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FOR AGENDA

EBAP/89/160

June 19, 1989

To: Members of the Executive Board

From: The Secretary

Subject: Establishment of an Administrative Tribunal for the Fund - Legal, Financial, and Administrative Implications

There is attached for consideration by the Executive Directors a paper on the legal, financial, and administrative implications of an administrative tribunal. A conclusion appears on pages 22 and 23.

This subject has been tentatively scheduled for discussion on Friday, July 7, 1989.

Ms. Powers (ext. 7714) is available to answer technical or factual questions relating to this paper prior to the Board discussion.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Establishment of an Administrative Tribunal for the Fund--Legal, Financial and Administrative Implications

Prepared by the Legal Department

(In consultation with the Administration Department)

Approved by François Gianviti

June 16, 1989

In earlier discussions, the Executive Board has endorsed, in principle, the establishment of an administrative tribunal for the Fund. In recent discussions, certain Executive Directors have identified, for further consideration, the issues of the possible structure of the tribunal and its legal competence. In particular, during the discussion by the Executive Board of the staff paper on "Establishment of an Administrative Tribunal for the Fund--Some Further Considerations" (EBAP/89/23 (1/27/89)) on February 22, 1989 (EBM/89/23), there was a request for further discussion of the issue of the competence exercised by international administrative tribunals, particularly whether and to what extent a Fund tribunal should be authorized to review regulatory decisions and other discretionary decisions taken by the Fund regarding the terms and conditions of Fund employment. The staff was also asked to continue its analysis of two of the models outlined in the staff paper for the establishment of an administrative tribunal, especially with regard to the legal, financial, and administrative implications. Finally, the staff was requested to consult with the staff of the World Bank on possible changes in the World Bank Administrative Tribunal ("WBAT"), including the replacement of the existing WBAT by a newly-established joint tribunal to serve both institutions.

This paper responds to these requests by describing (i) general principles for the review of the legality of employment-related decisions by international administrative tribunals; (ii) the legal, financial, and administrative implications of two models for an administrative tribunal, which are both reflected in the draft statute in the Attachment; and (iii) the staff's discussions with its counterparts at the World Bank regarding the possibility of a joint tribunal.

I. Review of the Legality of Employment-Related Decisions

In principle, international administrative tribunals have been authorized to adjudicate challenges to decisions taken by international organizations that arise out of the employment relationship with their staffs. Normally, a tribunal's statute authorizes the tribunal to review allegations concerning nonobservance of the contract of employment or terms of appointment. In construing this authority, tribunals have necessarily reviewed the legality of employment-related decisions in terms of their conformity to the higher legal norms within the organization. At the same time, however, it is accepted that administrative tribunals are not concerned with the advisability of a decision taken by the organization; in particular, tribunals have recognized that they must respect the power of the competent organs of the institution to establish and modify the terms and conditions of employment pursuant to their lawful authority to do so, in the light of what they decide is in the best interest of the institution.

The following sections elaborate on the basic concept of review of legality by examining (i) the sources of law applicable to the employment relationship of an organization; (ii) the range of decisions subject to review; and (iii) the grounds on which decisions taken in the exercise of discretionary authority can be reviewed.

A. Sources of Applicable Law

Every international organization operates within a legal framework in carrying out its purposes. The authority of an organization with respect to the employment of its staff derives from the law applicable to the organization, which also circumscribes the power of the organization. It is "generally accepted now that it is the internal law of the organization that governs the employment relationship of international civil servants with the international organization for which they work." 1/

The applicable law of an organization consists of both formal and informal sources. The formal sources of law are found in the constituent instrument of the organization (for the Fund, the Articles of Agreement), By-Laws and Rules and Regulations, staff rules and regulations, administrative orders and bulletins, letters of appointment, and other written terms and conditions of employment. For instance, the Statute of the IDB Administrative Tribunal spells out the formal sources of law to be applied by the tribunal as follows:

1/ C.F. Amerasinghe, The Law of the International Civil Service, Vol. I, at p. 9 (1988). See also M.B. Akehurst, The Law Governing Employment in International Organizations, at pp. 4-5 (1967).

> "In interpreting the terms of the employment agreements between the Bank and its staff and the terms and conditions of appointment, the Tribunal shall make decisions and pass judgments based on the Agreement Establishing the Bank and the written and approved policies, rules and regulations of the Board of Governors and the Board of Executive Directors, and the Personnel and Administrative Policies in force at the time of the alleged non-observance." 1/

There are primarily two informal sources of applicable law within an international organization. First, the administrative practice of the organization may give rise to legal rights and obligations between the staff and the organization. In order for practice to be integrated into the applicable law of the organization, certain factors must be present; in general, the practice must be consistent and reflect a conviction on the part of the organization that it is legally obligated to follow the practice. 2/

A second informal source of law governing the rights and duties of the staff is found in general principles of law. 3/ Certain principles of international administrative law, such as the prohibition against adverse retroactive changes in the conditions of employment, are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by an organization. In practice, all administrative tribunals have invoked general principles of law in deciding cases, principally in two ways.

First, and most common, is the use of general principles of law to interpret the written law of the organization and to supplement the written text of staff rules and regulations. 4/ "[I]t is clear from the jurisprudence of tribunals that they do try to interpret the

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1/ IDBAT Statute, Article VI(3).

2/ See de Merode, WBAT Reports, Dec. No. 1, at p. 12 (1981); Leger, ILOAT Judgment No. 486, at p. 6 (1982) (PAHO); Amerasinghe, supra, at pp. 159-167.

3/ See generally C.W. Jenks, The Proper Law of International Organizations, Ch. 5 (1962). The status of general principles of law as a source of public international law is reflected in Article 38 of the Charter of the International Court of Justice, which calls upon the Court to apply, inter alia, "the general principles of law recognized by civilized nations."

4/ Amerasinghe, supra, at p. 152-54. See also Schumann, LNT Judgment No. 13 (1934), rejecting a literal interpretation of the League of Nations Pension Regulations that would have created arbitrary and inequitable distinctions in favor of a more liberal interpretation.

written law so as to conform to general principles of law and to establish that the written law does not violate general principles of law." 1/

Second, general principles of law have been directly applied by tribunals to invalidate provisions in the written law of the organization that contravene these general principles, based on the view that these principles can be hierarchically superior to the written law. 2/ For example, the ILOAT has held that the principle that a staff member must be given the right to be heard before a disciplinary sanction is imposed on him must be respected "even where contrary provisions exist." 3/ There is no direct support, however, for the proposition that general principles of law would take precedence over the highest legal text of the organization, usually its governing charter or articles of agreement.

