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INTERNATIONAL MONETARY FUND

Minutes of Executive Board Meeting 87/5

3:00 p.m., January 9, 1987

J. de Larosière, Chairman

Executive Directors	Alternate Executive Directors
A. Abdallah	E. T. El Kogali
	Wang X., Temporary
	E. L. Walker, Temporary
	P. Péterfalvy, Temporary
A. Donoso	
M. Finaish	T. Alhaimus
G. Grosche	
	J. Reddy
A. Kafka	H. A. Arias
	M. Foot
H. Lundstrom	H. Fugmann
	G. D. Hodgson, Temporary
	K. Yao, Temporary
	L. P. Ebrill, Temporary
	J. de la Herrán, Temporary
	S. de Forges
G. A. Posthumus	
	I. Sliper, Temporary
G. Salehkhou	
A. K. Sengupta	
K. Yamazaki	M. Sugita
S. Zecchini	

J. W. Lang, Jr., Acting Secretary
J. K. Bungay, Assistant
S. L. Yeager, Assistant

Also Present

Le Hoang, Vice Minister-Deputy Director General, State Bank of Viet Nam; Tran Trong Do, State Bank of Viet Nam. Staff Association Committee: J. Berengaut, I. M. Fayad, K. Flug, J. McKee, A. Muttardy, M. A. Wallace. Administration Department: G. F. Rea, Director; H. J. O. Struckmeyer, Deputy Director; D. S. Cutler, J. P. Kennedy. Asian Department: P. R. Narvekar, Director; H. Neiss, Deputy Director; L. H. De Wulf, W. G. L. Evers, L. Mendras. Exchange and Trade Relations Department: M. W. Bell, E. Brau. Legal Department: F. P. Gianviti, Director; J. G. Evans, Jr., Deputy General Counsel; R. C. Effros, W. E. Holder, A. O. Liuksila, J. S. Powers. Research Department: A. Lanyi. Treasurer's Department: T. Leddy, Deputy Treasurer; J. E. Blalock, D. Berthet, A. G. Chandavarkar, J. C. Corr, J. A. Gons. Personal Assistant to the Managing Director: R. M. G. Brown. Advisors to Executive Directors: A. A. Agah, M. B. Chatah, A. Ouanes, G. Pineau, I. Puro, A. Vasudevan. Assistants to Executive Directors: F. E. R. Alfiler, O. S.-M. Bethel, H. S. Binay, F. Di Mauro, V. Govindarajan, A. Iljas, S. King, K.-H. Kleine, M. A. Kyhlberg, V. K. Malhotra, D. V. Nhien, W. L. Parmena, S. Rebecchini, C. A. Salinas, B. Tamami, H. van der Burg.

1. VIET NAM - OVERDUE FINANCIAL OBLIGATIONS - REVIEW FOLLOWING DECLARATION OF INELIGIBILITY

The Executive Directors resumed from the previous meeting (EBM/87/4, 1/9/87) their consideration of a staff paper on the third review of Viet Nam's arrears to the Fund following the declaration of its ineligibility to use the Fund's general resources effective January 15, 1985 (EBS/87/2, 1/6/87).

The staff representative from the Legal Department said that further to Mr. Salehkhou's point on the relationship of the Fund with the United Nations, it might be useful to recall a few provisions of the 1947 Agreement between the United Nations and the International Monetary Fund on the question of the Fund's relationship to the United Nations and on the question as to what bearing the decisions by the United Nations had on the work of the Fund. Under Article I of the Agreement, which was entered into by the Fund pursuant to the provisions of Article X of the Fund Agreement, the Fund was meant to function as an independent international organization. In other words, the United Nations recognized the independent role of the Fund in the context of the cooperation that would take place between the United Nations and the Fund under Article X of the Agreement of the Fund, which permitted the Fund to cooperate with other international organizations in respect of various areas of the Fund's competence. In its own field of interest, the Fund took note of developments and decisions at the United Nations pursuant to the various provisions of the Agreement between the Fund and the United Nations.

One of the most important provisions of that agreement was Article III, which referred to the preparation of an agenda for meetings of the Board of Governors and, in that context, the Fund was to give due consideration to the inclusion in the agenda of items proposed by the United Nations, the staff representative continued. On a number of occasions, the Fund had received requests from the United Nations to include items proposed by the General Assembly in the agenda of the Board of Governors. The staff had submitted such requests for consideration of the Executive Board each time that the Governors' agenda was being put together. Moreover, on one occasion the Board of Governors, expressly taking note of a particular resolution of the United Nations, had resolved that the Fund in its activities was to have due regard for recommendations of the UN General Assembly made pursuant to the resolution for the maintenance or restoration of international peace and security. That had happened in September 1951, a long time ago, but the said Resolution No. 6-8 of the Governors was an example of an affirmative action by the Fund in that regard.

There were provisions concerning reciprocal representation, consultation, and recommendations in the Agreement, and there was a provision concerning the decisions of the UN Security Council, the staff representative added. If the Security Council took a decision, the Fund was to take note of the obligation assumed by members of the Fund in respect to carrying out--through their action in the Fund, for example--resolutions of the Security Council. Under Article VI of the Agreement, the Fund had

due regard for decisions of the Security Council in certain matters but nothing in that provision derogated from members' rights and obligations under the Articles of Agreement of the Fund. Indeed, resolutions by the Security Council could not modify any provisions of the Articles. In the first place, Article VI of the 1947 Agreement between the United Nations and the Fund was addressed to the members of the Fund, rather than to the Fund itself, in recognition that it was the members that were the ultimate masters of that international organization, and that the Fund itself had no independent role to play in those Security Council questions.

The 1947 Agreement contained many other important provisions on exchange of information, statistical services, liaison, and administrative matters as well, the staff representative from the Legal Department went on. For instance, Article VIII of the 1947 Agreement concerned the advisory opinions that could be requested by the Fund of the International Court of Justice on certain legal questions arising within the scope of the Fund's activities. He hoped that those few examples had helped to substantiate his earlier point: that the Fund was by no means above international law in its activities. True, the Fund was an independent international organization, but also the Fund was a manifestation of international law. He did not consider it right to say that the Fund's way of making decisions, by taking note of the decisions of international organizations through its own best judgment consistent with the provisions of the Articles of Agreement, was in any way violative of the precepts of international law. It was in keeping with international law that the Fund was a functional international organization.

Mr. Sengupta, resuming the earlier discussion on Viet Nam's ability to pay its arrears, said that it was still not clear how the staff had concluded that the country's overall balance of payments position permitted substantial payments of foreign debt service. Table 4 of EBS/86/133 (6/20/86) displayed the balance of payments with the convertible area for the period 1985-90, including staff projections for 1987-90. Exports were listed at $334 million for 1985 and $400 million for 1986; although it had not been stated in the paper, it was his understanding that those figures did not take into account the convertible currency barter trade. Another factor that had to be taken into account was the trade involving reciprocal import/export obligations, and he wondered whether that trade was included in the figures given in Table 4. Given the importance of such reciprocal trade for Viet Nam, its inclusion or exclusion in the figures would have a substantial impact on the country's ability to pay its arrears. In any calculation of the ratio of arrears to exports, it was important to exclude barter and reciprocal trade from the export figures in order to reach a more realistic conclusion about Viet Nam's ability to repay its debts.

Table 4 (EBS/86/133, 6/20/86) showed a decline in total imports from $459 million in 1985 to $411 million in 1986, with consumer goods imports remaining at $100 million for both years, Mr. Sengupta went on. The staff, referring to Table 9 of SM/86/155 (6/30/86), had indicated that consumer goods imports had risen substantially in the period 1981-85.

Unfortunately, it was difficult to reconcile the figures in the two tables. Moreover, no data were available to indicate whether consumer goods had increased from the convertible area.

Table 36 of SM/86/155 (6/30/86), displaying selected data on Viet Nam's imports in the period 1981-85, indicated that imports of rice had increased substantially in those years; however, good crops had enabled Viet Nam to decrease its food grain imports in 1986, Mr. Sengupta added. According to Table 36, other imports--including steel, fertilizer, sugar, trucks, and tractors--had remained constant or had declined. A review of those tables led him to the conclusion that in the future, the staff should provide the Board with full documentation to substantiate any assessments of a country's ability to clear its arrears.

The staff representative from the Asian Department remarked that Table 36 of SM/86/155 (6/30/86), which included only selected data on imports, had specifically excluded imports of consumer goods. The figures that Mr. Sengupta was seeking were to be found in Table 9 of that paper, in which imports were divided into categories: imports of centrally managed units and those of locally managed units. Imports of locally managed units--located in the south--had risen from $8 million in 1981 to $52 million in 1985--quite a substantial increase. The staff did not have complete information on imports of the centrally managed units, but from the information available, total imports of consumer goods--including food grains--had risen from $172 million in 1981 to $200 million in 1985. If one excluded food grains and imports from the nonconvertible area, then the imports of consumer goods had risen from $6 million in 1981 to $42 million in 1985. The $42 million imported by centrally managed companies, plus the $52 million imported by locally managed companies, were the basis for the $100 million given in Table 4 of the staff report for the 1986 Article IV consultation (EBS/86/133, 6/20/86). Data on imports in previous years were given in Table 3 of the staff report, and showed that total imports from the convertible area had increased considerably--by 40 percent between 1983 and 1985--much faster than the rise in exports.

