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0404

INTERNATIONAL MONETARY FUND

Minutes of Executive Board Meeting 89/21

3:00 p.m., February 22, 1989

R. D. Erb, Acting Chairman

Executive Directors	Alternate Executive Directors
	C. Enoch
	Shao Z., Temporary
	C. Warner
	A. Rieffel, Temporary
	J. Prader
	S. M. Hassan, Temporary
E. Feldman	R. J. Lombardo
	M. Hepp, Temporary
	E. Ayales, Temporary
	N. Kyriazidis
	A. M. Othman
	M. B. Chatah, Temporary
	O. Kabbaj
G. Grosche	
	E. Kiriwat
	L. E. N. Fernando
A. Kafka	
	C. L. Haynes, Temporary
Mawakani Samba	J. K. Orleans-Lindsay, Temporary
	I. A. Al-Assaf
J. Ovi	
H. Ploix	
G. A. Posthumus	G. P. J. Hogeweg
C. R. Rye	
	S. Yoshikuni

J. W. Lang, Jr., Acting Secretary
R. Gaster, Assistant

Also Present

G. R. González J., Minister of Planning and Economic Policy, Panama. Administration Department: H. J. O. Struckmeyer, Deputy Director; D. S. Cutler, T. N. Usmani. Exchange and Trade Relations Department: E. Brau. Legal Department: F. P. Gianviti, General Counsel; W. E. Holder, Deputy General Counsel; L. W. James; J. S. Powers, J. V. Surr. Middle Eastern Department: H. H. Handy. Treasurer's Department: T. Leddy, Deputy Treasurer; D. Williams, Deputy Treasurer; J. E. Blalock, M. P. Blackwell, P. S. Ross. Western Hemisphere Department: S. T. Beza, Director; M. Caiola, Deputy Director; J. Ferrán, Deputy Director; L. A. Cardemil, R. Incer, S. Oteyza, L. L. Pérez, E. C. Suss.

1. ADMINISTRATIVE TRIBUNAL

The Executive Directors considered a staff paper on the establishment of an administrative tribunal in the Fund (EBAP/89/23, 1/27/89). They also had before them an earlier staff paper on the same subject (EBAP/88/151, 6/22/88), together with a paper from the Staff Association commenting on the staff's proposals (EBAP/88/173, 7/13/88).

Mr. Rieffel made the following statement:

I would like to begin by welcoming the staff paper prepared for today's discussion. It responds quite thoroughly to the questions that were raised in our discussion last summer on the establishment of an administrative tribunal for the Fund. Specifically, the paper provides a good description of the operation of the Fund's Grievance Committee, including a summary of cases that have been brought to the Committee's attention since its establishment in 1980. I was impressed by how well this Committee appears to be functioning. The paper also explains more clearly the four alternative models for structuring an administrative tribunal system by blending elements of the existing system with elements of the systems established by the World Bank and other international organizations. And the paper spells out in considerable detail the disadvantages of affiliating with the World Bank's Administrative Tribunal.

Indeed, looking at the issues in isolation, the paper makes a good case for establishing a tribunal for the Fund based on the fourth model. This model is especially attractive in terms of both its efficiency in responding to complaints from the staff and its cost.

My authorities, however, cannot look at this issue in isolation. They are strongly attached to the close relationship that has evolved between the personnel system and policies of the Fund and those of the World Bank. From this perspective, my authorities remain extremely uncomfortable with any approach which leaves the Fund and the Bank with two entirely separate and considerably different administrative tribunals.

The staff paper is quite persuasive in arguing that affiliation with the World Bank tribunal, as it is presently constituted, would not be effective in responding to the interests of both the staff and the shareholders. The staff paper begs the question, however, of why we should take the World Bank tribunal as a given. The paper does not address the possibility of modernizing the World Bank tribunal to make it more responsive and efficient, compatible with, or even integrated with an administrative tribunal for the Fund.

The work of the staff over the past year has led my authorities to the conclusion that the ideal system for the Fund and the Bank is a shared system which reflects the common approach taken by these sister institutions to personnel management, avoids the potential conflicts that would inevitably arise from two totally independent systems, and yet is tailored to the different cultures of the Fund and the Bank. Specifically, one option worth exploring is a system where each institution has a separate and distinct first panel, and where the two institutions share a second panel. We believe that such a system could be designed to be more responsive to staff complaints from within the two institutions than any other approach. At the same time, it could be made cost efficient, and would effectively eliminate the potential problem of conflicting decisions from separate tribunals.

We understand that the Executive Board of the World Bank and its management and staff are generally satisfied with their tribunal system. Nevertheless, we believe that the Boards of the Fund and the Bank should not let this opportunity pass, as the apparent advantages of a shared system over separate systems are too great. Our Executive Director at the Bank is prepared to bring this matter to the attention of the Bank's Board, and we propose that Fund staff explore this alternative approach with Bank staff and provide a further report to this Board as early as possible.

We regret that this further step will probably delay the establishment of an administrative tribunal for the Fund. We believe, however, that the potential advantages for both staff and shareholders of an integrated, or shared, system are large enough to justify a delay. Meanwhile, we take some comfort from the high regard in which the staff appears to hold the Fund's existing Grievance Committee.

Finally, we remain concerned about some of the details of the fourth model. For example, if the first panel is to make final decisions, it may be more appropriate for all the members to be external to the Fund. Also, we would like to understand better the advantages and disadvantages of enabling the tribunal to compel the production of Fund documents or the appearance of witnesses. I would like to stress, however, that these are points on which we remain open.

Mrs. Ploix made the following statement:

The additional information that the staff provides in its new paper largely confirms the preliminary conclusions that were reached during our meeting last July. On that occasion, I underlined my authorities' basic support for management's

proposal. The establishment of an administrative tribunal for the Fund seems appropriate, simply on the grounds that such a body exists in most other international institutions.

My authorities still strongly prefer an independent tribunal that would be exclusively competent to review Fund staff grievances. Affiliation with the existing World Bank Administrative Tribunal should be avoided, given the potential cost of such an approach, as it would be difficult to come up with a satisfactory cost sharing formula. Moreover, irrespective of the formula, the financial burden for the Fund would in any case be much higher, in light of the present operating cost of the World Bank Administrative Tribunal.

Second, we should consider the need to preserve the administrative identity of each institution. It is certainly justifiable to try to develop a common compensation system for both organizations. However, parallelism should not be taken too far. In particular, the differences in size and in the enterprise culture between the Fund and the World Bank make it undesirable to share the same tribunal with the Bank.

I can confirm my authorities' support for the staff's proposal concerning the appropriate model for the tribunal. As the staff convincingly explains, an attractive feature in the fourth model is that it would allow the Fund to draw upon the very positive experience of the existing Grievance Committee. In this regard, the feeling of uneasiness expressed by several Board members about the fact that in the fourth model two staff members would pass judgment on their peers should not be overblown. We should also note that of the 22 cases heard by the Grievance Committee over the last eight years, all the decisions were taken unanimously and confirmed by the Managing Director. There is no reason to consider that the transformation of an advisory body into a judicial one would alter its ability to make wise decisions. Apart from the staff members' integrity, the employment of a professional chairman external to the Fund would also remain a guarantee of sound decisions.

Another concern could be the review of the legality of regulatory decisions by the expanded five member panel, including two staff members. The fact that staff members may have to give an opinion on Executive Board decisions, even on strict legal grounds, can raise some difficulties. In its paper, the staff suggests a variation of the fourth model, whereby the tribunal would not be expanded to a five member body to review the most difficult cases. In this approach, the two panels would be kept separate, and regulatory decisions would be reviewed by the three members external to the Fund. Even if the staff paper does not favor this solution, more thought should be given to this delicate issue. Furthermore, I do not understand

why the two forums would not be served by a common chairman, as the chairman of the first panel will also participate in the second panel. I would appreciate some clarification from the staff on this issue.

Beyond this problem, which is rather specific to the fourth model, jurisdiction of any type of tribunal over regulatory decisions deserves special attention. Several speakers mentioned, during our meeting last July, that the tribunal's competence to judge the legality of regulatory decisions should not unduly restrict the ability of the Executive Board and management to make all the decisions necessary for the orderly functioning of this institution. One way to reduce the risk of conflicting decisions would be to interpret the tribunal's ability to review the legality of a regulatory decision in connection with the consideration given to individual appeals in a very narrow sense. I would appreciate any further comments from the staff on this point.

Before closing, I would like to insist on the need to secure the widest spectrum of nationalities in selecting members of the administrative tribunal.

Mr. Kafka made the following statement:

We have already indicated our preference for the establishment of an independent Fund administrative tribunal. Our preference was to retain the Grievance Committee with its present structure--two staff members, an outside chairman--but to authorize it to issue judgments rather than recommendations in cases of individual appeals against the applications of rules. However, we are impressed with the argument that it might be anomalous to have a Committee with staff members issuing judgments binding on management. Consequently, we would like to maintain the Grievance Committee as it is now, with regard both to competence and to composition.

