EBAP/88/151

June 22, 1988

To: Members of the Executive Board

From: The Secretary

Subject: Establishment of an Administrative Tribunal for the Fund

Attached for consideration by the Executive Directors is a paper on the establishment of an administrative tribunal, which is now proposed to be scheduled for discussion on Friday, July 15, 1988.

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

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

# Establishment of an Administrative Tribunal for the Fund

Prepared by the Legal Department

(In consultation with the Administration Department)

Approved by François Gianviti

June 21, 1988

At EBM/87/5 (1/9/87), the Executive Board considered whether the Fund should establish an administrative tribunal which would be empowered to adjudicate employment-related disputes. 1/ The conclusion of the discussion, as reflected in the Chairman's summing-up, was that the Fund should have an administrative tribunal, to be established by the Board of Governors upon the recommendation of the Executive Board. Accordingly, the Executive Board requested further study of the different options, particularly with respect to the feasibility of establishing an independent body or of affiliating with the World Bank Administrative Tribunal (WBAT), and the examination of the relevant issues.

This paper addresses these issues as follows. Part I discusses, in general terms, the principal issues that need to be considered as part of any decision to establish an administrative tribunal, surveys how these issues have been addressed with respect to the WBAT, describes the possible consequences to the Fund of affiliation with an existing administrative tribunal, in particular the WBAT, and concludes with an overview of how a system of judicial review of employment-related decisions might be established in the Fund (pp. 2 to 15). Part II comments on a draft statute, reproduced in full as Attachment I, which provides for the establishment of a tribunal that would serve the Fund exclusively (pp. 16 to 46). Finally, in Part III, which assesses the advantages and disadvantages of affiliation with the WBAT, the staff recommends the establishment of a tribunal to serve the Fund exclusively (pp. 46 to 47).

In the earlier Executive Board discussion, it was agreed that any decision to establish a tribunal should be taken by the Board of Governors, through a Resolution adopted pursuant to the recommendation of the Executive Board. 2/ In the normal way, the Executive Board

---

1/ The background Staff Paper was "Administrative Tribunals of International Organizations," EBAP/86/309 (12/10/86).

2/ The World Bank followed this procedure to establish the WBAT.

could make the recommendation in a Report to the Board of Governors, to be submitted along with the proposed Resolution and the draft statute.

Accordingly, the paper concludes with a proposal that the Executive Board authorize the preparation of a Report to the Board of Governors recommending the establishment of an administrative tribunal through adoption of the draft statute set forth in Attachment I.

## I. Options Available to the Fund

A decision by the Fund to establish an administrative tribunal would involve consideration of a number of issues concerning its role and nature. While the existing administrative tribunals present models on which the Fund could draw, other features might be contemplated.

Part I first identifies the major issues that would need to be addressed as part of any decision regarding an administrative tribunal to serve the Fund, including (1) the role of the tribunal in reviewing employment-related decisions; (2) the types of cases which the tribunal would be authorized to hear; (3) those persons entitled to have access to the tribunal; (4) the composition of the tribunal; and (5) the remedies which the tribunal would be authorized to award. Part I then describes how these issues have been approached in the WBAT, and concludes with a discussion of the possible implications were the Fund to affiliate with the WBAT.

### A. Major Issues Concerning an Administrative Tribunal

#### 1. The Role of an Administrative Tribunal in Reviewing Employment-Related Decisions

As surveyed in EBAP/86/309 (12/10/86), most of the major international organizations are served by an administrative tribunal. Given the immunity of these organizations from judicial process in employment-related matters and the inapplicability of domestic laws to disputes arising between them and members of their staffs, it was considered appropriate to create a special judicial body to resolve staff grievances.

An administrative tribunal of an organization is empowered to adjudicate disputes which arise out of the employment relationship between the organization and its staff members. In so doing, administrative tribunals determine whether an employment-related decision taken by the organization, whether applicable to an individual staff member (such as a decision on the availability of a benefit, or a disciplinary sanction) or applicable to the staff as a whole (such as the terms of the Staff Retirement Plan) violates a legal right of an

affected staff member. The judgment rendered by its administrative tribunal is binding on the organization and is, in principle, final. 1/

It is well-established in international administrative law that all employment-related decisions must be consistent with the internal law of the organization. As a general matter, this principle applies to two broad categories of decisions; namely (i) decisions establishing or modifying the terms and conditions of employment, such as the adoption of staff rules and regulations, and (ii) decisions in which those rules and regulations are applied in individual cases. The first category, which may be referred to as "regulatory decisions," encompasses all general rules prescribed by the governing organs which affect the rights and employment relationship between the organization and the staff.

Although no existing tribunal statute specifically provides for review of the legality of regulatory decisions, the major tribunals have all exercised such jurisdiction, and their competence in such matters appears uncontroverted. 2/ At the same time, however, it is well-established in the case law of administrative tribunals that a tribunal, in the exercise of its judicial powers, may not substitute its judgment for that of the legislative and executive authorities of the organization in determining what is in the best interest of the organization, or otherwise interfere in the proper exercise of the discretionary power that has been vested in these authorities. 3/

International administrative tribunals thus provide an avenue of judicial review of claims brought by staff in addition to other means of administrative review that may be available within the organization.

---

1/ The statutes of the United Nations Administrative Tribunal (UNAT) and the Administrative Tribunal of the International Labour Organisation (ILOAT), respectively, provide for review, by means of an advisory opinion, of the tribunal's decision by the International Court of Justice under highly limited circumstances.

2/ See de Vuyst, WBAT Reports, Dec. No. 39 (1987); Callewaert-Haezebrouck, ILOAT Judgement No. 344 (1978) (text of regulation interpreted so as to preclude discriminatory application); Lopez-Vallarino, ILOAT Judgement No. 271 (1976) (staff rule invalidated insofar as it imposed limitation on staff member's entitlement inconsistent with staff regulation on eligibility); Bernot, Dec. No. 89, OECD Appeals Board (1981), at 19 (execution of decision of OECD Council challenged on basis of legality of underlying decision); Mullan, UNAT Judgment No. 162 (1972) (staff rule which appeared contrary to the principles of equal employment enunciated in Article 8 of UN Charter would be invalid).

3/ For an elaboration of this principle, see discussion infra at 25-26.

The availability and scope of such administrative review depends largely on the type of decision at issue and, in particular, whether the decision is regulatory or individual in nature. A legislative organ may normally reconsider one of its decisions, both on its own initiative and at the suggestion of a member of that organ; the legislative organ may decide to confirm, reject or modify the earlier decision. A member of the staff, however, has no legal right to compel the legislative organ to reconsider one of its own decisions.

Similarly, regulatory decisions taken by the executive branch (i.e., management or administration) of the organization, such as staff rules and regulations regarding benefits, conduct, leave and other basic elements of the employment relationship, may be reconsidered at the initiative of the authority responsible for the decision. A staff member, even if directly affected, cannot require reconsideration or review of such decisions.

In conducting the administration of the staff, the management and administration are also responsible for applying these rules and regulations to staff in individual cases. Decisions in individual cases are subject to administrative review at the behest of the affected staff member. Thus, administrative review of individual decisions is usually available as a matter of right, although the type and scope of that review varies. In most organizations, the available administrative review must be exhausted before a staff member may seek judicial review by a tribunal.

Administrative review within international organizations usually involves the formal review of a decision taken at one level of authority by a higher level of authority, e.g., a supervisor and the head of the department or the chief of personnel, respectively, possibly with final review by the management of the organization. In reaching its final decision in the matter, the management may be guided by internal committees or panels that have been established to hear staff members' claims and to form opinions on the matters raised. 1/ These committees, like the Grievance Committee of the Fund, are not authorized to issue final and binding judgments; rather, they serve in an advisory capacity and make recommendations to management, which then takes the final decision. In some organizations, including the World Bank, these committees are comprised entirely of staff; there is no outside chairman possessing expertise in arbitration of employment-related disputes.

---

1/ See, e.g., Draft Guide to Recourse Procedures in the United Nations, U.N. Doc. SMCC/I/4 (1979).

In organizations served by tribunals, such as the Bank, UN, and OAS, once the available channels of administrative review have been exhausted, a staff member may file an application with the tribunal of the organization. Judicial review by the tribunal differs from the internal, administrative review in several major respects.

First, in terms of the scope of competence, a tribunal may review any employment-related decision, whether individual or regulatory in nature, which adversely affects a staff member, whereas the right to administrative review extends only to individual decisions.

Second, in terms of the substantive nature of the review, a tribunal is limited to examining the legality of the decision, and may not substitute its own views as to the merits of the decision; the responsibility for the decision therefore remains with the organ that is charged with this responsibility. 1/ By comparison, administrative review of a decision may take into account a broader range of factors in considering whether to affirm or overturn the decision.