However, the staff had based its assessment of Viet Nam's ability to repay the Fund on data found in Table 4 (EBS/86/133, 6/20/86), the staff representative stated. Mr. Sengupta had noted a projected deficit of $196 million for 1987. It had to be remembered that that deficit was after the scheduled debt service payments. The balance of payments data presented in the table were on a transactions basis, according to Fund standard practice, and assumed that Viet Nam would pay the debt service that was due. In the middle of that table, lines 16 and 17, under the heading "Services and transfers," the 1987 figure for interest was $67 million, and the amount of imputed interest on arrears was $68 million; under the heading "Capital account," line 21 listed the schedule of repayments for 1987 as $123 million. Those three items totalled $258 million for the debt service payments due. The deficit listed on line 26, "Overall balance," was $196 million. Thus, according to those calculations, Viet Nam would have in 1987 about $60 million of foreign exchange available to pay its foreign debt.

At EBM/86/113 (7/11/86) the staff had mentioned that those figures had been projected on the basis of information supplied by the Vietnamese authorities, the staff representative from the Asian Department recalled. Subsequently, the staff had held extensive discussions with the authorities on the outlook presented in Table 4 of EBS/86/133 (6/20/86), and the authorities had not raised any objections to the staff analysis. Moreover, the authorities had mentioned that the level of consumer goods imports had risen too quickly and was too high. That observation of the authorities had been noted previously in the staff report for the 1986 Article IV consultation (page 13, EBS/86/133, 6/20/86).

Governor Le Hoang thanked the Chairman and Executive Directors for their constructive comments and their understanding of Viet Nam's economic difficulties with regard to its settlement of the overdue obligations to the Fund.

As to the reconciliation of the data provided to the Fund missions, Governor Le Hoang said that he thought there was a difference between the authorities' statistics provided to the Fund mission and the staff estimates. It was his expectation that further discussions on that topic would take place during the forthcoming Fund mission to Viet Nam in February 1987.

Viet Nam intended to maintain normal relations with the Fund, Governor Le Hoang emphasized. Thus, his authorities expected constructive and effective assistance from the Fund, so that Viet Nam could overcome a critical moment, and could settle fully its overdue obligations to the Fund. Having cleared its arrears to the Fund, Viet Nam would then become eligible to use the Fund's resources under the structural adjustment facility. Together with assistance from the Fund, Viet Nam would make every effort to mobilize the necessary resources to repay the Fund. He appreciated the proposal to send a Fund mission to Viet Nam to assess and review the country's actual economic performance during the recent past, and to discuss the economic reorientation in Viet Nam during the next five years. The Vietnamese were fully committed to work constructively with the Fund mission, so that the best solution to the country's economic problems could be found.

The Chairman made the following remarks:

> This has been a very useful meeting. The Board has appreciated the attendance of the Governor of Viet Nam, Mr. Le Hoang, and has seen his coming here as a clear manifestation of the strong desire of the authorities to normalize fully Viet Nam's relationship with the International Monetary Fund. In this respect, the indications provided by Governor Le Hoang are seen as, indeed, the expression of a strong desire of settling fully the arrears of Viet Nam vis-à-vis the Fund.
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> The Executive Board has discussed the different alternatives suggested by the Governor in his opening statement. It appears from the discussion that the first alternative does not provide a

practical solution as far as the present circumstances are concerned. We will, of course, pursue this matter to the extent we can: the Fund is always at the disposal of both parties should they wish to have the Fund provide its good offices. Furthermore, I note that the hope was expressed that the process suggested under the first alternative of the Governor's statement could prove to be feasible and resolve some of Viet Nam's financial problems. But the Fund certainly cannot rely on that process to solve the immediate problem of Viet Nam's arrears to the Fund, which from the Fund's viewpoint is in no way connected with the bilateral problem between the two members. It is important to understand that the relationship between a member and the Fund has its own logic and its own intrinsic set of obligations that must be addressed; the Fund cannot be dependent on third parties.

As for the third option suggested by the Governor, which had already been examined and rejected by the Board (EBM/86/113, 7/11/86), the discussion today gives no indication of any change in the Board's sentiment on this matter. I think the Vietnamese authorities have understood that the third alternative is not a practical solution.

Thus, we are left with Alternative II, which has been explained and suggested by the Vietnamese authorities. I understand, after having listened very carefully to the interventions this morning, that the Executive Board considers that this avenue--the second option--should, indeed, be pursued, and explored in a very cooperative fashion.

In practical terms, this means that the Vietnamese authorities should devote to the repayment of the Fund all that they can in terms of their own resources, and in terms of what they can mobilize--as far as loans or facilities are concerned--on their own.

The second alternative also implies that the economic policies--which, if that option is pursued, eventually would serve as a basis for a future possible agreement with the Fund--must be formulated, discussed, and ultimately must be the object of an agreement between the Fund and the Vietnamese authorities.

Some steps in the right direction have already been taken by Viet Nam, steps that the Board has recognized and welcomed. But it also appears that some further action is called for if one wants to address in a more durable fashion the basic disequilibria that still affect a number of areas of the Vietnamese economy, including the exchange system, pricing system, trade system, etc. Thus, more work has to be done to arrive at a mutually acceptable and reasonable set of policies.

If we do manage to arrive at an agreement on such a set of policies--and it is my hope that we will--the Board has said clearly today that, provided that the Fund has been repaid, the Board would be willing to explore ways of bringing about positive results under Alternative II, which does indeed seem to be a promising option. Of course, the Fund must be repaid, because this is a general feature of our practice: we cannot engage in lending operations with members as long as arrears exist. However, if the proper arrangements are made and the set of policies is consistent with the Fund's lending policies--for instance, under the structural adjustment facility--then this institution will be happy to contribute in a positive way to the exercise outlined in Alternative II. In fact, an Executive Director has reminded us today that the Fund has already done that in a number of situations, and with success. Moreover, the remarks of Governor Le Hoang augur well for such a development.

In the meantime, I would urge the authorities to do everything possible to repay the Fund and facilitate the implementation of Alternative II. We will be following very closely the results of the February or March Article IV consultation mission, which will cover all these matters, because it is important to understand that Alternative II very much depends on the quality of the economic policies that will be formulated. I would have great difficulty in even comprehending Alternative II in a situation in which we had not reached that commonality of understanding, because it would be very difficult to envisage catalyzing external assistance and future Fund assistance without such a meeting of minds.

Vis-à-vis previous meetings, this meeting has had an element of progress that I am happy to note. Nevertheless, much will depend on what will happen, and on the quality of the policies that will be discussed, in the coming weeks. I very much hope that we will have good news to report when we come back to the Board after the 1987 Article IV discussion with Viet Nam, and that this problem will be solved.

Another thing I would like to say is that time is running out. Two years have lapsed since the declaration of ineligibility. This situation is not good for the Fund; it is not good for the member countries of the Fund; and, in particular, it is not good for countries that are poor, have great difficulties, and have to pay from their very meager resources for the delays and the failure of payments by Viet Nam. This situation is not good for Viet Nam either, because such an attitude casts doubt on the financial credibility of the country and makes more difficult the mustering of external support for the country.

If we can solve this problem, the Fund will have made progress. Viet Nam will be in a much better position vis-à-vis the international financial community, and eventually the quality of its policies will

be improved in the process, and growth prospects will be ameliorated. Thus, I very much hope that the discussion of today will lead to positive results.

Mr. Reddy requested that future staff papers include all the relevant data necessary to evaluate a country's ability to repay the Fund.

The Chairman assured Mr. Reddy that the staff would indeed provide such documentation in the future.

The staff representative from the Legal Department, taking note of Executive Directors' previous comments, suggested that paragraph 4 of the the proposed decision be amended to read, "The Fund will again review the matter of Viet Nam's overdue financial obligations to the Fund at the time of the 1987 Article IV consultation with Viet Nam, to take place by May 31, 1987."

The Executive Directors adopted the following decision, as amended:

1. The Fund has reviewed further the matter of Viet Nam's continuing failure to fulfill its financial obligations to the Fund in light of the facts and developments described in EBS/87/2 (1/6/87).

2. The Fund deeply regrets the continuing failure by Viet Nam to fulfill its financial obligations to the Fund and again urges Viet Nam to make full and prompt settlement of those obligations.

3. The Fund again stresses the urgency for the authorities to adopt a strong and comprehensive economic adjustment program.

4. The Fund will again review the matter of Viet Nam's overdue financial obligations to the Fund at the time of the 1987 Article IV consultation with Viet Nam, to take place by May 31, 1987.