We would favor establishing an administrative tribunal entirely separate from the Grievance Committee. This seems necessary for the tribunal to be seen to be independent; also, the competence of a tribunal which could render judgments or regulatory as well as individual questions would have to be different from that of the Grievance Committee. In other words, we favor model one. Since a staff member dissatisfied with the legal grounds underlying a Grievance Committee decision will be able to bring his case to the tribunal, the quasi-appeals procedure will increase costs. But the purpose of the tribunal is to make binding judgments in individual cases possible. We would not, initially, wish to assess costs against an appellant, but this should not be made into a rule which could not be

revised in the future. It would also be possible to abolish the Grievance Committee, but nobody has suggested this, and we would not favor it.

We could agree to follow the World Bank's example in backdating the tribunal's jurisdiction to a point before January 1989. We could also support authorizing the tribunal to compel the production of documents in the possession of the Fund, and the appearance of staff members as witnesses, subject to appropriate conditions of confidentiality and security.

Mr. Kyriazidis made the following statement:

In previous discussions, this chair has supported the establishment of an administrative tribunal in the Fund, and we wish to reiterate this support today.

The staff paper before us is extremely informative and thoughtful. However, although it deals with the institutional aspects of the question exhaustively, it still leaves unanswered certain important questions raised in the July 15 Board meeting, particularly those concerning jurisdiction which have to be clarified if the appropriate balance between the legitimate rights of the staff and the necessary flexibility of management is to be achieved. Am I correct in expecting these issues to be addressed when we come to discuss the statute in detail?

Let me deal first with the institutional aspects covered in the staff paper. The very cogent and detailed analysis has confirmed us in the view that there are distinct advantages in the establishment of an independent administrative tribunal in the Fund, rather than affiliating with the World Bank Administrative Tribunal. As we stated at the last Board meeting on this subject, the mere fact that there is already a body of jurisprudence in the World Bank Administrative Tribunal might create problems for this institution; in addition, conflicts may arise which, while they may well be reconcilable, would still restrict the independence of the Fund in matters of administrative policy. Furthermore, there does not seem to be a distinct cost advantage in affiliation.

On the other hand, however, we cannot agree with the staff's preferred solution--model four. We clearly prefer model one.

The establishment of an administrative tribunal is, in our view, a complement of the grievance procedures, not a substitute for them. We highly appreciate the work of the Grievance Committee so far, and we believe that its advisory status should be preserved. Despite the chairmanship of an outside lawyer, it

is an administrative organ and should remain so. Transforming it into a judicial body possessing the right to render binding and final decisions--even if its decisions are final only in individual cases which do not involve the legality of regulatory decisions--seems inconsistent with the whole concept and purpose of the administrative tribunal as a final appeals court. First, such a procedure would eliminate an important step in the administrative review of grievances before the dispute is submitted to a judicial body; second, it reduces the informality and flexibility of current grievance procedures, making them less accessible and effective. Besides, it would put members of the staff in a position to issue decisions binding on management, which we consider inappropriate.

The experience and practice of other international organizations seems to support the view that the consultative committee procedure is useful and should be retained outside the judicial review proper. Furthermore, we do not think that the argument that this procedure will result in duplication is valid. Duplication is, after all, an inescapable element in all appeals procedures; as it has to be in this instance if, as intended, the tribunal is to pass judgment after all available remedies have been exhausted.

We also feel uncomfortable with the staff proposal regarding the respective competencies of the two panels, which appears to turn the administrative tribunal, whether sitting as a second panel, or toutes chambres remmies, into a cour de cassation that renders judgment only on points of law and does not review the substance of the case. I would find no objection to that if the first panel were a proper judicial one, composed entirely of outside judges.

We clearly, therefore, prefer the first model. It respects the proper forms of judicial procedures followed in other comparable international institutions and ensures all the essential, as well as outward, guarantees of fairness and independence without being unduly cumbersome. There might also be advantages in terms of both cost and flexibility and speed if the two-panel format were maintained, with both panels being composed of outside judges.

Beyond these institutional points, I would like to raise two questions which have not been addressed in the staff's paper. First, we have to know--before the tribunal is established--the precise nature and extent of the proposed judicial review of Board and management actions in the exercise of their powers of decision on matters concerning personnel administration, if we are to avoid the danger of harmful constraints.

Second, there is the possibility of group or class recourse to the tribunal. The right of the Staff Association to challenge the legality of a regulatory decision before the tribunal--as provided in Article II.1c--seems to open the way for possibly undue interference in the decision-making process of this institution. This danger is all the more serious given the vagueness of the term "legality" if the body of law by reference to which it is to be determined is not spelled out.

Finally, we feel that if the first model is adopted as we proposed, the number of members of the Administrative Tribunal should be expanded to five to ensure adequate representation of nationalities, and that the judges should be appointed by the Board of Governors.

Mr. Grosche made the following statement:

The well-written paper before us answers several questions that were raised during our last meeting, and discusses a number of options. Unfortunately, the more I delve into the matter the more questions arise in my mind, and I must confess at the outset that I am not yet in a position to endorse the staff's suggestions, particularly with regard to the proposed competence and structure of an administrative tribunal for the Fund.

In our view, the tribunal should be empowered to hear only those cases of individual employment-related decisions which had been taken by the management or the Fund's administration. We have serious reservations about--and would probably vote against--a statute which would empower the tribunal to review employment-related decisions taken by the Executive Board, such as adjustments to compensation, pensions, tax allowance, benefits, and job grading methodology. The draft statute put forward in EBAP/88/151 empowers the tribunal to take such actions. I would be interested to learn from the staff whether it considers this draft to be the basis of our discussion today, and, if so, whether it could envisage amendments which would clearly delineate between decisions taken by management and administration on the one hand and the Board on the other, with the tribunal not being empowered to issue judgments on the latter.

Let me stress again that only individuals challenging administrative acts should have access to the tribunal. I would not support the proposal to allow, for instance, access for the Staff Association Committee as such.

Even if one opted for a separate tribunal for the Fund, one would think that a statute should be adopted which is as similar as possible to that of the World Bank because the same or

similar jurisprudence should be encouraged in both organizations in identical or closely related cases. I would have preferred the staff to have tried to follow the World Bank's statute and to deviate from it only if absolutely warranted. While the Fund certainly has no authority to amend the statute of the World Bank Administrative Tribunal, I would imagine that its "ambiguity" and "lack of guidance and predictability"--which the staff describes so effectively in the paper--are deficiencies that are also felt in the Bank, and that a wish by the Fund to align its statute with that of the Bank may perhaps serve as a welcome incentive for revision, and for a better alignment of the World Bank Administrative Tribunal with our needs.

This brings me to the question of affiliation. The cost calculations put forward today are based on a two-panel system in the Fund. It would have been interesting to know whether a separate tribunal would be as cost efficient, and I would appreciate a cost comparison with the Bank's tribunal on that basis.

We continue to have reservations about the two-tier approach, despite the arguments put forward in today's paper. The staff recommends that staff members on the first panel be permitted to issue decisions binding on management and affecting the staff itself, which implies that the staff is its own judge. We also doubt whether the chairman of the first panel--most appropriately a U.S. citizen--should necessarily also function as the chairman of the second panel. Basically, I still favor either model one or model three.

With regard to model three, it is worth considering a two-step approach. In the first step, the Grievance Committee would be transformed into a judicial body and empowered to issue binding decisions concerning the legality of individual decisions. Given the fact that up to now only a few cases were put forward to the Grievance Committee, and that it has worked well, we should be able to rely confidently on it in a more judicial function. We should test it for a few years and see whether the need arises for a second step, increasing the legal protection for our staff. I would be open to Mr. Rieffel's suggestions to have the second tier established jointly with the Bank.

Finally, I have some doubts about the draft statute's provision that the tribunal should not be given the authority to ask for the production of documents or the appearance of witnesses. I also have doubts with regard to the possibility of assessing costs against an appellant. Some further explanation on these points would be welcome.

Mr. Orleans-Lindsay made the following statement:

On the basis of the additional information provided by the staff we continue to support the proposal that the Fund should establish an administrative tribunal.

We are of the view that the Fund's administrative tribunal should be independent, and hence that it should not be affiliated with the World Bank Administrative Tribunal. We are convinced that the establishment of the Fund's own administrative tribunal would better serve the peculiar needs of this institution, in terms of the desire to maintain the Fund's independence in administrative policy matters and ability to review its own employment-related decisions, and to safeguard the legitimate rights of its staff.

We can go along with the choice of model one: the Grievance Committee should remain an advisory body, composed of two staff members and an external chairman with legal experience. We believe that the staff has greatly benefited from having as chairman of this committee a lawyer with a background in arbitration and labor law. There is great merit, therefore, in continuing this practice.

We are persuaded that the legal expertise of the chairman would further help the Committee to function in such a way as to provide orderly and well-reasoned advisory opinions for management. This characteristic would also help to reduce or minimize the frequency of appeals to the tribunal. The Grievance Committee would thus continue to provide an important and flexible avenue for exhausting all available administrative remedies before staff could have recourse to the tribunal.

