0404

INTERNATIONAL MONETARY FUND

Minutes of Executive Board Meeting 88/106

3:00 p.m., July 15, 1988

M. Camdessus, Chairman
R. D. Erb, Deputy Managing Director

Executive Directors	Alternate Executive Directors
A. Abdallah	A. G. A. Faria, Temporary
	C. Enoch
	Jiang H.
	A. Rieffel, Temporary
	E. L. Walker, Temporary
	G. Seyler, Temporary
	E. V. Feldman
	A. M. Othman
	M. B. Chatah, Temporary
G. Grosche	
	J. Reddy
A. Kafka	J. Hospedales
	D. McCormack
	C. L. Haynes, Temporary
	J.-C. Obame, Temporary
	I. A. Al-Assaf
	V. J. Fernández, Temporary
J. Ovi	
	D. Marcel
	G. Pineau, Temporary
G. A. Posthumus	
	C.-Y. Lim
G. Salehkhou	O. Kabbaj
	L. E. N. Fernando
	S. Yoshikuni
S. Zecchini	

L. Van Houtven, Secretary and Counsellor
R. Gaster, Assistant

Also Present

IBRD: M. Walton, Africa Regional Office. Staff Association Committee: M. A. de Luca, R. J. Niebuhr, R. K. Rennhack, R. H. van Til. Administration Department: G. F. Rea, Director; H. J. O. Struckmeyer, Deputy Director; T. C. Cole, D. S. Cutler, A. D. Goltz, H. Wiesner. African Department: A. D. Ouattara, Counsellor and Director; E. L. Bornemann, Deputy Director; M. E. Edo. Exchange and Trade Relations Department: J. T. Boorman, Deputy Director; A. Basu, S. B. Brown, A. P. De La Torre. Fiscal Affairs Department: R. Holzmann, C. Schiller. IMF Institute: O. B. Makalou. Legal Department: F. Gianviti, General Counsel; R. H. Munzberg, Deputy General Counsel; H. Elizalde, J. S. Powers. Secretary's Department: J. W. Lang, Jr., Deputy Secretary. Treasurer's Department: S. J. Fennell, D. V. Pritchett. Western Hemisphere Department: H.-M. Flickenschild. Personal Assistant to the Managing Director: H. G. O. Simpson. Advisor to Executive Director: A. A. Agah. Assistants to Executive Directors: S. Appetiti, A. A. Badi, R. Comotto, E. C. Demaestri, M. A. Kyhlberg, C. Y. Legg, V. K. Malhotra, J. A. K. Munthali, L. M. Piantini, S. Rouai, R. Wenzel.

1. MALAWI - REVIEW UNDER STAND-BY ARRANGEMENT AND ENHANCED STRUCTURAL ADJUSTMENT ARRANGEMENT

The Executive Directors continued from the previous meeting their consideration of a staff paper on the first review under the stand-by arrangement for Malawi approved on March 2, 1988, together with Malawi's request for a three-year arrangement under the enhanced structural adjustment facility in an amount equivalent to SDR 55.8 million (EBS/88/118, 6/17/88; and Sup. 1, 7/8/88).

Mr. Ovi made the following statement:

I join other Directors in welcoming this very first request for an arrangement under the enhanced structural adjustment facility. It is indeed satisfying to see that all the efforts invested in this new facility--including, of course, those particularly mentioned by the U.S. chair--are now finally starting to result in actual lending based on adequate programs.

As Malawi is a developing country with very low per capita income and mainly dependent on agricultural production, its economy is very sensitive to weather conditions and changes in the external environment. Drought and problems with transportation through the surrounding countries have, during the last decade, contributed to the destabilization of the economy. The problems associated with high population growth and an already tight food supply have been worsened by the influx of refugees from neighboring Mozambique. About a year ago, determined efforts by the authorities to commence an adjustment process were supported by the Fund, first in the form of a shadow program, and, since March 1988, by a stand-by arrangement. It is gratifying to note that Malawi will now be able to switch to a program involving more financing, and, most importantly, financing on terms much better suited to the economic situation of an extremely low-income country.

Satisfactory performance under a program supported by the stand-by arrangement, preceded by a shadow program, has, of course, unquestionable value as prior action. When combined with an appropriate program, this makes it easy for me to support the request for an arrangement under the enhanced structural adjustment facility. I largely concur with the views of other Directors on the program, and generally agree with the staff appraisal.

Looking at the two scenarios for the later program period, I hope that additional external financing on concessional terms will make it possible for Malawi to switch to the higher growth path in line with the second scenario. Malawi urgently needs to move to a higher growth path in order to address fully the social consequences of adjustment and the deterioration in

living standards experienced during recent years. It is especially heartening to note in the policy framework paper that Malawi is actively recognizing the social dimensions of the adjustment program. This recognition should, indeed, be supported, and seems also to be a prerequisite for positive results from the adjustment efforts in the longer term.

Finally, as we are about to establish guidelines for future requests for arrangements under the enhanced structural adjustment facility, let me offer two more general observations.

First, we should not, as a general policy, expect to find, or indeed require, evidence of prior adjustment as strong as that in the case of Malawi.

Second, in establishing quantitative criteria under the enhanced structural adjustment facility, there has been a merging of criteria with those agreed under the stand-by arrangement. I do not think that we should necessarily draw precise conclusions from this as to the general level of conditionality required for arrangements under the enhanced structural adjustment facility. Rather, I choose to see the case at hand as a logical and pragmatic solution in a situation of transition from one arrangement to another. It would be hard to argue the case for a loosening of conditionality in such a situation.

Mr. Al-Assaf made the following statement:

Like others, I welcome the inauguration of the enhanced structural adjustment facility. The credit for this speedy inauguration goes to management, and particularly to the Managing Director, and to the staff.

The request from Malawi constitutes a good starting point for the discussion of other programs supported by arrangements under the enhanced structural adjustment facility. The staff paper illustrates well the extent of the contribution that the facility can make toward restoring growth and achieving balance of payments viability for this low-income country.

I support Malawi's request. My support is made easier by the fact that, compared with some future requests for support under the enhanced structural adjustment facility, Malawi's case is a relatively easy one. The authorities must be commended for responding convincingly to the challenges facing them. Their determination and ability to deal comprehensively with the issues is evidenced by their record of performance--despite its short duration--under the present stand-by arrangement. In this

respect, while creating an improved framework for the implementation of the current adjustment process, the requested arrangement under the enhanced structural adjustment facility is essentially a continuation of the stand-by arrangement adopted in March 1988.

I fully support the authorities' medium-term fiscal objectives. The achievement of these objectives will be facilitated by continued implementation of the present tax reform. The core objective of this reform--the achievement of a broader tax base and a shift in the burden of taxation from production and imported inputs to consumption--is well founded, and could be applied to a number of countries eligible to use enhanced structural adjustment facility resources. I therefore hope that future tax reforms in programs supported by the enhanced structural adjustment facility will pay due regard to shifting the tax burden away from the productive sector.

The issue of inflation is a matter of concern in view of the rather weak past and current price performance. Hence, I support the broad objective of reducing inflation from its present rate of 20 percent to 5 percent by the end of the three-year program period. However, I would caution against an approach that seems to allow little flexibility in year-to-year progress toward this objective, given the nature of Malawi's economy and the effects of climatic conditions on the evolution of prices. As we know, a large part of the current level of inflation is a direct consequence of food shortages created by insufficient rainfall. A fixed percentage point reduction in inflation rates for each of the next three years may not prove entirely realistic or feasible. However, if progress along this set path is interpreted in a flexible manner, I have no objection to maintaining the current approach.

Finally, the program is expected to lead to balance of payments viability in 1991. I am aware that such viability implies a level of external financing still equivalent to approximately 8 percent of GDP. That level might be somewhat high, but it clearly reflects the high degree of confidence of creditor and bilateral contributors in the authorities' policies. However, as any policy slippages could cast a shadow on these assumptions, full implementation of the steps outlined in the present program will be essential. I am convinced that the authorities' determination in solving their current difficulties will make this first enhanced structural adjustment arrangement successful.

Mr. Haynes made the following statement:

We support the Malawi authorities' desire to implement a comprehensive macroeconomic and structural adjustment program designed to put the economy back on a path of sustained growth. We have been impressed by the significant policy measures taken during the last year, including currency depreciation, early elimination of import-related trade arrears, partial removal of controls on foreign exchange purchases, tax reform, and interest rate liberalization. In addition, performance under the stand-by arrangement has been encouraging and provides a clear signal of the authorities' willingness to pursue a credible adjustment program capable of commanding much-needed support from the international community.

We therefore consider Malawi an appropriate choice as the first candidate for arrangements under the enhanced structural adjustment facility. The proposed program is comprehensive and consistent in its reforms and contains an appropriate degree of conditionality. I can therefore limit my comments to a few general areas only.