Decision No. 8499-(87/5), adopted
January 9, 1987

2. ADMINISTRATIVE TRIBUNAL

The Executive Directors considered a memorandum from the Managing Director, together with a staff paper surveying administrative tribunals of other international organizations (EBAP/86/309, 12/10/86). They also had before them a paper prepared by the Staff Association Committee on access to an administrative tribunal (EBAP/86/326, 12/30/86).

The Chairman of the Staff Association Committee made the following statement:

Thank you for the opportunity to address this meeting. I would also like to make our usual request that the Staff Association Committee be allowed to remain for the following discussion. In view of the topic's importance for staff relations, I think that the case for our presence is very strong. In particular, it would be helpful for everyone if, following this discussion, we could be in a position of understanding clearly the views of the Board.

The issue before the Executive Board today is one of major importance to the staff, namely, whether the Fund should provide its staff with the right of recourse to an administrative tribunal, and, if so, how?

The position of the Staff Association Committee on this issue is set out in EBAP/86/326, and I hope you have had an opportunity to examine it. I would like to restate briefly our position and to provide you with some background. The Managing Director's transmittal memorandum sets out three basic issues on which management would appreciate your comments, and I will organize my remarks around these questions.

First, should the Fund have an administrative tribunal? The answer is, unequivocally, yes. Ever since the Staff Association was reconstituted in 1969, it has repeatedly called for granting the staff access to an independent tribunal. Our calls have intensified since 1980 when the World Bank staff was provided with access to a tribunal, leaving the Fund essentially alone among major international organizations in not putting its staff on a similar footing. A more recent indication of the staff's strong feelings on this issue became apparent in June 1986 when the staff was asked to sign a petition calling for reconsideration of the 1986 compensation review and the establishment of an administrative tribunal in the Fund. At a time of heavy mission travel, and with a short time allowed for signing, over 1,200 staff members signed the petition. It seemed obvious to me, as one of the persons involved in the collection of signatures, that the staff was equally interested in both questions on the petition and, indeed, saw them as two sides of the same coin.

The fact that over 1,200 staff members have signed a petition calling for the establishment of a tribunal does not mean that there are 1,200 dissatisfied staff members ready, at the first opportunity, to file their grievances with a tribunal. Indeed, it is striking that the record of the Grievance Committee shows a low number of cases actually heard. In part, this may be due to the narrow jurisdiction of the Committee. But I think that it reflects more the fact that, in general, the staff does not feel itself to

have been mistreated on an individual basis. Nonetheless, the staff does believe that it is important to have an independent judicial forum for ensuring justice. Indeed, to be subject to a rule of law is a basic human right regardless of the likelihood of mistreatment. Thus the staff views the tribunal not as an institution that they would necessarily want to use but as an institution--like a fire or police department--that should be available, in case it is needed.

Second, if the staff is to have access to a tribunal, what should be its jurisdiction? The position of the Staff Association Committee is that, if the objective is to ensure justice based on a rule of law, the jurisdiction of the tribunal should be as wide as possible: there should be no exceptions to justice based on a rule of law in the Fund. To establish a tribunal, but restrict its jurisdiction, would defeat the purpose of the exercise. Also, few things would have a more adverse impact on staff morale than if a certain outcome was clearly required in the interest of justice, but the tribunal could not issue a ruling because the matter was outside its jurisdiction.

Indeed, it ought to be stressed that the existence of a tribunal with wide jurisdiction is in the best interest of the institution and its management. Decisions taken in the presence of a tribunal would gain significantly in authority and credibility compared with the current situation. And if, for whatever reasons, mistakes were made, all would gain if an effective way of correcting those mistakes was in place. Moreover, apart from the effects on the current staff, the Fund itself might reap some immediate, tangible benefits from providing the staff with access to a tribunal. For instance, the recruitment of new staff, many of whom come from countries or institutions where tribunals or their equivalents are common, might become easier because the Fund would be in a position to assure all prospective staff that their conditions of employment would not be subject to arbitrary changes.

The third question is whether the Fund should establish its own tribunal or affiliate with an existing one. Our position on this issue is that the staff's main concern is the attainment of the ultimate objective of assuring justice based on a rule of law. We have few preconceived notions about the practical means of attaining this objective. However, some aspects of the situation suggest to us that the best course of action might be for the Fund to establish its own tribunal. The Committee's position paper identifies several considerations that support this judgment. Basically, these considerations stem from the fact that, in the staff's view, the Administrative Tribunal of the World Bank--the most logical institution if affiliation were considered--has been rather slow, unwieldy, costly, and timid about looking beyond procedures and examining the substance of issues. Accordingly, we

believe that the Fund could develop an institutional arrangement that would retain the World Bank Administrative Tribunal's strengths while avoiding its weaknesses.

To summarize, the Staff Association Committee hopes that the Executive Board will be guided in its deliberations on this topic by the Fund's interest in both the appearance and reality of justice for the staff and the Fund. We are hopeful that those deliberations soon will result in access to an administrative tribunal, preferably created by the Fund.

Finally, I would like to stress that, if the morale of the staff and the credibility of the final result are among the factors in the light of which the Executive Board will consider this important issue, favorable consideration should be given to the effective involvement of the IMF Staff Association in all stages of the design and operation of the tribunal, including the Committee's presence here for the ensuing discussion.

Mr. Kafka, commenting on a procedural issue, remarked that management had asked Directors for their views on three specific points regarding a subject affecting the staff, and the presence of representatives of the Staff Association Committee at the discussion could be seen as a negotiation between the Board and the Staff Association on those points. Negotiation was not the function of the Board, but of management. He therefore hoped that the Staff Association would understand when he took the same position regarding their request that he had taken on similar occasions in the past: the Board should thank the Committee for its exposition and assure it that it would have ample opportunity to comment on whatever the Board proposed before a final decision was taken on the matter under discussion.

The Executive Board supported the views of Mr. Kafka.

The Chairman invited Executive Directors to address any questions they might have to the members of the Staff Association Committee and its Chairman before they left the Board room.

Mr. Zecchini wondered what was the Staff Association's assessment of the performance of the World Bank Administrative Tribunal.

The Chairman of the Staff Association Committee responded that several potential problems with the World Bank Tribunal had been described in the Committee's position paper: the tribunal had seven judges from different countries that met not in Washington, but in London; the tribunal was costly; as a result of institutional arrangements, its deliberations were slow and unwieldy; and it was often quite timid about addressing questions of substance. According to representatives of the World Bank's Staff Association who assisted staff members in filing their grievances and who followed cases through the Tribunal, it sometimes took as long as two

years to resolve a case, although, on average, it usually took nine months. If affiliation with the World Bank Administrative Tribunal was considered, the staff hoped that an arrangement could be worked out for resolving those problems--and any others that emerged--and for changing any procedures as warranted prior to affiliation.

Mr. Posthumus noted that when commenting on a staff petition on the 1986 compensation review and the administrative tribunal, the Chairman of the Staff Association Committee had indicated that the two questions were viewed by the staff as two sides of the same coin. He would appreciate some clarification on that point.

The Chairman of the Staff Association Committee explained that in June 1986 following the staff's call for a reconsideration of the Board's decision to delay the implementation of the 1986 salary review, the Board had decided to stand by its original decision. The staff then had to ask itself whether it could do anything further in the circumstances. The answer, of course, was no. That answer was particularly demoralizing, the more so because World Bank staff in a similar position had recourse to an administrative tribunal where they could argue their rights. In the light of events, the staff perceived that the two questions were closely related.

Mr. Sliper asked whether the Bank staff had taken the issue of the 1986 compensation review to their Tribunal.

The Chairman of the Staff Association Committee responded that following the decision of the Bank's Executive Board on staff compensation, some Bank staff members had appealed to the Tribunal for a review of the decision. The matter had subsequently been resolved because the Executive Board had reconsidered its decision at the end of the year.

The Director of Administration added that he understood one appeal had been brought before the World Bank Administrative Tribunal on the subject of the 1986 compensation review, but as the Bank's Executive Board had reconsidered the decision, the case had become moot. Consequently, it was not possible to know what procedures would be followed in such circumstances.

The Chairman and other members of the Staff Association Committee then left the Board room.

Mr. Fugmann made the following statement:

> In the past, this chair has not been in favor of establishing an administrative tribunal for the Fund. Apart from well-known reasons of principle, that attitude rested on the premise that the Fund generally protected its staff with respect to its legal rights, its compensation, and in terms of personnel policies. This is still largely the situation today. However, it is evident that

the pressures on the staff in these areas and with respect to their daily working conditions have increased considerably in recent years.

These developments have brought the lack of protection of the Fund staff--compared with staff in national administrations--more sharply into focus than previously. Furthermore, our governments have accepted the establishment of administrative tribunals in almost all other international organizations, including the World Bank in 1980. Against this background, it is difficult in 1987 to find important arguments against an administrative tribunal, and we can, therefore, support giving the staff access to such a tribunal.

