorized to allocate special drawing rights to members that are participants in the Special Drawing Account.  

There is similar language in the first subsection of a provision that deals with the principles and considerations governing the allocation and cancellation of special drawing rights:

In all its decisions with respect to the allocation and cancellation of special drawing rights the Fund shall seek to meet the long-term global need, as and when it arises, to supplement existing reserve assets in such manner as will promote the attainment of its purposes and will avoid economic stagnation and deflation as well as excess demand and inflation in the world.

In the language of these provisions, and particularly in the noun and verb “supplement,” there is great resonance.

Professor Empson identified one form of ambiguity as follows:

An ambiguity of the third type, considered as a verbal matter, occurs when two ideas, which are connected only by being both relevant in the context, can be given in one word simultaneously.

No fewer than four ideas are commingled in the language in which the word “supplement” is the central element. These four ideas may be summarized as follows:

(a) The statement that special drawing rights are a supplement to reserve assets is not equivalent to the statement that special drawing rights themselves are reserve assets.

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30 Article XXI, Section 1.
31 Article XXIV, Section 1 (a).
32 “... I don't have to write more than I have to, ... each word resonates as much as it can” (Robert Creeley in an interview, The Guardian, July 21, 1970).