The key to restoring growth potential over the medium term rests in Malawi's ability to increase productivity in the agricultural sector and to diversify the production base. To achieve these objectives, the authorities need to ensure that adequate incentives exist to encourage the private sector. Steps to make fertilizer and credit more readily available to smallholders are particularly welcome since the output gains from these smallholdings could substantially raise food production, reduce domestic prices, and permit greater diversification. This approach is all the more important since the industrial sector does not currently appear to have considerable export potential.

We attach much importance to further reduction in the fiscal deficit, and we support a continuing emphasis on expenditure control to complement the tax reforms designed to simplify the tax system and improve its efficiency. Careful expenditure monitoring and control during the second half of 1987 has already started to bear fruit, and we look forward to further gains resulting from strengthening of the budgetary process supported by the World Bank. The performance of the parastatals and of the Agricultural Distribution and Marketing Corporation (ADMARC) in particular are critical to attaining a more balanced position. We encourage the authorities to intensify efforts to improve monitoring and accountability of statutory bodies, and to trim ADMARC to a more manageable size.

Inflation remains one of the most serious problems facing the authorities. The pass-through effects of devaluation and

recent food shortages have aggravated this situation, but the rate of inflation must be brought under control. We recognize the difficult task facing the authorities, especially given the considerable excess liquidity of the banks. The authorities need a carefully devised policy able to satisfy private sector credit demand while pursuing the inflation objective. Hence, the planned review of monetary policy instruments represents a critical benchmark in the program. In the meantime, we welcome the automatic downward adjustment of such quarterly targets as credit expansion and growth of net domestic assets if specified external flows exceed programmed amounts.

The staff has presented two medium-term balance of payments scenarios. We view the second scenario as an indicator of the potential benefits of higher financing flows, but would consider the first scenario as more appropriate during the first year of the program. It is clear, however, that if Malawi is to reverse the decline in per capita income over the last decade and to raise its consumption levels, then substantial financial assistance will be required. Like Mr. Enoch and others, I would welcome comments on the outcome of the recent Consultative Group meeting. Even with financing, the authorities will not have much room for maneuver and will need to proceed with caution.

Finally, Mr. Abdallah has indicated that the authorities do not anticipate a return to the Paris Club for further rescheduling. Recent developments suggest that Paris Club creditors are in the process of developing a framework to implement further concessions for the poorest debtors. I wonder whether Malawi might want to rethink its position when these new arrangements become operational. We support the proposed decisions.

Mr. Posthumus said that he supported the comments made by other speakers, and approved the draft decisions. While he had noted the varied comments from speakers about the level of Fund financing in Malawi's case, he believed that strong adjustment programs required and warranted strong financing, and that Malawi's was such a case. Whether that financing was under the enhanced structural adjustment facility or through general resources in the form of stand-by arrangements made basically no difference.

The Chairman said that Malawi's request did not constitute the most difficult possible case for the Fund's first arrangement under the enhanced structural adjustment facility: the conditions were there for success and for the further development of the program. The enhanced structural adjustment facility would play the traditional catalytic role of Fund financing for the countries concerned.

As Malawi was a country with a per capita GNP of $135 a year and relatively low reserves, concessional financing of the balance of payments was appropriate, the Chairman considered. However, the arrangements with the Fund were essentially aimed at catalyzing further financing from other donors, an approach that appeared to have been successful given the response of members of the Consultative Group. He hoped that strong measures taken in Malawi would help to catalyze further financing in the years to come.

He expected that during the following months a number of good quality programs similar to that of Malawi would allow further requests for arrangements under the enhanced structural adjustment facility to come before the Board, the Chairman remarked. Only if that happened could the facility be judged a success. It was in light of those expectations that the Fund had suggested to several countries that they return with improved programs at a later date.

The staff representative from the African Department said that under the two scenarios outlined in the policy framework paper, two categories of financing could be found. The first was money available through the World Bank's structural adjustment loan and related inflows, and the second category was project-related financing. The inflows assumed under the first category were SDR 153 million under the first scenario and SDR 173 million under the second scenario. With regard to project-related financing, the first scenario assumed SDR 206 million, the second scenario, SDR 250 million. And as the policy framework paper had noted, the second scenario implied a financing gap at the end of the program of SDR 119.4 million over the three years 1989-91. While the first scenario had no financing gaps, at the Consultative Group meeting, the donors had indicated that resources of SDR 173 million could be available, and indeed in light of statements from other donors, structural adjustment-related inflows could in fact reach SDR 180 million.

The staff had always been aware that project-related financing had already been committed by bilateral donors at a level substantially in excess of the figures described in both scenarios, the staff representative continued. Those commitments had been reconfirmed at the Consultative Group meeting. Hence, sufficient resources were now available to consider a higher level of activity than that proposed under the first scenario.

However, a number of points needed to be made in that connection, the staff representative observed. As several speakers had already mentioned, there were a number of uncertainties regarding Malawi's economic outlook. It was a landlocked country, overwhelmingly dependent on agricultural production for domestic consumption and for export earnings. Malawi was therefore vulnerable to uncertainties regarding crop output and world prices for primary commodities. There had also been cases in the past where donor commitments and actual disbursements had diverged to some extent. Further, if the project financing assumed under the first scenario was in fact received, development budget expenditures for 1988-89

would rise by nearly 30 percent--quite a large increase. Under the second scenario, development budget expenditures would rise by 57 percent, and there were some questions as to whether that expansion could be absorbed in one year. If all donor indications concerning development budgets were included in the assumptions of the program, the development budget for the coming year would be twice the size of that in 1987-88. In addition, the responses of donors at the Consultative Group meeting and of creditors at the Paris Club meeting in early April had been predicated on the strength of the programs supported by arrangements under the enhanced structural adjustment facility. The staff would, therefore, wish to maintain the assumptions contained in the program. The 1988-89 fiscal targets would not be altered, nor was a change currently being contemplated even in the 1989-90 target, although that would be subject to discussion during the review. At that time, if there were to be any change in the scenario, the staff would wish to identify very clearly the specific increases involved, and the impact on debt servicing, recurrent expenditures, and the absorptive capacity of the economy.

Currently, reserve levels were programed to rise from 8 weeks of imports in 1987 to 11.3 weeks in 1988, 12.5 weeks in 1989, 14.3 weeks in 1990, and 15.7 weeks in 1991, the staff representative observed. It might be appropriate to see whether reserve levels actually rose above those targets, as that would provide more confidence about current import liberalization schedules. Should reserves rise above those levels, it might be appropriate to consider accelerated import liberalization as a first step before examining changes in the budget.

For 1988, the staff projected an export shortfall, the staff representative remarked, mostly owing to a decline in the tobacco sector, where output had been lower than usual because of the drought. Exports were projected at 55,000 tons in 1988 compared with 61,000 tons in 1987. The assumptions underlying both the stand-by arrangement and the enhanced structural adjustment arrangement were that tobacco production would come back to a normal level in 1989. For the medium term, diversification was expected into other agricultural products owing to the lags in agricultural production, the staff projections assumed that the beneficial effects on export earnings would not occur immediately, but over a number of years.

It was difficult to determine the precise composition of imports for countries such as Malawi, the staff representative continued. That was particularly true where there had been significant import compression during the past several years. The staff had, therefore, not revised its estimate of GDP output pending a review in October, which would examine responses to import liberalization.

The inflation rate in Malawi over the past year had been quite high by historical standards, the staff representative remarked. For the 10 years ending in 1987, the rate of inflation had always been below 15 percent except for 1 year when it was about 19 percent. In 1987, the rate was on average in excess of 20 percent, and on an end-year to

end-year basis, it was 35 percent as of the end of December. Despite earlier expectations that it would begin to decline from the beginning of 1988, that had not happened. Hence, the staff had concluded that the target for inflation for 1988 could not be realistically reduced. In fact, that target was now more ambitious given the events during the first quarter of 1988. The tight fiscal and monetary policies, the import liberalization, and a good harvest should help the inflation rate to decline during the remainder of 1988.

There were to be no transfers from the budget to the Agricultural Development and Marketing Corporation (ADMARC) for 1988-89, the staff representative observed. The strategic grain reserve had been moved to the government budget in 1986-87. ADMARC's overdraft with the banking system was projected to decline from MK 21.7 million at the end of 1987-88 to MK 6.9 million at the end of 1988-89 leading to a self-contained financial institution, a produce marketing board that was financially sound. That had been accomplished through a number of measures. There had been staff rationalization, with a reduction from 30,000 to about 25,000 staff members. The grading of groundnuts and the producer price of groundnuts had also been altered to reduce the average cost to ADMARC. There had been a change in the procurement arrangements, and there had also been changes in the transport network system. Those changes had resulted from studies made in 1986-87. ADMARC had also been selling some of the assets that did not directly relate to its immediate activities.

The purpose of the current study of ADMARC was to examine its role in the long term, the staff representative said. ADMARC was, in principle, to become a price stabilization institution in the long term; that meant that certain current functions, including the distribution of inputs and pricing, might have to be reviewed. When the study was concluded by the end of 1988, the measures recommended by the study should be implemented during the following years.