In the review structures of most international organizations which have tribunals, there is no formal relationship, apart from the requirement of exhausting administrative remedies, between the tribunal in performing its judicial review function and the preceding process of administrative review. Thus, cases heard by the tribunal are not, in a legal sense, an "appeal" of the conclusions and recommendations of the internal committees which advise management. In such review structures, the tribunal would either have to rely, in whole or in part, on the factual record developed in the course of administrative review, such as through the submission of evidence and the hearing of testimony, or to duplicate that process in its own proceedings.

At times, the review processes of an organization may combine both administrative and judicial elements. This is the case, for example, with the Grievance Committee of the Fund. Insofar as it serves in an advisory role to management, the Grievance Committee is essentially part of the Fund's administrative review process. So, too, are the internal committees of other organizations that report to their managements. Moreover, the competence of the Grievance Committee does not extend to regulatory decisions or to certain enumerated categories of individual decisions.

In other respects, however, the Grievance Committee has some features of a judicial body, in that it examines only the legality of individual applications of Fund rules and regulations. In so doing, it

---

1/ For example, Article XII, Section 3(a) of the Fund's Articles of Agreement calls upon the Executive Board to conduct the business of the Fund, and Section 4(b) states that the Managing Director shall conduct, under the direction of the Executive Board, the ordinary business of the Fund.

receives evidence and testimony given under oath, and allows the right of cross-examination. The Committee is served by a chairman who is external to the Fund and who has professional expertise in the resolution of employment-related disputes.

As part of any decision to establish an administrative tribunal, a major issue to be considered would be whether to retain the Grievance Committee as it presently exists, or to modify it in certain respects. For example, the Committee could be retained as an advisory body to management in taking individual decisions, but certain of its judicial-type features could be eliminated. In particular, it may not be necessary or appropriate to have an outside chairman with specific legal expertise, since the tribunal, as a judicial body, would be rendering judgment on the legality of decisions. It would still be possible, however, to establish advisory committees to make recommendations within the framework of the administrative review process. Thus, the process of prior consultation by management of an internal advisory committee could be simplified in order to save institutional time and resources.

2. Types of Cases Heard by Tribunals

The statutes of several of the major international administrative tribunals, including the WBAT, define the competence of the tribunal in terms of "non-observance" of the "contract of employment" or "terms of appointment," including all pertinent regulations and rules in force at the time of the alleged non-observance. In practice, the "non-observance" of the terms and conditions of employment by an organization is manifested in an act. 1/ Accordingly, the review function performed by administrative tribunals involves an examination of the legality of an act by the organization which has adversely affected a staff member.

Instead of setting forth the substantive grounds that confer competence (e.g., "non-observance" of the terms of appointment), competence could be better defined in terms of the types of acts committed by the organization which would be subject to review. In requiring an applicant to identify the act he wishes to challenge, this type of formulation would help to clarify the issues and, with respect to administrative acts involving individual decisions, ensure that the applicant had fully exhausted prior administrative review of the decision.

---

1/ With respect to omissions or failures to act on the part of the organization, once the staff member brings the matter to the attention of the organization and is denied corrective action, the denial or refusal of the request is itself an act which is, as such, reviewable by the tribunal.

3. Access to Tribunals

With respect to the right of access to the tribunal, the statutes of the major administrative tribunals provide that, in addition to current, regular staff members, other designated categories of persons may file applications with the tribunal. These categories include, for example, former staff, beneficiaries of the staff retirement plan, successors in interest to a deceased staff member, and contractual employees. Although contractual employees are generally not subject to the same terms and conditions of employment as staff members, they nonetheless enjoy the rights, and are subject to the conditions, specified in their contracts. For this reason, other organizations have considered it appropriate to give such persons the right of access to the tribunal.

4. The Composition of Tribunals

The statutes of most international administrative tribunals set forth certain requirements which must be met by the members or judges appointed to the tribunal. Typically, the members must be nationals of the member countries of the organization and, in certain cases, must themselves be of different nationalities. This is prescribed, for example, with respect to the seven members of the WBAT.

With respect to professional qualifications, the judges who serve on administrative tribunals are required to be of high moral character and to possess the qualifications for appointment to high judicial office or to be of recognized competence in the field of law.

Of the major administrative tribunals, none has a provision for the appointment of current staff members of the organization to the tribunal. Staff members do, however, participate in the administrative review process, and especially in administrative review committees.

5. Remedies Prescribed by Tribunals

In accordance with the terms of their statutes, administrative tribunals have the authority to order the payment of monetary damages by the organization to a successful applicant, as well as other types of corrective action, as appropriate to the case. However, with respect to nonmonetary corrective action, the management of the organization may opt for the payment of monetary relief in lieu of implementing such corrective action. The amount of such compensation is determined by the tribunal at the time it renders its judgment, subject to a ceiling (two years' net salary in the case of the UN; three years' net salary at the World Bank); this amount may be higher in exceptional circumstances.

As noted above, the statutes of the major administrative tribunals do not, in defining competence, differentiate between cases challenging the legality of staff rules and regulations and those involving the legality of individual decisions taken pursuant to those rules and regulations. Likewise, the statutory provisions concerning remedies do not specify the type of relief which would follow from a holding that a regulatory decision was illegal; in particular, the consequences of such a holding with respect to individual decisions taken under the invalid regulatory decision are not enunciated in any tribunal statute. Thus, in the event that a tribunal held that a regulatory decision taken by the organization was illegal, it would have to be determined whether, and to what extent, that ruling required the rescission of prior or future individual decisions adversely affecting staff members other than the applicant in the case.

B. Overview of the WBAT

The WBAT, which serves the organizations of the Bank Group (IBRD, IDA and IFC), was established in 1980. To date, it has rendered 67 decisions. The approach of the WBAT with respect to the issues discussed above may be summarized as follows:

1. Role in the Bank's Review Structure

The creation of the WBAT supplemented the existing channels of administrative review at the Bank by establishing a judicial forum for the resolution of employment-related disputes between staff and the organizations of the Bank Group.

As provided in the WBAT Statute, recourse to the tribunal is available only after a staff member has exhausted "all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal . . ." 1/ The remedies available to Bank staff consist of procedures for the administrative review of "administrative decisions," defined as "a decision which affects a staff member's terms of appointment or conditions of employment," 2/ followed by appeal to the Bank's Appeals Committee. 3/

As noted by the Bank's President in recommending the creation of the WBAT to the Bank's Executive Board, the Bank's internal appeals procedure does not have the characteristics of judicial proceedings. 4/

---

1/ WBAT Statute, Article II(2).
2/ World Bank/IFC Staff Manual, Staff Rule 9.01, Sec. 1.03.
3/ Id., Staff Rule 9.03.
4/ See EBAP/86/309, at 19.

The Appeals Committee's members are chosen entirely from the staff, and their authority is limited to making recommendations to the Bank's management, which has the power of final decision. The Appeals Committee is not competent to review regulatory decisions taken by the Bank.

2. Cases Heard by the WBAT

The statute of the WBAT defines its competence in terms of allegations of "non-observance of the contract of employment or terms of appointment," which are defined to include "all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan." 1/ This definition does not make clear that the tribunal may review the legality of the regulations and rules themselves, and that it may apply general principles of law not specifically stated in the contract or letter of appointment.

The case law of the WBAT, however, has interpreted the competence of the tribunal under this provision to mean that the legality of decisions taken by the management and by the Executive Board of the Bank is reviewable by the WBAT. 2/

3. Access to the WBAT

The WBAT is available to persons who fall within the specifications of Article II(3) of its Statute, which permits certain claims by "a member of the staff of the Bank Group." A "member of the staff" is defined as

> "any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member as a personal representative or by reason of the member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan."

---

1/ WBAT Statute, Article II.

2/ See von Stauffenberg, WBAT Reports, Dec. No. 38 (1987), at para. 46 (under WBAT Statute, WBAT "has jurisdiction to hear and pass judgment upon any application alleging non-observance of a staff member's conditions of employment, whatever the organs or officials of the Bank involved"); accord, de Vuyst, WBAT Reports, Dec. No. 39 (1987) (upholding Executive Board decision to defer implementation of 1986 salary structure adjustment); de Merode, WBAT Reports, Dec. No. 1 (1981) (reviewing adjustments in salary structure recommended by Bank management under principles governing staff compensation prescribed by the Executive Board).

The WBAT Statute does not define the term "member of the staff of the Bank Group" by reference to the Bank's rules and regulations on appointment of its staff. 1/ Thus, this term might have to be construed by the WBAT in order to determine its own competence in a case. In one case, the WBAT indicated that the definition would include any person holding a contract of employment with the Bank. 2/ The WBAT has not had to consider whether assistants to Executive Directors would fall within the definition. Individuals who perform services for the World Bank other than employment services or who are employed by another employer presumably cannot assert claims.