We therefore favor the establishment of an administrative tribunal as a judicial review body--as provided under model one--endowed with the powers summarized in the chart attached to the staff paper. Its panel should comprise persons of different nationalities who posses certain legal qualifications, and are external to the Fund.

Finally, to ensure that the Fund's statute is consistent with those of other administrative tribunals in international organizations, and, above all, to assure justice and good order for the staff, the statute should provide the administrative tribunal with the authority to enforce production of documents and to summon witnesses. Of course, the usual safeguards for secrecy and confidentiality should also be ensured. Perhaps the staff would like to provide further justification for the provisions of Article XVI, where costs could be awarded against staff members appearing before the tribunal. Certainly, it is

not the intention of the Board to recommend provisions in the statute that could deter staff from availing themselves of the facilities of the tribunal.

Mr. Enoch made the following statement:

The paper before us provides a useful clarification of the various different ways in which a system to review employment-related decisions in the Fund could be structured. The paper also outlines how the existing Grievance Committee--which has worked very well over the last decade--might be incorporated into the new structure.

My provisional view is that model four may be the most satisfactory approach. However, in the absence of comprehensive costing on each option, it is very difficult to reach a definitive position, particularly since relative costs appear to weigh heavily in management's qualitative assessment of the four alternative structures presented in the paper.

The main potential advantage of model four is that it would provide for a single level of review at which issues would be resolved definitively. In contrast, under the other structures, staff members would have access to an additional level of review. It was largely because of the "potential duplication of effort" involved in this extra level of review that management rejected models one and two in preparing the initial paper. However, one should not necessarily dismiss models one and two, out of hand. As the latest paper acknowledges, a tribunal could choose to rely entirely on the factual record drawn up in the course of the earlier administrative review, thus minimizing the actual duplication of effort. I would be interested in hearing from the staff whether, in practice, excessive duplication of effort has been a problem in those international organizations which use structures of this sort.

While, therefore, I am not yet entirely convinced that model four would necessarily hold a decisive cost advantage over models one or two, even if full account were taken of the costs of staff time. I agree with the staff paper that the two levels of judicial review enshrined in model three would be excessively complex.

Looking at model four in more detail, I wonder whether it is right that the second panel should deal not only with the legality of regulatory decisions but also with certain individual decisions involving "fundamental issues for the staff member's career." I think, in practice, that it would be quite difficult to divide individual decisions into those raising fundamental and those raising less fundamental issues.

Moreover, there would be a risk--in making this distinction--that the three-member panel might come to be seen as an inferior, or somehow less competent, tribunal which was only to be trusted with relatively trivial issues. It would be both simpler and more satisfactory if the second panel were to confine its attention to regulatory decisions.

The final section of the staff paper deals with the question of whether the Fund should set up its own tribunal or whether it should affiliate with the World Bank Administrative Tribunal. Although this particular question does not arise if management's preferred model four is chosen, the discussion in the paper also raises some issues which are of considerable relevance to model four.

I can go along with the staff's view that if models one or two were followed, it would be more sensible for the Fund to establish its own tribunal than to affiliate with the World Bank. This conclusion rests largely on cost considerations, which are not clearly spelled out in the paper, and the view--expressed when I raised the issue on the occasion of our previous discussion--that the World Bank was not expected to be willing to modify its own tribunal in the light of Fund concerns.

Leaving aside cost arguments, the paper devotes considerable space to the apparent ambiguities or omissions in the statutes of the World Bank Administrative Tribunal. My own view is that these imperfections may be more relevant and important in theory than in practice. For instance, while it may not be clear from the language of the statutes that the Bank's Tribunal can pass judgment on the Executive Board's decisions, there is no doubt in practice that the Tribunal does from time to time pass judgment on the legality of Board decisions, and that the Bank's Board of Governors has not sought to challenge this practice.

I have two questions for the staff on this section of the paper. First, in the de Merode case, the Bank Tribunal held that the Bank could not unilaterally alter the "fundamental" conditions of Bank employment. Subsequently, in two more recent cases, and following de Merode, the Tribunal held that--as one of these fundamental conditions--Bank staff members were entitled to benefit from "periodic adjustments reflecting changes in the cost of living and other factors." Under the draft statutes contained in EBAP/88/151, would a future Fund tribunal have the power to constrain the Fund Board's right to change staff members' terms and conditions of employment? It is important that the Board should have a clear idea of the powers that it will have to relinquish in the future if these draft statutes are approved.

My second question concerns the perceived deficiency in the Bank Tribunal's statutes with respect to remedies. The staff suggests that in order to prevent uncertainties arising, a future Fund Tribunal should prescribe all of the measures required to correct the effects of a rescinded decision. However, it is by no means clear to me that this is either necessary or desirable. In some cases, the rescission of an illegal decision might leave a number of possible options open, each one of which might have knock-on effects for other policies and practices of the organization. In these circumstances, it would seem to me to be most appropriate for management and the Board to decide how to proceed rather than to have a judicial tribunal extend its role into quasi-legislative fields. In the Pinto case cited by the staff, the Bank Tribunal's decision left management in a situation where one possible response would have left anomalies between different categories of downgraded staff and another would have created anomalies between downgraded and nondowngraded staff. It seems to me entirely right to leave the Board to make that sort of choice.

Let me conclude by reiterating this chair's support for the establishment of a flexible, accessible, credible, and cost-effective administrative tribunal. Today's discussion certainly brings that prospect a step nearer.

Mr. Kiriwat said that during the previous discussion on July 15, 1988, his chair had stated its preference that the Fund should establish its own administrative tribunal separate from that of the World Bank; but, like others, he had sought more detailed information on the comparative costs involved. He was encouraged to note from the staff paper that while it would be able to resolve cases in a more expeditious manner, a separate Fund tribunal would be less costly than affiliation with the World Bank Administrative Tribunal. In addition, the establishment of a separate tribunal would enable the Fund to avoid a number of problems and difficulties experienced by similar tribunals, especially the Bank's Tribunal. While he saw some merits in joining the Bank Tribunal, he believed the interest of the Fund as a whole, especially its staff, would be better served by establishing a separate Fund tribunal.

His authorities' preference was to maintain the Fund's Grievance Committee in its present form and functions, and to establish a separate Fund tribunal--a structure referred to in the staff paper as model one, Mr. Kiriwat continued. While he agreed that the experience of the Grievance Committee has been very positive so far, he did not see that there was strong need to extend its functions and to turn it into a tribunal. Rather, a separate tribunal should be established to provide an additional level of administrative jurisdiction, which could act as a court of appeals for the Grievance Committee, in addition to dealing directly with

regulatory decisions. Moreover, the tribunal should not extend its jurisdiction into areas that were the prerogative of the Executive Board or the Board of Governors.

Mr. Ayales commented that the staff paper provided useful information on the Fund's Grievance Committee and on the possible consequences of joining the World Bank Administrative Tribunal, views which he shared. It also elaborated on the linkages between the Grievance Committee and an administrative tribunal in a very clear and thorough manner, and presented the Board with a set of options.

His authorities were inclined to support model one for several reasons, some of which had been already elaborated by other Directors, Mr. Ayales continued. Among them, he liked the idea of maintaining the Grievance Committee--which has played an important role in the past--in conjunction with an independent tribunal composed of members external to the Fund to carry out the judicial functions. The second model offered a second-best solution, since the exclusion of the external members from the Grievance Committee could only impair the objectivity of that body. Finally, he found models three and four unacceptable, since they did not fulfill the principle of independence which should be the main characteristic of any tribunal. Furthermore, the existence of two bodies or panels would raise complex issues of competence, thus complicating the judicial process.

Mr. Kabbaj made the following statement:

> We welcome today's continuation of the discussion of the complex and delicate issues involved in deciding on the establishment of an administrative tribunal for the Fund.
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> As stated on previous occasions by this chair, we believe that it is most appropriate for the Fund to provide its staff with proper recourse to an administrative tribunal, given the immunity enjoyed by the institution from judicial process in employment-related disputes. This position is supported by the fact that most other international organizations--including the World Bank--have established such a body.
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> It is nevertheless of paramount importance that all aspects of this process be carefully studied before a final decision is taken. The paper before us today clarifies many of the issues raised during the previous discussion.
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> Before addressing the question raised by the staff as to the most desirable approach, we wish to express our uneasiness at the exclusion of any form of cooperation with the World Bank on such matters. While we understand the points raised by the staff on the World Bank Administrative Tribunal's shortcomings and on the implicit potential loss of independence by the Fund on such matters, we fail to see why two institutions with

parallel systems of salaries and benefits cannot review employment-related decisions through the same legal process. Indeed, the ongoing work on joint compensation is supposed to make the parallelism between the two institutions even closer. Like Mr. Rieffel, I wonder whether the possibility of amending some of the features of the World Bank Administrative Tribunal to take care of the Fund's misgivings and concerns has been discussed with the sister institution, it being understood that we favor the inclusion of clauses which would preserve the formal independence of the two institutions and of the respective decisions of their Boards of Governors and Executive Boards.

