



Office Memorandum

To: The Staff

July 4, 1995

From: The Ombudsman

A handwritten signature in dark ink, appearing to be "D. J. [unclear]".

Subject: Fifteenth Annual Report of the Ombudsman (1993-1994)

During the period from August 1, 1993 through July 31, 1994, 194 individuals contacted the Office of the Ombudsman. Management, having determined that the term of service of the Ombudsman should be for a non-renewable period of five years, chose, as my successor in consultation with members of the Staff Association Committee^{1/} ("SAC"), Ms. Lyn Blatch who assumed her duties on October 17, 1995.^{2/} In the interim period (August 1, 1994 through October 16, 1994), an additional 19 staff sought assistance from the Office, not including those who simply came to bid farewell.

Last year's Report categorized staff who sought out the services of the Ombudsman according to the Departments to which they were assigned. As the results were largely misleading^{3/}, that practice has been abandoned.

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This, my final Annual Report, mandated in the original Terms of Reference, has been deliberately delayed for two reasons in particular. The first was my desire to try to achieve the perspective regarding my more than five years' experience as Ombudsman for the Fund which the passage of time can sometimes afford. Events are generally best judged with the dispassion that time and space provide. Because of some controversy which my earlier reports caused in certain circles at the Fund, I felt that to be an important objective.

The second reason for delay was to afford an opportunity to observe certain developments at the Fund in the several months since

^{1/} Selected by the Chairman of SAC.

^{2/} I continued to work with my successor until the end of the year in "handing over" certain continuing cases.

^{3/} In many cases, the problems encountered by Staff did not originate in their own Department. Further, the fact of a small number of staff reporting problems from a particular Department was being mis-cited as evidence of good personnel management there when, in some cases, the opposite was true. The Ombudsman should not be party to encouraging Departments in any effort to discourage their staff from taking problems "outside the Department."

my departure. In particular, I was interested in seeing how the new Director of Administration would define her role, how the Administrative Tribunal would deal with applications presented to it, and what progress the Fund would make in establishing an Ethics Office and in implementing recommendations developed from the 1992 Survey of Staff Views.

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It would, perhaps, be useful to begin by discussing the role of the Ombudsman and how that function relates to the dispute resolution system as it exists at the Fund.

The Ombudsman is a designated neutral who seeks to resolve disputes through informal mediation and provide counsel and advice to staff on an absolutely confidential basis. It is not, and should not be, the role of the Ombudsman to make determinations of culpability that will lead to disciplinary action nor to arbitrate or adjudicate disputes between staff and management. An Ombudsman should not adopt the role of an advocate for any party in a formal proceeding but will, in certain cases, unavoidably need to advocate the positions of the respective parties to a dispute to the other party in an effort to achieve a mediated settlement between them.

The value to the institution in having an Ombudsman is three-fold:

1. Staff morale invariably shows a significant improvement when staff are aware that there exists someone in whom they can confide without fear of retribution^{1/};
2. An effective Ombudsman will, through mediation, be able to reduce the number of disputes which would otherwise need to be dealt with in formal (and costly) grievance proceedings.
3. While strictly maintaining the principles of confidentiality of communications and anonymity of sources, the Ombudsman is able to develop and make available to management data that identify issues, problems and trends not otherwise known to management thus enabling it to deal with problems before they become damaging to the institution.

^{1/} Ideally the person selected for the Ombudsman position should have no past, or potential for future, ties to the institution. In that regard, the Fund's method of appointing an external person as Ombudsman is infinitely preferable to the method employed by its sister organization, the World Bank.

Of course, these benefits can be neutralized to the extent that management discourages staff from seeking out the Ombudsman, refuses to cooperate in seeking to resolve disputes or chooses to ignore the early warning signs of serious problems.