B. Range of Decisions Subject to Review

A principal function of international administrative tribunals is to protect staff members against "unilateral adverse modifications of emoluments and other benefits through 'legislative' action of the appropriate primary political organs of the organizations concerned." 4/ To fulfill this objective, tribunals have scrutinized the full range of employment-related decisions in light of the law of the organization, regardless of the organ responsible for the decision. Thus, "[t]he mere fact that legislative acts are being put in issue is not . . . a bar to the competence of the tribunal." 5/

In practice, therefore, the major administrative tribunals have reviewed the legality of regulatory decisions, including decisions taken by the highest legislative organs, thereby determining whether such decisions conform to the higher legal norms of the

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1/ Amerasinghe, supra, at p. 156.

2/ Amerasinghe, supra, at p. 155. For example, the ILOAT held that a provision in the staff rules offering health plan participation to "wives" of staff discriminated between male and female staff members, and that "[s]uch discrimination offends against the general principles of law, and particularly of the international civil service, and the Tribunal cannot allow the application of a text which so discriminates." Callewaert-Haezebrouck-(No. 2), ILOAT Judgment No. 344 (1978) (IPI) at p. 6.

3/ Ferrechia, ILOAT Judgment No. 203 (1973) (ILO).

4/ See Baade, "The Acquired Rights of International Public Servants," 15 Am. J. Comp. L. 251 (1967).

5/ Amerasinghe, supra, at p. 211; see generally id. at 16-18.

organization. 1/ The UNAT, for example, in examining the applicability of staff rules in light of applicable principles of law, has recognized that it is competent to review both the legality of regulatory decisions of the General Assembly, as well as the exercise of authority delegated to the Secretary General. 2/ This competence has been asserted notwithstanding the statement in the legislative history of the UNAT Statute that the tribunal "would have to respect the authority of the General Assembly to make such alterations and adjustments to the staff regulations as circumstances might require." 3/

The WBAT's case law also displays the tribunal's willingness to appraise the legality of decisions taken by the Executive Board in terms of higher legal norms. 4/ In the de Merode case 5/, the Bank administration argued that the only limitation imposed by the internal law of the Bank on the authority of the organization unilaterally to alter the terms and conditions of employment was the prohibition against retroactive adverse changes. The WBAT, in its decision, did not specifically decide the reach of the internal law of the Bank, but it did hold that certain elements of the conditions of employment "are not open to any change without the consent of the staff members affected." 6/ This statement is comprehensive, referring to all changes, at all levels of authority. Accordingly, the principle

> "covered the powers of the Executive Directors, or even the Board of Governors for that matter, to make legislative changes in and take decisions in regard to the conditions of employment of staff members. To this extent, the tribunal was of the opinion that the internal law of the organization

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1/ As used in previous staff papers on the establishment of an administrative tribunal (EBAP/88/151 (6/22/88) and EBAP/89/23 (1/27/89)), the expression "regulatory decision" is intended to refer to any rule concerning the terms and conditions of employment, as distinct from the application of a rule in individual cases.

2/ See Mullan, UNAT Judgment No. 162 (1972).

3/ U.N. Doc. A/1127, para. 9, reproduced in U.N. Doc. GAOR, 4th Sess. Plenary, Annexes a.i. 44 p. 167, at p. 168.

4/ At the time the WBAT was established, the Bank's Executive Directors, after referring to the legislative history of the UNAT Statute, pointed out in their report to the Board of Governors on the administrative tribunal that the intent of the language used in Article II of the Statute "is that the Tribunal has to respect the authority of the Board of Governors or the Executive Directors to make such alterations and adjustments in the staff rules and regulations as circumstances might require." Memorandum to the Executive Directors dated Jan. 14, 1980, from the President of the World Bank.

5/ WBAT Reports, Dec. No. 1 (1981).

6/ Id. at p. 19 (emphasis added).

> limited the powers of these bodies. They were not merely subject to the Articles of Agreement and the doctrine of retroactivity but to the integral internal legal system applicable to the Bank." 1/

The WBAT's authority to review decisions taken by the Executive Board of the Bank was also exercised in the von Stauffenberg case. 2/ There, staff members challenged the legality of the general salary adjustment decisions taken by the Bank in 1984 and 1986. The WBAT found it irrelevant whether the applications should have been directed against the decision of the Executive Board or the recommendation of management. With respect to its competence, it stated:

> "Under Article II of its Statute the Tribunal has jurisdiction to hear and pass judgment upon any application alleging non-observance of a staff member's conditions of employment, whatever the organs or officials of the Bank involved. The only question before the Tribunal in the present case is whether the Organization, as such, violated the Applicants' conditions of employment when it reached its decision on the salary structure adjustments. Since the applications allege non-observance of the contracts of employment or terms of appointment of the Applicants, the Tribunal decides that it is competent to determine these matters." 3/

Thus, it has been the practice of administrative tribunals to review the legality of any decision affecting the terms and conditions of employment, even where the highest organs of the institution are responsible for the decision, and the organizations have not taken any action to limit this exercise of jurisdiction.

C. Grounds for Review

It has been observed that "[t]he largest issue which has confronted, and still confronts, the international administrative tribunals is that of the extent to which executive discretion should be subject to judicial control." 4/ It has been widely recognized by the administrative tribunals that organizations must have broad discretion to establish and modify the terms and conditions of employment in accordance with the needs and priorities of the organization. In reviewing decisions taken by the organization pursuant to its discretionary powers, tribunals have, on the one hand, sought to

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1/ Amerasinghe, supra, at p. 15.
2/ von Stauffenberg, WBAT Reports, Dec. No. 38 (1987).
3/ Id. at p. 28.
4/ Jenks, supra, at p. 85.

respect the need of the organization to have wide scope for the exercise of its discretionary powers while, on the other hand, protecting staff rights through the application of certain basic legal norms. As one scholar observed, "[w]hile it is proper and important that the rights which accompany [the organization's legal] obligations should be judicially safeguarded, it is no less important that the executive authority of the administration in respect of matters which are essentially an executive responsibility should remain unimpaired." 1/ The tribunals have thus recognized this dichotomy between judicial and policy-making responsibilities, and have, in practice, severely limited the scope of their review of the exercise of discretionary authority. 2/

The exercise of discretionary authority by an organization in the area of employment might conveniently be divided into two categories: (i) regulatory, or policy-making, decisions, taken by the legislative and executive organs of the organization, and (ii) individual discretionary decisions taken by the management, administration, or other authorized staff (such as supervisors). The international administrative tribunals have defined certain grounds on which each of these categories of discretionary decisions may be reviewed. Implicit in these grounds are the well-recognized limitations, discussed above, on the ability of tribunals to review regulatory and individual discretionary decisions. The following sections identify the principal grounds on which tribunals have reviewed such decisions.

1. Review of Regulatory Decisions

Generally, challenges to regulatory decisions in cases heard by administrative tribunals have been raised in connection with challenges to individual decisions taken pursuant to those regulatory decisions. Recent case law, however, suggests that tribunals will also consider direct challenges to regulatory decisions and do not distinguish

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1/ See id., at 99.