In the set of cases arising out of the job reorganization exercise at the Bank, the WBAT dismissed an application filed by the Bank's Staff Association. It held that the Staff Association had no standing to file an application on its own behalf as an organization nor on behalf of all or particular staff members who had been adversely affected by the Bank's alleged non-observance of their contracts of employment or terms of appointment. Although the WBAT rejected the Staff Association's claim that it had standing to file an application as an intervening party, the tribunal confirmed that the Staff Association could state their views as a friend-of-the-court (amicus curiae) in the proceeding. 3/

---

1/ See World Bank/IFC Staff Manual, Staff Rule 4.01, Section 2.01.

2/ See Justin, WBAT Reports, Dec. No. 15 (1984), at para. 23 ("[t]he question whether or not the Applicant holds a contract of employment with the [Bank] and, therefore, is a staff member under Article II of the Statute can be decided only after a substantive consideration of the case") (emphasis added). Cf. Mendaro, WBAT Reports, Dec. No. 26 (1985), dismissing as time-barred an application filed by a consultant to the Bank.

3/ World Bank Staff Association, WBAT Reports, Dec. No. 40 (1987). The WBAT decision refusing to allow the Staff Association to intervene in the case, while confirming its right to participate as an amicus, underscores the distinction between intervention and participation in a case. The right to intervene is generally available only to persons whose legal rights may be affected by the tribunal's decision, and who would themselves have access to the tribunal in their own right. See, e.g., WBAT Statute, Article VII(2)(d). A tribunal may agree to permit the participation of any entity or person with a substantial interest in the outcome of the case. As stated by the WBAT, such participation can "provide assistance to the Tribunal in rendering a full and considered decision of the issues raised . . ." World Bank Staff Association, supra, at para. 88.

4. Composition of the WBAT

The seven members of the WBAT are appointed by the Executive Directors of the Bank from a list of candidates drawn up by the Bank's President after "appropriate consultation." 1/ The WBAT Statute provides that "[t]he members of the Tribunal shall be persons of high moral character and must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence." The members of the WBAT must be nationals of the member countries of the Bank, but no two members may be nationals of the same country.

5. Remedies

If it concludes that an application is well-founded, the WBAT is authorized to order "rescission of the decision contested or the specific performance of the obligation involved." 2/ The Statute does not differentiate between individual decisions and regulatory decisions with respect to the type and scope of the remedies that may be ordered upon a finding of illegality. For example, it is not clear whether the tribunal would have the power to annul regulatory decisions, with the consequence that individual decisions already taken pursuant to such regulations could thereupon be challenged, subject to the exhaustion requirements and time limits prescribed in the Statute.

The WBAT Statute prescribes that the Bank's President may decide, in lieu of taking the action ordered by the tribunal, that the applicant will be paid a stipulated amount of compensation. The amount to be paid under this alternative is fixed by the WBAT at the time it renders its judgment; the amount may not exceed the equivalent of three years' net pay of the applicant unless "exceptional circumstances" exist which, in the opinion of the tribunal, warrant the payment of a higher amount.

The WBAT Statute is silent as to whether, and under what circumstances, the tribunal may award costs to a party, although the WBAT has done so in one case. 3/

---

1/ WBAT Statute, Article IV.
2/ WBAT Statute, Article XII(1).
3/ See Buranavanichkit, WBAT Reports, Dec. No. 7 (1982) (ordering payment of $1,250 for legal fees).

C. Consideration of Fund Affiliation with the Tribunal of Another International Organization

1. Affiliation with the WBAT

If affiliation with the tribunal of another international organization were to be considered, the most sensible choice would be the WBAT. 1/

Article XV of the WBAT Statute provides that the Bank may make agreements with other international organizations for the submission of applications of their staff members to the tribunal. Such agreements are to include provisions concerning the organization's participation in the administrative arrangements for the WBAT and its sharing of the costs of the tribunal. 2/ The Bank has not, to date, entered into any such agreements under the authority of this provision, so there are no precedents to be assessed in this respect. However, two distinct types of affiliation by the Fund would appear possible.

One possibility would be for the Fund to adopt a statute of its own in which the WBAT was designated as the organ authorized to adjudicate disputes between the Fund and its staff. The specific powers of the WBAT with respect to the Fund would be elaborated in the provisions of the statute; these powers would not necessarily be identical to those which the WBAT exercises with respect to the Bank. Thus, the Fund would simply opt to have the members of the WBAT adjudicate the claims of Fund staff. However, under this option, the Fund would not have any formal role with respect to the selection and appointment of the WBAT's members.

Another possibility would entail the application of the WBAT Statute itself to Fund staff. In this respect, a number of clarifications of the existing Statute, whether through its formal amendment or otherwise, would be needed to clarify how certain provisions of the

---

1/ This is consistent with the views expressed by Executive Directors at EBM/87/5, who were not inclined to explore further the possibility of affiliation with the UNAT or the ILOAT.

2/ Article XV of the WBAT Statute provides that "[e]ach such agreement shall provide that the organization concerned shall be bound by the judgments of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that organization; the agreement shall also include, inter alia, provisions concerning the organization's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing of the expenses of the Tribunal."

Statute would apply with respect to the Fund. 1/ These would include, e.g., the definition of "member of the staff"; the applicable requirements for exhaustion of remedies; the authority of Fund management, in cases involving Fund staff, to opt for compensation in lieu of non-monetary relief; and the applicable starting date for causes of action which would be justiciable by the WBAT in cases brought by Fund staff. The Statute would also have to be amended to give the Fund a formal role with respect to the selection and appointment of the WBAT's members.

Under the latter type of affiliation with the WBAT, the Fund would essentially adopt the Bank's system for the resolution of employment-related disputes, including the mode of operation of the WBAT. This would have certain consequences for the staff and for the Fund, such as the length of time it might take to have a dispute resolved and the costs involved to the organization.

The mode of operation of the WBAT has been to convene all seven of its members twice a year, once in London and once in Washington. In practice, the tribunal has exercised all of its functions in plenary session and has not invoked the authority conferred under its statute to convene three-member panels to hear individual cases. 2/ Because the WBAT members, who originate from seven different countries around the world, have professional commitments and responsibilities apart from the WBAT, there may be delays and postponements involved in the scheduling of the WBAT's sessions. Such logistical difficulties may prolong the length of time it takes before a decision is rendered by the tribunal; this time is, of course, in addition to the duration of administrative review in a case, including proceedings before the internal Appeals Committee in most cases.

With respect to costs, in convening the WBAT's seven members twice annually, the Bank incurs considerable expense, including the members' per diem fees and expenses, and the costs of travel. Other costs arise from the administrative support of the WBAT. The WBAT is served by a full-time Registry consisting of an Executive Secretary and his assistant, both of whom are lawyers, as well as two clerical staff. The total cost of the WBAT operation in FY 1988 was estimated at around $938,000, inclusive of the costs of the WBAT Registry. The largest item in the WBAT budget is the judges' fees and travel costs, which account for approximately 55 percent of the total costs.

---

1/ The WBAT Statute can only be amended by a decision of the Board of Governors of the Bank. See WBAT Statute, Article XVI.

2/ See WBAT Statute, Article V(2).

If it affiliated with the WBAT, the Fund would be obligated to share in the expenses of the tribunal, in accordance with an agreement to be reached with the Bank. The formula for sharing or allocating such costs is not prescribed in the WBAT Statute and would need to be negotiated between the organizations.

From the standpoint of jurisprudence, the consequences of affiliation with the WBAT would have to be discerned over time as the tribunal rendered judgments in cases brought by Fund staff. On the one hand, the fact that the Fund and the Bank shared a common tribunal would eliminate the risk of conflicting decisions concerning the legality of policies common to both organizations. In this regard, the WBAT has already had some experience with respect to parallelism in Fund/Bank employment policies. Moreover, insofar as the WBAT has been in existence since 1980, it already has an established body of case law on which to draw. In particular, the tribunal has considered and applied various principles of international administrative law which might be of relevance in cases brought by Fund staff. On the other hand, affiliation with the WBAT might result in an unwarranted effort by the tribunal to harmonize policies between the Fund and the Bank that are intentionally divergent or to apply concepts that are appropriate for one institution but not the other.

2. Establishment of a Fund Tribunal

Instead of affiliating with the WBAT, the Fund could establish a tribunal of its own. It would be able to draw on the experience of the existing tribunals with respect to the basic questions described above, while at the same time adapting some features to meet the needs of the organization and the staff.