But an Ombudsman is only one feature of an integrated dispute resolution system which enlightened employers seek to establish. In addition, there must be a mechanism for the in-house resolution of disputes which cannot be resolved informally such as a grievance or other administrative procedure that is open to all employees and all forms of dispute. Underlying every effective dispute resolution system is the recognition by management that it is beneficial to the institution that all disputes be dealt with as promptly and as fairly as possible; that employees should be encouraged to come forward with their problems and be given multiple means for their early resolution rather than have the problems remain hidden and unresolved. No organization functions well with employees who become resentful, bitter or lose trust in the benevolence of their employer because they feel that raising a problem or pressing a dispute will result in some reprisal against them for becoming a "troublemaker." It is sometimes difficult for employers to encourage complaints from their employees but the more enlightened and far-sighted do just that because the ultimate rewards to the institution in terms of employee loyalty and morale are incalculably great.

In an ever increasing number of private organizations, employees are strongly encouraged to utilize in-house grievance procedures for problem resolution so that the employer may avoid the very high cost of litigating the matter before regulatory commissions or the courts. The current trend is to provide incentives to employees for this purpose, typically in the form of the provision of free or subsidized legal representation before a grievance/arbitration panel.

While the Fund, because of its immunity, does not have the same concern, the inability of some staff to afford legal representation discourages utilization of the existing formal grievance resolution channels and thus tends to defeat the primary purpose of the system. Understandably, perhaps, the Fund takes the position that it does not wish to subsidize its adversaries by providing them with legal representation. But that leaves a crippled dispute resolution system; clearly not in the best interests of the Fund.

There are two possible solutions to the dilemma. One would be to expand the dispute resolution system by creating a Peer Review Panel which would deal with disputes in a much less formal manner than the Grievance Committee. No record of proceedings would be made and no lawyers or representatives of either party to the dispute would be permitted to participate though witnesses and relevant documents would

be made available. The majority of the panel of, say, five staff members would be elected or appointed by the Staff Association with a minority representation of management appointees. The dispute would have to be brought within a reasonable period, say 60 days or less from when it arose, and the panel's unappealable recommendation would go to a Deputy Managing Director for appropriate action. The Peer Review Panel would exist apart from, but in addition to, the other means of dispute resolution available at the Fund; the Office of the Ombudsman and the Grievance Committee^{1/}.

The Administrative Tribunal is not included as a dispute resolver because its enabling statute limits its role essentially to that of an appellate body charged with the mere legal review of the recommendations of the Grievance Committee upon application (appeal) by the grievant. The likelihood that such recommendations would be overturned by the Tribunal is so remote as to make the function meaningless. While the Tribunal has original jurisdiction regarding matters pertaining to the Staff Retirement Plan ("SRP"), it has, in a recent case, essentially relieved itself of much of that responsibility by holding that not only does it not have jurisdiction over determining the legality of provisions of the SRP adopted prior to October 15, 1992 but that it also lacks jurisdiction over any decisions made at any time thereafter based on or relating to an assertion of the illegality of such pre-existing provisions. All of the current provisions of the SRP were in fact adopted prior to October 15, 1992.^{2/}

The other means to achieve a more effective dispute resolution system, given a Fund unwillingness to subsidize legal counsel for grievants, lies within the power of the staff itself, through its Staff Association. Following the lead of their

^{1/} An effort to revise G.A.O. 31 (re the Grievance procedures) for the purpose, inter alia, of rationalizing it with the Statute of the Administrative Tribunal began just prior to my departure and appears to be near completion. A similar effort, (at my suggestion), to rewrite the Terms of Reference for the Ombudsman commenced about the same time and also appears near approval. In an apparent effort to achieve greater control over staff in the area of dispute resolution, principles of communication espoused by the Managing Director and his former Deputy were not, unfortunately, adhered to by Administration during the revision process regarding these two important documents.