2/ For example, tribunals have squarely held that "the classification of staff in grades and categories is likewise, in general, a legislative or administrative and not a judicial matter." Id. at p. 89. See, e.g., Cardena, ILOAT Judgment No. 39 (1958) (ITU); Raj, UNAT Judgment No. 350 (1985) (holding that the reduction of units in a division was an organizational decision falling within discretionary authority and would not be overturned unless vitiated by prejudice or other improper motive). Cf. Cook, IDBAT Judgment No. 5 (1985), where the tribunal noted that granting the requested relief--the formulation of a tax reimbursement system--would put it in the position of "act[ing] as a legislator or arbitrator, neither of which falls within the competence" of the IDBAT.

between the regulation as such and the individual decisions that implement the regulation for purposes of review. 1/

The grounds on which tribunals will review the legality of regulatory decisions include the following:

. Scope of Authority. One basic principle is that an organ must be acting within its legal authority in taking a decision; otherwise, the decision is ultra vires and, thus, illegal.

. Observance of Procedural Requirements. Another basic principle is that decisions must be taken in accordance with all mandatory and applicable procedural requirements.

. General Principles of Law. The major administrative tribunals have recognized certain limitations on the ability of the organization unilaterally to amend the fundamental terms and conditions of employment. The WBAT discussed this principle at length in the de Merode case. There, the WBAT endorsed, as a "significant limitation" on the Bank's power unilaterally to change the conditions of employment, the general principle that "fundamental and essential elements of the conditions of employment may not be amended unilaterally" by the Bank. 2/

With respect to the power of the organization to amend the terms and conditions of employment, the WBAT stated that although the power was discretionary, its exercise was subject to certain limitations:

> "First, no retroactive effect may be given to any amendments adopted by the Bank. The Bank cannot deprive staff members of accrued rights for services already rendered. This well-established principle has been applied in many judgements of other international administrative tribunals.

1/ For example, in a recent WBAT case, three Bank staff members contested the decision reached by the Bank's Executive Directors regarding the 1984 compensation exercise, and asked the WBAT to direct the Bank to amend the Executive Directors' decision and to order the rescission of the staff circular implementing that decision. The Bank agreed that any ruling of the tribunal based on general principles of law (rather than facts pertaining to a given individual) would be applied to all similarly-situated staff. See von Stauffenberg, supra, at pp. 15-16.

2/ de Merode, supra, at pp. 16, 21.

> The principle of non-retroactivity is not the only limitation upon the power to amend the non-fundamental elements of the conditions of employment. The Bank would abuse its discretion if it were to adopt such changes for reasons alien to the proper functioning of the organization and to its duty to ensure that it has a staff possessing 'the highest standards of efficiency and technical competence.' Changes must be based on a proper consideration of relevant facts. They must be reasonably related to the objective which they are intended to achieve. They must be made in good faith and must not be prompted by improper motives. They must not discriminate in an unjustifiable manner between individuals or groups within the staff. Amendments must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff. In this respect, the care with which a reform has been studied and the conditions attached to a change are to be taken into account by the Tribunal.
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> The Tribunal must satisfy itself in each case that the Bank's power to change the non-fundamental elements in the conditions of employment of its employees has not been exercised either retroactively or in an arbitrary or otherwise improper manner." 1/

These types of basic principles would apply to the review of any regulatory decision to ensure that the decision conforms to the higher legal norms of the organization.

2. Review of Individual Discretionary Decisions

International organizations take various individual decisions vis-à-vis their staffs, both discretionary and obligatory in nature. 2/

With respect to the former, insofar as a discretionary decision involves the exercise of judgment and other subjective factors, a tribunal will not endorse the use of discretionary authority for an

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1/ Id., at pp. 21-22.

2/ The legal concept of discretion implies power to choose between alternative courses of action in making a decision. If only one decision can lawfully be adopted (such as authorizing a benefit to which a staff member is entitled), the decision taken is not the exercise of discretion but the performance of a duty; this is what is meant by "obligatory" decision. See S.A. de Smith, Judicial Review of Administrative Action, at p. 278 (1980).

improper purpose or in an unreasonable fashion. At the same time, to the extent that an individual discretionary decision depends on the assessment or characterization of certain facts and the application of subjective judgment, the international administrative tribunals have reiterated their inability to substitute their judgment for that of the competent authority. 1/ It has thus been observed that

> "[j]udicial review of the substance of administrative decisions is severely limited in its effectiveness by the very nature of discretionary powers. Even if the legality of the decision is dependent on the existence of jurisdictional facts, these are often subject to the Administration's characterization, and the Tribunal can only intervene if the characterization is unreasonable." 2/

For example, the international administrative tribunals have unequivocally held that the determination of the adequacy of professional abilities is presumptively within the exclusive purview of the organization, and that a judgment on this matter is not reviewable. 3/ This deference to the conclusions of the organization would apply to decisions involving an assessment of a staff member's performance of his duties or his suitability for promotion.

While the managerial judgment involved in an individual discretionary decision will not be reviewed as such, some legal norms do apply, as a means of protecting staff against the unlawful use of discretionary authority. These norms have been invoked by tribunals as limitations on the exercise of discretionary authority in individual cases. 4/ Individual discretionary decisions have, for example, been examined on the following grounds:

1/ See, e.g., Salle, WBAT Reports, Dec. No. 10, at p. 11 (1983) (involving refusal to convert probationary appointment to that of regular staff); Pagani, Council of Europe Appeals Board, Appeal No. 76 (1982).

2/ Akehurst, supra, at p. 148.

3/ Jenks, supra, at pp. 86-87; see, e.g., Saberi, WBAT Reports, Dec. No. 5, at p. 8 (1982); Suntharalingam, WBAT Reports, Dec. No. 6, at p. 9 (1982); Buranavanichkit, WBAT Reports, Dec. No. 7, at p. 10 (1982).

4/ E.g., Ballo, ILOAT Judgment No. 191 (1972) (UNESCO) (decision not to renew fixed-term contract); Reid, UNAT Judgment No. 210 (1976) (disciplinary case); Einthoven, WBAT Reports, Dec. No. 23 (1985) (concerning exercise of power to reassign staff member).

- whether the decision was taken by the proper authority;
- whether correct and fair procedures have been followed;
- whether the decision was based on an error of fact or law, or whether significant facts were not taken into consideration;
- whether there were improper motives behind the decision, including discrimination and inequality of treatment vis-à-vis similarly-situated staff; or
- whether the decision was arbitrary or capricious.