Perhaps the most fundamental issue is the institutional framework for the administrative and judicial review of employment-related decisions. One could contemplate the direct challenge of regulatory decisions in the tribunal, whereas administrative review would be required with respect to individual decisions.

In this regard, the role of the Grievance Committee would need to be reexamined in light of the existence of an administrative tribunal. 1/ One possibility would be simply to abolish the Committee and establish a tribunal comprised entirely of persons external to the Fund to review any decision challenged by the staff. This would mean that judicial review of any decision, regardless of its nature or scope, would require that the members of the tribunal be convened in

---

1/ The existing Grievance Committee is established by GAO No. 31, Rev. 2.

Washington or elsewhere to hear the case. This process could be costly, slow and--at least in relatively simple and straightforward cases--unnecessarily formal.

Another possibility would be to retain the Grievance Committee in its present form in addition to the administrative tribunal. This system might, however, result in unnecessary duplication with respect to decisions which fall within the competence of both forums. For example, both forums would be called upon to review the legality of individual decisions and to receive evidence and argumentation for this purpose. It would not seem advisable to keep the Grievance Committee, at least in its present form, if an administrative tribunal were established.

A third possibility would be to incorporate the Grievance Committee into the administrative tribunal. This could be accomplished by establishing an administrative tribunal which consisted of two panels. The first panel would consist of two staff members and an outside President with specific expertise in employment-related arbitration, just as the Grievance Committee is presently structured. The second panel would consist of the same President and two other members who would be external to the Fund and who would possess professional expertise in international administrative law.

The first panel would hear the types of cases now heard by the Grievance Committee, with the significant difference that it would be empowered to issue final and binding judgments. At the same time, it could offer the same advantages that have characterized the operation of the Grievance Committee--namely, the relative informality and promptness of the proceedings, and the ability to draw upon the institutional knowledge of the staff member appointees.

The second panel would decide cases in which the legality of a regulatory decision was challenged. If a case challenging an individual decision raised the legality of a regulatory decision as an issue, there could be a mechanism for referring that issue to the second panel. In addition, the first panel could be expanded to include the two external members in cases which involve significant questions of law or are of fundamental importance to a staff member's career. Because the types of cases in which these two external members would participate are expected to be relatively infrequent, there could be significant cost savings in comparison to the mode of operation of the WBAT.

Part II discusses a draft statute for the establishment of an administrative tribunal that would be structured in this fashion.

## II. Proposed Statute for an Administrative Tribunal of the Fund

### A. General Overview

The draft statute, if adopted, would establish an administrative tribunal to serve the Fund exclusively. The system envisaged in the draft differs in several important respects from those found in other international organizations, particularly in that staff members would serve on the tribunal in certain categories of cases. In terms of competence, however, the subject matter jurisdiction of the tribunal would be comparable in scope to that of other administrative tribunals. Moreover, the decisions of the tribunal, unlike those of the Grievance Committee, would be final and binding on the Fund. Several general points should be noted:

First, staff members would have to exhaust administrative remedies, when available, before bringing an action before the tribunal. This would usually include, for example, appeal to the Director of Administration in individual cases involving a staff member's career or benefits. It is expected that such review procedures would be more clearly defined than at present.

Second, an application would normally have to be submitted within a specified period of time after the decision at issue was taken in order to be admissible.

Third, the existing Grievance Committee would be replaced by the administrative tribunal. There would be a continuity of function between the Grievance Committee and the tribunal, in that the tribunal would be competent to hear the types of cases which presently fall within the competence of the Grievance Committee under GAO No. 31. This would include, in particular, review of individual decisions taken pursuant to the General Administrative Orders.

Fourth, the tribunal's competence would be broader than that of the Grievance Committee in several respects. In addition to cases presently within the Committee's jurisdiction, the tribunal could review the legality of a broader range of individual decisions than those now within the competence of the Grievance Committee, as well as the legality of regulatory decisions (as defined in the statute) which arise out of the employment relationship between the Fund and the staff, including decisions concerning the Staff Retirement Plan.

Fifth, the composition of the tribunal in a given case would depend upon the nature of the issue raised in that case, and, in particular, on the type of decision that is being challenged. In cases challenging the legality of an individual decision, the composition of the tribunal would consist of an outside President and two members appointed from the staff, one appointed by the Managing Director and one appointed by the Staff Association (thus constituting the first

panel). This panel would thus be structured in the same manner as the current Grievance Committee, and would perform its functions in essentially the same fashion as the Grievance Committee, although the range of individual decisions within its competence would be broadened.

In cases challenging the legality of a regulatory decision, the tribunal would consist of the President, but in lieu of the two members appointed from the staff, there would be two members who would be external to the Fund (the second panel). Like the members of most international administrative tribunals, these two members would be selected on the basis of their training and relevant experience.

In addition, the first panel could be expanded to include the two external members in cases which involve significant questions of law or are of fundamental importance to a staff member's career.

B. Commentary on Proposed Statute

ARTICLE I

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

Article I, like its counterpart in the statutes of other tribunals, performs a constitutive function and also names the tribunal. As noted above, it envisages the establishment of a tribunal to serve the Fund exclusively.

ARTICLE II

> 1. The Tribunal shall be competent to pass judgment upon any application:
>
> a. by a member of the staff challenging the legality of an administrative act adversely affecting him;

Article II sets forth the competence of the tribunal. The power of an international administrative tribunal to pass judgment in a particular case brought before it derives from the statute which establishes the tribunal. The scope of competence of the proposed tribunal is defined by this instrument, and the limitations imposed in it establish the bounds of the tribunal's authority.

Section 1(a) provides that the tribunal would be empowered to review a staff member's challenge to the legality of an administrative act adversely affecting him. The statutes of several other tribunals contain similar language as regards jurisdiction. 1/ Although the Fund has not adopted a formal statement of principles of staff employment, the employment relationship between the Fund and the staff is subject to legal rights and obligations, one element of which is the obligation of the employer to take employment-related decisions in accordance with the law of the Fund, including applicable rules, procedures and recognized norms. It would be the function of the tribunal, as a judicial body, to determine whether a decision transgressed the applicable law of the Fund. However, a staff member would have to be adversely affected by a decision in order to challenge it; the tribunal would not be authorized to resolve hypothetical questions or to issue advisory opinions.

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

Section 1(b) sets forth the competence of the tribunal with respect to the retirement and other benefit plans maintained by the Fund, such as the Staff Retirement Plan (SRP), the Medical Benefits Plan (MBP) and the Group Life Insurance Plan. 2/ This provision would allow individuals who are not members of the staff but who have rights under these plans to bring claims before the tribunal concerning decisions taken under or with respect to the plan. Such individuals would include beneficiaries under the SRP and nonstaff enrollees in the MBP, e.g., a deceased staff member's widow who continues to participate in the MBP. Such individuals would, however, be entitled to assert claims only with respect to decisions arising under or concerning the Fund's retirement or benefit plans; they would not have the right to challenge other types of administrative acts before the tribunal.

---

1/ E.g., European Court of Justice: EEC Treaty, Article 173; NATO Appeals Board: Resolution of the North Atlantic Council, Article 4.21; Council of Europe Appeals Board: Staff Regulations, Article 59(1).

2/ The tribunal would be authorized to review decisions relating to or arising under the Staff Retirement Plan (SRP), whether of an individual or general nature. Other tribunals, including the WBAT, have jurisdiction to consider whether there has been nonobservance of the provisions of a staff retirement plan. See, e.g., WBAT Statute, Article II(1). It should be noted that this would require an amendment of the SRP in order to permit the tribunal to exercise such jurisdiction.

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

The draft statute would permit the Staff Association to challenge, in its own name, a regulatory decision which adversely affects its members as a whole or in part. The effect of the Staff Association's suit, if successful, would be to have the regulatory decision declared illegal and annulled by the tribunal, as prescribed in Article XV, Section 3 of the draft statute. Although the Staff Association could not itself seek corrective action on behalf of individual staff members, any decision in its favor which invalidated and annulled a regulatory decision would have certain consequences for individuals who had been adversely affected by the decision; such individuals could, in turn, challenge the failure of the Fund to take corrective action in their individual cases.

2. For purposes of this Statute,

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

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

Subsections (a) and (b) of Section 2 provide two definitions which are critical to construing the competence of the tribunal; the definitions of "administrative act" and "regulatory decision" delineate the types of cases which comprise the subject matter jurisdiction, or competence ratione materiae, of the tribunal. There are several aspects of this competence.