We are attracted by model one; if, however, there is a consensus in the Board, we can go along with the staff's recommended introduction of model four, which correctly builds upon the satisfactory experience of the Grievance Committee.

Finally, like Mr. Grosche and others, we wish to reiterate our position that whatever the model adopted by the Executive Board, we would not accept review of the legality of decisions of the Executive Board or of the Board of Governors within the field of competence of the tribunal or of the Grievance Committee.

Mr. Ovi made the following statement:

The existing Grievance Committee has functioned very well. However, the working climate has clearly deteriorated in recent years, due to the job grading exercise and general uncertainty as to staff compensation matters. Hence, staff calls for an administrative tribunal should be accepted, although we hope and firmly expect that there will in practice be little use made of this new body.

In our view, a separate tribunal for the Fund is required on the grounds of cost, efficiency, and relevance, and because it would better preserve the best of the existing system. I am less convinced by the staff's arguments about deficiencies in the World Bank system, and as regards specification of remedies.

I note Mr. Rieffel's proposal, but to my mind, it would cause unnecessary further delay. I am not sure that we will reach a satisfactory solution, and I have my doubts as to the cost involved in affiliation with the World Bank Administrative Tribunal. So, overall, I am not sure that the option is worthwhile pursuing.

Of the four models, I continue to support the staff proposal. I also agree with the ranking in the paper of the

various proposals, and hence that if no agreement can be reached on model four, we will have to fall back on model one.

There are several arguments for model four including, inter alia, past experience, usefulness of the composition of the present Grievance Committee--including representatives from each side and an independent chairman--the number of cases, the unanimity of the Committee in all cases, and management acceptance of all recommendations. In sum, those points make me go along with what appears to be a most pragmatic and cost-efficient solution.

The Fund is increasingly becoming overadministered. Let us not add to this by creating a large--and largely unnecessary--legalistic apparatus.

Several concerns have been raised by Directors. One issue concerns staff participation in this process and in the issuance of decisions binding on management or on the Executive Board. I have difficulties in following that line of reasoning. First, this has been one of the major benefits and attractions in the present composition of the Grievance Committee. Second, such a process is a common feature of all labor market legislation and practice in the Nordic countries, where both parties of the labor market take part, either through staff representatives or, at the very least, through the appointment of members of the various bodies by staff members. We should recognize that grievances are basically a conflict of interest rather than a matter purely of law in most cases, and this should be reflected in the composition of the tribunal.

To put it differently, although this tribunal might pass judgment on various decisions, it is not making new policies. It is simply passing judgment as to inconsistency with certain basic guidelines.

Questions could be raised as to whether one would ideally like to see a different type of chairman for the upper tier. I am willing to go along with the present system, and one could meet objections by including, for instance, a trial period of two years followed by a review of the system. I would be willing to take the chance of a permanent U.S. chairman. There was discussion earlier on who should decide whether a case should be dealt with at the lower or higher level. I can go along with the position in the staff paper, leaving that decision to the lower body or its chairman.

Finally, when the Staff Association Committee indicated its support for the basic thrust of the management proposal last summer, it put forward certain suggestions for change as regards backdating of the starting period, the need to compel the

production of documents and the appearance of witnesses, and the need for protecting staff members with regards to the cost of appeals. I can go along with these suggestions.

Mr. Rye made the following statement:

I have to confess a very considerable degree of skepticism--or, indeed prejudice--in the sense that I am completely unconvinced that any administrative tribunal is necessary.

I strongly believe that structures of this kind should not be multiplied beyond what is strictly essential. My experience in Australia is that such bodies tend to have unintended consequences, and to be more costly and time consuming for both management and senior staff than anyone can foresee. Given the present state of mind of Fund staff, all those who see this as a body that will be used only on very rare occasions, are very optimistic.

The case made so far is essentially that there is a trend toward such bodies. In that regard, I was interested in the reasons that led the World Bank to create its own Tribunal in 1980, reproduced on page 5 of the staff paper. And I observe that scarcely any of these four reasons apply to the Fund in 1989.

However, leaving all that aside, I also share Mr. Grosche's concerns, and believe that if we are to have such a body, it should be open to individual appeal only and should not have any power to review decisions of the Executive Board, or, for that matter, the Board of Governors.

Looking at the paper itself, it was, I thought, quite persuasive in rejecting the alternative of linking up with the World Bank Administrative Tribunal. However, I do recognize that one can approach this question from points of view that are not spelled out in the paper, and I saw some merit in Mr. Rieffel's arguments. His proposal should be further explored, including, if necessary, discussions with the World Bank itself.

The paper was reasonably persuasive when it turned to the four alternatives, coming down for model four. However, at this stage, I am not in any position to reach a definitive conclusion, and the views that I have expressed are very much provisional ones.

Mr. Hassan made the following statement:

We stated our views on this issue last July and supported the establishment of an administrative tribunal for the Fund. My comments today will be brief and along the same lines.

The staff paper shows that the Grievance Committee has served a useful purpose. The efficient manner in which the Committee has heard and resolved cases should provide a basis for the structure of reviewing employment-related decisions taken by the Fund. The composition of the Grievance Committee--with a chairman who is an outside legal expert experienced in conducting arbitration proceedings and two staff members who have inside knowledge--is well suited for the consideration of complaints and grievances of individual persons. Accordingly, the Committee should be retained in its present form.

My preference would be for the Grievance Committee to remain advisory in function, with its current composition and competence, in the context of a system which includes an administrative tribunal. I therefore endorse model one, as it will draw on the features that have contributed to the positive experience with administration of grievances in the Fund. Besides retaining the Committee as an advisory body, the system should also include an administrative tribunal as a judicial body. This system is similar to the structure found in other international organizations. Some of my concerns with the staff recommendation of model four are that it might do away with some of the advantages of the current procedures--including flexibility and informality--which have served well. Another issue is the awkward position we may create by having staff members issuing decisions binding on management. However, I can go along with model four if that is the view of the majority of the Board.

The advantages and disadvantages of establishing an administrative tribunal affiliated with the World Bank Administrative Tribunal, compared with the creation of a new tribunal to serve the Fund exclusively, leave little doubt that establishing a separate tribunal will be less costly and more efficient. I therefore support establishment of an independent Fund tribunal, rather than affiliation with the World Bank Administrative Tribunal. As the staff has mentioned, this will also allow the formulation of a statute that will benefit from the experience of other tribunals and avoid their apparent shortcomings. I should add that for a tribunal to function properly, it should have full access to all the information that is requested, subject to the normal considerations of security and confidentiality.

Mr. Prader said that an independent and separate administrative tribunal would be the best option. His line of reasoning was similar to that put forward by Mrs. Ploix and other speakers. It was based on cost effectiveness and, above all, on the need to preserve the administrative identity of the Fund. Seen from that point of view, any affiliation with the World Bank in that matter might not be very useful.

Like others, he could support model four, with model one as a fall-back option, but he could also go along with model two, Mr. Prader continued. The reason for accepting model two was the experience with such administrative tribunals in international organizations located in Vienna. Any fears about a committee composed entirely of staff had turned out to be groundless. His impression of the degree of staff loyalty in the Fund was that there was no reason to fear infringement or interference by Fund staff in Board decisions.

While Mr. Rieffel's proposal sounded interesting--as a compromise solution--its two-tier approach might lead to the establishment of yet another committee, Mr. Prader concluded. In addition, he tended to think that the importance of the matter should not be overestimated, and that the Fund's intellectual resources might be better directed toward other topics.

Mr. Feldman commented that the paper presented for that day's discussion offered a clear description of the Fund's positive experience with a Grievance Committee since 1980, when it was established as an advisory body for the review of employment-related matters. The staff had offered several good reasons for preferring model four, and he could in principle go along with that approach. The integration of the Grievance Committee into the administrative tribunal, providing the former with judicial powers to conduct hearings and to give final resolution to the consideration of individual decisions, seemed the most efficient and the least complex of the different alternatives proposed.

Furthermore, when comparing the costs and benefits of the creation of a new administrative tribunal for the Fund with affiliation with the World Bank Administrative Tribunal, the advantages of separate tribunals were particularly clear when analyzing the costs and delays that could follow affiliation with the World Bank Administrative Tribunal, Mr. Feldman remarked. Other problems included difficult questions on cost sharing arrangements and other legal implications. As the staff paper stated, if the Fund had its own tribunal, costs could be reduced in several ways, for instance through simplification of procedural arrangements and the confinement of sessions to Washington, D.C. In addition, the Fund would have the right to select and appoint the members of the tribunal by itself, which would not be possible in the case of affiliation with the World Bank Administrative Tribunal. Finally, by establishing its own tribunal, the Fund would be able to draw on the experience of other tribunals and it would also be able to resolve cases in a more expeditious

manner. For all those reasons, he agreed with the staff that a separate administrative tribunal would better serve the needs of the Fund and its staff.

Mr. Yoshikuni said that like other Directors, he generally supported the idea of establishing an administrative tribunal in the Fund. At the same time, he shared the concerns of Mr. Grosche and other Directors about the possible implication of that Tribunal for the power of the Board on employment-related issues. He wondered whether the staff would like to elaborate on that point.

