

holders to agree on the transfer of SDRs in the direct settlement of obligations.²¹¹ Under the second amendment of the Articles, SDRs may be held by participants and the Fund, and by such nonmember states, nonparticipating members, institutions that perform functions of a central bank for more than one member, and other official entities as may be prescribed by the Fund. The Fund also determines the terms and conditions on which a prescribed holder may accept SDRs and engage in operations and transactions in them.²¹²

Conclusions

Floating Currencies

The breakdown of the par value system of the original Articles of the Fund and the failure of the Fund's efforts to substitute a comparable system based on central rates are producing widespread effects in international and domestic law. Some of the consequences have been discussed in this pamphlet. The drafters of new legislation must take account of the existing situation, even if the legislation is not related to the Fund. The courts are called upon to interpret contracts that refer to par values in circumstances in which they will continue to exist according to the law of the Fund until the second amendment of the Articles becomes effective but in which they are irrelevant to actual exchange rates. Unsettled monetary conditions have contributed to the spread of "hardship clauses" in contracts. This phenomenon is seen as one that blurs the distinction between the formation and the execution of a contract and that modifies the principle that a contract establishes immutable rights and obligations between the parties. The contract establishes a relationship that produces adaptations of the contractual terms.

The Fund's practice under stand-by arrangements is a similar phenomenon on the international plane, even though these arrangements are not intended to be contractual.

The floating of sterling has been an impetus to the reversal of the ancient rule that English courts can give monetary judgments only in sterling. Floating has also influenced the choice of the exchange rate on the day when payment is actually made, and not when it should have

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been made or the date of the judgment, for converting the currency awarded into sterling. The new practice is spreading far beyond the case in which the reversal was decreed. The depreciation of sterling is discouraging the denomination of contracts in sterling when they involve business with residents of the United Kingdom. The courts of some countries had already followed practices similar to the new British principle. It is not yet apparent what influence the latter principle will have on the courts of countries that so far have not applied it.

The provisions on exchange arrangements of the second amendment of the Articles will not offer the assurance of stability of exchange rates that the drafters of treaties, statutes, and contracts had in the past. Even if the operation of the new provisions achieves greater stability in general than under the par value system, members will have the unilateral right to change their exchange arrangements. This fact alone may affect not only the drafting of legal instruments but also the development of international and national monetary law.

Special Drawing Rights (SDRs)

The only allocations of SDRs so far, totaling approximately 9.5 billion, occurred during the first basic period of three years that began on January 1, 1970. The three most important developments in connection with the SDR since that time are the adoption of the "basket" valuation of the SDR (effective July 1, 1974), the modifications in the characteristics and possible uses of the SDR included in the proposed second amendment of the Articles, and the increasing use of the SDR as a unit of account in legal instruments. This last development is the result of the breakdown of the par value system and the *de facto* disappearance of an internationally recognized official price for gold, which will be followed by its disappearance *de jure* as a result of the second amendment of the Articles. The SDR is being substituted for gold as a unit of account in international agreements in which gold appears or probably would have appeared but for the changes that are occurring in the international monetary system.

The attitudes of countries in negotiations on the adoption of a unit of account for the purposes of a treaty are influenced in favor of the SDR by a broad range of considerations. They include membership of the negotiating countries in the Fund, adoption of the SDR as the unit of

account of the central organization of the international monetary system, the ease with which the SDR can be adopted by interpretation or administrative decision, the adoption of the SDR under treaties that deal with a similar subject matter, the desirability of a unit of account that will ensure equal value wherever a recovery of damages pursuant to the treaty is sought and whatever the currency in which damages are awarded, the publication by the Fund of exchange rates in terms of the SDR and the difficulty or cost of establishing a substitute procedure, and the absence of financial obligations for the countries under the treaty.

Doubt about adoption of the SDR as a unit of account, or opposition to it, has been based on such considerations as nonmembership in the Fund of a substantial number of the negotiating countries, the difficulty of amending the treaty, although this consideration applies to the adoption of any new unit of account, the possibility of further changes in the international monetary system, the assumed "interim" character of the basket method of valuing the SDR, the frequency of adjustments or settlements in connection with financial obligations under the treaty that would result from adoption of the SDR as the unit of account, the possibility that the SDR might decline in value against certain currencies, uncertainty that the industry affected by the unit of account will concur in adoption of the SDR, the inclusion in the basket method of valuation of the SDR of many currencies issued by countries that are not contracting parties to the treaty, and the need to adopt a second unit of account to apply to contracting parties that are nonmembers of the Fund.

In this pamphlet, treaties for which it has been agreed that the SDR shall be the unit of account, or for which the SDR is still being considered, or for which another unit based on or influenced by the SDR has been adopted, have been assembled into five classes: (1) international transportation by air and sea; (2) international transportation by rail; (3) international telecommunication and postal services; (4) international financial operations; (5) products liability.

The SDR as a unit of account is considered a legal or political problem in relation to the currencies of nonmembers of the Fund. The so-called Montreal solution, i.e., the solution adopted for the purposes of the four Montreal Protocols relating to transportation by air, has been influential in other negotiations. The SDR is the unit of account for valuing the currencies of both members and nonmembers of the Fund, but the latter are allowed to determine how the calculation shall be made. If a

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nonmember's law does not permit application of the SDR, it may declare that the limits of liability under its law will be based on the Poincaré franc. This solution has its critics, who complain that the existence of two units of account frustrates basic objectives of having a unit of account.