The tribunal would be competent to hear cases challenging the legality of an "administrative act," which is defined as all individual and regulatory decisions taken in the administration of the staff of the Fund. This definition is intended to encompass all decisions affecting the terms and conditions of employment at the Fund, whether related to a staff member's career, benefits or other aspects of Fund appointment, including the staff regulations set forth in the N Rules. In order to invoke the jurisdiction of the tribunal, there would have to be a "decision," whether taken with respect to an individual or a broader class of staff, identified in the application filed by the staff member. As discussed below, in most cases concerning individual administrative decisions, the staff member would be challenging the final decision resulting from the administrative review of his complaint.

With respect to individual administrative decisions, such as decisions relating to a staff member's career or benefits, or involving the imposition of disciplinary sanctions, the tribunal would replace the Grievance Committee as the forum in which challenges to such decisions would be presented. 1/

The tribunal would also be competent to review individual decisions involving the exercise of managerial discretion, some categories of which presently fall within the competence of the Grievance Committee. This competence would encompass, for example, decisions concerning merit salary adjustments, assignments, promotions, and other aspects of a staff member's career. The competence proposed for the tribunal would also encompass certain categories of decisions that are presently excluded from the jurisdiction of the Grievance Committee, such as decisions concerning the termination or extension of a temporary or fixed-term appointment, and conversions of initial probationary appointments into regular appointments. Although discretionary decisions are not excluded from the competence of administrative tribunals, 2/ the scope of review of such decisions is quite limited. Under well-established principles of international administrative law, it is recognized that management and the administration must have sufficient flexibility and autonomy in personnel matters, without interference by a tribunal. For example, it would not be appropriate for a tribunal to substitute its judgment for that of a supervisor in assessing a staff member's performance or in selecting a candidate for a job vacancy. Accordingly, tribunals may invalidate decisions taken in the exercise of managerial discretion only in very limited circumstances, such as where the administration has failed to observe proper procedures, exceeded its authority, or acted in an arbitrary, capricious or discriminatory fashion in making a decision. 3/

Finally, the draft statute makes explicit that the tribunal would have jurisdiction to review employment-related decisions taken by management or the Executive Board, which are presently beyond the competence of the Grievance Committee. This would encompass, for

---

1/ Under GAO No. 31, the Grievance Committee is empowered to consider cases involving ". . . any question brought by a staff member concerning the interpretation or application of the rules and regulations of the International Monetary Fund in his individual case."

2/ But see Article 10 of the Statute of the Administrative Tribunal of the Bank for International Settlements, which provides that the tribunal may not pass judgment on matters of promotion.

3/ E.g., Durrant-Bell, WBAT Reports, Dec. No. 24 (1985); Suntharalingam, WBAT Reports, Dec. No. 6 (1981), at para. 27; Saberi, WBAT Reports, Dec. No. 5 (1981), at para. 24. For a further elaboration of these principles, see discussion below with respect to Article III of the draft statute.

example, Executive Board decisions regarding employment policy (such as adjustments to compensation, pensions, tax allowance, benefits and job grading), the Staff Retirement Plan, and staff rules and regulations promulgated by management, such as the General Administrative Orders. These types of regulatory decisions, insofar as they affect the terms and conditions of Fund employment, would be reviewable by the tribunal in accordance with the principles governing judicial review of administrative action.

The competence of an administrative tribunal to review the legality of decisions taken by the management or the legislative organ of an organization has been firmly established in the case law of the tribunals. 1/ Insofar as the legislative organs of an organization derive their authority to act as employer from the internal law of the organization, their acts cannot exceed that authority or violate the law of the organization. It is the function of the tribunal to determine whether those acts are consistent with the internal law of the organization; the WBAT undertook such a review in the seminal de Merode case, which challenged the legality of a change in the tax allowance system introduced in 1979. 2/

The internal law of an international organization with respect to its role as an employer derives from several sources, most importantly the constituent instrument of the organization (for the Fund, its Articles of Agreement), its by-laws, rules and regulations, and previous decisions of its governing organs. In the de Merode case, for example, the WBAT stated that the Articles of Agreement of the Bank and the By-Laws were an integral part of the legal relationship between the Bank and its staff members; further elements of that relationship were also found in various statements of personnel policy and, in certain circumstances, in the practice of the organization. 3/ Another source of the rights and duties of the staff and the organization consists of certain generally recognized principles of law that have been applied by various international administrative tribunals to employment-related decisions taken by the organization. 4/

---

1/ Tevoedjre, ILOAT Judgment No. 580 (1983) at 6. See also Krug, Decision No. 87, OECD Appeals Board (1981), Recueil des decisions 83 to 102 (1983) at 11; Lancy, Decision No. 88, OECD Appeals Board (1981), at 15; Bernot, Decision No. 89, OECD Appeals Board (1981), at 19.

2/ de Merode, WBAT Reports, Dec. No. 1 (1981); see also von Stauffenberg, WBAT Reports, Dec. No. 38 (1987), at para. 46 (considering challenge to legality of 1984 and 1986 IBRD compensation decisions).

3/ de Merode, WBAT Reports, Dec. No. 1 (1981), at paras. 20-25.

4/ See Callewaert-Haezebrouck, ILOAT Judgement No. 344 (1978), invalidating the application of the text of a staff regulation which discriminated against women, and applied to them the rights conferred upon male staff members in the regulation.

With respect to the Fund, the legal framework in which employment-related decisions are taken is created by the Articles of Agreement, the Staff Regulations (N Rules), Executive Board decisions, the General Administrative Orders and related staff bulletins, administrative practice, and general principles of law. In cases challenging the legality of a regulatory decision, the tribunal would examine the decision in light of these sources of law and decide whether the decision, as understood and interpreted by the tribunal, conformed to that law.

> c. the expression "member of the staff" shall mean:
>
> (i) any current or former officer or employee of the Fund;
>
> (ii) any current or former technical assistance expert appointed by the Fund, whether or not an officer or employee of the Fund, provided that such an expert shall have access to the Tribunal in the event of dispute only to the extent that his letter of appointment so provides; and
>
> (iii) any successor in interest to a deceased staff member to the extent that he is entitled to assert a right of such staff member against the Fund;

The definition of "member of the staff" would include any individual who is a current or former officer or employee of the Fund. The expression "officer or employee" as used in the draft statute is derived from Article IX, Section 8, of the Fund's Articles of Agreement and would have the same meaning and scope as under the Articles. This expression would include regular and fixed-term staff members as well as contractual employees. 1/ It would also include the secretarial staff in Executive Directors' offices and Assistants to Executive Directors, who are considered "officers or employees" of the Fund. It would not include, however, Advisors to Executive Directors, who fall in a separate category of persons who enjoy privileges and immunities under Article IX, Section 8. Advisors would, however, be able to assert claims before the tribunal as participants in the SRP and other benefit plans, as provided in Article II, Section 1(b) of the draft statute.

---

1/ "Employees" of the Fund would include individuals under contract to the Fund who are not employees of another employer. The tribunal would not, for example, be available to persons who work on the Fund premises but are not employed directly by the Fund (e.g., security guards).

Technical assistance experts appointed by the Fund, regardless of whether they were considered officers or employees of the Fund for other purposes, 1/ would also have access to the tribunal to the extent their letters of appointment so provided. That access could thus be limited to certain categories of decisions affecting the expert.

The definition also includes persons who would be entitled to assert the rights of the staff member in the event of his death; thus, if an issue as to the termination payments due to a staff member were unresolved at the time of his death, that claim could be pursued by the personal representative of the estate.

The statute would not allow unsuccessful candidates to the staff to bring claims before the tribunal; almost no tribunal statute permits access by such persons.

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

This provision clarifies how the periods of time stated in the statute (e.g., the time limits for filing an application in Article VI) are to be calculated. Basically, the period would start to run on the day after the date on which the challenged decision is rendered; if the last day of the period fell on a weekend or holiday, the deadline would be extended through the next working day. 2/

> e. the masculine pronoun shall include the feminine pronoun.

This provision makes clear that the statute applies equally to males and females; it enables the universal use of the masculine pronoun for the sake of simplicity.

---

1/ Under the terms of their appointment letters, CBD experts (unlike FAD experts) are normally not considered to be employees of the Fund and are instructed to report to the institution of assignment. There is no reason in principle, however, to differentiate between these categories of technical assistance experts for purposes of access to the tribunal.

2/ For an example of how periods are calculated under this provision, see p. 29 infra.

ARTICLE III

(first sentence)

The Tribunal shall not have any powers beyond those conferred under this Statute.

The first sentence of this Article, in providing that the powers of the tribunal are limited to those set forth in the statute, states the general principle recognized in international administrative law that tribunals have limited jurisdiction rather than general jurisdiction. 1/ As a consequence, administrative tribunals have competence only to the extent that their statutes or governing instruments confer authority to decide disputes. Thus, the statutory provision defining the competence of the tribunal is, at the same time, a prohibition on the exercise of competence outside of the jurisdiction conferred.