Of the three basic issues raised in the Managing Director's memorandum, this is the only issue on which I can give a definitive view today. Despite the very useful staff paper, we feel that additional information and further discussion is needed before we can form final views on the two other issues.

As to whether the Fund should have its own tribunal or affiliate with an existing one, our point of departure is that we should probably affiliate with the World Bank Administrative Tribunal. In our view, any other affiliation is not desirable. However, before we can decide to join the World Bank Administrative Tribunal, estimates on the costs of affiliation versus the costs of establishing our own tribunal are needed. A priori, affiliation with an established tribunal can be expected to lower costs. In addition, we believe that discussion is needed on the jurisdiction the Fund would want to see for a tribunal and how our requirements fit with the jurisdiction of the World Bank Administrative Tribunal. Here again, our assumption is that the jurisdiction accepted by our Governments seven years ago in the World Bank must be largely acceptable to us now. But we have to examine that assumption, and we also should evaluate whether and to what extent any possible changes might need to be introduced through negotiation with the World Bank. In this connection, an evaluation of the Bank's experience so far with the present jurisdiction of its Tribunal would be of interest. We would also like to have an evaluation of the risk, if any, of the Fund's personnel policies and administration over time being brought more into line with those of the Bank than is justified in view of the difference in structures and purposes of the two institutions.

Finally, let me offer some views on a few specific issues. First, the decision to establish or accept the jurisdiction of an administrative tribunal should in our view be taken by the Board of Governors. Second, we would not want to grant authority to a tribunal to render advisory opinions. Third, we should keep the Grievance Committee in place and, more important, the tribunal should be able to hear appeals of cases heard by that Committee on

a de novo basis and not only with respect to the questions of law presented by such cases. Fourth, while we have no strong feelings on the subject, we would appreciate any comments the staff might have on whether there are any strong reasons for not accepting class actions.

There are obviously many more important issues to be considered--such as other linkages between the Grievance Committee and the tribunal, the procedures to be followed by the tribunal, and the awarding of costs--but at this stage we do not feel sufficiently equipped to examine these issues further. Most of them would, of course, not need to be addressed if agreement was reached to affiliate with the World Bank Administrative Tribunal.

Mr. Ebrill made the following statement:

After reading the paper prepared by the Staff Association Committee, this chair feels that the staff is clearly anxious to see the establishment of an administrative tribunal. If that is its wish, I certainly have no objection. I believe that this will create a happier and more relaxed atmosphere in the Fund.

On the scope of the tribunal's jurisdiction, it makes sense to start out modestly and to go directly to the essence of the matter: the need is to adjudicate, and, where appropriate, compensate individual cases that come before the tribunal after all other recourse available to the staff member has been exhausted. There is reason to believe that the first two parts of the proposed jurisdictional scope for the tribunal mentioned in the Committee's paper constitute a sufficient basis for such a jurisdiction. There is no harm in reviewing and expanding the scope, in time, and in light of whatever needs emerge. I do not see, at this stage, the need for details such as those in the next four narrow areas proposed by the Committee. For example, I see no reason to extend access to the tribunal to contractual, temporary employees at this time. If, in the future, the Fund expands the employment of contractual, temporary employees to such an extent that they are an important part of the daily operation of the Fund, then this could be justified. On another point, I cannot imagine a tribunal performing an advisory function to management.

As to whether the Fund should establish its own tribunal or affiliate with an existing one--for example, the World Bank Administrative Tribunal--I instinctively opt for establishing our own. My primary criterion, however, would be cost. A second criterion would concern the size of the court and the extent of its jurisdiction. Unfortunately, no cost estimate was presented in the staff paper, although estimates were given in a footnote in the Committee's paper. When this question comes back to the Board again, we would like to see some cost estimates. If the cost is judged to

be on the high side, irrespective of whether we affiliate with the World Bank Tribunal or establish our own, I wonder if some of that cost could be borne by the staff.

With respect to whether the Board of Governors or the Executive Board should be the authority to establish the administrative tribunal, I have an open mind, although I prefer that the Executive Board would be the authority. The important consideration is to give the administrative tribunal enough powers in its charter at the outset, so that its rulings and judgments are binding and final.

Mr. Reddy made the following statement:

This chair supports the idea of establishing an administrative tribunal for the Fund. There seems to be a genuine need for a tribunal because, even though a number of steps have been taken to deal with the grievances of individual staff members, there is still a need for an additional mechanism that is independent of existing arrangements: an administrative tribunal would meet such a need. In giving support to the establishment of an administrative tribunal, I would like to emphasize that all the existing procedures for dealing with staff grievances should be exhausted before cases are brought to the tribunal.

As to whether the Fund should establish its own tribunal or join an existing tribunal, this chair would prefer that the Fund join the World Bank Administrative Tribunal. The World Bank is a sister institution whose staff policies are similar to the Fund's. The small size of the Fund staff also constitutes an argument in favor of affiliating with the World Bank Tribunal. The cost of the tribunal could be shared between the World Bank and the Fund in proportion to the relative staff size of the two institutions. In view of the Board's heavy work load and because the Fund would have an associate status with the World Bank Tribunal, this chair would prefer to leave the selection of the Tribunal's members to the World Bank as under the existing arrangements.

With respect to which organ of the Fund should authorize the establishment of the tribunal, I would prefer that it be established by the Board of Governors. In this manner, the tribunal would have the independence necessary to act as a watchdog to ensure that administrative decisions are taken with due regard to the legitimate rights of staff members. This approach would also be consistent with the approach taken by the World Bank.

On all other issues related to the constitution of the tribunal, the type of cases to be heard, the determination of access, procedures, and how cases would be decided, we can support the adoption of the rules governing the World Bank Administrative Tribunal, with whatever modifications may be necessary to suit the particular circumstances of the Fund.

Mr. Zecchini made the following statement:

The staff paper thoroughly surveys the existing major international administrative tribunals. Moreover, with a view to assessing the viability of setting up a tribunal for the Fund, it correctly raises some basic issues, which we will address in the order presented in the paper.

First, we support the proposal that the Fund should provide its staff with the right of recourse to an administrative tribunal. Because of the immunity of all international organizations, and of the Fund in particular, from judicial process in employment-related disputes as well as the inapplicability of local law to internal organizational matters, we consider it important to establish special organs and procedures to adjudicate these matters. It is a question of equity that will contribute to further improve the efficiency, the integrity, and the image of this institution. Moreover, we believe that although the existing arrangement--namely, the office of the Ombudsman and the Grievance Committee--do provide safeguards for the legitimate rights of the staff, they still lack the formality and the power of an administrative tribunal. Finally, we consider this innovation to be particularly important in the current period, when working conditions and terms of staff service are undergoing significant changes. Hence, we support the proposal of setting up a tribunal, having in mind the impact it will have on the morale of the staff.

We would prefer that the Fund establish its own tribunal rather than join an existing one, even the World Bank Administrative Tribunal (WBAT). Although cost considerations would tend to favor affiliation, we still believe that the establishment of the Fund's own tribunal would be more appropriate. Affiliation in general would entail acceptance of prior jurisprudence, which in turn might conflict with the particular nature and needs of the Fund. As for joining the WBAT, although the Bank and the Fund have many common elements with respect to staff policy and benefits, some incompatibility may still arise because existing practices and, ultimately, the Fund's independence in matters of administrative policy might be constrained.

We deem it more appropriate that the establishment of the tribunal should be authorized by the Board of Governors, the Fund's highest legal authority, on the basis of a proposal by the Executive Directors. This approach implies that the tribunal could not be dismantled or limited by any Fund authority except the Board of Governors itself, and thereby will guarantee its impartiality and independence.

On specific rules that should be incorporated in the statutes of the tribunal, we have several comments.

Judges should be elected by the Board of Governors and should be appointed for a relatively long term without the possibility of re-election. This will strengthen the independence of the judges vis-à-vis the Executive Board and avoid any conflict of interest. For reasons of effectiveness, the number of judges has to be restricted to no more than five. They should be drawn from the law profession and the public administrations, and should reflect a wide spectrum of nationalities.

In general, proposals with respect to technicalities such as remuneration, required quorum, qualifications and number of judges, can be made by drawing, among others, on existing arrangements in the WBAT.

The competence of the tribunal should be established taking into account the three basic limitations on the jurisdiction of administrative tribunals recalled in the staff paper: jurisdiction is allowed only in specifically limited circumstances; the tribunal should respect the institution's authority to modify the terms and conditions of employment; and the tribunal should hear individual and actual cases. No advisory function should be entrusted to the tribunal, since it is to be merely a judicial body. No class cases could be brought to the judgment of this tribunal.

In principle, jurisdiction should not be extended to questions of law. The plaintiff has to demonstrate that he has a personal, legitimate interest to commence a personal action to obtain a remedy for an injury to his rights.

We endorse the requirement that, whenever appropriate, there is to be more than a threshold amount in dispute before a case could be heard.