In April 1988, total Fund resources in use in Malawi had been equivalent to 217 percent of quota, the staff representative from the African Department observed. At the end of the enhanced structural adjustment arrangement, those resources would be 233.6 percent of quota. Thus, the Fund would continue to maintain resources in Malawi and to support the program during that period. During the Paris Club meeting in April, Malawi received good rescheduling terms with a 10-year grace period and a 20-year maturity. Once the details of the new proposals with regard to the debt initiative for the debt-distressed countries in Africa became available, the authorities might want to examine them and to take advantage of them were that to be appropriate.

The staff representative from the Exchange and Trade Relations Department said that so far as the two balance of payments scenarios presented in the policy framework paper were concerned, the first year's program was, in each case, the same. That would be true at any given point in the program, because the operative scenario would be for the coming year, and would be agreed by all the parties concerned at the

beginning of that year, during the review process. Hence, the two scenarios reflected different possibilities for the outlying years, rather than for the program year itself. The existence of the two different scenarios did allow the possibility of providing a range of options, which made it possible to peg the program to a more reasonable and feasible immediate scenario. And the annual program review wiped out the discrepancy between the scenarios in practice.

The presentation of two balance of payments scenarios also allowed a practical solution to what could otherwise be a major problem--namely, the pressure to opt for the higher financing scenario if only one scenario was to be presented, the staff representative continued. It also allowed some flexibility during the course of the program, as the impact of developments could be considered during the course of midterm or annual reviews.

There was a clear rationale in the case of Malawi in particular for the buildup of reserves, in case of a continuing balance of payments need, the staff representative concluded. Malawi was exceptionally vulnerable to a variety of exogenous shocks including, inter alia, terms of trade fluctuations, transport bottlenecks, the influx of refugees, and droughts. It was also a landlocked country with extremely low income levels, and that certainly suggested the need for a stronger cushion of reserves. The staff's recommendation for an enhanced structural adjustment arrangement recognized those needs.

In addition, the program aimed at dismantling restrictions, the staff representative observed. That clearly implied some degree of uncertainty about the effects of the program, and particularly how it would bear upon foreign exchange development. Once again, that underlined the need for a substantial reserve.

The program to be supported by an enhanced structural adjustment arrangement was also one that came after a number of programs during which the adjustment process had still not been completed, despite some successes, the staff representative remarked. That had been recognized during the last Article IV consultation and stand-by arrangement discussions in the Board. The proposed program provided for an efficient framework of structural and stabilization policies that would help Malawi to achieve external viability and to mobilize external support.

So far as the policy framework paper was concerned, in most cases the paper and the relevant program were presented to the Board simultaneously, the staff representative commented. The problem, when considering the possibility of conveying the Board's views on the policy framework paper to the World Bank, was to distinguish clearly between comments made concerning the program, and comments about the content of the policy framework paper. That was, however, a problem that the staff would have to consider, probably in the context of the next Board review of the structural adjustment facility or of the enhanced structural adjustment facility in early 1989.

During the recent discussion in the Board on the monitoring of Fund-supported programs and structural measures, the general consensus had been that when a very specific statement or quantification could be made on what needed to be done by way of structural measures, those measures could be included in an arrangement as a performance criterion, the staff representative from the Exchange and Trade Relations Department recalled. However, when there would be some need for a margin of flexibility on implementation, those measures could best be covered under the review. The review could then establish whether in fact the policies had been implemented in the direction intended, and whether that had been done to the extent desirable. That strategy had been followed in the case of Malawi's enhanced structural adjustment arrangement.

Mr. Rieffel observed that his understanding of the summing up from the Board discussion on the monitoring of Fund-supported programs was that it stated fairly clearly an interest on the part of the Board in communicating to the Executive Directors of the World Bank some reaction to the policy framework paper process. He hoped that it would be possible to respond to that sentiment before the next Board review of the policy framework paper process in 1989.

The Chairman said that an opportunity would be found before the next review of the policy framework paper to explain what was possible.

Mr. Rieffel remarked that the tendency to develop two scenarios reflecting differences of opinion was one that would be faced in every case in which a policy framework paper was required, and he hoped that the staff would not find it necessary in the case of Malawi to repeat the dual scenario approach in the coming years. He also felt that the staff should be offered some support for dealing with pressures to have a budget in which the development expenditures might exceed Malawi's absorptive capacity.

The staff representative from the Exchange and Trade Relations Department said that it was clearly best to agree on a single scenario and to work toward the implementation of that scenario. At the point in the review process at which programs would be formulated for the coming year, the staff and the authorities would indeed take into account considerations concerning absorptive capacity. It was only in relation to the outlying years that the problem remained unresolved. It was also useful to note that opinion in the Board had itself been divided on which scenario seemed the most likely. In any event, it was important to emphasize that so far as the program itself was concerned, it would always be effectively anchored to a single scenario.

Mr. Abdallah said that the Malawi authorities were fully determined to implement the structural measures in full. It was therefore particularly important that the catalytic role of the enhanced structural adjustment arrangement be effective, particularly in light of the good response in the Paris Club, and that disbursements should actually conform with commitments.

In that light, he noted that the repayments of bank loans by the authorities were based on the assumption that those aid flows would materialize, Mr. Abdallah continued. However, the staff had noted that "there is no automatic upward adjustment of these targets in the event of a shortfall in the specified external cash loans." That indicated a clearly asymmetrical approach in the sense that full account of the excess over loan commitments would be taken, but if disbursements fell short, the authorities would be expected to make adjustments. That was especially important as aside from the structural adjustment loan flows, there was always the likelihood of some doubt about the extent to which bilateral aid flows would materialize. Were such shortfalls to occur, the Fund should be prepared, provided that the authorities stuck to the program, to be more generous.

The proposed reserve buildup in Malawi was a bare minimum, Mr. Abdallah commented. Sixteen weeks of imports was the same target as that adopted by the Central Bank of Kenya--a country which was not land-locked. Many other countries assumed a minimum of four months' imports as a base for reserves. When that was considered in light of Malawi's extreme vulnerability to exogenous shock, and the need to liberalize the trade and payments regime, the minimal nature of the target became clear. While the commitments of the authorities were clear, and the authorities had every intention of implementing all the proposed adjustments, the international community also had to face its responsibilities.

The Executive Board then took the following decisions:

Review Under Stand-By Arrangement

1. Malawi has consulted with the Fund pursuant to paragraph 4(b) of the stand-by arrangement for Malawi (EBS/88/25, Sup. 1, 2/9/88) and paragraph 24 of the letter dated February 2, 1988 from the Minister of Finance and the Governor of the Reserve Bank of Malawi, in order to review progress made under the stand-by arrangement and establish performance criteria for the remaining period of the stand-by arrangement.

2. The letter dated May 27, 1988 from the Minister of Finance and the Governor of the Reserve Bank of Malawi shall be attached to the stand-by arrangement for Malawi, and the letter dated February 2, 1988 attached to the stand-by arrangement shall be read as supplemented by the letter of May 27, 1988 and its attached memorandum on economic and financial policies.

3. Accordingly, the references in paragraph 4(a) of the stand-by arrangement for Malawi to paragraph 24 of the letter dated February 2, 1988 relating to net domestic assets of the banking system, net claims on the Government by the banking system, net claims on statutory bodies by the banking system, the limits on new nonconcessional external loans and on the net increase in short-term external debt contracted or guaranteed

by the Government and other public sector institutions, shall comprehend references to paragraph 32 and 33 and Annex II of the memorandum on economic and financial policies attached to the letter of May 27, 1988.

4. The Fund decides that the first review contemplated in paragraph 4(b) of the stand-by arrangement for Malawi is completed.

Decision No. 8919-(88/106), adopted
July 15, 1988

Enhanced Structural Adjustment Arrangement

1. The Government of Malawi has requested a three-year structural adjustment arrangement under the enhanced structural adjustment facility, and the first annual arrangement thereunder.

2. The Fund notes the policy framework paper for Malawi set forth in EBD/88/155.

3. The Fund approves the arrangements set forth in EBS/88/118, Supplement 2.

Decision No. 8920-(88/106), adopted
July 15, 1988

2. ADMINISTRATIVE TRIBUNAL

The Executive Directors considered a staff paper on the establishment of an administrative tribunal for the Fund (EBAP/88/151, 6/22/88). They also had before them a paper prepared by the Staff Association Committee (EBAP/88/173, 7/13/88).

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

> For too long, the Fund has not followed Montesquieu's dictum of the trias politica in which the legislative, executive, and judicial branches are separated. We are pleased that, after so many delays, the establishment of an Administrative Tribunal for the Fund is in sight.
>
> The Staff Association Committee broadly endorses management's proposal for a Tribunal. We have appreciated the consultative process which accompanied the preparation of this proposal. We believe that the proposed Tribunal is an innovative combination of existing institutional arrangements, such as the Grievance Committee, and of more conventional features of

tribunals, which makes it uniquely suited for the needs of the Fund. We would have serious reservations if an association were to be sought with other tribunals, such as the World Bank's, since there are diseconomies of scale and major doubts about its effectiveness.