This principle would have other consequences with respect to the functioning of the tribunal. In particular, the draft statute does not give the tribunal the authority to compel the production of documents or the appearance of witnesses. 2/ In the absence of such express authority, the tribunal would be limited to requesting, but not ordering, that such information and testimony be provided in a case. The decision whether to comply with such a request, when directed to the Fund, would be left to the Managing Director. The intention is not to impede the tribunal or to prevent the appearance of witnesses but rather to protect the confidentiality of sensitive documents and information whose release might be prejudicial to the interests of the Fund's membership or other entities or persons. The tribunal could, of course, make whatever adverse inference or decision it felt was appropriate in light of a refusal to comply with such a request.

(second sentence)

In deciding on an application, the Tribunal shall apply the legal principles that are generally recognized for the judicial review of administrative acts.

---

1/ See, e.g., the advisory opinion of the International Court of Justice concerning the competence of the ILOAT in Judgments of the Administrative Tribunal of the International Labour Organisation, ICJ Reports (1956) 77, at 97.

2/ Under its Rules of Procedure, the WBAT, through its President, "may obtain any necessary information from any party, witnesses or experts" Rule 11(3).

The second sentence of this Article calls upon the tribunal to adhere to and apply generally recognized principles for judicial review of administrative acts. These principles have been extensively elaborated in the case law of both international administrative tribunals and domestic judicial systems, particularly with respect to review of decisions taken under discretionary powers. Through case law, judicial bodies have repeatedly affirmed their incapacity to substitute their own judgments for those of the authorities in which the discretion has been conferred. 1/ Thus, although a tribunal may decide whether a discretionary act was lawful, it must respect the mandate of the legislative or executive organs to formulate employment policies appropriate to the needs and purposes of the organization. Similarly, a tribunal is not competent to question the advisability of policy decisions. 2/

As applied to the review of regulatory decisions, the case law of administrative tribunals in general demonstrates that although there exists a competence to review regulatory decisions, in fact the scope of that review is quite narrow. Likewise, with respect to review of individual decisions, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures. 3/ This principle is particularly significant with respect to decisions which involve an assessment of an employee's qualifications and abilities, such as decisions whether to confirm a probationary appointment or renew a contract, promotions, and dismissals for unsatisfactory performance. In this regard, administrative tribunals have emphasized that the determination of the adequacy of professional qualifications is a managerial, and not a judicial, responsibility. 4/

In light of the sentence proposed in the draft statute, the Fund tribunal would have to apply these principles in assessing the legality of individual decisions involving the exercise of administrative or managerial discretion.

---

1/ See generally S.A. de Smith, Judicial Review of Administrative Action at 278-79 (4th ed. 1980).

2/ See von Stauffenberg, WBAT Reports, Dec. No. 38 (1987), at para. 126; Decision No. 36, NATO Appeals Board (1972), Collection of the Decisions (1972).

3/ E.g., Durrant-Bell, WBAT Reports, Dec. No. 24 (1985), at paras. 24, 25.

4/ See generally M. Akehurst, The Law Governing Employment in International Organizations at 118-23 (1967); C.W. Jenks, The Proper Law of International Organisations at 86-88 (1962).

(third sentence)

> Nothing in this Statute shall limit or modify the powers of the organs of the Fund under its Articles of Agreement, including the power to establish and amend the terms and conditions of employment with the Fund.

The third sentence of Article III incorporates, as part of the governing instrument of the tribunal, the concept of separation of power between the tribunal, on the one hand, and the legislative and executive organs of the institution, on the other hand, by stating that the establishment of the tribunal would not in any way affect the authority conferred on other organs of the Fund under the Articles of Agreement. This provision would be particularly significant with respect to the authority conferred under Article XII, Section 3(a), which authorizes the Executive Board to conduct the business of the Fund, and under Section 4(b) of that Article, which instructs the Managing Director to conduct the ordinary business of the Fund, subject to the general control of the Executive Board.

The authority of an international organization to establish and to change the conditions of employment, including the limitations on that authority, has been described as "the largest issue which has confronted, and still confronts, the international administrative tribunals . . ." 1/ The case law of administrative tribunals has, however, recognized certain broad principles protecting the exercise of legislative or executive authority. For example, it is firmly established that the classification of the staff in grades and categories is a legislative or executive function rather than a judicial matter. Likewise, matters of administrative organization or reorganization, assignments and promotions, and the choice of staff to be retained in the event of a reduction in force, are matters generally within the discretion of the institution and cannot normally be overturned by the tribunal. 2/ The provisions of Article III of the draft statute would make clear that this distinction between executive and judicial authority would have to be respected by the tribunal.

ARTICLE IV

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

---

1/ C.W. Jenks, supra, at 85.

2/ Id. at 88-90; see generally Amerasinghe, Detournement de Pouvoir in International Administrative Law, 44 ZaoRV 439, 440-41 (1984).

The tribunal would have the authority to determine its own competence within the terms of its statute. Comparable authority has been accorded to virtually every international administrative tribunal. 1/

ARTICLE V

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

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

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

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

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

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

Article V prescribes an exhaustion requirement with respect to the admissibility of applications before the tribunal. Cases otherwise falling within the tribunal's competence would be admissible only if applicable administrative remedies have been exhausted. The exhaustion requirement is imposed by the statutes of all major administrative tribunals, presumably for the reason that the tribunal is intended as the forum of last resort after all other channels of recourse have been attempted by the staff member, and the administration has had a full opportunity to assess a complaint in order to determine whether corrective measures are appropriate.

---

1/ E.g., UNAT Statute, Article 2(3); ILOAT Statute, Article II(7); WBAT Statute, Article III.

Under this Article, a channel of administrative review would be exhausted by any of the following events, as applicable to the circumstances. First, the requirement would be satisfied if an applicant filed for administrative review and received no decision granting him the relief requested within three months. Second, the requirement would be satisfied if the applicant received a decision denying his request; a decision which granted his request only in part would be treated as a denial for this purpose. Third, if the applicant received a decision granting him the relief requested but the relief was not forthcoming after two months had elapsed, administrative review would be considered exhausted. Finally, if the Fund and the applicant agree to bypass administrative review and submit the dispute directly to the tribunal, all channels of administrative review would be considered exhausted for purposes of this Article.

In the Fund, administrative review would usually involve recourse to the Director of Administration with respect to most individual decisions regarding a staff member's career or benefits, although special means of administrative review might be established for certain types of decisions. Thus, if a staff member's rights were allegedly violated by a particular course of conduct or set of events, the staff member would have an admissible claim only after a decision had been taken by the organization on the matter. For example, if a staff member felt that he had been wrongfully bypassed for promotion, he would first have to present his claim and request remedial action through administrative channels. If his claim was then denied by the Director of Administration (or if no response was received), the denial would constitute an individual decision that, having flowed from the exhaustion of administrative remedies, would be ripe for review by the tribunal. The establishment of the tribunal may entail greater formalization of the review procedures available within the Fund.

ARTICLE VI

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

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

Sections 1 and 2 of Article VI set forth the time limits in which an application must be filed with the tribunal in order to be admissible. In most cases involving individual decisions, a staff member will have three months from the date on which all available channels of administrative review have been exhausted (as prescribed in Article V) in which to bring an action.

An illustration of the interaction of the exhaustion requirement of Article V and the time limits of Article VI with respect to individual decisions may be helpful. If, on January 2, a staff member submitted a request for administrative review of an individual decision, the three-month period prescribed in Article V, Section 2 would run from January 3 to April 2, inclusive. 1/ Thus, if the staff member received a response denying his request on the last day of the period, or had not received a response granting his request by that date, he would have exhausted administrative review. 2/ He would thereupon have three months, i.e., from April 3 to July 2, in which to file an application with the tribunal. If July 2 was not a working day, the deadline would fall on the next working day thereafter, as prescribed in Article II, Section 2(iv). If the staff member received a favorable decision on April 2 granting his request, but did not receive the relief requested by June 2, inclusive, he would have three months, i.e., from June 3 to September 2, inclusive, in which to bring an action before the tribunal. Of course, if the relief was, in fact, granted in that period, there would be no case to go forward.

Regulatory decisions could be challenged by adversely affected staff within three months of their announcement or effective date. However, the legality of a regulatory decision could be raised as an issue at any time with respect to an individual decision taken pursuant thereto, subject to the rules involving timely filing of challenges to individual decisions. Accordingly, a staff member could contest the denial of a benefit in his particular case on the grounds that the regulation on which the denial was based was illegal, without regard to the date on which the regulation was enacted, subject to the provisions of Article XXI.

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

---

1/ Or on the next working day, if April 2 is not a working day.