There is a substantial and well-developed body of tribunal case law defining and refining these grounds. In applying these concepts, the tribunals have attempted to delineate, on the one hand, those core elements of the organization's discretionary decision-making that are unreviewable, and, on the other hand, those aspects that are reviewable on the basis of higher legal norms. 1/ Accordingly, tribunals have sought to preserve to the organizations a substantial degree of flexibility for the accomplishment of their objectives, while affording their staffs a reasonable degree of protection against abuse of authority. 2/

D. Assessment

The competence of an administrative tribunal to review decisions arising out of the employment relationship between an organization and its staff is derived from the statute establishing the tribunal. In exercising the competence conferred by their governing statutes, tribunals have examined, without limitation, the legality of the full range of employment-related decisions, including rules and regulations promulgated by the organizations they serve.

It would, of course, be possible to establish a Fund tribunal with more circumscribed powers than those exercised by the other major administrative tribunals. In particular, the governing statute of the tribunal could expressly preclude or limit the review of decisions taken by certain organs of the Fund; for instance, all regulatory decisions taken by the Board of Governors and the Executive Board could

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1/ See, e.g., Garcin, ILOAT Judgment No. 32 (1958) (UNESCO), where the ILOAT, while declaring the Director-General's right to make or refuse a staff appointment "sovereign" and professing that it could not seek or judge his reasons for doing so, quashed the decision at issue because of procedural irregularities which tainted the otherwise unreviewable decision.

2/ See generally Carlston, "International Administrative Law: A Venture in Legal Theory," 8 J. Pub. L. 329, at 334, 337 (1959).

be explicitly excluded from review. 1/ Another approach would be to exclude certain categories of decisions on the basis of their subject matter, such as all decisions concerning salary adjustment or job grading.

It is clear, however, that the categorical exclusion of specified decisions from the tribunal's competence, whether based on the authority responsible for the decision or the subject matter involved, would represent a substantial departure from the practice of the other major administrative tribunals, and would necessarily impair the ability of the tribunal to ensure that all employment-related decisions are consistent with the law of the Fund. Indeed, it would be anomalous if the legality of the more fundamental and broad-reaching decisions could never be tested, whereas the individual implementations of those decisions would be reviewable by a judicial body. In order for the Fund tribunal to perform fully the adjudicatory functions for which administrative tribunals have been established, as well as to provide staff with judicial protection comparable to that available to the staffs of other organizations served by administrative tribunals, a Fund tribunal should be given competence to review the legality of all individual and regulatory decisions taken by the organization.

At the same time, however, it would be expected that a Fund tribunal would respect the principles recognized by tribunals as a limitation on their ability to review decisions that involve the exercise of discretion, including all regulatory decisions. This maxim could be expressly incorporated in the statute of the tribunal, to make clear that the scope of review by the tribunal may not exceed the well-accepted principles of international administrative law that significantly limit the substantive review of discretionary decisions. These points are reflected in the draft statute, as discussed below.

II. Implications of Draft Statute

During the Executive Board discussion at EBM/89/21, Executive Directors expressed interest in further analysis of two of the models for an administrative tribunal (Models 1 and 4) presented in EBAP/89/23. These two models may be summarized as follows:

1/ Alternatively, only the exclusion of the resolutions of the Board of Governors, as the highest organ of the Fund, from the tribunal's review could be considered. This would have the effect of precluding review of such resolutions in light of higher legal norms, including the Articles of Agreement. However, because employment-related matters are generally not addressed by the Board of Governors, this exclusion would not, in practice, be particularly significant.

- Under the first model, the Grievance Committee would remain as an advisory body, consisting of two staff members and an outside Chairman, with authority to make recommendations to management concerning the applicability of the Fund's rules and regulations in individual cases. An administrative tribunal, consisting entirely of persons external to the Fund, would be established and empowered to review both individual decisions, following their review in the grievance process, and regulatory decisions, for which there are no administrative remedies to exhaust.

- Under the fourth model, which was the original proposal presented to the Executive Board in EBAP/88/151 (6/22/88), the Grievance Committee would be incorporated into an administrative tribunal for the Fund, specifically as the first panel of the tribunal. The second panel would consist of the same presiding officer and two associate members external to the Fund. Under the guidance of the presiding officer, all cases would be handled by the respective panels, depending on the type of decision at issue.

The draft statute presented in the Attachment would accommodate the establishment of the systems of review described in either the first model or the fourth model. The provisions of the draft statute that would be unique to the first model are indicated in bold-type parentheses; the provisions that would be unique to the fourth model are indicated in square brackets. 1/ The remaining provisions of the draft statute would be common to both systems.

The following sections discuss further the legal, financial, and administrative implications of the draft statute.

A. Legal Aspects

The legal aspects of a draft statute for the establishment of a Fund tribunal along the lines of the fourth model were examined in detail in EBAP/88/151. The following discussion builds upon that earlier presentation, and deals with a few specific aspects that were of particular interest to Executive Directors, as well as those provisions where the language incorporated in the statute would depend on whether the first model or the fourth model was followed.

1/ The juxtaposition of material in bold-type parentheses and square brackets should therefore be regarded as alternatives between the first model and the fourth model.

1. Competence

The draft statute, in Articles II and III, envisages that the Fund tribunal would be competent to review the legality of all employment-related decisions taken by the organization, as is the case with other international administrative tribunals. The competence to review regulatory decisions would thus enable the tribunal to examine decisions taken by the Board of Governors, the Executive Board, and the Managing Director or those to whom he has delegated administrative authority. This follows from the proposition, as described above, that all of the organs of the Fund, whether exercising legislative or executive functions, are subject to the internal law of the organization. Accordingly, the tribunal would be authorized to determine whether a decision is consistent with applicable legal norms within the internal law of the Fund, including those derived from general principles of law.

At the same time, the draft statute would incorporate the significant limitations that administrative tribunals have recognized regarding the review of regulatory decisions and other types of discretionary decisions. In particular, Article III specifies that the tribunal will apply the internal law of the Fund, including generally-recognized principles of international administrative law concerning judicial review of administrative acts. As described above, the tribunals, in following these principles, have recognized the need for the organization to have broad discretion with respect to structuring and administering the employment relationship with the staff in what is judged the best interests of the organization. In addition, Article III makes clear that the establishment of a tribunal would not derogate from the lawful exercise of authority by the organs of the Fund under the Articles of Agreement. Thus, the tribunal would have to respect this important limitation in carrying out its judicial review functions and refrain from interfering with the legislative, executive, and administrative prerogatives of the Fund.

2. Access

Article II of the draft statute contemplates that any individual who has an employment relationship with the Fund, or who participates in a retirement or benefit plan maintained by the Fund as an employer, would have access to the tribunal to challenge the legality of a decision adversely affecting him.

In addition, the draft statute would enable the Staff Association to bring an action in its own name challenging the legality of a regulatory decision affecting all or a portion of its members.