In accordance with general practices, we would prefer that cases be brought to the tribunal after having exhausted all the existing administrative remedies of the Fund. The tribunal should not exercise a review function on Executive Board decisions that change the rules and regulations governing personnel, since these are general policy matters. However, the tribunal could rule on specific cases of violation of vested economic interests, namely, economic interests acquired under the rules previously in effect.

Access should be granted to staff members, former members, and their successors. Given the growing role of contractual employees and consultants in the Fund's personnel policy, consideration could be given to admitting them to the tribunal's jurisdiction.

Finally, we do not see any need to provide for appeal to the International Court of Justice against the tribunal's decisions.

Mr. Hodgson made the following statement:

In my authorities' view, there is no compelling reason for the Fund to establish a judicial review mechanism at this time. They have noted that one of the reasons behind the World Bank's decision to implement a tribunal was the possibility that national courts might assume jurisdiction over complaints of staff members in the absence of a body to resolve staff-management disputes. That concern does not apply to the Fund, however: the Fund's Articles of Agreement provide that the Fund, its property and assets are immune from judicial process. In principle, my authorities would prefer that the Fund staff continue to make full use of the existing mechanisms for review of personnel matters, including recourse to the Grievance Committee, where warranted. The most senior levels of management should continue to be vested with the authority and responsibility for ultimate decision making in employment-related disputes.

Having set out these initial views, I should add that we would not wish to stand in the way of any broad consensus within the Board in favor of creating access to an administrative tribunal. If such a consensus were to emerge, this chair would be prepared to join it, in the interest of fairness, staff morale, and symmetry with other international organizations. In our view, any decision to create or permit access to a tribunal should, as was the case in the World Bank, be approved by the Board of Governors, which would ensure the independence and authority of the tribunal. Such a tribunal should have jurisdiction to consider challenges to the exercise of discretionary power by management in only limited circumstances, such as a possible failure to observe proper procedures, or where the administration allegedly has exceeded its authority. Any tribunal must respect the authority of the Board to adopt and modify policy with respect to personnel matters. Any tribunal would only deal with actual cases and would not issue general statements unrelated to actual cases. Generally, access should be available only to persons who are current or former staff members. The procedures should be simple, similar to those outlined on pages 10 and 11 of the staff paper, with the staff member having to exhaust the internal administrative remedies of the Fund, including recourse to the Grievance Committee, before bringing any action to the tribunal.

My authorities tend to feel that, if consensus favored establishment of a tribunal, it would be preferable for the Fund to have its own tribunal. At the same time, they recognize the geographical proximity, and the similarity of purpose and personnel practices of the Fund and the World Bank, might suggest affiliation of the Fund with the World Bank Administrative Tribunal. Before reaching any firm view on this matter, however, it would be necessary to have some cost estimates on an independent versus a joint

tribunal, and to reflect further on the differences in personnel policy between the Fund and the Bank, which might make affiliation less than ideal.

In sum, this chair is not fully convinced that there is an overwhelming case in favor of creating an administrative tribunal but would be prepared to join any broad consensus that emerged within the Board. Should that consensus develop today, we would like to reflect further on the specific details regarding the tribunal's formation.

Mr. Yao made the following statement:

I welcome today's discussions on the possibility for the Fund to establish or affiliate with an administrative tribunal that will adjudicate employment-related disputes that may arise between the institution and its staff. The request is timely as it follows the job grading exercise, whose adverse effects on the staff, particularly those in downgraded positions, have been a major concern for management. In our view, a favorable decision on this issue will help to restore the morale of the staff, thereby strengthening the relationship between the Fund and the staff.

After a careful examination of the staff paper, I concluded that there is a need for an administrative tribunal. My support is not meant to indicate that the employment relationship between the Fund and its staff has deteriorated. On the contrary, I am convinced that over the years the channels of communication or internal committees, such as the Office of the Ombudsman, the Grievance Committee, and the Job Grading Appeals Committee--through which the staff has voiced its concern over administrative matters--have been quite useful. However, as stated in the Managing Director's memorandum, there are limitations on the issues that can be raised under these arrangements. These entities play a conciliatory role and lack the legal authority to make their recommendations binding on both management and the staff. Furthermore, the recent job grading exercise and the expected changes in working conditions have heightened the need to create an environment in which the staff could feel that it has an enforceable contractual right. Moreover, that the Fund is the only UN specialized agency without a tribunal could be subject to a great deal of misinterpretation.

As to whether the Fund should establish its own administrative tribunal or affiliate with an existing one, I would favor the establishment of a Fund tribunal. However, I do not have strong feelings on this point; the final decision, however, should be made after we have agreed upon the jurisdiction of the tribunal and have examined the possibility of improving existing ones to take into account our concerns.

Regarding the jurisdiction of the tribunal, in my view its competence should be extensive. For instance, the tribunal should be competent to hear appeals alleging nonobservance of contracts of staff employment or terms of employment. Access to the tribunal should be open to present and former officials or successors to staff rights upon death. A tribunal with a wide jurisdiction would be in the interest of the Fund as well as the staff.

Mr. Sliper made the following statement:

Our position is similar to that put forward by Mr. Hodgson: we remain unconvinced of the need to create an administrative tribunal, although we would not stand in the way of its establishment. In our view the arguments offered in support of the creation of an administrative tribunal are not especially strong. In addition, there are several disadvantages to establishing such a body.

Both the staff paper and the paper prepared by the Staff Association Committee place considerable emphasis on the argument that the Fund is virtually alone among international organizations in not having an administrative tribunal. Clearly the implication is that the Fund is somehow falling down in its duty. In our view, the argument of precedent is rather superficial: while it is important for the Fund to be recognized as an employer of the highest standing, the existence of an administrative tribunal is not a significant factor in people's judgment about the relative merits of the Fund as an employer.

Even more important in coming to a view about the proposal before us is a consideration of what these tribunals actually do. Here the picture is unclear. According to the staff paper, the World Bank Tribunal has taken 30 decisions but in 23 of them, it declined to act. Apart from the de Merode case, the case load of the Bank Tribunal does not seem to have been substantive, or one that would lead to a clear conclusion that the tribunal has been worthwhile.

Philosophically we can see a number of disadvantages in the creation of a tribunal. The vital elements of good personnel policies are decentralized procedures and a system that encourages the settlement of disputes at the lowest possible level--namely, at the level of the staff member and his immediate supervisor. We also attach considerable importance to the principle of allowing managers to manage: management freedom and flexibility are important ingredients in an efficient organization.

The creation of a tribunal could operate against these principles. By its nature a tribunal encourages the escalation of disputes and the pursuit of formal, legal procedures. A tribunal could also lead to an attitude among managers of always looking

over their shoulder. These would be retrograde changes. Moreover, we consider that the existing instruments of the Grievance Committee and the Ombudsman are appropriate and provide adequate safeguards against administrative indiscretion.

On the other topics on which Directors have been asked to comment, we would make the following observations. If a consensus does emerge for the establishment of a tribunal, then it follows from our preceding comment that its terms of reference should be limited. We would not favor any move to broaden its functions as implied in the Staff Association's comment that the World Bank Tribunal has been timid and its charter should be modified to allow more involvement in matters of substance.

We believe that the limitations or constraints that have evolved on the activities of tribunals generally should be retained: tribunals should not substitute their own judgment for that of management; they should not interfere with the authority of the Board of Governors or Directors to change employment terms and conditions; and, they should not be advisory but should rather deal with actual cases.

As to whether the Fund should have its own tribunal or whether we should join with the Bank in creating a joint tribunal, we feel that there are arguments on both sides. Arguments in favor of a joint tribunal are cost and the similarity between the personnel policies of the two institutions. By contrast, parallelism and close working relations are well and good, but the institutions are distinct and their management practices and methods of operation are different. We have not yet come to a conclusion about this matter.

Mr. de la Herrán made the following statement:

In his memorandum accompanying the staff paper, the Managing Director set three specific issues that need to be addressed and on which precise views are sought.

First, as to whether the Fund should have an administrative tribunal or not, our response is positive: the need for an administrative tribunal seems to be clear under the present circumstances. The Grievance Committee has been a helpful element in solving disputes arising from administrative decisions, but the magnitude and potential number of administrative disputes that may well arise within this institution deserve the chance of appeal to an entity that is different in nature from an ad hoc committee. However, the Grievance Committee and an administrative tribunal should not necessarily be merged; rather, they should coexist in a complementary manner. The tribunal would be a superior judicial

body that would consider appeals of cases previously heard by the Grievance Committee, and decisions taken by the administrative tribunal would be binding.

On the second issue--whether the Fund should establish its own tribunal or affiliate with an existing one--we are in favor of creating an administrative tribunal exclusively for the Fund. One of the aims of establishing administrative tribunals is to offer the staff a reliable system for presenting their requests and complaints to an independent body. This purpose will be best served if the chosen formula also provides a simplified, efficient method of assisting the staff in this area. A Fund Administrative Tribunal would have this advantage and would still be able to profit from the jurisprudence and experience of other tribunals of a similar nature, which have been operating for a number of years and have served a variety of international institutions.