2/ If a response denying the request was received before April 2, the three-month period for filing an application would run from the date of receipt. For instance, if the response was received on March 19, the application could be filed until June 20, inclusive.

The tribunal would have discretion, in exceptional circumstances, to waive the time limits for filing imposed under the Article; this might be appropriate, for example, in situations where, due to extensive mission travel, prolonged illness, or other exigent personal circumstances, a staff member was unable to file his application within the prescribed period. The staff member could request a waiver either before the deadline if he anticipated that he would be unable to file on time, or after the deadline had passed. However, such a waiver would have to be predicated on a finding that the delay was justified under the circumstances.

> 4. The filing of an application shall not have the effect of suspending the implementation of the decision contested.
>
> 5. No application may be filed or maintained after the applicant and the Fund have reached an agreement on the settlement of the dispute giving rise to the application.

Section 4 follows the principle applicable to other tribunals that the filing of an application does not stay the effectiveness of the decision being challenged. 1/ This is considered necessary for the efficient operation of the organization, so that the pendency of a case would not disrupt day-to-day administration or the effectiveness of disciplinary measures, including removal from the staff in termination cases.

Under Section 5, it would be open to the applicant and the Fund to reach an agreement on the dispute involved in the application; thereupon, the application could not be pursued.

ARTICLE VII

> 1. The Tribunal shall be composed of a President and four associate members, who shall be appointed as follows:
>
> a. The President shall be appointed for two years by the Managing Director after consultation with the Staff Association and with the approval of the Executive Board. The President shall have no prior or present employment relationship with the Fund.

---

1/ E.g., WBAT Statute, Article XII(4).

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

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

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

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

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

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

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

Article VII, Section 1 of the draft statute governs the appointment of the tribunal's members. A President (who could not be a present or former Fund staff member) would be appointed by the Managing Director after appropriate consultation, subject to the approval of the Executive Board. Two associate members and alternates from the current staff would be appointed in the same manner as are the members of the Grievance Committee at present. Finally, two associate members and two alternates with no prior or present employment relationship with the Fund would be appointed by the Managing Director.

The President and the outside associate members would be required to be nationals of member countries of the Fund at the time of their appointments; subsequent changes in nationality or in the membership of their country of nationality would not disqualify them. They would also have to possess the qualifications and background which are generally required of members of administrative tribunals. 1/ Such expertise

1/ E.g., WBAT Statute, Article IV(1); IDBAT Statute, Article III(1).

would be well-suited to the types of issues, discussed below, which they, as members of the second panel of the tribunal, would be called upon to resolve. In cases that do not involve the legality of regulatory decisions or fundamental questions of law, the participation of the outside associate judges--and the additional costs entailed by such participation--would not be necessary. Past experience suggests that a panel constituted on the same basis as the Grievance Committee would be fully capable of handling such matters.

The terms of service would be one year for the associate members from the staff, and two years for the President. The outside associate members would be appointed for three years. Because it is not expected that these outside associate members would participate on a frequent basis in the tribunal's agenda, it would be useful to have them serve over a longer term in order to develop greater familiarity with the Fund in general and the legal relationship between the institution and the staff in particular.

> 2. The President and the associate members and their alternates may be reappointed. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
>
> 3. Any member who has a conflict of interest in a case shall recuse himself.
>
> 4. When an associate member has recused himself or, for any other reason, is unable to hear a case, an alternate shall be designated by the President. If the President himself is unable to hear a case, the elder of the associate members appointed under Section 1(c) shall act as President for that case, and, if the case is heard by the second panel of the Tribunal, as described in Article X, shall be replaced by an alternate as associate member.
>
> 5. The Managing Director shall terminate the appointment of a member who, in the unanimous opinion of the other members, is unsuited for further service.

Sections 2 through 5 establish the rules by which the President and the associate members of the tribunal may be reappointed, replaced or dismissed from their duties.

The President and all associate members could be reappointed at the end of their terms.

A member who had a conflict of interest in a particular case would be required to recuse himself. A conflict of interest could arise in an individual case, for example, if a member from the staff had a close professional or personal relationship with the applicant. A conflict of interest would be less likely in the case of the other members, who would not have a present or prior employment relationship with the Fund.

Section 4 provides for the temporary replacement by the designated alternate of an associate member of the tribunal who is unable to hear a case (for instance, due to illness or scheduling problems) or who, in his own judgment, decides to recuse himself in a particular case for reasons of conflict of interest. In the event that the President was unable to hear a case, he would be replaced by the elder of the two outside associate members who, if the case were heard by the second panel, would in turn be replaced by one of his alternates.

Section 5 provides the exclusive means by which a member could be removed from his position on the tribunal by the Managing Director. This provision would apply to any member of the tribunal (including the President); however, the Managing Director would be authorized to dismiss a member only if the other members unanimously agreed that he was unfit for further service.

ARTICLE VIII

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

This Article, in providing that the members of the tribunal cannot be subject to instructions from any source, is intended to protect the independence necessary for the performance of judicial duties. It further provides that in the performance of their functions, the members of the tribunal will be considered as officers of the Fund for purposes of the Articles of Agreement. This provision would have two principal effects.

First, it would confer upon the President and the outside associate members the privileges and immunities enjoyed by officers and employees of the Fund under Article IX, Section 8 of the Fund Agreement including, in particular, the immunity from judicial process. Such protection would further ensure the independence and impartiality of the tribunal in carrying out its functions. It would also provide a basis for dismissal, on immunity grounds, of any lawsuit brought in a national

court of a member country of the Fund by an unsuccessful applicant against a member of the tribunal with respect to the member's performance of his official duties.

Second, it would protect the members of the staff who serve on the tribunal from interference with, or reprisals for, the performance of their duties. Similar protection is afforded to the staff appointees to the Grievance Committee.

ARTICLE IX

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

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

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

This Article addresses certain administrative aspects of the tribunal. It contemplates that administrative support will be provided to the tribunal by staff members who will be designated for such purpose by the Managing Director, but who will be responsible to the President. Administrative tribunals are usually serviced by a small secretariat. The WBAT, for example, has the services of a full-time professional Secretariat whose members are staff members of the Bank but who are responsible only to the tribunal. The staff members assigned to serve the tribunal would be required to refrain from disclosing confidential information which they receive in carrying out their duties; this would apply to disclosure both outside of and within the Fund, where personnel information is not available to staff except on a need-to-know basis.

The Fund would bear the expenses of the tribunal. These expenses would include the fees paid to and expenses incurred by the President and the outside associate members in connection with the performance of their duties. Given the need for the first panel to be convened on a somewhat regular basis, it would be necessary for the President to be readily available. The annual cost of a tribunal of the type contemplated in the draft statute would depend on the number and complexity of the cases heard.

ARTICLE X

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

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

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

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

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

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

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

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

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

Article X defines the first and second panels of the tribunal, and provides criteria for differentiating the types of cases to be decided by each panel. Under Article X, Section 2(a), the first panel, that is, the President and the two associate members from the staff, are empowered to pass judgment on all applications challenging individual decisions. The first panel would be identical in structure to the present Grievance Committee.

Article X, Section 2(b), provides that the second panel of the tribunal, that is, the President and the two outside associate members, would decide cases challenging a regulatory decision. Moreover, in cases in which the only grounds for invalidating an individual decision was the illegality of the regulatory decision under which the individual decision was taken, the first panel would refer the issue of the legality of the impugned regulatory decision to the second panel, whose opinion on the matter would be binding.

In addition, it would be possible to provide for the participation of the outside associate members in cases of relatively greater importance in terms of the issues presented. To this end, the statute provides that the first panel could, at its own discretion, be expanded to include the two outside associate members because of the existence of significant legal issues in a case or the importance of the case for the staff member's career. This might be the case, for example, in cases involving dismissal, or where the adequacy of procedural protections was at issue.

The draft statute provides for expansion of the first panel to include the outside tribunal members in these cases in lieu of referral of the case to the second panel. It is considered appropriate to have individual decisions that involve significant legal questions or are fundamentally important to the staff member's career heard by the staff appointees to the tribunal as well as by its outside associate members. Given their familiarity with the Fund, the staff appointees would be sensitive to the institutional framework within which the decision was taken. The outside appointees would have greater expertise in, and familiarity with, general principles of international administrative law in resolving the issues. This combination of skills, knowledge and experience would serve the tribunal well in resolving cases that were considered to present unusually difficult or important issues.

It is not intended, however, that the first panel would exercise the discretion to include the outside associate members on a frequent or regular basis. A decision to enlarge the first panel in accordance with this provision would have to be by a majority of the first panel.

Any oral proceedings conducted by the tribunal would be open to "interested persons," unless the tribunal decided that the nature of the case required that such proceedings be held in private, for example, if sensitive information or matters of personal privacy were involved.