Nevertheless, we have difficulties with some of the provisions in the present proposal and would urge the Board to consider our amendments with a view to strengthening the effectiveness of the Tribunal and making it a more accessible instrument for resolving employment-related disputes.

First, we believe that the provisions for compelling cooperation with the Tribunal are much too weak and must be strengthened to ensure that it can function effectively. It is clear that the Tribunal should have full authority to obtain all the necessary information and that refusal to cooperate or obstruction of the process should have consequences for the parties involved.

Second, the Staff Association Committee strongly recommends backdating the jurisdiction of the Tribunal. What are the arguments against backdating? One is that the administrative provisions before 1989 did not take into account the existence of the Tribunal. Does that imply that these provisions could not stand the test of an independent review? Or does it mean that many things were not covered by existing regulations? But where there are no rules, violating them is by definition impossible, and the Tribunal should decide on the basis of general principles of fairness and equity. Our proposal is to backdate the jurisdiction of the Tribunal to January 1986. This timing would be consistent with the initiation of the first serious discussion about the establishment of the Tribunal. Also, not backdating the jurisdiction will give the impression that there is an attempt to exclude a number of recent developments from independent review. Another important consideration for backdating is that some job grading decisions were ruled ineligible for appeals hearings, and affected staff may have missed out on an independent review of their cases. In sum, we believe that the Board could enhance staff perceptions by showing that decisions taken in the past can stand the test of an independent review.

Third, access to the Tribunal is unnecessarily constrained by a loose provision for the award of costs. It would be more appropriate to establish an asymmetrical rule which awards costs automatically in cases that are well founded, while leaving it to the discretion of the Tribunal to decide on the award of costs in all other cases. Such a provision would remove barriers to pursuing valid cases, which is in the interest of the Fund.

Fourth, the decision to grant access to the full Tribunal for important individual cases should be taken by a majority of all members of the Tribunal and not just by a majority of the first panel.

Finally, we see no need to formulate in the statute a penalty for bringing "frivolous" cases to the Tribunal. We are confident that the Tribunal can deal effectively with such cases.

Unfortunately, one cannot fail to observe that there are some negative externalities associated with the establishment of the Tribunal which should and can be avoided. We have noticed that General Administrative Orders are being revised to make them, so to speak, bullet proof and Tribunal resistant. While nobody would challenge the need to make GAOs internally consistent, the bureaucratization reflected in the significant expansion and tightening of rules is damaging for the atmosphere and trust in which Fund employees should be able to function.

I would like to finish by expressing the staff's expectation that you will do everything in your power to ensure that the Fund will have this important institution established at the Annual Meeting in Berlin.

Mr. Kafka said that he agreed with the staff's basic proposal to establish a separate administrative tribunal for the Fund, rather than using the World Bank Administrative Tribunal (WBAT), or any other existing administrative tribunal. He disagreed with the staff proposal to establish an administrative tribunal with two panels, one to replace the Grievance Committee, the other to be a new judicial entity. There was a need to establish a body which was clearly differentiated from the present Grievance Committee, and which was a tribunal on a par with all other administrative tribunals.

He sympathized with the objectives which underlay the particular structure proposed by the staff, Mr. Kafka continued. However, he proposed that the Grievance Committee with its independent chairman should be retained. That committee should be authorized to issue judgments, rather than merely to make recommendations to the Managing Director, in those cases that involved individual appeals against the application of rules. To issue decisions on regulatory issues, however, a tribunal should be established which should be composed of a chairman and two members. All three members would be drawn from outside the Fund, and would have the required legal expertise. As that expertise would be different from that required by the independent chairman of the Grievance Committee, and in order to separate the two entities clearly, the chairman of the Grievance Committee should not be a member of the administrative tribunal.

For cases involving the individual application of rules, which encompassed substantial legal issues, the Grievance Committee would be expected to recuse itself and to submit the case to the tribunal, Mr. Kafka said. He was confident that the tribunal would be able to gain the information necessary to judge an individual case in ways other than by incorporating members of the Grievance Committee itself. If the Grievance Committee refused to submit the case to the administrative tribunal, it would be open to the aggrieved party to do so.

In general, he suggested that the Board first discuss separately the problem of structure, leaving individual articles of the proposed statutes to be addressed in detail later, Mr. Kafka concluded.

Mr. Zecchini made the following statement:

> We welcome the establishment of an administrative tribunal for the Fund. It reflects a question of equity that will help to further improve the efficiency, integrity, and image of the Fund, as it will also help to safeguard the legitimate rights of the staff.
>
> In view of the delicacy of this matter and its far-reaching implications, we should avoid rushing to a decision today. Further consideration should be given particularly to two major questions: the institutional framework, and the jurisdiction of the tribunal. I will address these two topics in turn, after touching upon the issue of affiliation.
>
> We would prefer that the Fund established its own tribunal rather than joining the World Bank Administrative Tribunal (WBAT). Although cost consideration would tend to favor affiliation, the establishment of the Fund's own tribunal would be more appropriate. Affiliation in general would entail acceptance of prior jurisprudence, which in turn might conflict with the particular features and needs of the Fund. Moreover, although the Fund and the World Bank have many common staff policies and benefits, some incompatibility might well arise because existing practices and ultimately the Fund's independence from the World Bank in matters of administrative policy might be constrained.
>
> On the institutional framework, the staff paper proposed a setup in which the tribunal would consist of two panels, the first of which would replicate the structure and the function of the existing Grievance Committee. Such an arrangement is highly questionable. First, the Grievance Committee in its present form is not empowered to issue final and binding judgments but only recommendations to the Managing Director. Under the new formulation, the decisions of the first panel of the tribunal--i.e., the Grievance Committee--will instead become binding. This is de facto a significant and far-reaching extension of the

powers of the Grievance Committee, one neither originally envisaged nor warranted. Second, based on our understanding of equivalent institutions, the rationale for creating an administrative tribunal is to provide for an additional level of administrative jurisdiction to complement the existing remedies, and not to replace them. Therefore, our preference would be for retaining the Grievance Committee in its present form and functions in addition to establishing an administrative tribunal. As for the staff's argument that this will result in duplication of effort, this is a nonissue. It is obvious that if the tribunal is to pass judgment after all the existing remedies have been exhausted, there will be duplication just as in the case of any court of appeals.

Mrs. Walker said that her authorities were willing to consider the possibility of establishing an administrative tribunal, in line with the consensus reached at the last Board meeting on the subject. The staff paper confirmed the view that such a tribunal could be an important part of preserving the rights of the staff. In addition, other international organizations had established such tribunals, although in different ways. Taking that step, however, was not something that should be done lightly.

She was not sure that all the issues that staff and management had probably discussed in the course of developing the paper were fully outlined in the staff paper currently before the Board, Mrs. Walker continued. That made it difficult to feel fully confident that the proposal under discussion was really the best option available. In addition, the proposed tribunal differed in several important respects from other tribunals, and her authorities were not at all sure that those differences were warranted or necessarily appropriate. Hence, she was not able to support the adoption of the administrative tribunal along the lines proposed in the staff paper.

In general, her authorities saw a need for further analysis of the situation, perhaps answering some Directors' questions, and reconsidering some of the major structural elements, before Directors could decide on the most appropriate structure for the Fund tribunal, Mrs. Walker commented. Her main area of concern lay in the proposal to include staff members on the first panel. An administrative tribunal should be fully objective in order to render independent opinions on areas under its jurisdiction. And the staff could not be members of such a panel without calling its independence into question. Regardless of the type of claim involved, it was not appropriate to have the staff making formal decisions on other staff grievances.

If the goal was, as it appeared to be, to institutionalize the Grievance Committee, then perhaps the latter should remain as it was, as part of a procedure on the way up to the administrative tribunal, Mrs. Walker considered. Perhaps the staff could also discuss Mr. Kafka's proposal. Nor was she exactly sure as to how the binding powers of the

Grievance Committee would work in practice. It appeared as though the tribunal could act as a court of appeals for the Grievance Committee, rather than the Grievance Committee becoming a tribunal itself.

While it might at first glance be easier and less costly to have the staff as members of the first panel, there could be other ways to make the tribunal cost effective, Mrs. Walker remarked. It was important to ensure that the tribunal was able to make a fair and independent judgment.

It was also unclear why two panels were required, Mrs. Walker added. If the Grievance Committee were to be retained, the second panel could become the only panel of the tribunal. That could save some money.

If the Fund were to have its own tribunal, decisions could be taken that differed from those that emerged from the World Bank Administrative Tribunal, but concerned the same compensation system, Mrs. Walker noted. It was not clear what would happen were the Fund tribunal to take a different decision on the fundamentals of the compensation system from that taken by the World Bank tribunal. Her authorities were not completely convinced that not affiliating with the World Bank tribunal was an effective approach, although there were arguments on both sides.