^{2/} Article XX, Statute of the Administrative Tribunal of the International Monetary Fund. The Tribunal also has sole jurisdiction regarding certain applications challenging the legality of other rules or regulations adopted by the Fund since October 15, 1992. It is difficult to believe that there will be many such cases, with the possible exception of the yet to be issued revised version of GAO 31 which expands the jurisdiction of the Grievance Committee.

counterpart organization at the World Bank, the Staff Association should create its own fund for this purpose. But to do so would require a quantum increase in the dues required from its members and an inevitable consequent reduction in membership. The additional receipts from dues, based on a one dollar per mille of gross remuneration could, however, raise as much as \$75,000, or more, annually enabling the Staff Association to do many other things as well which are currently well beyond the scope of its current resources such as establishing an on-going relationship with key United States Congressional Offices and hiring permanent staff to provide continuity for its programs.

As presently constituted, with its meager budget and a governing committee that changes every year, the Staff Association is understandably lightly regarded by the Administration. That is a situation that only the staff itself has the power to change. Its failure to have done so to date sends an unmistakable message to the Administration of docility and lack of will. The reason that there has been no serious effort to implement the changes recommended by the Task Force to deal with the troubling results of the Survey of Staff Views conducted nearly three years ago is because there is no perceived need to do so. The staff, in short, are incapable of effective complaint and their silence in the matter does not go unnoticed by administration, management or the Executive Board. In the meantime, of course, more and more staff become apathetic, cynical and mistrustful about the motives and good will of their masters.

For its part, the Fund seems to have determined that it is easier to maintain the traditional parent-child relationship between employer and employee rather than struggle with the transition from command-and-control hierarchy to employee empowerment and organizational learning as have most successful major corporations in the private sector. In the long run, however, the easy way may prove costly indeed.

As I indicated at the outset of this report, how the new Director of Administration defines her role is a matter of critical importance to staff. It is, of course, too soon to reach any conclusions. The time-consuming responsibilities of overseeing the administration of the Fund on a day to day basis, to say nothing of the learning process that must first take place in that regard, reduce the high expectation that the Director will be able to grapple in the very near future with the serious concerns of staff expressed in the Staff Survey. It would be to the benefit of the institution as a whole were she to personally evaluate the Survey results rather than rely on the interpretations of her advisors.

It has been more than two years since the recommendation to establish an Ethics Office was presented to management. Creation of such an Office remains a priority. The Ombudsman subscribes to a Code of Ethics and Standards of Practice which prohibit conducting formal investigations for the purpose of determining culpability or administering discipline.^{1/} In cases of misconduct, including sexual harassment and discrimination, the Ombudsman, to function effectively, must be able, in his or her discretion, to refer such matters to an Ethics Officer for appropriate action. The current system in which the Director of Administration acts as prosecutor and judge is acknowledged by all to be seriously flawed.

The existence of a properly constituted Ethics Office^{2/} would result in a significant improvement in staff morale. For example, there continues to be widespread and persistent rumors circulating among staff of mis-use and even self-dealing by high level officials of the Fund with regard to the Separation Benefit Fund (SBF). The SBF, the need for the existence of which may itself be questionable, is designed to enable the administration to expedite the departure of staff whose performance is judged not up to standard or as compensation for the abolishment of their position. The damaging rumors that the SBF has been and continues to be invaded for the purpose of rewarding certain staff, suggesting favoritism of the worst sort, would be promptly dispelled by the knowledge that an Ethics Office existed which would investigate and report any such misconduct to the highest level.

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It has been my distinct privilege to have served as Ombudsman for the Fund and its dedicated and loyal staff. It remains my hope that the Fund will eventually recognize that dedication and loyalty by adopting a more enlightened approach to its human resource and performance management policies. I leave the Fund with the knowledge that the staff will continue to have access to an "Ombudsperson" of great competence and integrity. It is my hope that she will derive as much satisfaction from her experience as I did from mine.

^{1/} Both the current Ombudsperson and I are members of The Ombudsman Association which has developed both the Code and Standards.

^{2/} The Ethics Officer, who should be free to choose his or her own staff, must, in order to insure both the reality and the appearance of the integrity of the Office, have access and report to the Managing Director or Executive Board and be an "outsider," i.e., someone who has not previously had an employment relationship of any kind with the Fund.