With respect to the third issue--the jurisdiction to be conferred on the tribunal--the resolution of the de Merode case, cited in Attachment IV of the staff paper, was of particular interest. An administrative tribunal should be a judicial entity created to protect the legal core governing the institution. To this end, its capability to limit unilateral alterations of the agreed rules is essential. As a judicial organ, a tribunal should develop its activity with absolute independence from the executive arm of the institution. For that reason, it is essential that the decision to establish the tribunal should be taken by the Fund's Board of Governors and not by the Executive Board.

Strictly speaking, the jurisdiction of a Fund Administrative Tribunal should extend to those matters involving disputes between employer and employee. It would be useful to have some guidance from the staff on those matters in which the Tribunal would be directly competent in the first instance and the rules that would govern when a case goes to the Tribunal.

Several other subsidiary questions, such as procedures, costs, and the selection of judges, may be better addressed in detail at a later stage, once we have agreed on the basic guidelines to be followed. If the outcome of today's discussion is consensus in favor of creating a tribunal, before our next meeting on this matter it might be helpful to have a study presenting alternatives and proposals on a number of specific topics related to the creation of a tribunal. For this purpose, I would suggest inviting experts from outside the Fund to collaborate with the staff of the Legal Department on that study so as to benefit from the expertise of other institutions while at the same time, making possible an open-minded regulation that meets the particular needs of the Fund.

Mr. de Forges made the following statement:

I consider, in principle, that safeguarding the legitimate rights and concerns of staff members is primarily incumbent upon the Fund's management, under the general guidance given by the Board of Governors and by the Executive Board. This having been said, I can go along with the principle of giving Fund staff access to an administrative tribunal, for the reasons expressed by Mr. Fugmann, among others. I would like to see further study on the pros and cons of creating a tribunal for the Fund or acceding to the jurisdiction of the World Bank Tribunal. I would also like to make it clear that I have no strong opinion regarding the competencies and procedures with which such a body would be endowed, as long as the tribunal takes into account the legal framework of the Fund. In the event that today's discussion led to a decision to set up or join a tribunal, however, I would like to express two general wishes: that recourse to the tribunal should be possible only after all internal reviews or appeals procedures have been exhausted; and that the decisions rendered should be regarded as final and binding on the Fund.

Mr. Grosche made the following statement:

I share the view expressed in the Managing Director's memorandum that the Ombudsman and the Grievance Committee have helped in a material way to safeguard the legitimate rights and concerns of our staff. I had hoped that these measures would suffice and that staff members would not feel it desirable to have access to an additional, independent decision-making organ, but this was probably too optimistic an expectation. Recent experience with Board decisions on job grading and salaries have increased certain concerns. In addition, the example of nearly all other international organizations described in the staff paper point to having such an additional body. While the need for an additional organ still has to be set forth in more detail, I am nonetheless of the view that in principle the Fund should join other institutions in providing its staff with the right of recourse to an administrative tribunal.

As to the jurisdiction to be conferred to such a tribunal, I am open minded. Basically, I feel it would be appropriate to stay in the mainstream and not to go beyond what most of the other institutions have provided for. We are fortunate at this stage to be able to draw heavily on the experience of other tribunals, taking account of their strengths and avoiding their weaknesses. Generally speaking, I think the tribunal should exercise a review function: it could hear appeals of cases heard by the Grievance Committee and could review decisions of the Executive Board in the employment area, that are beyond the competence of the Grievance Committee. The establishment of a tribunal should be authorized by the Board of Governors.

Finally, as to whether the Fund should establish its own tribunal or affiliate with an existing one, for practical reasons, I believe we should affiliate with the World Bank Tribunal, provided, however, that the Fund's independence from the Bank in matters of administrative policy can be maintained. Further exploration seems to be warranted in order to determine whether the procedures of the World Bank Tribunal can be amended in such a way as to accommodate the Fund's needs. As today's discussion is a preliminary one, the Board will have to consider this issue further before it can decide on the establishment of such a body, and particularly on its rules and procedures.

Mr. Yamazaki made the following statement:

While the Fund has taken several steps, including the establishment of the Ombudsman and the Grievance Committee, to deal with the grievances of individual staff members, the lack of a formal organ independent of the Executive Board became apparent when far-reaching administrative measures, such as the job grading exercise, were taken in 1985-86. Moreover, with the exception of the Fund, almost all public international organizations have established administrative tribunals for the settlement of disputes between the organization and its staff. In the case of the Fund, the immunity from judicial process provided for in the Articles of Agreement may particularly strengthen the need to protect the legal rights of its staff. For these reasons, I can support the proposal to move toward providing the staff with the right of recourse to an administrative tribunal. At the same time, if we move in this direction, it will be important to review the rules governing the Ombudsman and the Grievance Committee so as to avoid or minimize the duplication of function with an adminstrative tribunal.

As to whether we should establish our own tribunal or associate with an existing one, given the small size of this institution and the similarities in function and staff policies with the World Bank, accession to the World Bank Administrative Tribunal seems to be the most rational choice. However, if cost-sharing between the World Bank Group and the Fund needs to be made on a one-to-one basis, affiliation with the World Bank Tribunal may turn out to be costly to the Fund because of the difference in the staff size of the two institutions. Perhaps a detailed study on the feasibility and the advantages and disadvantages of accession to the World Bank Tribunal, including cost considerations, needs to be made before coming to any tentative conclusion in this respect.

While at this stage I have no strong views on the structure and jurisdiction of a tribunal, it would be reasonable to envisage that they would be similar to those of the World Bank Tribunal. In view of the importance of this matter, perhaps the decision to

establish such a tribunal or to associate with an existing one should be made by the Board of Governors rather than by the Executive Board.

Mr. El Kogali made the following statement:

This chair supports the proposal to establish an administrative tribunal for the Fund. According to the staff paper, most international organizations have an administrative tribunal, and the Fund is one of a small minority of organizations that is not served by any tribunal. Staff members of international organizations cannot take grievances arising from their employment contracts to national courts because of the organizations' immunity from suits in these courts--such as the Fund's immunity under Article IX, Section 3 of its Articles of Agreement--which leaves the Fund staff, in particular, in a vulnerable position and necessitates the establishment of an administrative tribunal.

While we appreciate the useful role now played by the Fund's in-house grievance mechanisms--comprising the Ombudsman, the Grievance Committee, and the Job Grading Appeals Committee--we recognize their limitations vis-à-vis an administrative tribunal. In particular, the Grievance Committee is advisory to the chief executive, and its recommendations are not legally binding, whereas an administrative tribunal independently evaluates the extent to which an employment contract has been violated, and its recommendations are legally binding.

Executive Directors are familiar with recent representations by the Staff Association Committee regarding serious grievances, some of them bordering on legal concepts, concerning the staff's employment contract with the Fund. Many of us, although not lawyers, can nevertheless appreciate the useful role that could be played by an administrative tribunal under such circumstances involving, for example, job grading, downgrading of staff positions, grandfathering, and delays in periodic salary adjustments. There are many other examples of past and foreseeable administrative actions that would benefit from an independent evaluation by an administrative tribunal.

It might be argued that the Fund deals with delicate policy matters that might be compromised if staff grievances are taken beyond the level of management. However, this problem can be handled in the same way as under the World Bank Administrative Tribunal: grievance cases would be brought before the administrative tribunal only after all internal grievance mechanisms had been exhausted. In the Fund, grievances would continue to be handled initially by the Grievance Committee.

Because the Fund and the World Bank have cherished parallelism in the treatment of their staffs, and because of similarities and geography, there would apparently be advantages and economies in having a common administrative tribunal. Accordingly, we would recommend that the Fund should affiliate with the World Bank Administrative Tribunal, whose statute should be amended as circumstances warrant. In addition, the Fund's Tribunal, like the World Bank Tribunal, should be established by the Board of Governors so as to command a stature corresponding to that of the Bank's Tribunal. Finally, we would recommend that the Fund's Administrative Tribunal be given as broad a mandate as possible but be kept completely separate from Fund management: it should not play an advisory role to management.

Mr. Kafka remarked that of the three issues raised in the Managing Director's memorandum, he had a position only with respect to the access of the Fund staff to an administrative tribunal. While he had not favored such access thus far, he had become convinced that it was unavoidable for the future.

He had an open mind as to whether the Fund should have its own tribunal or affiliate with an existing one, Mr. Kafka continued. In the latter event, affiliation would have to be with the World Bank Administrative Tribunal. On the basis of the information provided in the staff paper, cost ought not to be a major consideration. He therefore had a slight preference for the Fund having its own tribunal.

As to jurisdiction, while he tended to favor a more restrictive jurisdiction, he was still open minded on that matter. He was convinced that if an administrative tribunal was established, it should be by the authority of the Fund's Board of Governors.

Mr. Alhaimus made the following statement:

I shall concentrate my remarks on the three main issues raised in the Managing Director's memorandum, assuming, like Mr. Grosche, that this is a preliminary discussion and that further work will be undertaken on this subject.