Mr. Grosche remarked that he supported the establishment of an administrative tribunal for the Fund reluctantly, as a deplorable result of growth. The Fund had perhaps inevitably reached a staffing level at which bureaucratic procedures crept in and diseconomies of scale emerged. The proposed tribunal was one of the costs associated with growth. His authorities had not yet reached a final decision on a number of difficult legal and institutional problems, and preferred to return to some of those issues before taking any final decision.

Like other speakers, his authorities did not agree that staff members should sit on the first panel of the proposed administrative tribunal, Mr. Grosche continued. That would be without precedent in international institutions, and implied that the staff would become their own judge. It seemed to contradict the basic idea behind the establishment of the tribunal--to transfer administrative disputes to an independent body. Impartiality and the maximum comparability of treatment possible with the staff in other international institutions would not therefore be ensured. Hence, he found Mr. Kafka's idea to be worth considering further.

His authorities had a preference for affiliation with the World Bank Administrative Tribunal, given the similarities in the backgrounds of the staffs and the similar tasks that the two staffs fulfilled, Mr. Grosche noted. That was, for example, recognized by an almost identical salary structure. Affiliation could also tend to be less costly. However, he remained undecided on that issue, and thought that in the end the decision would rest on the relative cost involved.

Mr. Lim recalled that his chair had previously been unconvinced of the need to create an administrative tribunal, although it would not

stand in the way of its establishment. At the last Board meeting on that issue, however, the majority of Directors had favored establishing such a tribunal. Hence, the task was to design a tribunal which was flexible and cost effective and which would avoided cumbersome and unnecessarily bureaucratic arrangements.

Affiliation with the World Bank tribunal held no particular attraction as it appeared especially cumbersome and administratively expensive, Mr. Lim remarked. He was, however, interested in further elaboration of the potential administrative cost of the proposed Fund tribunal. Was it envisaged that a permanent secretariat would be established, as it had been in the case of the World Bank Tribunal? While it would be difficult to make an accurate forecast, some guidance as to likely demands on such a tribunal might be provided by Fund experience with the Grievance Committee and the Fund Ombudsman.

He saw merit in the staff proposal for a two-tier tribunal incorporating the existing Grievance Committee, Mr. Lim continued. However, the staff paper also reported in passing the possibility of separate advisory committees to assist in the administrative review process, and he wondered whether the staff could elaborate further on that possibility. It did not, on first sight, appear consistent with the basic requirement of simplicity. He also wondered whether the staff could comment on the relationship between the proposed tribunal and the Fund Ombudsman.

He had some difficulties understanding the legal foundation that would underpin the tribunal's jurisdictional competence, Mr. Lim remarked. He welcomed the assurance that such a tribunal would be limited to considering the legality of any decision, whether individual or regulatory. The staff paper observed that the internal law of the Fund would be that created by the Articles of Agreement, staff regulations, Executive Board decisions, general administrative orders, administrative practice, and general principles of law. It was not clear how those various sources would be weighted. Moreover, the staff paper also indicated that the tribunal would have jurisdiction to review, inter alia, the legality of Executive Board decisions and the general administrative orders--themselves elements of the yardstick against which the legality of individual administrative decisions would be measured. He underscored his authorities' reservations on any interference by the tribunal with the authority of the Board of Governors or Board of Directors to change employment terms and conditions.

So far as the proposal advanced by the Staff Association was concerned, he had some difficulties with the suggestions regarding Article XI, Section 2(c), Article XVI and Article XXI, Mr. Lim concluded. However, he saw merit in the Association's proposal regarding Article X, paragraph (d).

Mr. Pineau said that his authorities broadly supported the establishment of an administrative tribunal. They were also ready to endorse the

basic principle of creating a separate administrative tribunal serving the Fund exclusively, and saw little merit in any affiliation with the World Bank Administrative Tribunal.

The misgivings expressed by several Directors did not relate specifically to the structure of the tribunal but to the composition of the first panel, Mr. Pineau considered. The idea of two separate panels with different jurisdictions was an interesting one, as several Directors had stressed during the first Board discussion of the proposed tribunal that extreme caution should be exercised in order to prevent any encroachment by the tribunal on the administrative power of both management and the Executive Board. It followed that two clearly differentiated panels dealing with individual decisions and regulatory decisions, respectively, was appropriate.

So far as the composition of the first panel was concerned, his authorities appreciated the concerns that had been raised, and before reaching any final position on that issue, wished to await the views of other Directors, Mr. Pineau concluded.

Mr. Fernández said that his authorities believed the tribunal to be needed. They supported the proposed decision, but had general comments on the draft statute relating to the structure of the tribunal.

Although he could go along with the staff proposal incorporating the Grievance Committee into the administrative tribunal, if that were to be the majority position of Directors, his first choice was the establishment of a more orthodox independent administrative tribunal, Mr. Fernández remarked. He was not convinced by the staff's argument that unnecessary duplication should be avoided at all cost. The Grievance Committee should be reformed if necessary, but he preferred the administrative tribunal to be composed of three or five judges from outside the Fund. The division of the tribunal into two panels raised complex issues of competence between them, and it unnecessarily complicated the judging process. For instance, the procedure to decide on the nature of the issue raised to determine the composition of the tribunal was not clear. Moreover, as a matter of principle, he supported an independent judicial branch, separate from the legislative and executive branches of the Fund. In sum, he did not yet see why the composition and the working of the tribunal should represent such a profound departure from practices of the World Bank Tribunal.

Mr. Obame said that he could go along with the proposal to establish an administrative tribunal for the Fund. The advantages of having an independent tribunal far outweighed those of affiliating with the World Bank Administrative Tribunal, as an independent tribunal would better serve the peculiar needs and nature of the Fund. Nonetheless, some clarification from the staff seemed to be needed on the operational cost of the tribunal. In particular, it would have been appropriate to make a

full comparative study on a yearly basis between the operational cost of affiliation to the World Bank Administrative Tribunal and that of an independent tribunal along the lines suggested by the staff.

The Grievance Committee should be retained as part of the Fund's administrative review process, Mr. Obame considered. It was accepted that all avenues for dealing with staff grievances and complaints should be fully exhausted before cases were brought to the administrative tribunal, and the Grievance Committee's advisory role to management should at least be preserved, while perhaps some of its judicial features and roles should be incorporated into the administrative tribunal. Hence, he suggested eliminating the first panel of the tribunal.

Mr. Al-Assaf commented that he too supported the establishment of an administrative tribunal, independent from the World Bank Administrative Tribunal, and with three members. He went along with the second option presented by the staff on page 15 of the staff paper, although he thought that the legality of individual decisions should be first reviewed by the Grievance Committee and should go to the administrative tribunal only if it could not be determined at the lower level.

Mr. Fernando said that he welcomed the proposal to establish an administrative tribunal. He did not think that affiliation with the World Bank Administrative Tribunal was appropriate. He was attracted by the idea that there should be two panels, one to review the question of individual decisions, the other looking at more regulatory questions. Thus, he supported the third option proposed in the staff paper, especially as such a procedure would also have important cost saving benefits. However, even after setting up the tribunal, it would be advisable to continue to have an internal advisory committee within the Fund, and the present Grievance Committee could fulfill such a function, without its outside chairman and divested of its judicial aspect. That, of course, would raise questions as to whether an Ombudsman was still needed.

Mr. Yoshikuni said that his authorities also supported the idea of establishing an administrative tribunal for the Fund. He broadly agreed with the thrust of the staff paper, but had some concerns regarding the structure of the proposed tribunal.

Although the staff paper noted that affiliation with the World Bank Administrative Tribunal was likely to be more costly than establishing the Fund's own tribunal, he was not yet convinced of the benefits, Mr. Yoshikuni continued. He wondered whether the staff could produce a preliminary estimate of the cost associated with operating an independent tribunal.

While he welcomed the proposal to incorporate the Grievance Committee into the tribunal, with a view to avoiding the duplication of operations, he shared the concern of other Directors about the precise role of the Grievance Committee, Mr. Yoshikuni continued. To avoid duplication, it might be better if the current Ombudsman was incorporated into the

Grievance Committee. While he could broadly go along with the staff's proposal as regards the proposed statute, he wished to reserve the right to comment after its formal presentation. It was still too early to make a firm decision.

Mr. Ovi said that he welcomed the proposal for establishing an administrative tribunal. While he regretted that the staff wanted such a tribunal, the staff's views should decide the matter. In general, he favored a Fund tribunal independent of the World Bank Administrative Tribunal. His authorities could certainly go along with the staff's suggestion of a staged approach, but preferred it to be implemented on an experimental basis, since the proposed approach deviated substantially from known experience elsewhere. If that was not feasible, perhaps Mr. Kafka's proposal should be adopted. The Staff Association had also raised the crucial issue of shifting a complaint from one panel to the other, and had noted that it should not be the members of the Grievance Committee who decided whether a case should be put to the tribunal. Rather, that should be decided by a combination of the two panels. He had serious operational difficulties with that compromise solution. It would be better to adopt the approach proposed by the staff, or to go directly to Mr. Kafka's suggestion. He preferred to try the staff proposal on an experimental basis.

