

agreement. It will be recalled that the Fund accepts no responsibility or liability, whether as guarantor or in any other capacity, in connection with the agreement.

The Fund is, of course, a third party in relation to any "implementing agreement" that is entered into between Switzerland and a participant in the General Arrangements. The Fund has no responsibility or liability in connection with the performance of an implementing agreement. However, without prejudice to this, it is stated in the agreement between Switzerland and the Fund that, at the request of a party to an implementing agreement, the Fund may make any determination or use its good offices to facilitate the operation of the implementing agreement.

10. Objective International Personality and Non-Members

Article IX, Section 1, provides that to enable the Fund to fulfill its functions the status, privileges and immunities set forth in Article IX "shall be accorded to the Fund in the territories of each member." Section 2 provides that the Fund "shall possess full juridical personality" and, in particular, the capacity to contract, acquire, and dispose of property, and institute legal proceedings. Notwithstanding the reference to the territories of members, it has never been doubted that the Fund has juridical personality and the capacity that flows from it in relations with non-members. Indeed, there is explicit evidence in the Articles that the reference to the territories of members in Article IX, Section 1, does not circumscribe the personality and capacity of the Fund. Under Article X, the Fund may make arrangements with other international organizations, and it has already been seen that under Article VII, Section 2, the Fund may borrow from sources "either within or outside the territories" of a member. Even these express provisions, however, do not exhaust the personality and capacity of the Fund. It is established in international law now that an international organization has an objective personality which goes beyond the express provisions of its charter. In its Advisory Opinion of April 11, 1949 (*Reparation for Injuries*

Suffered in the Service of the United Nations),⁵⁴ the International Court of Justice dealt, *inter alia*, with the question whether the United Nations had the capacity to bring international claims against a non-member state for injuries suffered by agents of the United Nations in the performance of their duties in circumstances involving the responsibility of the state for those injuries. The Charter of the United Nations is silent on this subject, and it contains language similar to Article IX, Section 1, of the Fund's Articles.⁵⁵ The Court declared that "fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims."⁵⁶ The reference to member territory in Article IX, Section 1, must be taken to deal with the status of the Fund under the municipal law of members and not with the position under international law.⁵⁷

The agreement between the Fund and Switzerland on the association of Switzerland with the General Arrangements to Borrow is an example of the Fund's capacity to enter into an agreement with a non-member in furtherance of the purposes of the Fund which derives from the objective international personality of the Fund. This is not the only agreement of the Fund with non-members. The Fund has made a number of agreements with non-members for technical assistance to them. Most of the agreements have been with countries contemplating membership, but some have preceded applications for membership. Moreover, the assistance dealt with the exchange system or monetary policy of the country and not with technical issues of membership. The

⁵⁴ *ICJ Reports* 1949, pp. 174-219.

⁵⁵ "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes" (Article 105(1)).

⁵⁶ *ICJ Reports* 1949, p. 185. For a full study, see Seyersted, *op. cit.*

⁵⁷ Cf. Article IX, Section 10: "*Application of Article.*—Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken."

agreements have been informal in character and have covered the nature of the assistance to be rendered and the sharing of the cost. They have not dealt with the privileges and immunities of the Fund personnel giving the assistance, presumably on the assumption that these would be accorded where appropriate.

The Fund has been willing to provide certain non-members with another service. It has established a service under which it seeks to match intending buyers and sellers of gold with a greater economy than might be available to them outside this service. Each party pays 1/32 of one per cent to the Fund on a completed transaction. The service was originally available only to members but was extended to transactions between a member on one side and a member, a specified non-member, or a specified international organization on the other side. It has been further extended to transactions between a member or a specified international organization on one side and a member, a specified international organization, or a specified non-member on the other side. The service has not been extended so as to cover transactions between non-members. The service is made available on the understanding that the Fund does not become a party to any contract of purchase or sale and does not accept any liability or obligation in connection with any transaction. The specified non-members have been Argentina, Ireland, New Zealand, Portugal, Saudi Arabia, Spain, and Switzerland, all of which, with the exception of Switzerland, have since become members.

The purpose of the service was, of course, to create a facility that would benefit members, although this purpose was broadened in the interest of cooperation with international organizations having responsibilities in fields related to the Fund's. The inclusion of non-members in the service was intended to increase its usefulness to members (or the specified international organizations) by finding more partners for gold transactions. The criterion of benefit to members explains a number of the actions of the Fund in relation to non-members. For example, the attention given to the role of non-members in the Fund's statement on premium gold transactions was intended to contribute to the stability of member currencies. Again, the agreement between the Fund and Switzer-

land for association with the General Arrangements to Borrow was for the benefit of the participants in those Arrangements. Of course, benefit to members does not preclude, and indeed may necessarily include, some benefit to non-members, but it is the former which justifies the latter.

The enjoyment of privileges and immunities is one feature of the recognition of the objective international personality of international organizations. The question of privileges and immunities in non-member territory has arisen in connection with Fund personnel in Geneva in the course of their official duties. It has been agreed that a special agreement between the Fund and the Swiss authorities could be dispensed with and that the Decree of the Swiss Federal Council of July 11, 1947 would apply to Fund personnel. Under that Decree, officials of the Specialized Agencies of the United Nations on official missions in Switzerland enjoy the same privileges and immunities that officials of the European Office of the United Nations enjoy under the agreement of April 19, 1946⁵⁸ between the United Nations and the Swiss Federal Council.

Summary

The experience of the International Monetary Fund in relation to non-member states illustrates the misleading character of any principle, however formulated, which suggests that states cannot be affected, to their advantage or disadvantage, by a treaty to which they are not parties.

Article XI, Section 1, is a key provision. It does not seek to impose direct obligations on non-members, but it binds members to avoid relations with non-members that would be contrary to the provisions or purposes of the Articles. There are obscurities in the language of the provision, but it is clear that it was intended to have a broad effect in controlling the conduct of non-members through members. The experience of the Fund in connection with premium gold transactions shows that the Fund may make recom-

⁵⁸ Entered into force on July 1, 1946. *United Nations Treaty Series*, Vol. 1, p. 163.