He generally agreed with the staff's argument that affiliation with the existing World Bank Administrative Tribunal would not be desirable, Mr. Yoshikuni continued. While the World Bank was the institution with the closest relationship with the Fund, the Fund had a unique institutional character which should be respected. Nor was it clear whether the World Bank Administrative Tribunal had been very efficient. Accordingly, he did not support affiliation of a Fund tribunal with the existing World Bank Administrative Tribunal. On the other hand, he was open minded as to Mr. Rieffel's alternative proposal, although he had some doubt about the feasibility of modifying the existing World Bank Administrative Tribunal.

He had at that stage, no strong preference as to the model to be adopted for the Fund tribunal, Mr. Yoshikuni remarked. His preliminary view was that either model one or model four would be appropriate in view of the purpose of the tribunal. In addition, however, he wished to benefit from the experience of other institutions and asked whether the staff could provide information concerning the experience of other institutions.

Mr. Al-Assaf stated that he preferred the first model, in which the Grievance Committee would remain as it was--an advisory body consisting of two staff members and an outside Chairman, with a three- or five-man administrative tribunal consisting of persons external to the Fund. His choice was influenced by the fact that the Fund's experience with the Grievance Committee had been very positive, especially with regard to the speedy and cost-effective manner in which it had dealt with the cases that it had heard; he hoped that resort to the tribunal would be minimal. However, he remained open if the majority favored model four.

He wondered whether the staff had any estimates of the cost involved in the establishment of such a tribunal, Mr. Al-Assaf continued. To keep that cost under control, he preferred a tribunal system that imposed some kind of penalty on those who pursued cases without sufficient foundation.

The staff had made a convincing argument in favor of the Fund having its own tribunal and statutes, rather than affiliating with the World Bank Administrative Tribunal, Mr. Al-Assaf considered. However, like Mr. Grosche and others, he did not favor establishing a tribunal that passed judgment on decisions taken by the Board of Governors or the Executive Board.

Mr. Fernando said that the paper had helped to clarify, to a large extent, some of the issues, by setting out the various options as to how employment-related decisions--of both an individual and a regulatory nature--could be reviewed in the context of a grievance. His chair had already supported the establishment of a tribunal. He noted that cost, among other reasons, led to a preference not to affiliate with the World Bank. He could accept either model one or model four. However, before reaching a final conclusion, he wished to hear further on the subject of the decisions that would come within the purview of the tribunal. As Mr. Grosche and several others had pointed out, a situation in which Board decisions were ruled illegal by the tribunal could be unsatisfactory. The potential would exist also for decisions of the Board of Governors to be questioned in similar fashion.

The undesirability of staff members issuing decisions binding on the management was another point, Mr. Fernando remarked. He would, therefore, welcome staff comments on those points, as well as further cost estimates with respect to model one, which had been rejected largely on the grounds that it would involve duplication of effort.

Mr. Haynes stated that his chair continued to favor an independent tribunal system which had simple procedures, was cost efficient, and enabled expeditious resolution of staff grievances. While he agreed with Mr. Rieffel that possible reform of the World Bank's Administrative Tribunal should not be ruled out, he would need some information on the time which would be involved before coming to a final decision on Mr. Rieffel's suggestion, because undue delay would not seem to be in the interests of any concerned.

His chair had indicated a slight preference for model four during the Board's previous discussion, Mr. Haynes recalled. However, given the reservations expressed by the staff, it might enhance the image of the tribunal process itself if model one were adopted. That model maintained elements of the Grievance Committee, which appeared to have worked well thus far, and offered a relatively efficient mechanism for resolving problems.

Mr. Chatah said that he continued to support the establishment of an administrative tribunal, not necessarily because he was absolutely convinced that such a tribunal was necessary, but because he was convinced that the staff thought that it was necessary.

Like other speakers, he found that the Grievance Committee had performed its intended function very well, and that the Committee should, therefore, be preserved with its relative flexibility of procedures intact, Mr. Chatah continued. Those characteristics had served the Committee well, and any tribunal should be complementary to the present Grievance Committee, and not a substitute for it.

He also continued to find it awkward to have a committee composed of staff members passing binding judgments on management, Mr. Chatah

remarked. On the basis of that and other considerations, therefore, his preference was for model one. He had the same questions concerning competence and jurisdiction raised by Mr. Grosche and others. Although, at that stage, he had no fixed ideas or positions, the staff might wish to address the question of whether the staff--in the form of the Staff Association, for example--had any standing to seek review of certain decisions which the staff might think were illegal. He was not sure whether such a recourse existed, legal or not.

On the question of whether to affiliate with the World Bank, his chair had previously raised the issue of whether there would be a possible conflict in the case of separate tribunals, Mr. Chatah recalled. The staff had addressed that issue, and had convinced him that the risk probably lay on the other side. The differences were large enough to make the risk greater in a joint tribunal, and, therefore, he was convinced that separate tribunals would be more appropriate--although, in the end, he could consider a joint tribunal if that was judged preferable for other reasons.

Mr. Posthumus said that he accepted the staff's conclusions, with one proviso: the issue of competence, as raised by Mr. Grosche, needed to be resolved.

The General Counsel of the Fund said that Mr. Rieffel's proposal had turned the tables on the staff, which had started with the assumption that, in view of its informal discussions with the World Bank's staff, the World Bank's staff was not interested in amending the statute of its Administrative Tribunal. That had led to the proposal for a different system which would draw on the experience of the Fund, the Grievance Committee, the World Bank, and other international organizations.

It would be perfectly feasible to combine a continuation of the Fund's work on the establishment of its own tribunal with consultations with the World Bank to test their willingness to join in that exercise, which would, of course, require an amendment of the statute of the World Bank Administrative Tribunal, the General Counsel continued. He therefore suggested that the Fund's work should continue while the World Bank was approached for its reaction. Obviously, that could not be done only at the level of the staff; it would also require involvement of the Bank's Executive Directors.

On the different models which were presented, models one and four, rather than two and three, seemed to be preferred by Executive Directors, the General Counsel remarked. The staff could therefore go on to present the Board with a draft statute with alternatives that would reflect those two models. In fact, there were few differences between the two, because once it was agreed that the statute would deal exclusively with the administrative tribunal, not with the Grievance Committee, then the only question concerned the internal structure of the tribunal--namely, whether there should be two panels, one consisting only of outsiders and one of staff members combined with outsiders, or one panel comprised exclusively

of outsiders, who would hear all issues. The other provisions could be the same for both models, relating to jurisdiction, remedies, and so forth. In other words, the discussion could concentrate on perhaps one or two sections of the draft statute, to decide whether model one or model four would be preferable. The staff could return to the Board in the next paper with alternative formulations.

Major objections had been raised by some Directors to two aspects of the proposed system, the General Counsel recalled. The first problem was common to all the models: namely, the scope of the tribunal's jurisdiction. Would the tribunal have jurisdiction not only over individual decisions, but also over regulations? The second objection was directed only to the fourth model: the participation of staff members in judicial bodies.

So far as the scope of the tribunal's jurisdiction was concerned, the Grievance Committee was competent to give advisory opinions, to make recommendations on individual decisions, the General Counsel observed. If an administrative tribunal was established, it would be difficult to give it less jurisdiction than that currently held by the Grievance Committee. Indeed, one reason underlying the need to establish a tribunal for the Fund was not that the role of the Grievance Committee was unsatisfactory with respect to individual decisions, but that the scope of its review was too narrow. It was worth examining the source of that need in more detail.

The competence of the Grievance Committee had not been challenged by anybody, the General Counsel stated. Several speakers had noted that its recommendations had always been unanimous and endorsed by the Managing Director. So the real problem lay not so much in the binding character of those recommendations--in that, there would be no substantive change--but in whether some other organ could extend the review of decisions beyond the level of individual decisions. That raised the problem of regulations, in particularly those made by the Executive Board. In the statutes of some other international administrative tribunals--for instance, the World Bank's--there was no special provision on that point. However, those tribunals, including the World Bank's Tribunal, had taken the view that they did have jurisdiction over regulations in connection with the individual application of such regulations. In other words, if a staff member challenged an individual decision implementing a regulation, the review exercised by the tribunal would not be limited to the consistency of the decision with the regulation, but would also extend to the legality of the regulation itself. For example, the tribunal could find that a regulation was contrary to a general principle of administrative law--such as the principle of nondiscrimination among staff members on racial, sexual, or other grounds.

It would be possible, however, to restrict the competence of a Fund tribunal to limits narrower than those generally accepted outside the Fund, the General Counsel stated. Not to mention the reaction within the Fund, that would be perceived outside the Fund as more restrictive than

the normal scope of jurisdiction of an administrative tribunal. While such a limitation on the tribunal's jurisdiction was not impossible, it was a clear deviation from the normal practice of international organizations.