Mr. Feldman said that the staff paper offered clear recommendations with which he broadly agreed. The tribunal designed to serve the Fund exclusively appeared a better option than affiliation with the World Bank Administrative Tribunal. Such an approach could reduce both the length of time needed to decide cases, and also the cost borne by the Fund.

The system envisioned in the draft statutes before the Board seemed suitable, Mr. Feldman continued. The composition of the tribunal and its division into two panels was adequate, and should in practice produce positive results by reducing both the time and cost involved.

Mr. Faria observed that he had no problem with the establishment of an administrative tribunal, as that reflected both staff wishes and prior discussion and agreement in the Board. The question of the structure and function of the tribunal should, however, be examined in terms of a more general application of accepted principles of natural justice, as applied to an objective review of administrative action. It would have been useful therefore if the staff paper had discussed the functions of the administrative tribunal in relation to the Grievance Committee and the Ombudsman. The Grievance Committee represented a very useful institution which had served the Fund well, and it should not be converted into the first level of judicial action. Its place as an advisory committee for the Managing Director should be fully preserved, on the principle that all administrative remedies should be fully exhausted before judicial review of administrative action was envisaged.

He did not see why an independent administrative tribunal would generate rulings that conflicted with those of the World Bank Administrative Tribunal, Mr. Faria continued. Methods could be devised under which each tribunal would take serious note of decisions made by other tribunals in formulating its own decision.

Mr. Enoch commented that he welcomed the establishment of an administrative tribunal, but also believed that there was some way to go before finalizing the decisions. His authorities had in the past expressed some interest in affiliation with the World Bank Administrative Tribunal, and he would have been grateful for some more detailed information in the staff paper of the respective costs to the Fund of an independent or an affiliated tribunal. He also wondered whether the World Bank had been contacted in that connection, and whether there was any prospect of the World Bank Administrative Tribunal changing in some way to reflect Fund concerns, were the Fund to affiliate.

The staff proposals indicated a tribunal somewhat different from those of other international bodies, and in particular an expanded role for the Grievance Committee, Mr. Enoch noted. He wondered whether the Grievance Committee should in fact retain its present form, making one panel of the proposed tribunal superfluous. In any event, there was as yet insufficient information available on which to make a decision.

Mr. Salehkhou made the following statement:

> Given its immunity from judicial process in employment-related disputes and the inapplicability of local law to its internal organizational matters, the Fund, like most other international organizations, should provide its staff with the right of recourse to an administrative tribunal. Thus, I welcome today's discussion on the establishment of an administrative tribunal for the Fund, and wish to make a few general comments.
>
> Given the complexity of the issues involved, the staff has produced an excellent paper. However, in view of a number of questions and reservations on some of the articles of the proposed draft status, I, like Mr. Kafka and others, propose to state my final position on specifics after hearing our colleagues.
>
> First, while the staff has succinctly examined some of the major points in the Chairman's summing up of our last discussion on the subject at EBM/87/5 (1/9/88), such is not the case with other principal issues raised by several Directors and endorsed by the Chairman. For example, the Chairman had concluded "that a tribunal similar to the World Bank's might be reasonable, but it would be necessary to study the experience with the system in more detail." While some of the relevant issues in the designs

and modalities of administrative tribunals of different international organizations have sporadically been discussed in this paper, there is no detailed examination of the actual case experiences with these tribunals, particularly that of the World Bank. Some general citations in the footnotes of the paper cannot substitute for such detailed examination. In short, evaluation of the World Bank's experience with its present tribunal is far from sufficient.

Second, no estimates are provided on the costs of affiliation versus the costs of establishing the Fund's own tribunal, despite the Director of Administration's own assertion that "cost estimates needed to be examined." The Chairman has also clearly concluded that "it would be necessary to study...the feasibility of affiliation...or the establishment of an independent body, particularly with respect to cost." Therefore, further substantiation is needed of the Director of Administration's assumption that "the costs of an independent Fund tribunal would not be much less than those of the World Bank tribunal."

Third, I associate myself with Mr. Lim regarding the competence of the tribunal to review the legality of decisions of the Executive Board or General Administrative Orders.

Mr. McCormack recalled that during the last discussion on a Fund tribunal, his chair had said that there was no compelling need for the Fund to have such an administrative tribunal, but that it did not wish to stand in the way of establishing a tribunal were that deemed generally appropriate. The Fund should have its own tribunal rather than using the offices of some existing tribunal such as that of the World Bank. The draft proposals before the Board responded well to some considerations mentioned at the last Board meeting--inter alia, that the tribunal should have jurisdiction to consider challenges to the discretionary power of management in only limited cases, that procedures should be simple, and that staff members should exhaust all internal remedies before having recourse to the tribunal. The proposal seemed to envisage simple procedures, and would on the face of it seem less cumbersome and time consuming than the process used in the World Bank Administrative Tribunal.

So far as structure was concerned, his authorities tended on balance to believe that the staff proposal should be given a chance to operate, although like Mr. Ovi, he believed that that could be done in an experimental context, Mr. McCormack continued. As there seemed to be a conscious attempt to adapt the structure to the institutions and culture of the Fund, and also to build on existing arrangements in a creative way, one should not be deterred by the fact that the proposed arrangements were somewhat innovative.

Mr. Jiang said that he supported the staff proposals regarding the establishment of an administrative tribunal in the Fund. It would be an important further step in resolving possible employment-related disputes through an external and independent adjudication.

In weighing the advantages and disadvantages of an affiliation with the World Bank Administrative Tribunal, the current proposal to establish an independent administrative tribunal for the Fund was a wise choice, Mr. Jiang considered. Incorporating the Grievance Committee into the proposed administrative tribunal offered the best combination available of expert knowledge of the Fund staff and outside expertise. It would also be more efficient and cost saving than other alternatives. However, in view of the differences expressed by other speakers, he wished to keep an open mind on the issue. He also fully shared the concerns of the Staff Association that the administrative tribunal be established as soon as possible.

Mr. Chatah said that he supported the establishment of the administrative tribunal for the Fund, and that on balance he preferred a separate Fund tribunal as opposed to affiliation with the World Bank Administrative Tribunal. He would, however, also be interested in staff comments on the cost of the two alternatives, and on the possible hazards of inconsistent rulings by separate tribunals on the common aspects of the employment systems in the World Bank and the Fund.

Like Mr. Fernández and some other speakers, he was not convinced that the tribunal should have a composition different from those of similar tribunals, and saw little need for the rather unorthodox composition currently proposed, Mr. Chatah continued. In particular, it did not seem appropriate that a body that could give binding rulings on staff employment issues should include staff members.

He agreed with previous speakers that the Grievance Committee should be maintained as a major step toward finding administrative remedies before disputes reach the state of the tribunal, and he therefore saw no need for a first panel, Mr. Chatah concluded.

Mr. Reddy said that he supported the idea of a tribunal separate from that of the World Bank, but like Mr. Enoch he wondered whether the staff could provide more detailed information on the comparative cost. He supported the two-tier approach, with the Grievance Committee and a three-member tribunal, and he also believed that there was some merit in incorporating the office of the Ombudsman into the Grievance Committee.

It was important that the powers of the tribunal be circumscribed so that it did not extend its jurisdiction into areas that were the prerogative of the Executive Board or the Board of Governors, Mr. Reddy concluded.

Mr. Seyler remarked that he too had sympathy for the establishment of an independent administrative tribunal, but had reservations with regard to its structure similar to those of Mr. Zecchini, Mr. Grosche, and other speakers.

The Chairman said that members of the Board had all welcomed the staff proposal on the idea of establishing the tribunal. They were not yet unanimously prepared to follow management's suggestion to have a tribunal independent from that of the World Bank, seeking further justification especially on cost. Directors' remarks had also been preliminary, in that a decision could not be taken immediately. He suggested that rather than discussing the details of the proposed statutes, Directors with questions about specific elements of the Articles should communicate those questions to the staff, allowing those discussions to be taken into account before the Board's next discussion of the administrative tribunal.

The General Counsel noted that several Directors had criticized the staff proposals on the grounds that the proposed structure was not orthodox, and more specifically that it was unlike existing tribunals as it would incorporate staff members in at least one of the two panels. He sympathized with the objection, and would have raised it himself had he not had the benefit of his own experience in the Fund. After working within the Fund, and realizing the differences between the Fund and other organizations with respect to the review of administrative decisions, it seemed inappropriate not to take account of that experience. Hence, instead of viewing the Fund as a late entrant into the category of organizations with Administrative Tribunals, it was better to envisage the Fund as an innovator that could take advantage of others' experience and mistakes--which those organizations were still trying to correct.

The traditional approach to administrative tribunals dated back to the League of Nations in the 1930s, and had been more or less faithfully copied statute after statute by successive organizations, the General Counsel continued. Hence, there were notable similarities between the UN Administrative Tribunal and the World Bank Administrative Tribunal. The UN Tribunal had been established in 1949, and the Fund could, of course, copy the UN statute or that of the World Bank. In that case, however, none of the subsequent experience gained by the UN or the World Bank would be taken into account.