The treaties discussed in Pamphlet No. 19 and in this pamphlet for which the SDR (or a multiple or fraction of it) has been adopted or is being considered as a unit of account for certain purposes are listed below. The letter A or C indicates, wherever possible, whether the SDR has been adopted or is being considered. In those instances in which adoption of the SDR as a unit of account is being considered, the degree of support for this solution differs from case to case. It should not be assumed that all the treaties are already in effect. The letter F indicates that the SDR is the "flexible" SDR, i.e., the SDR according to the method of valuation that might be adopted by the Fund from time to time. The letter V indicates that authority exists under the treaty to depart from the SDR or to modify the Fund's method of valuing it for the purposes of the treaty, or that, although the treaty has not yet been agreed, a preference has been expressed for this authority. The letter Z indicates that the Fund's method of valuation of the SDR at a particular date will be applied notwithstanding changes by the Fund in the method of valuation.

(1) *International transportation by air or sea*

Four Montreal Protocols, 1975 (amending the Warsaw Convention of 1929, the Hague Protocol of 1955, and the Guatemala City Protocol of 1971, and a fourth new protocol)

A F

International Air Transport Association*

C V

International Convention on Limitation of Liability for Maritime Claims, 1976

A F

International Convention on Civil Liability for Oil Pollution Damage, 1969
(amended 1976)

A F

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
(amended 1976)

A F

*Not a treaty, but an organization of carriers whose activities are subject to governmental approval.

Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974 (amended 1976)	A F
Convention on Carriage of Goods by Sea (draft)	C
(2) <i>International transportation by rail</i>	
International Convention Concerning the Car- riage of Goods by Rail (CIM), 1975	C
International Convention Concerning the Carriage of Passengers and Luggage by Rail (CIV), 1975	C
(3) <i>International telecommunication and postal services</i>	
International Telecommunication Convention	C
Universal Postal Convention	C
European Conference of Postal and Telecom- munications Administrations, 1976	A
(4) <i>International financial operations</i>	
Arab Monetary Fund	A V
Asian Clearing Union	A V
Asian Development Bank	C F
Economic Community of West African States	A F (?)
Financial Support Fund	A V
International Fund for Agricultural Develop- ment	A F
International Bank for Reconstruction and Development	C
Islamic Development Bank	A F
Nordic Investment Bank	A V
Nordic agreement for short-term financial assistance	A V
(5) <i>Products liability</i>	
European Convention on Products Liability in Regard to Personal Injury and Death	A Z

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Gold

The SDR is already the Fund's unit of account under a decision of the Fund, but when the second amendment enters into force, the Articles will require the SDR to be the Fund's unit of account. It will cease, however, to be defined in terms of gold. The Fund will determine the method of valuation of the SDR. The former official price of gold will disappear for most, but not for all, purposes as a result of the second amendment of the Articles. The price of SDR 35 per fine ounce of gold will apply under certain provisions of the second amendment, most of which relate to dispositions or possible dispositions of the Fund's holdings of gold. If the Fund enters into other operations and transactions in gold under other provisions, the price will be determined on each occasion on the basis of prices in the market. The Fund will have to be guided by the objective of avoiding the management of the price, or the establishment of a fixed price, in the gold market.

Under the Articles before the second amendment takes effect members may sell gold at a price in excess of the official price, provided that the purchaser is not another member. The Articles do not prevent a member from valuing gold at a nonofficial price, for example, for such purposes as the application of gold-value clauses under its domestic legislation that gives effect to a treaty containing such clauses. Directives of this kind avoid the confusion about gold value that exists before the second amendment becomes effective and that will continue to exist after that date if another unit of account is not substituted in domestic law for gold.

Some courts have sought solutions of the problem of applying gold value clauses by reference to actions taken by the Fund. A pioneering decision has been adopted by a Hamburg court, which converted the Poincaré franc into deutsche mark on the basis of the value of that currency in terms of the SDR as calculated by the Fund for the relevant date.

The proposal to repeal the Gold Clause Joint Resolution of the U.S. Congress of June 5, 1933 so as to legalize gold-value clauses was pressed during the hearings in June 1976 on the amendment of the U.S. Bretton Woods Agreements Act. The U.S. Administration did not favor repeal at a time when this action might seem inconsistent with support for the gradual reduction of the role of gold in the international monetary system, but less objection was expressed to the removal of impediments to the enforceability of multicurrency clauses. Canadian law is to be

amended to permit the use of units of account defined in terms of the currency of two or more countries. The SDR valued according to the basket technique will qualify as such a unit of account. A recent case in England holds that the parties to a domestic contract may validly provide that a debt expressed in sterling shall be varied according to the exchange rate between sterling and the Swiss franc. It would appear, therefore, that the amount of the obligation under a domestic or transnational contract might be made to depend on the value of sterling in terms of the SDR without any modification of statutory law such as that which is under way in Canada. It would seem also that the obligation might be expressed directly in SDRs.