

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.

mendations to members in connection with their relations with non-members under the more general language of Article IV, Section 4(a), without reference to Article XI, Section 1. Juridically, perhaps the most interesting attempt to affect the conduct of non-members has been the obligation imposed on them as contracting parties to GATT to enter into a "special exchange agreement." These agreements have bound the signatory states to obligations that are closely parallel to the obligations in the code of conduct binding on members of the Fund under the Fund's Articles. In addition, although the obligations of a signatory of a special exchange agreement are owed to the CONTRACTING PARTIES to GATT, the Fund has had an important role in connection with them. This role has included authority to determine whether actions in the exchange field are in accordance with the terms of the agreement. Moreover, provision has been made for direct contact between the signatory and the Fund, and for the signatory to act on the Fund's finding in certain circumstances pending later consideration by the CONTRACTING PARTIES. There are no special exchange agreements now in effect, but where the CONTRACTING PARTIES have exempted non-members of the Fund from the duty to sign a special exchange agreement, they have done so on conditions that have been drafted in various ways but have stipulated, in effect, that the intent of GATT shall not be frustrated by actions in the exchange field and have thus required observance of the principles of the code of conduct in the Fund's Articles.

Article XI, Section 2, is the leading expression of the classical principle that the benefits of a treaty are not accorded to third parties. The provision declares that nothing in the Articles affects the right of a member to impose restrictions on exchange transactions with non-members or their residents. However, this freedom cannot be carried to the point where the Fund finds that restrictions prejudice the interests of members and are contrary to the purposes of the Fund. The Fund has made a finding that restrictions by Fund members against non-members that sign a special exchange agreement under GATT would be prejudicial to the interests of members and contrary to the purposes of the Fund.

As a result, these non-members enjoy certain of the benefits of the Articles as if they were members.

There is judicial authority in support of the proposition that non-members are not entitled to the benefit of Article VIII, Section 2(b), under which certain exchange contracts that offend a member's exchange controls are unenforceable, even though they may have been members when the contracts were entered into.

The Articles can have effects on non-members because of the Fund's authority to enter into agreements with them. A leading example of this is the agreement of June 11, 1964 between the Fund and Switzerland, which is of further interest because it appears to be a *stipulation pour autrui*, with participants in the General Arrangements to Borrow as the third party beneficiaries. There have been other effects on non-members resulting from other exercises of the objective international personality and capacity of the Fund.