The Fund's Grievance Committee, although it bore the same name as similar committees in other organizations, was quite different, the General Counsel considered. In particular, the chairman of the Fund Grievance Committee was not a staff member. Hence, although the Fund Grievance Committee could be viewed as part of the nonjudicial administrative review process, it was not comparable to the forums of administrative review found in other organizations. As a result, a Fund decision to establish its own tribunal based on the pattern of existing tribunals would imply an important change in the Fund's Grievance Committee, and the chairman would then have to be a staff member to follow the model of other organizations.

Three main types of cases could be brought before an administrative tribunal, the General Counsel remarked. First, there were what might be called the "small claims" type of cases. A staff member might complain that part of his return ticket on a home leave trip was not paid by the Fund. Was it really appropriate to bring seven judges to Washington from far-off countries at large expense to the Fund in order to judge a $200 claim? That would be the consequence of a fully fledged administrative tribunal. Second, there were cases involving individual staff members, but in which the decision at issue was particularly important for the career of the staff member--for example, termination. That was a much more serious case, and deserved a higher degree of consideration. The staff believed that such cases warranted a differently composed tribunal. Third, there were cases which did not involve staff complaints arising out of individual decisions, but rather a regulation adopted, for example, by the Executive Board or the Managing Director, such as a general administrative order. The participation of staff members in examining the validity of those regulations would not be warranted. Serious legal questions would arise, and the exclusive involvement of independent and external professional lawyers was justified.

Given the three types of cases, there were two possible solutions, the General Counsel noted. First, the same tribunal with the same composition could dispose of all the three types of cases. In that event, the most serious type of case would have to determine the form of the tribunal, because it was not appropriate to have staff members deciding on the validity of regulations. Hence, if only a single composition of tribunal were chosen, the tribunal would have to have only external professional judges. That was the approach adopted by the World Bank. Alternatively, differently composed tribunals could resolve different types of cases. This was the approach being proposed by the staff. It was relatively easy to distinguish between the first and third types of cases. The intermediate category was the most difficult type to identify; it included individual cases where a decision had legal or individual implications so serious that the participation of additional outside legal experts was warranted. One solution was to expand the first panel by bringing in two additional outsiders. That left the question of how to decide whether or not to bring in the outsiders. The Staff Association had made a suggestion on this point, to which there were a number of different possible answers. The staff had proposed that the majority of the first panel should decide that question, partly because the case in question would still be an individual case, and partly because the case itself had to be examined in order to decide whether the participation of outsiders was warranted. Obviously, only those who were in Washington at the time could make such an examination--the members of the first panel. If the outsiders were to decide whether or not they would be involved, they would have to be brought first to Washington, then given one or two weeks to decide, and then perhaps returned to their respective countries. There was, however, a third possibility, which would be to let the chairman--an independent member of the first panel, not a staff member--decide

whether or not the first panel should be expanded to bring in the outsiders. The staff had no objection to that proposal, and it could be a possible compromise approach.

The staff's current proposal was therefore based primarily on an examination of the experience of other tribunals, the General Counsel concluded. That was true both with respect to the composition of the tribunal and also with respect to the specific rules contained in the statute--for instance, those governing costs and frivolous cases. The United Nations was currently working on an amendment to the statute governing its tribunal in order to remedy precisely some of the flaws that the staff had identified. The staff had also drawn on the original and successful experience of the Fund's Grievance Committee, and that Committee would indeed be the basis for the first panel of the proposed administrative tribunal.

The staff representative from the Administration Department said that it was difficult to estimate costs precisely because the number of cases, or the sharing of costs with the World Bank under a joint scheme, could not be predicted. Based on the relative populations of the two organizations, the Fund would pay perhaps one third of the costs of a shared administrative tribunal.

In the World Bank's 1988 financial year, the revised estimates of those costs was $938,000, and the budget request for the tribunal for FY 1989 was over $1 million, the staff representative continued. Hence, the Fund's share would be approximately $330,000.

The existing Fund Grievance Committee also represented something of a baseline for the expenses of the proposed administrative tribunal, the staff representative considered. During the last few years, Grievance Committee costs had been about $23,000 annually, reaching a maximum of $39,000. In the 1988 calendar year, those costs were likely to be about $37,000. On that basis, it seemed likely that the starting point for the cost of an independent administrative tribunal for the Fund would be approximately $40,000 or $50,000.

To bring in two more external judges from abroad for perhaps two sessions of two weeks each in Washington would cost approximately another $50,000, making a total of $100,000 in all, the staff representative remarked. The other costs incurred by the tribunal would be those related to some form of secretariat. The World Bank had an elaborate administrative tribunal secretariat, with quite high staff costs. In the Fund, the case load would not probably be sufficient to justify more than perhaps a half-time appointment of a contractual employee. That might cost another $25,000 or $30,000, giving an overall cost of $125,000-$130,000 per year. That was, clearly, significantly below any Fund share of the costs likely to be incurred through affiliation with the World Bank Administrative Tribunal.

The tightening of general administrative orders mentioned by the Chairman of the Staff Association Committee had not taken place, the staff representative commented. The text of the general administrative orders were now, after a long period of neglect, being updated. In fact, Fund rules often consisted of a general administrative order written perhaps ten years ago, supplemented by half a dozen staff circulars or staff bulletins. All that was being done was to put those regulations together in one updated document. While that process might cause some difficulties in some cases, and might need further elaboration, it did not amount to a significant expansion or tightening up of the rules.

The Administration Department took very seriously the argument that retaining the existing Grievance Committee would involve a duplication of effort, the staff representative commented. The Department was particularly concerned that the kind of staff member who brought cases to the Grievance Committee even on minor matters was often precisely the staff member who refused to take no for an answer. With the retention of the existing Grievance Committee, the Department was concerned that those were the staff members whose claims would move forward to a panel of outside judges, and that would involve a clear duplication of procedures, and of staff time and effort, even in relatively minor cases. The current proposals were specifically designed to avoid those kinds of problems.

While an advisory committee was mentioned in relation to the administrative review stage, there was no intention to overelaborate the review procedure, the staff representative continued. The suggested advisory committee merely reflected the idea that if the Director of the Administration or even the Managing Director was called upon to review a decision, it might be preferable to call upon some other senior staff member simply to look at the case and to provide some advice. Under the existing Grievance Committee procedure, there was a process of administrative review. Before going to the Grievance Committee, the process of administrative review had to be exhausted, and that was a level of review that the staff took very seriously. If a further appeal was then permitted to an administrative tribunal, that would provide three layers of appeal, which the staff believed to be unnecessary.

It was the view of the Ombudsman himself, and of his predecessor, that he should have minimal involvement in Grievance Committee procedures, and presumably in those of an administrative tribunal, the staff representative said. The Ombudsman acted as a mediator and broker between the staff member and the organization, often without the Administration Department being involved. The Ombudsman did not wish to be involved in the Grievance Committee procedure. He was mentioned in the General Administrative Orders relating to the Grievance Committee because he could be called as a witness if the Committee thought that to be necessary. Broadly speaking, however, the Ombudsman felt that his office was much better served by operating as a mediator, and avoiding quasi-legal procedures.

The Fund Grievance Committee was clearly very different from the administrative review available in other organizations, the staff representative from the Administration Department commented. The Administration Department took the Grievance Committee as seriously as if it were already an administrative tribunal, and did not lightly let something go forward to the Committee when a matter was brought to the Department for administrative review. The opinions and recommendations expressed by the Grievance Committee had always been put into effect by the Managing Director, and it was regarded very much as a court of appeal where the Administration Department or the organization itself was on trial.

The staff representative from the Legal Department said that the Ombudsman was generally considered as a complement to rather than a part of the administrative review process. In other international organizations served by both administrative tribunals and internal appeals committees, those organizations also had Ombudsmen who performed the functions outlined by the staff representative from the Administration Department.

Mr. Kafka observed that as the Fund had about one third of the World Bank's staff, the prorated cost of affiliation with the World Bank Administrative Tribunal--if that were the course chosen--should amount to a quarter of the total cost, or approximately $250,000.

The main point differentiating himself and some colleagues from the staff on the structure of the tribunal was that he wished to separate the administrative tribunal completely from the Grievance Committee, Mr. Kafka continued. The basic procedure would still be that outlined by the General Counsel, and he hoped that in most cases it would not be felt necessary to appeal beyond the Grievance Committee precisely because the Fund Grievance Committee was somewhat different in its makeup from that of other appeals committees--specifically, it had an independent chairman. It would also be a good idea to give the Grievance Committee final decision-making power rather than merely the power to make recommendations.

The great advantage of his own proposal would be to establish a clear separation between the functions of the two panels, Mr. Kafka commented. He was particularly unable to understand the need ever to have the judicial panel merged into the Grievance Committee. If individual decisions had to be taken to the administrative tribunal because they were of a sufficiently judicial nature, they could then be taken by the three-member administrative tribunal which was totally separate from the Grievance Committee.

