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July 13, 1988

To: Members of the Executive Board

From: The Secretary

Subject: Staff Association Committee - Establishment of an
Administrative Tribunal for the Fund

There is attached a paper prepared by the Staff Association Committee concerning the establishment of an administrative tribunal for the Fund.

The Staff Association Committee has requested that this material be circulated for the information of the Executive Directors prior to the Executive Board meeting scheduled for Friday, July 15, 1988.

Att: (1)

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Department Heads

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International Monetary Fund Staff Association

Establishment of an Administrative Tribunal for the Fund

Prepared by the Staff Association Committee

July 12, 1988

I. Introduction

The Staff Association Committee (SAC) believes that the establishment of an Administrative Tribunal in the Fund is an important contribution toward resolving employment-related disputes through independent adjudication. An Administrative Tribunal, which almost all other major international organizations have had for many years, will promote equitable employment practices by ensuring that employment regulations are compatible with accepted law and are consistently applied in individual cases. The SAC agrees with the main thrust of the proposal of Management regarding the establishment of an Administrative Tribunal (EBAP/88/151). It provides for a flexible and cost-effective structure which uniquely combines the knowledge of the Fund staff and the professional expertise of outside judges. The proposed Tribunal is tailored to the specific needs of the Fund: it incorporates existing institutional arrangements, and its operating procedures avoid expensive, cumbersome, and time-consuming features found in tribunals in other international organizations. In view of the long delays already encountered, the SAC urges the Board to act now so that the Administrative Tribunal will be established during the Annual Meeting in Berlin.

The draft Statute contains substantial weaknesses. Our amendments are designed to remedy these weaknesses so that the Tribunal can function more effectively, and access is not hampered.

II. Proposed Amendments

1. Cooperation with the Administrative Tribunal

Under Management's proposal, the Tribunal has no power to compel the production of documents and the testimony of witnesses. This aspect is contrary to most other administrative tribunals in international organizations. Without this capacity, the Tribunal could suffer from an incomplete record of facts and would make ill-informed decisions. On the other hand, incorporating this capacity would promote full disclosure. Accordingly, it is

proposed that Article XI, Section 2 (c) be changed to read as follows:

"Testimony and other evidence whose presentation the Tribunal, on application by any party, may compel or forbid."

2. Access to the Tribunal for important individual cases

In effect the existing Grievance Committee would become the first panel of the Tribunal, but in a more formal and more powerful form. However, the first panel can decide to add the associate members of the second panel if significant questions of law are raised or the issue is of fundamental importance to the applicant's career. We believe that, rather than allowing this important decision to be taken by a majority of the first panel, decisions on expanding the Tribunal to five members (Article X, Section 2(d)) should be made by a majority of the members of the first panel and the associate members of the second panel, thereby ensuring that a majority of those voting would consist of outside judges. The decision to enlarge the panel could be settled in written communication without the need to convene the Tribunal. Article X, paragraph (d) would read as follows:

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

3. Award of costs

The draft Statute is ambiguous about whether a successful applicant will be awarded the costs incurred in presenting a case. Because the size of these expenses could deter many staff from filing cases, a clear policy should be defined and the discretionary power of the Tribunal limited in this regard. It is proposed that Article XV, Section 4 be amended as follows:

"If the Tribunal concludes that an application is well-founded, it shall order that reasonable and customary costs incurred by the applicant in the case, including the cost of applicant's counsel, be borne by the Fund. The Tribunal may order that such costs be partially or entirely borne by the Fund in other cases."

4. "Frivolous" cases

Article XVI authorizes the Tribunal to penalize an applicant for a case deemed "manifestly without foundation." We would prefer the Tribunal to deal with such cases by rapid decisions, such as summary judgment or denial of request for immaterial evidence, and do not see any justification for granting the Tribunal punitive powers exclusively directed at the applicant. *Such a provision would be a strong deterrent to valid grievances.* Therefore, Article XVI should be deleted.

5. Date of jurisdiction of the Tribunal

Article XXI proposes to postdate the jurisdiction of the Fund Tribunal to January 1, 1989. This proposal will enhance the staff's perception that the Tribunal was delayed intentionally in order to get some contestible issues out of the way. In particular, the job grading decisions of February 1986 and the subsequent appeals process have been of deep concern to the staff. We would note specifically that there are a number of cases arising out of the job grading exercise that were ruled ineligible for appeals hearings; for reasons of equity, these staff members should have full assurance of access to an independent review. These and other unsettled questions can only be laid to rest by providing an opportunity for adjudication by the Tribunal. Consequently, we propose that "1986" be substituted for "1989" in Article XXI.