Although staff associations of most international organizations do not have legal standing to file an action with the tribunal, in practice, staff associations do participate in tribunal proceedings, either as amicus curiae ("friend of the court") or by financing and

controlling an action nominally brought by one or more of its individual members. Thus, staff associations are actively involved in the determination of cases by the tribunals, particularly with respect to decisions that affect, or have implications for, large numbers of staff. The draft statute would acknowledge this function that the Fund's Staff Association could play in centralizing and coordinating the legal challenges to regulatory decisions.

Under Article VI of the draft statute, direct challenges to regulatory decisions may be brought within 3 months of the announcement or effective date of the decision. It is considered useful to allow such challenges, either by individuals or by the Staff Association, within this limited time frame so that the validity (or invalidity) of the decision may be clearly determined before there has been substantial reliance on, or implementation of, the decision. As prescribed in Article (XI)[XII] the Managing Director may, in consultation with the President, convene a special session of the tribunal; this authority could be invoked to ensure a prompt determination of the legality of a regulatory decision. Invalidation of the decision at an early stage would allow its effects to be undone without excessive administrative inconvenience.

3. Composition

The principal difference between the first model and the fourth model is with respect to the ongoing role of the Grievance Committee. In the first model, the Grievance Committee would be separate from the administrative tribunal, and an unsuccessful grievant would be able to take his case to the tribunal; in the fourth model, it would be integrated into the tribunal. These alternatives would affect the composition of the tribunal, including the use of panels, as reflected in Articles VII and X of the draft statute.

Under the first model, the tribunal would consist of a chairman and two associate members, all of whom would be external to the Fund. Under this model, these three members (or their alternates) would hear all of the tribunal's cases; there would be no differentiation of functions between panels of the tribunal.

Under this model, the Grievance Committee would continue, as at present, in its advisory role, with an outside chairman (who would not be a member of the administrative tribunal) and two staff members. Its competence might be broadened to include authority to review certain categories of individual decisions that are presently excluded from the Grievance Committee's jurisdiction. The issue of competence and other matters would continue to be governed by the general administrative orders; the draft statute is concerned only with the administrative tribunal as such and would not regulate the Grievance Committee. The only formal linkage between the tribunal and the Grievance Committee

would be that prior recourse to the Committee, where applicable, would be required as part of the exhaustion of administrative remedies. 1/

Under the fourth model, the Grievance Committee would be transformed into the first panel of the tribunal. Thus, the tribunal would consist of a President, two associate members external to the Fund, and two associate members from the staff--one appointed by the Managing Director and one appointed by the Staff Association.

In this model, the first panel of the tribunal would be empowered to review the legality of individual decisions. If a decision involved significant questions of law or was of fundamental importance to the staff member's career, the first panel could, on its own initiative, decide to include the two other associate members of the tribunal in the consideration of the case.

Under this model, the second panel of the tribunal would consist entirely of persons external to the Fund with expertise in law. The second panel would be competent to review the legality of regulatory decisions, whether raised in a direct challenge or as the basis for challenging the legality of an individual decision.

4. Production of Documents

The draft statute (Article (X) or [XI] depending on which basic system of review is followed) would empower the tribunal to adopt its own rules of procedure, including rules regarding the presentation of testimony and other evidence. With respect to documents in the possession of the Fund, the tribunal could request, but would have no authority to compel, the production of any Fund document. The tribunal could, of course, draw an appropriate inference from the organization's refusal to make a document (or other information) available in the course of a tribunal proceeding.

This rule would be consistent with the practice of other international administrative tribunals. For example, the UNAT has held that it could not require the Secretary-General to produce confidential information, and that "it must clearly be for the Secretary-General to decide what information and evidence he places before the Tribunal which can be subject to test and counter-argument by the Applicant," but that "when Respondent does not, of his own initiative, produce such information and evidence despite a number of requests by the Tribunal that a clear statement should be made, the Tribunal is left with no option but to proceed to a conclusion in the absence of such information and evidence." Thus, the staff member should not be

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1/ There might be "informal" linkage between the tribunal and the Grievance Committee. For example, the tribunal, in its discretion, could rely on the record developed before the Committee in lieu of hearing testimony or receiving additional documentation from the parties.

"penalised because certain information is regarded by the Respondent as confidential and the Applicant has no opportunity either of knowing what the reason is or of challenging it." 1/

5. Costs in Cases "Manifestly Without Foundation"

The draft statute would authorize the tribunal to award costs to the Fund in respect of cases that it finds are manifestly without foundation. While it is not expected that the tribunal would invoke this authority except in the most extreme and egregious situations, it is considered appropriate to allow the tribunal, in addition to dismissing the application, to declare that a particular case amounts to an abuse of the judicial process, and to compensate the Fund (at least nominally) for the cost of defending such an action.

6. Effective Date

It is proposed that the starting date for the jurisdiction of the tribunal should be the date the tribunal is formally established. 2/ As a result, the tribunal's jurisdiction would be entirely prospective, and it would not be authorized to review the legality of any decision, whether individual or regulatory, taken before the starting date.

There would be considerable difficulties associated with giving the tribunal retroactive jurisdiction. First, the selection of a particular starting date prior to the creation of the tribunal would be purely arbitrary; it would be anomalous if some existing decisions already in effect were subject to challenge, while others were not.

The second, and related, objection derives from the uncertainties that would result if decisions taken between the starting date and the establishment of the tribunal, which had been relied on by both the organization and the staff, were subject to invalidation by the tribunal. For example, a staff member might challenge a decision not to promote him in favor of another candidate. In the meantime, a number of positions could have been filled in the basis of this promotion and related vacancies. If the tribunal found that the decision at issue was tainted by a procedural irregularity, it would be difficult, if not impossible, from an administrative standpoint to return to the status quo ante in order to correct the procedural flaw.

1/ Robinson, UNAT Judgment No. 15, at p. 51 (1952); accord, McIntire, ILOAT Judgment No. 13 (1954)(FAO) (declining to order Director-General of FAO to produce confidential communication from member country).

2/ The United Nations Administrative Tribunal, for example, was established on November 24, 1949; Article 2 of its Statute provides that the UNAT is not competent "to deal with any applications where the cause of complaint arose prior to 1 January 1950."

For these reasons, it is recommended that the tribunal be authorized only to review decisions taken on or after the date the tribunal is established. This means that if the fourth model is adopted, the Grievance Committee will remain in its present form for one year from the creation of the tribunal, which reflects the statute of limitations for bringing actions that fall within the Grievance Committee's competence.

B. Administrative and Financial Aspects

The administrative and financial aspects of a system of review featuring an administrative tribunal will depend primarily on several factors, such as the channels of administrative review, the use of an advisory body as a prerequisite to review by the tribunal, the size and composition of the tribunal itself, the tribunal's method of hearing and deciding cases, and the number and complexity of the cases. The system of review contemplated by the draft statute, whether along the lines of the first model or the fourth model, is intended to be relatively simple and cost-effective.