The General Counsel remarked that there was actually an important difference between Mr. Kafka's proposal and what he would call the orthodox structure of administrative tribunals. Under Mr. Kafka's proposal, the Grievance Committee would have the power to take decisions--a major departure from the existing powers of the Fund Grievance Committee. While

the title of the Grievance Committee would be retained, in fact, a tribunal would be established under a different name. That would lead to the problem of having two tribunals in the Fund, both of which could adopt decisions.

It was, of course, possible to imagine different jurisdictions for each tribunal, the General Counsel continued. One tribunal could deal with regulations, the other with individual cases. Alternatively, one could be a court of first instance and the other a court of appeal. In any event, both would be tribunals. In contrast, in the so-called orthodox structure, a Grievance Committee had only an advisory function and was not chaired by an outsider but only by a staff member. Hence, Mr. Kafka's proposal was in fact closer to the staff's proposal than it was to the so-called orthodox approach.

Mr. Zecchini observed that on the question of duplications it was clear that the courts of appeal under certain circumstances had to perform just as thorough an analysis of the entire case as the lower court. Hence, such duplications were only to be expected. It was important to retain the Grievance Committee and its advisory nature without inserting a new layer of jurisdiction. He also continued to be opposed to class cases being brought within the sphere of the administrative tribunal.

So far as the small claims type of case was concerned, it might be possible to establish a threshold level above which such cases could be brought to the administrative tribunal, Mr. Zecchini considered. Small claims could be resolved using the procedures already in place, while larger small claims could be brought to the attention to another administrative court.

The General Counsel said that while the staff had indeed considered the possibility of imposing a threshold, it was difficult to prevent a staff member whose claims would have fallen below the threshold to make an exaggerated claim in order to bring the case before the administrative tribunal. Even if the claim was eventually reduced by the tribunal below the threshold, the time and effort of litigating the case would not have been avoided. Thus, the use of a threshold test would not be a satisfactory device for winnowing out the smaller cases.

The Chairman remarked that such a problem could be resolved through the use of a frivolous cases clause.

Mr. Zecchini observed that such cases often came before normal domestic courts and were usually resolved by the imposition of penalties on those who pursued cases without sufficient foundation.

Mr. Al-Assaf said he agreed with that possibility, and thought that perhaps in such cases costs could be apportioned against those bringing frivolous cases.

Mrs. Walker stated that she was not convinced by the arguments presented either by Mr. Kafka or the General Counsel. She wondered whether it was possible to leave the Grievance Committee as a nondecision-making authority which made recommendations to the Managing Director while maintaining it in its current form as the first stage of the tribunal. It might be possible to come up with a disincentive for those who would not take no for an answer before going on to the administrative tribunal. Perhaps the costs--especially of small claims types of cases that did have to go to the second stage--could be minimized if there were only three people on the administrative tribunal, and if it were possible to find enough local and qualified people of different nationalities. Alternatively, perhaps the second panel might meet less frequently, and that could also be less expensive. A main difference with Mr. Kafka's proposal was in keeping the Grievance Committee as it was and in not giving it decision-making power.

Mr. Faria observed that one way to meet the concerns of Mrs. Walker and others was to distinguish between situations in which a point of fact or mixed law and fact was an issue, and one in which there was simply a question of law involved. If the former was the case, then it might be possible to arrive at a decision without necessarily having to go through a full-scale investigation; that would minimize both the costs and delays involved.

The General Counsel observed, in answer to a question from Mrs. Walker, that the staff did not expect separate tribunals in the World Bank and the Fund to issue conflicting opinions on the same type of regulation--there was no reason to expect such an outcome. Of course, such an outcome was still possible. Even in that event, one of the tribunals could modify or overrule its own ruling in a later case.

Mrs. Walker said that her point concerned the possibility that the World Bank Administrative Tribunal might take a decision on an issue that had not even come to the Fund tribunal, one for instance affecting the joint compensation system in relation to a decision confirmed or approved by both Executive Boards.

The General Counsel observed that there were a number of different possibilities. First, if the decision were made by the administrative tribunal of the World Bank on a joint regulation, the Fund staff would take it into consideration. The core point was whether the Fund staff would, nevertheless, follow a practice that differed from that recommended or decided upon by the World Bank Administrative Tribunal. Such a decision would be risky because it was probable that a member of the Fund staff would challenge the legality of the practice in view of the tribunal's decision. One remedy might be to ask the Fund administrative tribunal for an advisory opinion. That was why the initial document circulated by the staff on the establishment of a tribunal had included a proposal for giving it an advisory power; however, the Executive Board had not endorsed that suggestion. An advisory opinion from the tribunal would

allow a decision to be made within the Fund, based on whether or not its tribunal agreed with the decision of the World Bank Administrative Tribunal.

Mrs. Walker suggested that it might be easier if the same tribunal applied to both staffs in cases where unified regulations, such as the joint compensation system applied to both institutions.

The General Counsel said that that would indeed be a simple solution. However, it was not absolutely certain that the same tribunal would adopt the same interpretation for the same regulation. The World Bank Administrative Tribunal had said that it would take into account the practice of the organization when deciding on the validity or interpretation of the World Bank's regulations. Obviously, the same tribunal would have to take into account the practice of the Fund, which would not always be the same as the practice of the World Bank. Hence, even with the same tribunal, there might be different interpretations. However, such differences would obviously be limited.

Mr. Grosche asked what would happen if there were two separate tribunals and the Executive Boards of both organizations took an identical decision on the salary structure of the two staffs, a decision that was questioned and on which the World Bank Administrative Tribunal gave a ruling different from that issued by the Fund tribunal. Would the matter then automatically be referred back to both Boards for additional reinterpretation?

The General Counsel said that it might be useful to assume that one of the tribunals had decided that the hypothetical regulation was invalid, whereas the other had decided that the regulation was valid. Then, of course, the organization within which the regulation had been found invalid had to rescind the regulation or adopt a new one, whereas the other organization, whose regulation had been found valid, was not legally required to do anything.

Mr. Grosche commented that that would lead to different decisions in the two institutions, while it had been the objective of, for instance, the joint compensation system, to adopt identical decisions. Clearly, there were no difficulties from the legal point of view. However, there were some political objections, in the sense that both Boards had declared their wish to adopt identical decisions. That objective was now in question.

The Chairman remarked that the danger noted by Mr. Grosche already existed. The World Bank Administrative Tribunal could already invalidate a decision taken by the World Bank Executive Board, despite the agreement of both Boards that an identical decision was appropriate.

Mrs. Walker observed that while that risk was indeed being run, it was not clear whether the Board wished to continue to run it. That was especially significant given the likely introduction of a new compensation system.

The Chairman commented that even if the Executive Board decided today that in principle in the future it would always try to have a fully identical decision--for instance, in relation to the compensation system--to that adopted in the Board of the World Bank, the Executive Board was sovereign and it could change its decision at any time, given the wishes of the majority.

Mr. Zecchini said that a case such as that raised by Mr. Grosche should never be brought to the administrative tribunal because it would interfere with the competence of the Executive Board. Only individual cases could be taken to the tribunal, to resolve the specific claims of an individual. Otherwise, the Board would face serious consequences if it were to run a job evaluation exercise similar to that completed two years previously, because all downgraded staff could raise a class action case, and the competence of the Board to decide those matters would be in danger.

The Chairman commented that it was important to understand the exact competence of the administrative tribunal in the World Bank on those matters, as it currently stood.

The General Counsel noted that the text of the World Bank statute was itself not very clear, but it seemed to indicate that a staff member could only challenge an individual decision; he could not challenge a regulation. However, interpretation of the statute had not supported that reading. The World Bank Administrative Tribunal, on whom, after all, the power of interpretation rested, had decided that it was competent to examine the legality of a regulation, at least in the context of reviewing an individual decision. Therefore, unless the Fund were to establish a tribunal with a more limited jurisdiction than that of the World Bank, its tribunal would also have the same jurisdiction.

Mr. Zecchini observed that that was an additional argument in favor of establishing an independent Fund tribunal.

The Chairman said that the further discussion and analysis that was clearly necessary in light of the discussion would take place over the following weeks. At the opening of the next Board discussion on the subject, management would provide the product of its reflections, and would again invite Directors to discuss the proposed statutes.

The Executive Directors adjourned for the time being their discussion of an administrative tribunal for the Fund.

DECISION TAKEN SINCE PREVIOUS BOARD MEETING

The following decision was adopted by the Executive Board without meeting in the period between EBM/88/105 (7/15/88) and EBM/88/106 (7/15/88).

3. KOREA - TECHNICAL ASSISTANCE

In response to a request from the Korean authorities for technical assistance in the fiscal field, the Executive Board approves the proposal set forth in EBD/88/192 (7/11/88).

Adopted July 15, 1988

APPROVED: February 9, 1989

LEO VAN HOUTVEN
Secretary