The question had been raised by Mrs. Ploix in particular as to why the review of regulations could not be limited to cases in which the legality of the regulation was challenged in the context of an individual decision, i.e., why the staff member should have the power to challenge regulations as such, the General Counsel continued. A judicial review of the legality of administrative regulations existed in many domestic systems, including the French system, where civil servants had the power to challenge a regulation even in the absence of an individual decision. In France, the United States, and other countries, the answer would be the same: that there were advantages to testing the legality of a regulation even before it had given rise to individual application. For example, if the Executive Board were to adopt a regulation establishing discrimination between male and female staff members, should the Administration Department implement that decision without finalizing whether the regulation could be legally applied? In view of the Board's stated preference for not giving an advisory function to the tribunal, was it not better to let a staff member, or the Staff Association, for that matter, test the legality of a regulation, after which it could be safely applied by the Administration Department? In that respect, the draft statute which had been circulated in 1988 would authorize the Staff Association to challenge the legality of regulations, precisely to avoid having to wait until an individual staff member challenged the application of the regulation in an individual case.

In addition, when an administrative tribunal reviewed the legality of an administrative decision--for instance, a regulation--it had to limit that review to the legality of the decision: namely, the consistency of the decision with a higher principle of law, the General Counsel remarked. For example, such review might cover the consistency of a general administrative order with an Executive Board regulation. However, the review did not bear on the policy aspects of the decision itself. If, for example, the Managing Director selected one staff member rather than another for a promotion, his assessment of their respective merits was not a legal problem. And that aspect of the decision would not be reviewed by the tribunal, unless the case was made that the real reason for the promotion was not the merits, but some improper motive, such as discrimination.

Hence, giving the tribunal the power to review the legality of Executive Board regulations meant that the tribunal would determine only whether the regulations were in conflict with some higher norm of general international administrative law or of the specific law of the Fund, the General Counsel stated. The problem, however, was that although a distinction was made in all international administrative tribunals between policy aspects and legality aspects, the implementation of the distinction in decisions was not always clear. It might be useful, when drafting the

commentary on the statute on the Fund tribunal, not only to emphasize that the tribunal should limit its review to the legality aspect; but also to explain what that meant in practice, together with some examples.

Another objection, limited to model four, concerned the participation of staff members in one of the two panels, the General Counsel recalled. Mr. Ovi had defended that approach very strongly in view of the practice of labor dispute boards in Scandinavian countries. Other countries had also shared that rather satisfactory experience. For instance, French labor courts included representatives of staff and management. The Fund's own experience with the Grievance Committee showed that the participation of staff members could provide good results. The role of the staff members would also be extremely limited, because they would only have jurisdiction over challenges to individual decisions, never over the legality of a regulation.

In that respect, Mr. Enoch had asked why the proposal was to expand the first panel by adding the outside judges in some cases, the General Counsel noted. That was not a mandatory feature of the system. It was only thought that it might be more appropriate to involve outsiders in some cases involving particularly important or difficult issues.

Directors had also stated that the transformation of the Grievance Committee into a panel of the tribunal might lead to a loss of informality, the General Counsel observed. It was not clear to him why there should be such a loss. One purpose of having two panels was to enable them to have different procedures. The first panel would deal with individual matters, would hear witnesses, and could use very informal procedures. The second panel would deal with the legality of regulations, and would, therefore, not need to hear witnesses, but would concentrate more on the theoretical aspects related to the test of the legality of the regulation at issue. Hence, there seemed no reason to believe that a Grievance Committee, renamed the first panel of the tribunal with an unchanged composition, would need to have a different procedure, just because at the end of the procedure it would issue binding decisions rather than making recommendations. The nature of the final result did not necessarily change the procedure. The practice, in Scandinavian and other countries, had been that labor dispute boards had very informal procedures, and the same spirit would operate in the Fund.

The fourth model reflected the draft statute that had been circulated in June 1988, and should be understood in the same fashion, the General Counsel went on. The idea was that there would be a common chairman for both panels, and that that common chairman would be the center of the system.

The essential difference between the first and fourth models concerned duplication of effort, the General Counsel considered. In the first model, there was a Grievance Committee above which there would be an administrative tribunal. Duplication of effort could be limited, in the sense that the Grievance Committee could establish a written record which

would then be transmitted to the administrative tribunal. So it would be preferable to have a written record for submission later to the tribunal if the first model was selected. That was the case in the World Bank. Other organizations, like the Bank for International Settlements (BIS) had taken a completely different approach. They had no grievance committee, and only one administrative tribunal panel. In other words, there was only one level which included outsiders. The BIS was a more European-style organization. It had a five-judge tribunal, but could bring judges from nearby European countries much more easily than the Fund, where judges could potentially come from around the world.

The proposal of the staff was that the tribunal should not have the authority to require the production of documents by management, the General Counsel noted. That did not mean that management, acting as a respondent for the Fund, would not be prepared to present documents to the tribunal if so requested. It only meant that management would reserve the right to exercise its judgment in those matters. In other words, management would feel free and even obliged not to communicate confidential documents to the tribunal. However, the tribunal could then draw conclusions from that refusal, and could conclude on that basis that the applicant's request should succeed. Hence, if management decided not to present documents to the tribunal, there was a risk that management would lose the case, but it was important in an organization like the Fund to reserve that right not to communicate confidential documents. Even if the tribunal was given the power to require the production of those documents, that requirement could not be enforced because the tribunal had no enforcement powers.

So far as remedies were concerned, the World Bank tribunal had in the Pinto case rescinded a decision, but had not prescribed the remedies, the General Counsel of the Fund remarked. Therefore, it had been open to the management and Executive Board of the World Bank to determine the appropriate remedies. The staff had proposed that the Fund's tribunal be given the power to prescribe those remedies. The World Bank's procedure seemed to have some advantages, in giving some freedom to the management and the Executive Board, but that freedom had a price, namely, that the staff member could again challenge the remedies prescribed by management or the Executive Board. Therefore, it increased the risk to either management or the Executive Board for those remedies to remain undefined. Hence, in the procedure proposed by the staff, a tribunal could ask management to return with a proposal for a remedy. That remedy would be submitted by management to the tribunal, and if it was approved by the tribunal, the dispute would be closed. Whereas in the World Bank's procedure, there was always room for further action. The difference was not substantive, but purely procedural.

The staff representative from the Administration Department said that as an administrative department, his colleagues had considerable sympathy for the alternative that the General Counsel had suggested. His department would have considerable concern about an outside tribunal prescribing all remedies, preferring that the administration be given a certain time

in which to bring back to the tribunal a remedy or remedies. That would be far superior to prescription by an outside body, which could not have a full grasp of all the internal ramifications.

The General Counsel of the Fund added that there was a provision in the draft statute which would empower the tribunal to award costs against an applicant, but only in limited circumstances. First, it was not mandatory to award such costs. Second, the case would have to be one in which the application was frivolous--manifestly without foundation. It had to be obvious that the action should never have been brought to the attention of the tribunal. There had been cases where the same staff member in the Fund, or the World Bank, repeatedly raised the same issue, with different formulations; clearly, that was a waste of energy and money, for the institution and for all participants. The tribunal could respond in such a case, but there was no notion of punishing an individual, or blocking a legitimate right of recourse. Even if the application was frivolous, the tribunal could still decide not to impose costs. So the regulation was not very strict.

Mr. Al-Assaf said that in order to limit the number of applicants, perhaps the wording should be more forceful.

Mr. Kyriazidis said that the most important point concerned the scope of the tribunal's authority concerning the legality of regulatory decisions. He was particularly concerned about preserving the ability of the Board and management to govern the institution flexibly. That problem should be seriously studied in depth, and the Board should study any conclusions, after consulting with legal experts on that matter.

Mr. Grosche said that he supported the point made by Mr. Kyriazidis. As an Executive Board member, he preferred to interpret his own view himself, rather than having outsiders judge his opinion. That problem needed very careful study. He did not want to see an administrative tribunal interfere with Board procedures.

He also thought that model three deserved further consideration, Mr. Grosche continued. It had certain advantages, particularly if one could restrict action at that point in time to an improvement in the Grievance Committee's procedures--leaving matters at that for the time being. That was in line with Mr. Prader's comments. If at a later stage it was felt necessary to have an administrative tribunal at all, the Board should try to work out a solution together with the World Bank. That should not be too difficult given the fact that both organizations were aiming at more or less similar salary policies. However, it was somewhat awkward to establish a separate tribunal for the Fund and then put pressure on the Bank to adjust the workings of its tribunal accordingly.

The Acting Chairman said that the best approach would be for the staff to come back to the Board with another paper to examine the issues touched upon by the General Counsel in response to the questions and

comments of Directors. The staff and Directors could also explore Mr. Rieffel's suggestion with their counterparts in the World Bank. The next Board meeting could then be scheduled at an appropriate occasion in a few months' time.

2. PANAMA - OVERDUE FINANCIAL OBLIGATIONS - REVIEW OF DECISIONS ON COMPLAINTS UNDER RULE K-1 and RULE S-1

The Executive Directors considered a staff paper on the further review of Decision No. 8899-(88/91) on the complaint under Rule K-1 relating to Panama's overdue obligations in the General Department, and Decision No. 8900-(88/91) S on the complaint under Rule S-1 relating to Panama's overdue financial obligations in the SDR Department (EBS/89/22, 2/17/89).