1. The First Model

The system of review contemplated in the first model would be more elaborate than that found in other international organizations, in that, following administrative review, there would be review by two formal bodies with respect to the legality of individual decisions. 1/

As noted above, the first model would retain the Grievance Committee in its present form with an outside Chairman, although its jurisdiction would need to be expanded to cover a broader range of individual decisions. In addition, it may be appropriate to establish other review or advisory bodies to consider grievances in specialized areas, for example, questions arising under the Staff Retirement Plan. Thus, the direct cost of the Grievance Committee ($34,000 in FY 1989) 2/ would increase with the expansion in its jurisdiction, and pressures on staff resources--not reflected in the direct cost--would also increase if other review and advisory bodies had to be created.

1/ Other organizations do not have the equivalent of the Fund's Grievance Committee with an outside chairman.

2/ The direct cost of the Grievance Committee consists of the fee paid to the Chairman, part-time secretarial assistance, stenographic costs, and minor miscellaneous expenses. It does not include the time spent by the staff members who serve on the Committee, as well as the time spent by the grievants themselves, their representatives from the staff, and the staff who appear on behalf of the Fund in grievances; it also excludes fees awarded to outside counsel who have represented a grievant.

In the first model, the three members of the tribunal would convene in Washington, D.C. to conduct and decide cases, and would be compensated on a daily basis for so doing and for any additional time spent in preparation for a session. Hotel and travel costs and daily expenses would also be borne by the Fund. Clearly, the frequency and length of the Washington meetings would be determined by the number and complexity of the cases and the nature of the procedures adopted by the tribunal, e.g., whether the tribunal decided to conduct a hearing in a case. The WBAT has almost invariably dealt with cases on the basis of the written record, and has not found it necessary to conduct hearings and receive oral argument and testimony.

In addition, it would be necessary to provide the tribunal with its own registry for necessary administrative and clerical assistance. Again, it is difficult to assess in advance the nature and extent of such assistance. At both the professional and support levels, assistance would be provided on an "as needed" basis by the temporary assignment of regular staff or contractual employees. Such assistance would probably not exceed more than one-quarter of a man-year at both the professional and the support staff level.

If it is assumed that (i) that the three-member tribunal met twice a year for sessions of 10 working days each, with five extra days of preparation per session, and (ii) the tribunal secretariat required three months each of professional and support staff time, the combined annual direct costs of the tribunal and the Grievance Committee under the first model would be estimated as follows:

	$
Tribunal Members	
fees; travel; hotel & per diem	116,000
Tribunal Secretariat	
3 months of both professional and support staff	34,000
Miscellaneous Expenses	20,000
TRIBUNAL	170,000
GRIEVANCE COMMITTEE	40,000
	210,000

The cost estimates for the Grievance Committee and the tribunal do not take into account the important element of staff time that would be

devoted to the review process, including time spent on administrative review, preparation of Grievance Committee and tribunal cases, appearances by witnesses, and the time spent by the grievants themselves in pursuing their claims. 1/ Obviously, these indirect costs, which are very difficult to quantify or predict, would increase with the establishment of the tribunal, particularly with the first model in which the successive layers of the Grievance Committee and the tribunal would lead to duplication of effort.

2. The Fourth Model

The fourth model is intended to be more streamlined and cost-effective than the first model by collapsing the Grievance Committee into the administrative tribunal thus avoiding the duplication of staff time and effort that would occur with the first model when unsuccessful grievants take their cases to the tribunal. The first panel would consist of two staff members, acting in the course of their Fund duties, and an outside presiding officer who would presumably be resident in Washington, D.C. Most cases involving individual decisions would be heard by the first panel, and there would be no duplication of effort in respect of unsuccessful grievances, as there could be under the first model. Thus, cases challenging individual decisions would not involve travel and hotel costs and fees for the two outside tribunal members, unless the case involved the legality of a regulatory decision on which the individual decision was based, or was one where, because of the importance of the issues involved, the first panel decided to convene the whole tribunal.

Assuming that challenges to individual decisions will constitute the major share of the tribunal's case load, the fourth model is likely to be appreciably less expensive that the first, not only in terms of the direct costs, which would vary with the case load, but also in respect of the staff time and effort involved. This follows from the fact that, under the first model, challenges to individual decisions will, in most instances, be heard at two levels--first, by the Grievance Committee and then by the tribunal. However, this potential cost advantage of the fourth model might be reduced in practice if the nature of the cases often required the convening of the full tribunal. Moreover, there would, in principle, be no cost difference between, under the first model, a case where an unsuccessful grievant did not pursue his case before the tribunal and, under the fourth model, the same case being heard and rejected by the first panel. These uncertainties make it particularly difficult to predict the costs of either model or the cost differences between the two. However, the fourth model--as was intended--is clearly likely to involve lower direct costs and appreciably lower indirect costs.

1/ A Grievance Committee case involving the termination of a staff member involved five days of hearings. A recent case involving a promotion took three days of testimony.

III. Discussions with Bank Staff Regarding Joint Tribunal

The staff has undertaken, at the behest of Executive Directors, to approach its counterparts at the World Bank in order to explore possible Bank interest in the creation of a joint tribunal to serve both institutions and thereby replace the WBAT. 1/ In particular, the issue was raised as to whether the exclusion of regulatory decisions, especially those taken by the Bank's Executive Board, from the tribunal's competence would be supported at the Bank. The Bank staff, while reserving judgment on the likelihood of success of such a proposal, made two points.

First, unlike the Fund, the Bank does not enjoy total immunity from judicial process. The extent of the Bank's immunity in employment-related matters was tested in the Mendaro case, 2/ where the U.S. Court of Appeals ultimately dismissed the employee's complaint against the Bank on immunity grounds. The court's decision was premised in part on the existence of the Bank's administrative tribunal as a forum for challenging employment-related decisions. 3/ The exclusion of an important category of those decisions from the competence of the tribunal serving the Bank could, therefore, prejudice the continued immunity of the Bank from the jurisdiction of domestic courts over a broad range of employment-related matters.

Second, the case law of the WBAT firmly establishes that the Bank's tribunal is competent to review decisions taken by the Bank's Executive Board, and that view has been accepted by the organization and relied on by its staff. The establishment of a new tribunal with more restrictive competence would be viewed by Bank staff as a major curtailment of the protections they are now afforded by virtue of the WBAT.

There are numerous other issues that would have to be resolved in formulating a new joint tribunal for the two organizations. A number of provisions in the tribunal's statute would have to be negotiated, including those dealing with access to the tribunal by the respective staff associations, remedies, and costs. It would also be necessary to agree on the size of the tribunal and the method of selecting its members, including the President, by the Bank and the Fund. Finally,

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1/ Among the major international administrative tribunals, there are no "joint" tribunals as such, i.e., a tribunal established by parallel resolutions of two organizations. A number of international organizations have decided to submit their disputes to either the UNAT or the ILOAT. In the case of both the UNAT and ILOAT, the power to amend the governing charter of the tribunal and to appoint the tribunal's members rests exclusively with the UN and the ILO, respectively.