The first and most basic issue is whether the Fund should have an administrative tribunal. On the basis of legal grounds and the practice of other international organizations, as well as the views of the management and the staff, there are reasonable arguments for having an administrative tribunal for the Fund. The staff paper explains the legal rationale that led to the spread of administrative tribunals and underlines the fact that, in contrast to the Fund, almost all public international organizations have established administrative tribunals. The Staff Association indicates that the need for a tribunal has been heightened lately owing to such recent developments as job grading, which have had an adverse impact on morale.

These considerations, however, have to be balanced against other factors, especially potential costs. No indication of the magnitudes of possible costs have been presented in the staff paper, although some useful figures have been cited by the Staff Association on the costs incurred by other organizations, including the World Bank. On the basis of those figures, it seems that costs may not be a prohibitive factor, although careful estimates should be made of the possible costs of the main modalities of tribunals now contemplated.

The other issue to be considered is whether any kind of tribunal would allay the concerns of the staff and contribute to better staff relations and morale. The Staff Association asserts in this respect that a weak tribunal with narrow jurisdiction "could worsen employment relationships rather than improve them." This point leads to the second major issue raised by the Managing Director, namely, the jurisdiction to be conferred on the tribunal.

The jurisdiction of a Fund tribunal should not as a rule depart substantially from the general practice of other tribunals. The Staff Association suggests a wide range of jurisdiction. It is doubtful, however, whether the effectiveness of a tribunal depends crucially on the inclusion of such tasks as class actions and cases raised by nonstaff members. At any rate, one may initially envisage a scope of jurisdiction in line with general practice while also providing for the possibility of widening the scope on the basis of further experience.

On the third major issue--whether the Fund should have its own tribunal or affiliate with an existing one--some relevant points have been touched upon in the staff paper and interesting observations were made by the Staff Association. One option that might be safely eliminated is affiliation with organizations whose nature and functions do not even remotely resemble those of the Fund. This leaves only two viable options: an independent tribunal for the Fund or affiliation with the Bank Tribunal, possibly through a joint tribunal. Obviously, a Fund Tribunal can better suit the particular conditions in the Fund and can more easily function within the Fund's own personnel policies. Other considerations that have been mentioned--making use of an already experienced tribunal such as the Bank's with possible savings in effort and costs--call for a careful consideration of this option before reaching any final decision on an independent organ.

Mrs. Walker made the following statement:

Today's discussion on the possible establishment of an administrative tribunal for the Fund is an interesting one and raises potentially important issues for the Fund in terms of a tribunal's impact on the decisions of the Executive Board, on the traditional

character of Board-management-staff interactions on personnel matters, and on protecting staff interests and maintaining staff morale.

Interest in the establishment of a tribunal at this time is understandable, in the light of staff concerns over job grading and salary developments during the past couple of years and since most other international organizations belong to a tribunal. Furthermore, one of the major arguments in favor of establishing a tribunal stems from the Fund's immunity from legal suits, so that Fund employees do not have access to courts to resolve disputes over personnel matters.

However, throughout the Fund's history, it has not felt the need to establish an administrative tribunal. Instead, the Fund has set up various grievance procedures and the office of an Ombudsman, which have offered staff a vehicle for expressing grievances and redressing problems with regard to personnel issues. These grievance procedures have functioned during periods of major change in the compensation system as well as when, at times, views differed between the staff and the Board or management on salary increases. Moreover, management did not believe it necessary or appropriate to bring the issue of an administrative tribunal to the Board, even when the World Bank created its own Tribunal in 1980. This fact perhaps points in a positive way to the uniqueness of this institution. I would appreciate any further elaboration on the reasons why staff or management did not feel that a tribunal was necessary before now.

The fact that other similar international institutions have a tribunal, is not a sufficient reason to create one for the Fund. Parallelism with other international organizations, such as the United Nations and the International Labor Organization, has not necessarily been an objective of the Fund in other areas. Many of the Fund's personnel policies, salary practices, and benefits differ from those of other organizations. Furthermore, the Fund has procedures to address staff concerns, and, like Mr. Grosche, we had hoped these would suffice. In our view, there might be an argument for strengthening these procedures, rather than establishing a tribunal. In any event, all existing grievance procedures should be exhausted before a case would be brought to a tribunal, if one were established.

We are uncertain therefore as to whether the Fund should move toward the creation of a tribunal. However, we recognize that there is widespread interest in a tribunal, particularly among the Staff Association and those Executive Directors who have spoken thus far; we would therefore be willing to examine the issue further without committing ourselves at this time.

A number of questions need to be addressed before this issue can be considered further, including those presented on pages 14-16 of the staff paper. In particular, what would be the costs of establishing an independent tribunal versus joining one already in existence? Most of the other international institutions have joined existing tribunals, and thus the creation of our own would probably not be cost effective, although Mr. Ebrill has made an interesting suggestion about the possibility of the staff bearing part of the costs. Cost estimates are needed before a decision can be made on which way to go.

Another, and perhaps the most important, issue regarding the establishment of a tribunal is its jurisdiction. A clear analysis of the potential areas of jurisdiction of an individual tribunal as well as the World Bank Tribunal is needed, including an examination of the implications of such jurisdiction. For example, the staff paper refers to a decision by the Bank Tribunal which, although it upheld the validity of a decision taken by the Executive Board, "implied that the Tribunal would be competent to invalidate unilateral changes made by the Bank in the fundamental elements of the conditions of employment, or other decisions taken by the Executive Board or management which contravened the internal law of the organization." This decision raises two questions: what are "fundamental elements of the conditions of employment"; and what implications could this case have for Board decisions taken on compensation matters? These questions might be difficult to answer today, but it would be important to discuss them in any future paper on this issue.

Moreover, if the tribunal were established by the Board of Governors, the tribunal could overrule decisions of the Executive Board. In our view, there are very serious risks involved if the Executive Board was to relinquish some of its jurisdiction in a way that it does not fully understand or fully appreciate. Nor is it clear why the Board of Governors should establish a body whose decisions might result in binding reversals of the decisions taken by its representatives in the Executive Board.

The paper prepared by the Staff Association Committee lists elements that should be included in the jurisdiction of a tribunal, including "jurisdiction to interpret its own jurisdiction." This would not, in our view, be appropriate, nor would be the inclusion of class actions.

Questions also remain with respect to the jurisdiction of any tribunal which the Fund might join. For example, if we joined the World Bank Tribunal, would we be subject to the same jurisdiction as currently exists in its tribunal, or would there be scope for changing that jurisdiction? A thorough examination of the question of jurisdiction is needed before we could decide on this issue. If we move toward establishing a tribunal, at this stage we would

prefer to have the tribunal established by the Executive Board; and if we joined the World Bank Tribunal, we would prefer to leave open the door for negotiation so that the jurisdiction of that Tribunal could be changed, as necessary, to accommodate the special circumstances of the Fund.

In sum, we are willing to look further into this subject. However, additional exhaustive discussion is needed, particularly regarding those issues and questions I have raised, and those presented on pages 14-16 of the staff paper; the World Bank's experience with its Tribunal; and the pros and cons of joining the Bank Tribunal, including the relevance to the Fund of aspects of the Bank Tribunal.

Mr. Posthumus remarked that he agreed with Mrs. Walker that much study remained to be done on an administrative tribunal, particularly with respect to its jurisdiction, before a final decision could be reached. As a starting point, however, he considered that the Fund should provide the staff with the right of recourse to an administrative tribunal, partly for the reasons expressed by Mr. Grosche and partly because most other international institutions had access to a tribunal.

Initially, it might be beneficial for the Fund to join another tribunal, preferably the World Bank's, Mr. Posthumus continued. However, he would need to know more about the World Bank's experience with its Tribunal and about the possible faults in its functioning.

Finally, he understood that only individual grievance cases would be brought to an administrative tribunal, Mr. Posthumus commented. However, in Attachment IV of the staff paper, it was stated that "there are several applications pending before the WBAT, including a challenge to the 1984 compensation exercise at the Bank...." He wondered whether issues of compensation and salary adjustments in general were to be brought to a tribunal. If so, he would not favor such extensive jurisdiction for a tribunal for the Fund.

Mr. Donoso remarked that the relationship between the events that had affected staff morale over the past few years and the need for an administrative tribunal were unclear. Staff-management problems concerned questions of policy rather than questions of justice. Nevertheless, if the staff strongly felt the need for a tribunal, he would favor establishing one. Such a tribunal should be established by the Executive Board and not by the Board of Governors. With respect to jurisdiction, he had an open mind but he would like to see more detailed analysis on experience with the World Bank Tribunal before reaching a decision on that issue. He would also like to see more detailed analysis of what would be involved if the Fund were to establish its own tribunal or join the World Bank Tribunal, particularly with regard to costs.

Mr. Péterfalvy remarked that his chair considered that the Fund should have an administrative tribunal and that it should establish its own tribunal. As far as specifics were concerned, including jurisdiction, his authorities would elaborate their views at the next stage of the Board's discussion of the subject.