Mr. G. R. González J., Minister of Planning and Economic Policy, and Governor of the Fund for Panama, was present. Mr. González made the following statement:

> On behalf of my Panamanian authorities I wish to thank the Executive Directors for this opportunity to address the Executive Board meeting on Panama's overdue obligations to the Fund. I also wish to thank the Managing Director for the staff visit to Panama conducted at our request in the last week of January. My presence in this meeting, as well as our request for a continuing dialogue with the staff, reflects my authorities' desire for a prompt re-establishment of relations with the Fund on a normal basis as soon as Panama's financial conditions permit.
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> Now that 1988 is over, our estimates confirm the results of the external measures directed against the economy of Panama. GDP declined by 17 percent in real terms, affecting all sectors of the economy and resulting in a 19.3 percent drop in per capita GDP. Unemployment in the metropolitan area increased from 14 percent to 21 percent of the labor force. The reduction in employment opportunities affected mainly the construction sector (61 percent unemployment), internal trade (28 percent), and manufacturing industry (25 percent). Exports of goods and services dropped 11 percent, and there was a decrease of 40 percent in imports. Deposits in the banking system of Panama were $33 billion in June 1987, with loans outstanding worth $24 billion, while one year later deposits were $11 billion and loans amounted to $10 billion.
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> As the staff had the opportunity to confirm during its last visit, Panama's economic and financial situation continues to be severely constrained. The drop in economic activity as a result of the application of economic, trade, and assistance sanctions imposed by the United States had a direct effect on payments and

revenue collection. Revenues due under contractual provisions in Canal treaties and duties and taxes owed by U.S. firms remained unpaid. The effects on fiscal revenues of the Republic of Panama have been highly adverse. A sharp reduction in external financing has occurred as a result of the country's limited ability to service its commitments abroad adequately and on time. This situation forced the authorities to implement drastic financial management measures in the public sector and to regulate banking operations, aiming at surviving under severe fiscal limitations and avoiding further disruptions of the banking system. The fact that current expenditures of the public sector now consist mainly of wages and pensions with little capital expenditures poses a threat to the economy's growth prospects.

The fiscal situation in 1989 could be even more difficult, as public sector revenues are projected to decline by about 15 percent as a result of a further drop in economic activity. At this time, all agencies and enterprises of the public sector of Panama are operating under a centralized budget system managed by the Central Government covering the expenditure process of all public entities, with daily monitoring of available funding. The obvious uncertainties of a budgeting process dependent on actions outside the control of the Government make financial programming extraordinarily difficult.

Notwithstanding the difficulties experienced in the public sector finances, and in line with the national Government's concern about debt service arrears, Panama has decided to make another modest payment to the Fund which, at the same time that it highlights the preferred creditor status of the Fund, underlines the national determination to fulfill Panama's duties as a debtor--in spite of its being subject to events outside its control, which impeded the normal development of its finances. Furthermore, considering the country's role in international and offshore banking, the Government has accorded very high priority to all measures tending toward a rational easing of restrictions imposed on banks to protect the system. In December, for example, the remaining restrictions on demand deposits were lifted, limits on withdrawals in savings accounts were raised, and interbank deposits were liberated, while in negotiations with bankers, the authorities continue to explore ways to lift the remaining limitations which still apply to savings accounts and time deposits.

Conversations with the Fund have opened the way for Panama to approach multilateral and bilateral sources of credit, as well as the country's commercial bank creditors in an effort to seek a basis for an understanding with respect to our debts. We have informed all concerned about our situation, as well as perspectives in the immediate future, and about our determination

to agree, within the limits of our difficulties, on ways and means of restoring our credit at the same time that we seek to encourage growth, thereby assuring fulfillment of the agreements that we may reach. Furthermore, the country is proceeding toward general elections set for May, as mandated by the Constitution and the laws of the Republic of Panama, leading to an orderly change of government in September. This event is a testimony to the determination of the Government and people of Panama to continue the process of democratization within the framework of its laws, so as to provide guarantees to capital and labor, both national and foreign, of the environment required for a return to normality.

We are aware of the important role that the Fund plays in support of growth-oriented adjustment programs, and Panama has had a successful experience in this area in the recent past. My authorities are convinced that as soon as external conditions improve, Panama will be in a position to implement financial policies aimed at restoring external and internal balance in the economy. In this context, we call on interested countries to assist the Republic of Panama in seeking solutions leading to a full and early normalization of its relations with the Fund as well as with members of the financial community.

Mrs. Hepp said that she welcomed the presence of Mr. González at the meeting. However, she regretted that Panama had not been able to settle its overdue obligations to the Fund. She noted that Panama's situation was closely related to the political difficulties and changes that had emerged in the country since the second half of 1987. In that connection, she fully concurred with the staff's view that Panama's situation was quite different from that of other members with arrears to the Fund. Furthermore, it was important to emphasize that Panama had previously had an excellent record of payments to the Fund, which was fully consistent with the recognition of the Fund's preferred creditor status, and the authorities' commitment to a prompt and full settlement of arrears as soon as circumstances permitted.

She had also noted the staff comments that Panama had apparently not made any payments to any creditors--other than two small payments to the Fund--since the sanctions had been imposed, followed by the closing of banks in early 1988, Mrs. Hepp continued. She welcomed those payments made to the Fund. In conclusion, she hoped that Panama's main problem could soon be resolved, and that the authorities could adopt an economic program that would resolve domestic and external imbalances and normalize their relations with the international financial community. She fully supported the proposed decision.

Mr. Ayales observed that Panama's difficulties in fully servicing its external obligations, including those to the Fund, had to be viewed in the context of the extraordinary circumstances facing the country, which had

been clearly presented by Mr. González. The restrictions on payments to the country and the political situation had resulted in a sharp reduction in government revenues, a shortfall in official disbursements, and, in general, a crisis of confidence in the financial sector, all of which has exacerbated the country's external debt problems.

In that context, his authorities fully agreed with assessments of the staff and Mr. González that Panama's circumstances differed from those of other countries with similar overdue obligations to the Fund, Mr. Ayales remarked. In addition to the adverse external circumstances, the authorities' previous excellent record of payments to the Fund, and their stated commitment to restoring normal financial relations with the Fund as soon as the political situation permitted, had to be taken into consideration. In light of those comments, his authorities supported the proposed decision.

Mr. Warner made the following statement:

In previous discussions of Panama's arrears, a great deal of interest has been expressed about U.S. sanctions. I trust this Board remembers that the Fund was notified of the U.S. actions, pursuant to Decision No. 144-(52/51), and that the Fund did not object. Of equal importance, the Board should recall that Panama's arrears to the IMF preceded the U.S. sanctions by several months. So it has been obvious from the beginning that the conditions contributing to the Panamanian default were present long before the imposition of U.S. sanctions.

I think it is also important to note that there are considerable resources available to Panama that are not affected by the U.S. sanctions. The disposition of these resources, of course, is entirely the prerogative of the authorities in Panama.

I have listened with great interest to Minister González's statement. I see some meritorious aspects to his observations. I would like, however, to comment on a few of his observations to make sure that the record of this Board discussion is reasonably balanced.

I think it was appropriate for the staff to visit Panama at the invitation of the authorities in January. Minister González's statement expressing a desire for continuing the dialogue with the Fund is also very constructive.

His position, though, that the economic difficulties of Panama are solely due to trade and assistance sanctions by the United States is not one that we can accept. As I said earlier, there were prior conditions that contributed to the emergence of arrears, especially certain weaknesses in economic management.

I am pleased, as I am sure other Directors are, with the continued recognition by Panama of the Fund's status as a preferred creditor, and the fact that Panama has made some payments to the Fund as a sign of good faith. However, there is no clear determination by the staff of the capacity of Panama to meet its obligations to the Fund. Perhaps this is a point that we can discuss further today with Minister González.

I think the consideration that Panama is headed toward general elections can be a hopeful sign. However, I do not think that the Board, in seeking to implement its arrears strategy, should give undue weight to this factor. Nevertheless, the outcome of those elections could be very meaningful to Panama's future relationship with the Fund and with the world community at large.

Minister González has observed that, as soon as external conditions improve, Panama will be in a position to implement financial policies aimed at restoring external and internal balance in the economy. The view seems to be that, once the sanctions are removed, economic euphoria could come to Panama. I think this is an exaggeration. I hope that in our discussion today other members of this Board will focus on this implication.

There is a distinct possibility that, following elections, further staff work will be needed to help Panama formulate a credible economic program. Perhaps, Mr. Chairman, you and the staff could comment on this. I think we should take up the invitation from Minister González to proceed with more intensive staff work because, whatever happens in the election, Panama should be prepared to undertake a truly sound adjustment program.

Having a program in place quickly could accelerate the assistance from interested countries that Minister González referred to in his statement. That is, if there is an adjustment program in place, if good faith payments to the Fund are continuing, if the staff at the invitation of the authorities of Panama can present a program to the Board, then I think the possibility of a favorable reaction would be greatly enhanced.