2/ Mendaro v. World Bank, 717 F.2d 610 (D.C. Cir. 1983).

3/ Id. at p. 616 & n.41.

agreement as to a cost-sharing formula would need to be reached; in this respect, there could be differences of view as to the most equitable manner of apportioning costs (e.g., based on total staff size versus actual cases brought by the respective staffs).

Given the substantial uncertainty of the outcome of any further discussion on these issues, as well as the lengthy time it would inevitably take to reach agreement, it is recommended that the Fund proceed independently toward the establishment of an administrative tribunal to serve the Fund exclusively.

IV. Conclusion

The Fund has agreed, in principle, to establish an administrative tribunal. In earlier discussions, most Executive Directors expressed a preference for the creation of a new tribunal, independent of existing tribunals serving other organizations. This paper has examined certain issues that would need to be addressed in establishing such a tribunal, including the structure of the tribunal and the competence it would exercise.

With respect to the issue of structure, the draft statute in the Attachment would accommodate a tribunal along the lines of either the first model or the fourth model. In the staff's view, the fourth model would be more cost-effective and less time-consuming than the first model because it would eliminate the stage of Grievance Committee review before an action was brought before the tribunal, and incorporate the Grievance Committee into the tribunal. There would be no distinction between these models, however, regarding such basic issues as the competence of, and access to, the tribunal, as well as the authority of the tribunal with respect to costs, remedies, and other powers needed to carry out its functions.

With respect to the issue of competence, both models follow the practice of the other major international administrative tribunals by conferring upon the tribunal the authority to review the legality of all employment-related decisions taken by the Fund, whether regulatory or individual in nature.

Several important issues remain to be resolved by the Executive Board. In particular, the view of the Executive Board is needed on the following three issues:

1. Should the structure of the Fund tribunal correspond to the first model or fourth model?

2. Should the Fund tribunal be authorized to review the legality of all employment-related decisions taken by the Fund, whether regulatory or individual in nature?

3. Should the establishment and functioning of the tribunal generally conform to the system contemplated in the draft statute?

In the light of the guidance provided by the Executive Board on these questions, the staff would prepare a proposed Statute to be formally considered by the Executive Board, which could then be recommended to the Board of Governors for adoption.

STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND 1/

ARTICLE I

There is hereby established a Tribunal of the International Monetary Fund (hereinafter referred to as "the Fund"), to be known as the Administrative Tribunal of the International Monetary Fund (hereinafter referred to as "the Tribunal").

ARTICLE II

1. The Tribunal shall be competent to pass judgment upon any application:

a. by a member of the staff challenging the legality of an administrative act adversely affecting him;

b. by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant; or

c. by the Staff Association challenging the legality of a regulatory decision adversely affecting all or a group of its members.

2. For purposes of this Statute:

a. the expression "administrative act" shall mean any individual or regulatory decision taken in the administration of the staff of the Fund;

b. the expression "regulatory decision" shall mean any rule concerning the terms and conditions of employment, including the General Administrative Orders and the Staff Retirement Plan;

c. the expression "member of the staff" shall mean:

1/ The draft statute would accommodate the establishment of the systems of review described in either the first model or the fourth model. The provisions of the draft statute that would be unique to the first model are indicated in bold-type parentheses; the provisions that would be unique to the fourth model are indicated in square brackets. The remaining provisions of the draft statute would be common to both systems.

(i) any current or former officer or employee of the Fund;

(ii) any current or former technical assistance expert appointed by the Fund, whether or not an officer or employee of the Fund, provided that such an expert shall have access to the Tribunal in the event of dispute only to the extent that his letter of appointment so provides; and

(iii) any successor in interest to a deceased staff member to the extent that he is entitled to assert a right of such staff member against the Fund;

d. the calculation of a period of time shall not include the day of the event from which the period runs, and shall include the next working day of the Fund when the last day of the period is not a working day;

e. the masculine pronoun shall include the feminine pronoun.

ARTICLE III

The Tribunal shall not have any powers beyond those conferred under this Statute. In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts. Nothing in this Statute shall limit or modify the powers of the organs of the Fund under the Articles of Agreement, including the lawful exercise of their discretionary authority in the taking of individual or regulatory decisions, such as those establishing or amending the terms and conditions of employment with the Fund.

ARTICLE IV

Any issue concerning the competence of the Tribunal shall be settled by the Tribunal.

ARTICLE V

1. When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review.

2. For purposes of this Statute, a channel of administrative review shall be deemed to have been exhausted when:

a. three months have elapsed since the request for review has been made and no decision stating that the relief requested would be granted has been notified to the applicant;

b. a decision denying the relief requested has been notified to the applicant; or

c. two months have elapsed since a decision stating that the relief requested would be granted has been notified to the applicant, and the necessary measures have not actually been taken.

3. For purposes of this Statute, all channels of administrative review shall be deemed to have been exhausted when the Managing Director and the applicant have agreed to submit the dispute directly to the Tribunal.

ARTICLE VI

1. An application challenging the legality of an individual decision shall not be admissible if filed with the Tribunal more than three months after all available channels of administrative review have been exhausted, or, in the absence of such channels, after the notification of the decision.

2. An application challenging the legality of a regulatory decision shall not be admissible if filed with the Tribunal more than three months after the announcement or effective date of the decision, whichever is later; provided that the illegality of a regulatory decision may be asserted at any time in support of an admissible application challenging the legality of an individual decision taken pursuant to such regulatory decision.

3. In exceptional circumstances, the Tribunal may decide at any time, if it considers the delay justified, to waive the time limits prescribed under Sections 1 or 2 of this Article in order to receive an application that would otherwise be inadmissible.

4. The filing of an application shall not have the effect of suspending the implementation of the decision contested.

5. No application may be filed or maintained after the applicant and the Fund have reached an agreement on the settlement of the dispute giving rise to the application.

ARTICLE VII

1. The Tribunal shall be composed of a President and (two) [four] associate members, who shall be appointed as follows:

a. The President shall be appointed for two years by the Managing Director after consultation with the Staff Association and with the approval of the Executive Board. The President shall have no prior or present employment relationship with the Fund.

[b. Two associate members and two alternates shall be appointed from the current staff as follows:

(i) One associate member shall be appointed from the staff for one year by the Managing Director.

(ii) One associate member shall be appointed from the staff for one year by the Staff Association.

(iii) Two alternates shall be appointed for each of the two associate members appointed from the staff in the same manner and for the same term.

(iv) An associate member or alternate appointed from the staff shall cease to hold office upon retirement or separation from the staff.]