Mr. Foot remarked that the time had come to establish an administrative tribunal for the Fund. As to whether the Fund should have its own tribunal or join an existing one, he was inclined to favor joining the World Bank Tribunal if that proved to be cost effective and met the Fund's needs.

The question of jurisdiction would have to be examined very carefully, Mr. Foot observed. While he was opposed to the tribunal having an advisory function, he was less certain about extending its jurisdiction to class actions. He would not want to eliminate that possibility. However, the tribunal's recommendations should not be taken as final: the Executive Board had the responsibility for running the Fund, and a tribunal would primarily serve to ensure that properly set rules were observed and that arbitrariness and discrimination were avoided. As to which organ of the Fund should authorize the establishment of a tribunal, he considered that the Board of Governors was the ultimate authority.

Finally, he looked forward to some narrowing of the issues described in the staff paper, Mr. Foot commented.

The Director of Administration remarked that the information on the cost of the World Bank Tribunal presented in a footnote to the paper prepared by the Staff Association Committee was inaccurate. The figure of $250,000 a year was the amount actually paid for the travel and other expenses of jurists who acted as judges for the Tribunal. That amount did not include internal and administrative costs of the Secretariat, which probably exceeded $100,000. In addition, there were the costs of staff time spent in dealing with actual cases. The budgeted cost for the United Nations Administrative Tribunal in 1986 was $550,000. Of course, cost estimates needed to be examined, but he assumed that the costs of an independent Fund Tribunal would not be much less than those of the World Bank Tribunal. The less costly approach would be to join the World Bank Tribunal on a cost-sharing basis. That would not, however, necessarily be the best approach from other points of view.

He felt that the memorandum from the Staff Association Committee portrayed present grievance practices unfairly because it implied that the only way for the staff to get justice was through an administrative tribunal, the Director commented. The existence of a tribunal was not, in itself, a necessary prerequisite for achieving justice. Present grievance procedures had worked quite well, thanks to the Grievance Committee's members and its Chairman.

The staff's interest in establishing an administrative tribunal was perhaps largely symbolic, the Director suggested. Although that symbolism was significant, it must be recognized that a tribunal would involve the addition of a cumbersome, time-consuming, and expensive layer to the administrative process, as did to the Grievance Committee to some extent. In that regard, it was notable that almost one half of the cases brought before the Grievance Committee had been brought by one staff member. Inevitably, a tribunal would tend to formalize a process that had to date been kept relatively informal.

The creation of an administrative tribunal would necessitate a review of the present jurisdiction and operation of the Grievance Committee as well as the rules and regulations that govern the staff, the Director continued. In addition, those rules and regulations would have to be spelled out more precisely, if they were to be subject to scrutiny by a legal tribunal. For example, there was no provision in the regulations for the demotion of staff members. Nonetheless, a tribunal was important in the eyes of the staff, and for that reason he felt that the time had come to move toward creating an administrative tribunal.

The Director of the Legal Department observed that many Directors' comments reflected different legal traditions. Two specific questions had been raised concerning the World Bank Tribunal's decision on the de Merode case: what was the meaning of a breach of a fundamental right; and what were the implications of that decision for the Executive Board? The concept of a fundamental right could only be defined in a concrete setting. Moreover, it had a limited scope: in principle, an administrative tribunal should not interfere with decisions taken by the executive organ of the organization, such as management and the Executive Board; the resort to the concept of breach of a fundamental right was only an exception to that principle. For example, the retroactive reduction of salaries might be regarded as a breach of a fundamental right. However, it was not clear whether the decision to freeze salaries for the future would be regarded as such a breach. In fact, the World Bank Administrative Tribunal itself had not yet interpreted that concept.

The other aspect of the de Merode case--a decision by the World Bank Administrative Tribunal that recognized its jurisdiction to review the validity of decisions taken by the Executive Board--was analogous to developments in international or national courts, the Director continued. For example, in Marbury v. Madison (1803), the U.S. Supreme Court had decided that it had jurisdiction to review the constitutionality of statutes adopted by the Congress, although there was no specific provision in the U.S. Constitution to that effect. Likewise, there was no specific provision in the Statute of the World Bank's Tribunal giving the Tribunal such powers. If the Board decided to establish an administrative tribunal for the Fund, it would be necessary to clarify that point and to explain whether and to what extent the tribunal would have jurisdiction over decisions taken by the Executive Board, the Board of Governors, and management.

As to the distinction between individual and regulatory decisions, the Director noted that the main issue was whether a regulatory decision could be challenged at all, either at the time of its adoption or at the time of its application in individual cases. It was also possible to envisage a different system under which a staff member would not be allowed to challenge the validity of staff regulation, but only the consistency of individual decisions affecting him with the regulations. Whether that distinction was desirable or not was another matter which would have to be examined.

Mr. Kafka, noting the staff observation that the establishment of an administrative tribunal would create administrative complications, remarked that it would be interesting to have some report, if possible, from the World Bank staff on the extent to which they felt such complications had been created by the establishment of their Tribunal. He was also surprised to hear that the rules for demotion of Fund staff had not been spelled out previously; whether or not there was an administrative tribunal, such rules should be spelled out.

Mrs. Walker commented that the staff's comments concerning administrative complications indicated that further work on an administrative tribunal would have to include a more systematic examination of the Fund's administrative procedures. On another matter, she wondered whether clarification of a tribunal's jurisdiction in the manner indicated by the staff would be possible if the Fund joined the World Bank Tribunal?

The Director of the Legal Department responded that if the Fund decided to join the World Bank Tribunal, and if, at the same time, the decision was taken to clarify the jurisdiction of the Tribunal, an amendment of the Tribunal's Statute would be required. Thus, two resolutions would have to be taken by the respective Boards of Governors: the first would amend the Statute of the World Bank's Tribunal, and the second would be a decision on the part of the Fund to join the renovated Administrative Tribunal.

The Chairman remarked that he presumed that if substantial changes regarding the scope of jurisdiction of the World Bank Tribunal were made, the World Bank could be involved in a complicated decision-making process, whereas if the Fund were to apply to share the existing arrangements, the process would be simpler.

The discussion had been a preliminary one and the issues that had been raised by Directors would be taken up in further staff papers on the subject, the Chairman continued. Directors had, in principle, answered the first question he had raised in his memorandum in the affirmative. Most speakers considered that the time had come to establish an administrative tribunal in the Fund, although some Directors were not convinced that the course of action would entail more benefits than risks.

As to why management had proposed consideration of the establishment of a tribunal, the Chairman recalled that in the 1970s, when the World Bank was moving toward the establishment of a tribunal, he had encouraged the Fund's Staff Association Committee not to pursue similar formal arrangements for settling grievances in the Fund and had instead tried to lead the Fund into less formal arrangements--namely, the establishment of the office of Ombudsman and the Grievance Committee. Under those arrangements, the Grievance Committee had played only an advisory role in the decision-making process; however, management had always made a point to follow the Committee's views when taking a decision and had tried to reinforce the authority of that body.

In the past, the Fund had also been sufficiently endowed with good industrial relations, the Chairman continued. The establishment of the Kafka compensation system in 1979 had provided a strong framework within which to sort out problems in a more informal manner, consistent with management's approach. Indeed, management's relations with the Staff Association Committee had been rather good under that system, but they had been changing. The recent job grading exercise had given rise to a number of frustrations among the staff, particularly as a result of the downgrading of a significant number of staff positions. In addition, the Board's decision to delay action on the 1986 staff compensation review--which was clearly at odds with the established system--had been resented by the staff as an arbitrary action with many political connotations. Because the staff had no means of recourse to appeal that action, the Staff Association Committee believed strongly that an additional mechanism was needed in the Fund to ensure that the staff was treated fairly, predictably, and according to a system of law. For all those reasons, he too thought that the time had come to consider the possibility of establishing an administrative tribunal.

As to the questions he had raised on modalities, Directors had been open minded, the Chairman noted. Some Directors had suggested that a tribunal similar to the World Bank's might be reasonable, but it would be necessary to study the experience with that system in more detail. The feasibility of affiliation with the World Bank Administrative Tribunal, or the establishment of an independent body, particularly with respect to cost, was another aspect that would have to be explored. As to a tribunal's jurisdiction, Directors understandably needed more information on different options. Clearly, no tribunal should be endowed with the right to advise the Board on policy decisions, including decisions on personnel matters. The Board would therefore have to examine the matter of jurisdiction with a view to keeping the fundamental lines of authority within the institution intact.

Most Directors had commented that the decision to establish a tribunal should be taken by the Board of Governors, the Chairman observed. The staff would be preparing a paper addressing the various questions Directors had raised, and focusing in particular on the implications of affiliation with the World Bank Administrative Tribunal and of establishing the Fund's own tribunal.

The Executive Directors concluded for the time being their consideration of administrative tribunals.

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LEO VAN HOUTVEN
Secretary