Turning to the proposed decision, it does not look measurably changed from the one we took in November. It gives me the feeling, from an arrears management point of view, that we are standing in place.

This chair would be the last, at this particular moment, to move toward a decision that in light of current circumstances would appear unduly harsh. To the contrary, as we said in November, we have a deep concern for the welfare of the

Panamanian people. Therefore, I think the decision has to reflect a proper approach from an arrears management point of view, while at the same time recognizing the long-term interests of the Panamanian people. Further staff work could perhaps demonstrate for the Board that a truly realistic adjustment program is being formulated. This would facilitate an equally constructive posture by the Board when we review Panama again in the latter part of May after elections.

Mr. Rye said that he welcomed the presence of Mr. González, which he took as an earnest and continuing wish of Panama's willingness to cooperate with the Fund.

Panama's was obviously a difficult case, and one that was not getting any easier with the passage of time, Mr. Rye continued. The current emergency measures were in serious danger of becoming entrenched, with long-term damage to the economy. Perhaps it would soon be time for the authorities to consider that they faced not a short-term emergency, but an ongoing situation, though all hoped that the problems could be resolved in a proper way before such a judgment had to be reached.

The authorities had, of course, as part of that emergency program taken a decision to suspend payments to Panama's creditors, Mr. Rye observed. It was true that the Fund had been something of an exception to that policy. In that regard, he noted first that the payments made had been of a token kind only; second, that their timing appeared to be related to consideration of Panama in the Board; and third, that it was not evident that Panama could not have made payments to the Fund of a less obviously token kind if the authorities had so chosen.

He felt that it was a fairly significant deficiency of the staff paper that there was no real analysis of how much of an effort Panama was making in those payments, and whether more could not have been done, Mr. Rye remarked. The precise nature of the discussions between Panama and the staff had also been left somewhat cloudy. His conclusion was that he was not sure that he could attach the same significance to those payments as Mr. González had, although he did regard Panama's continuing dialogue with the staff as a very constructive element. He certainly hoped that that would soon lead to steps to resolve the problems between Panama and the Fund.

He had the same difficulties as Mr. Warner in simply repeating the Board's decision of last November, Mr. Rye commented. The only prior such case was that of Sudan, which certainly did not make for a happy precedent. Of course, he recognized that there were exceptional features present in the Panamanian case. The problem was that there were nearly always exceptional circumstances of one kind or another in all the cases that come before the Board. It was not certain how far the Board could allow such exceptional circumstances to influence what Mr. Warner had called "arrears management decisions." So, on balance, he was inclined to

say that the Board ought to pursue its normal course, which in Panama's case would mean a decision somewhat stronger than that which the staff had put forward, and one which expressed an expectation of a declaration of ineligibility at the next Board consideration of the Panamanian case, unless some concrete steps had been taken in the meantime toward a resolution of Panama's arrears to the Fund.

The staff representative from the Western Hemisphere Department said that during the staff's January visit to Panama, it had tried to ascertain whether the very difficult economic and financial situation envisaged in August had actually occurred. The staff's general conclusion was that so far as public sector finances were concerned, the picture for 1988 was more or less that projected during the August mission. The Government's situation was thus very difficult, given the external debt prospects. A staff mission in the future could certainly play a useful role in helping the authorities formulate their financial policies, with a view to returning the economy to a more sustainable level in the future. The staff would continue to analyze the economic prospects for Panama in terms of alternative external scenarios but not much more could be said at this time than was said in the paper to the Board. Prospects for recovery would depend on the authorities' position when they are ready to formulate the policies designed to begin to address their very difficult situation.

Mr. González said that he too was concerned about the lack of progress that brought him to Washington every three months to verify that conditions seemed to be continuing more or less the same. He also felt that it would be useful to continue a dialogue with the Fund, and with the staff, leading to the examination of various alternatives that could put Panama back on track toward a program.

Financial programming continued to be a precarious exercise as the authorities had no control over their revenues, Mr. González continued. It was certainly very difficult to finance the public administration out of the revenues. It was also the authorities' duty to preserve a viable government over the next seven months, one that would face the challenges of getting the country back on its feet and resuming growth. Now was the time to start to look at various policy orientations that would be useful to the incoming government following the elections. So, he shared the concern that had been expressed by Directors at the lack of a program. However, a program was not easy to create, and it was useful to have the support and assistance not only of the staff, but also of other countries which might share that concern.

He did not feel it necessary to rebut the argument that Panama's situation was not solely caused by external sanctions, Mr. González remarked. The situation was very complex and external sanctions were some of the most important elements. In addition, external debt service had weighed very heavily on development revenues, especially during the period of no growth in the country between the early 1980s and 1986. Panama had also been a net exporter of capital over the past four or five years, to the detriment of infrastructure, which had in turn endangered its

development possibilities. In conclusion, while the solution of the problem of Panama did not lie 100 percent in the lifting of sanctions, that would nonetheless have a very important bearing on events.

Mr. Warner said that he found some very constructive elements to Mr. González's last comments, especially his recognition that there were a number of elements identifiable as components in Panama's overall complex of problems. That recognition, and Mr. Rye's shared concern, indicated that the proposed decision did not really demonstrate a great deal of progress. It certainly was not a good sign for the Fund's arrears management program.

The recognition offered by Mr. González, and the strength of his restated invitation that the staff work more intensely with his authorities to establish a realistic adjustment program, meant that the decision could be taken so long as the record indicated that an adjustment program would be formulated in the interim period, Mr. Warner continued. The Board would then, as a matter of timing, have to consider the election in Panama, and could anticipate that the adjustment program framed by the staff with the current authorities might be in place at least for the early consideration of a new government.

Mr. González observed that a point of agreement was being reached, with the difference being that he was reluctant to continue a dialogue leading to a single policy which might be considered in September by the new government while there were many unknowns in the situation which would be cleared up as a result of events in the country during the next seven months. Perhaps the exercise could take up several scenarios, consider them, and be in a position--after the installation of the new government--to start a concrete conversation leading toward progress. Before that, careful and intimate consultation with the staff was required, to handle the situation as it existed, and to investigate some of the alternatives to be put before the future government in Panama in September.

Mr. Warner observed that such decisions were made on a case-by-case basis. The proposed decision was somewhat specialized, and it should be understood that it had been based in light of Mr. González's observations and his affirmative statements which included an invitation for further staff work which could at least lay the fundamental ground work in framing up an appropriate adjustment program. With that in view, it would appear that the proposed decision was not being taken in light of a standstill. The Board would not be demonstrating for the world that it was taking the same decision as it had in November, with no positive sign or step forward. On the contrary, it appeared that the present authorities in Panama were prepared to move forward in a meaningful way, given the circumstances under which they operated, and would not only continue to make payments to the Fund, but would, in fact, undertake a serious analysis leading toward the framing of an adjustment program. Hence, when the Board again discussed Panama, it could have the basis for another decision which could perhaps be somewhat different from that currently before the Board. That decision would, in fact, consider the question of eligibility. That would

give the Panamanian authorities the opportunity, with the help of staff, to demonstrate good faith, as well as to declare an element of progress in establishing a recognized adjustment program.

The Executive Board then took the following decision:

1. The Fund has reviewed further Decision No. 8899-(88/91), adopted June 8, 1988, and Decision No. 8900-(88/91) S, adopted June 8, 1988, in light of the facts described in EBS/89/22 (2/17/89) pertaining to Panama's overdue financial obligations to the Fund.

2. The Fund welcomes the payment made by Panama. The Fund also welcomes the recognition by Panama of the Fund's preferred creditor status and Panama's commitment to give the highest priority to the full and prompt settlement of the overdue financial obligations to the Fund. Nevertheless, the Fund regrets Panama's continuing nonobservance of its financial obligations to the Fund in the General Department and with respect to special drawing rights and notes the financial burden placed upon other members by the continuation of these arrears.

3. The Fund welcomes the commitment of the authorities to pursue the adjustment process begun several years ago and to adopt policies aimed at restoring external and internal balance and normalizing Panama's relations with the international financial community. The Fund stands ready to cooperate with Panama in the formulation of such policies.

4. The Fund shall review further Decision No. 8899-(88/91) and Decision No. 8900-(88/91) S within a period of three months from the date of this decision, if any financial obligations of Panama are overdue at the time. Unless by the time of that review Panama is current in its financial obligations to the Fund in the General Department, the Fund will consider the appropriateness of further steps, including the possibility of declaring Panama ineligible to use the general resources of the Fund pursuant to Article XXVI, Section 2(a). Furthermore, unless by the time of that review Panama is current in its financial obligations with respect to special drawing rights, the Fund will consider the appropriateness of further

steps, including the possibility of suspending Panama's right to use SDRs it acquires after that date, pursuant to Article XXIII, Section 2(b), other than for settlement of financial obligations to the Fund.

Decision No. 9092-(89/21) G/S, adopted February 22, 1989

APPROVED: September 1, 1989

LEO VAN HOUTVEN
Secretary