(b.) [c.] Two associate members and two alternates who have no prior or present employment relationship with the Fund shall be appointed for (two) [three] years by the Managing Director after appropriate consultation.

(c.) [d.] The President and the associate members and alternates [appointed under the preceding paragraph] must be nationals of a member country of the Fund at the time of their appointments and must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.

2. The President and the associate members and their alternates may be reappointed. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

3. Any member who has a conflict of interest in a case shall recuse himself.

4. When an associate member has recused himself or, for any other reason, is unable to hear a case, an alternate shall be designated by the President. If the President himself is unable to hear a case, the elder of the associate members [appointed under Section 1(c)] shall act as President for that case [, if the case is heard by the second panel of the Tribunal, as described in Article X,] shall be replaced by an alternate as associate member.

5. The Managing Director shall terminate the appointment of a member who, in the unanimous opinion of the other members, is unsuited for further service.

ARTICLE VIII

The members of the Tribunal shall be completely independent in the exercise of their duties; they shall not receive any instructions or be subject to any constraint. In the performance of their functions, they shall be considered as officers of the Fund for purposes of the Articles of Agreement of the Fund.

ARTICLE IX

1. The Managing Director shall make the administrative arrangements necessary for the functioning of the Tribunal.

2. The Managing Director shall designate members of the staff to serve as a Secretariat to the Tribunal. Such staff, in the discharge of duties hereunder, shall be under the authority of the President. They shall not, at any time, disclose confidential information received in the performance of their duties.

3. The expenses of the Tribunal shall be borne by the Fund.

ARTICLE X

[1. The Tribunal shall consist of two panels, composed as follows:

a. the first panel shall be composed of the President and the two associate members appointed under Article VII, Section 1(b);

b. the second panel shall be composed of the President and the two associate members appointed under Article VII, Section 1(c).

2. The respective panels of the Tribunal shall meet to pass judgment upon applications as follows:

a. the first panel shall pass judgment upon applications challenging an individual decision, subject to the provisions of subsections (c) and (d);

b. the second panel shall pass judgment upon applications challenging a regulatory decision;

c. if the first panel, in considering an application challenging an individual decision where the illegality of the regulatory decision pursuant to which the decision challenged has been taken is alleged, concludes that the relief sought cannot be granted unless the regulatory decision is found invalid, it shall refer the issue of the legality of such regulatory decision to the second panel, and the first panel shall be bound by the opinion of the second panel on this question in passing judgment upon the application;

d. if a majority of the first panel, in considering any application challenging an individual decision, concludes that the questions raised present significant questions of law or are of fundamental importance to the applicant's career, it may decide that the associate members of the second panel shall be added to the first panel for purposes of passing judgment upon the application.

3. In the event of a question as to whether, for purposes of this Article, a decision is individual or regulatory in nature, the matter shall be decided by the President.]

ARTICLE (X) [XI]

[1. Subject to the provisions of this Statute, the Tribunal shall establish its own Rules of Procedure.

2. The Rules of Procedure shall include provisions concerning:

a. presentation of applications and the procedure to be followed in respect to them;

b. intervention by persons to whom the Tribunal is open under Section 1 of Article II, whose rights may be affected by the judgment;

c. presentation of testimony and other evidence;

d. summary dismissal of applications without disposition on the merits; and

e. other matters relating to the functioning of the Tribunal.

3. Each party may be assisted in the proceedings by counsel of his choice, and shall bear the cost thereof, subject to the provisions of Article (XIV) [XV], Section 4 and Article (XV) [XVI].

ARTICLE (XI) [XII]

The Tribunal shall hold its sessions at the Fund's headquarters at dates to be fixed in accordance with its Rules of Procedure. In addition, the Managing Director may, in consultation with the President, convene a special session of the Tribunal to hear and decide a case.

ARTICLE (XII) [XIII]

The Tribunal shall decide in each case whether oral proceedings are warranted. Oral proceedings shall be open to all interested

persons, unless the Tribunal decides that exceptional circumstances require that they be held in private.

ARTICLE (XIII) [XIV]

1. All decisions of the Tribunal shall be by majority vote.

2. Judgments shall be final and without appeal, subject to Article XVII and Article XVIII.

3. Each judgment shall be in writing and shall state the reasons on which it is based.

4. The deliberations of the Tribunal shall be confidential.

ARTICLE (XIV) [XV]

1. If the Tribunal concludes than an application challenging the legality of an individual decision is well-founded, it shall prescribe the rescission of such decision and all other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.

2. When prescribing measures under Section 1 other than the payment of money, the Tribunal shall fix an amount of compensation to be paid to the applicant should the Managing Director, within one month of the notification of the judgment, decide, in the interest of the Fund, that such measures shall not be implemented. The amount of such compensation shall not exceed the equivalent of three hundred percent (300%) of the current or, as the case may be, last annual salary of such person from the Fund. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher compensation; a statement of the specific reasons for such an order shall be made.

3. If the Tribunal concludes that an application challenging the legality of a regulatory decision is well-founded, it shall annul such decision. Any individual decision adversely affecting a staff member taken before or after the annulment and on the basis of such regulatory decision shall be null and void.

4. If the Tribunal concludes that an application is well-founded, it may order that the costs incurred by the applicant in the case, including the cost of applicant's counsel, be totally or partially borne by the Fund.

5. When a procedure prescribed in the rules of the Fund for the taking of a decision has not been observed, the Tribunal may, at the request of the Managing Director, adjourn the proceedings for

institution of the required procedure or for adoption of appropriate corrective measures, for which the Tribunal shall establish a time certain.

ARTICLE (XV) [XVI]

Should the Tribunal find that an application is manifestly without foundation, it may order that compensation be made by the applicant to the Fund for the administrative and other costs of the case. The Managing Director shall determine the means of enforcing the compensation, including by way of deductions from payments owed by the Fund to the applicant, and may, in particular cases, waive the claim of the Fund against the applicant.

ARTICLE (XVI) [XVII]

A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal, and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

ARTICLE (XVII) [XVIII]

The Tribunal may interpret or correct any judgment whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error.

ARTICLE (XVIII) [XIX]

1. The original of each judgment shall be filed in the archives of the Fund. A copy of the judgment, attested to by the President, shall be delivered to each of the parties concerned.

2. Copies may also be made available by the Secretariat on request to interested persons, provided that the President may decide that the identities or any other means of identification of the applicant or other persons mentioned in the judgment shall be deleted from such copies.

ARTICLE (XIX) [XX]

The present Statute may be amended only by the Board of Governors of the Fund.

ARTICLE (XX) [XXI]

The Tribunal shall not be competent to pass judgment upon any application challenging the legality or asserting the illegality of an administrative act taken before January 1, 19__, even if the channels of administrative review concerning that act have been exhausted only after that date.