ARTICLE XIV

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

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

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

4. The deliberations of the Tribunal shall be confidential.

As with other tribunals, decisions would be taken by majority vote (a majority of two, except where the first panel included the two outside associate members as well, in which case a majority of three) and would not require unanimity. Although dissents would not need to be registered, dissenting opinions would be possible under the draft statute.

Judgments of the tribunal would be final and without appeal. It is not proposed that further recourse to the International Court of Justice be available. Although the UNAT and ILOAT Statutes authorize appeal to the International Court of Justice under highly limited circumstances, this avenue of recourse was not adopted by other tribunals, including the WBAT.

ARTICLE XV

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

2. When prescribing measures under Section 1 other than the payment of money, the Tribunal shall fix an amount of compensation to be paid to the applicant should the Managing Director, within one month of the notification of the judgment, decide, in the interest of the Fund, that such measures

> shall not be implemented. The amount of such compensation shall not exceed the equivalent of three hundred percent (300%) of the current or, as the case may be, last annual salary of such person from the Fund. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher compensation; a statement of the specific reasons for such an order shall be made.

Article XV, Section 1 provides for the remedies which the tribunal may order when it concludes that an individual decision is illegal. Section 2 provides that, with respect to nonmonetary relief ordered by the tribunal in individual cases, the Managing Director may opt for monetary relief instead of taking the remedial measures.

Under Section 1, if the tribunal finds that an individual decision is illegal, it shall order the rescission of the decision and all other appropriate corrective measures. These measures may include the payment of a sum of money, or the specific performance of prescribed obligations, such as the reinstatement or promotion of a staff member.

In cases where the tribunal concludes that an individual decision is illegal by virtue of the illegality of the regulatory decision pursuant to which it was taken, the judgment would not invalidate or rescind the underlying regulatory decision, nor would it invalidate or rescind other individual decisions already taken pursuant to that regulatory decision. 1/ If a regulatory decision had been in effect by the organization for over three months, an application challenging its legality would not be admissible. Similarly, a finding by the tribunal, in the context of reviewing an individual decision, that the regulatory decision was illegal would not nullify the decision as such. The judgment would, however, render the regulatory decision unenforceable against the applicant in the immediate case. The regulatory decision would also, for all practical purposes, become ineffective vis-à-vis other staff members, since future applications in individual decisions would themselves be subject to challenge.

Section 2 provides that where the consequences of the rescission of an individual decision or the corrective measures prescribed by the tribunal are not limited to the payment of money, the Managing Director would be authorized to determine whether, in the interest of the Fund, the applicant should be paid an amount of monetary compensation that

---

1/ Other staff members to whom the regulatory decision had already been applied could seek relief in light of the tribunal's holding only if their applications were made within the specified time limits for challenging individual decisions.

has been determined by the tribunal in accordance with the limitations prescribed in the statute, as an alternative to rescission of the individual decision or performance of the prescribed obligations. 1/ For example, if the tribunal prescribed, as a corrective measure, that a staff member be promoted or reinstated, the Managing Director, might conclude that such a remedy was not possible or advisable. Such a situation might arise where an applicant was arbitrarily denied a position which has, in the meantime, been filled by another qualified individual. In general, the monetary award could not exceed three times the individual's current or last salary from the Fund, as applicable. The tribunal could, however, exceed this limit in exceptional cases, if it was considered justified by the particular circumstances.

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

Section 3 sets forth the consequences of a ruling in favor of an application challenging the legality of a regulatory decision. In that case, the draft statute provides that the tribunal shall annul the decision. As a result, the decision could not thereafter be implemented or applied by the organization in individual cases.

Annulment would have certain consequences with respect to individual decisions taken pursuant to the annulled regulatory decision, whether taken before or after the date of annulment. Such individual decisions would be null and void. Accordingly, it would be incumbent on the Fund to take corrective measures with respect to each adversely affected staff member. The failure to take proper corrective measures in an individual case would itself be subject to challenge as an administrative act adversely affecting the staff member. For example,

---

1/ The statutes of administrative tribunals permit the award of monetary compensation as an alternative to be chosen by the organization's management in lieu of nonmonetary remedies. As is shown at page 27 of EBAP/86/309, three of the seven tribunals studied had no limit on the amount of monetary compensation to be awarded, three place a limit equal to two years' net pay, and the WBAT has a limit of three years' net pay. In all cases with limits, however, there is a provision similar to that in Article XII, Section 1 of the WBAT Statute, to the effect that "[t]he Tribunal may, in exceptional cases, when it considers it justified, order the payment of higher compensation. A statement of the specific reason for such an order shall be made."

if the tribunal annulled a regulatory decision retroactively reducing a benefit, all staff members to whom that decision had been applied would be entitled to the restoration of that benefit for that period. The failure to restore the benefit in an individual case could then be challenged before the tribunal.

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

Section 4 authorizes the tribunal to award costs, including attorney's fees, to a successful applicant, in an amount to be determined by the tribunal. Costs, apart from attorney's fees, that might fall within this provision could include such items as transportation to Washington, D.C. for applicants not working at Fund headquarters and the fees of expert witnesses who testify before the tribunal. With respect to unsuccessful applicants whose claims nevertheless had prima facie merit or significance, the tribunal could always recommend that an ex gratia payment be made by the organization.

Most administrative tribunals, whether pursuant to their rules or as a matter of practice, have comparable authority to award costs. For example, the UNAT has declared in a statement of policy that costs may be granted "if they are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the tribunal." 1/ The tribunals have, however, been rather conservative and cautious in deciding whether, and to what extent, to award costs in a case. 2/

> 5. When a procedure prescribed in the rules of the Fund for the taking of a decision has not been observed, the Tribunal may, at the request of the Managing Director, adjourn the proceedings for institution of the required procedure or for adoption of appropriate corrective measures, for which the Tribunal shall establish a time certain.

---

1/ A/CN.5/R.2 (Dec. 18, 1950).

2/ E.g., Powell, UNAT Judgment No. 237 (1979), in which the applicant requested payment of costs in excess of $100,000 and was awarded $2,000 by the tribunal.

Section 5 of draft Article XV permits corrective measures in respect of procedural errors committed by the Fund to be implemented after adjournment of a case in lieu of proceeding to decision on the merits. There is a comparable provision in Article XII of the WBAT Statute.

ARTICLE XVI

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

This Article would authorize the tribunal to award costs against applicants who bring cases which the tribunal determines are patently without foundation. The award of costs against an applicant could be enforced through deductions from amounts he is owed by the Fund (such as salary or separation payments) or through such other means as management deems appropriate; other means would have to be implemented if the applicant was not owed any money from the Fund so as to preclude the possibility of setoff.

Such a provision would serve as a deterrent to the pursuit of cases that are manifestly without factual basis or legal merit. Unless an application is summarily dismissed by the tribunal, 1/ the tribunal must hear the case and dispose of the matter on the merits. This could involve lengthy proceedings and substantial costs, even if the tribunal ultimately concluded that the applicant's claims were manifestly unsound or devoid of support. Such cases can be expected to be very rare, but when they arise they can be prolonged and costly. 2/ It is considered appropriate that an applicant who abuses the review process and imposes substantial cost on the organization in defending the case should assume some responsibility for the consequences of his actions.

---

1/ The tribunal would be authorized to adopt a rule providing for summary dismissal of applications. This would permit disposal of a case that was clearly irreceivable on its face without disposition on the merits, thus minimizing the time and expense involved.

2/ For example, one staff member at the Bank has brought seven cases before the WBAT, all of which arose out of the same set of facts and have been squarely rejected by the WBAT.

ARTICLE XVII

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

This Article is the same as in the WBAT and other statutes. It is intended to serve two purposes. First, it provides that no material fact that was known to a party before a case was decided but was not presented to the tribunal can be presented to the tribunal after it has rendered its decision. Second, it provides that a case may be reopened if a material fact is discovered by a party after the decision has been rendered in order to permit the tribunal to revise its judgment in light of that fact.

ARTICLE XVIII

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

Article XVIII authorizes the tribunal, once a judgment has been rendered, to correct typographical or arithmetical errors and to interpret its own judgment, under certain circumstances. Judgments could be corrected by the tribunal on its own initiative or upon application by one of the parties.

The tribunal would be empowered to interpret its own judgment upon the request of a party if the terms were unclear or incomplete in some respect, as demonstrated by the party requesting the interpretation. Similar authority is conferred upon other tribunals, including the Court of Justice of the European Communities. 1/ The ability of the tribunal to interpret its own judgments where the parties are unable to discern the intended meaning would help to insure that judgments are given effect in accordance with the tribunal's findings and conclusions.

---

1/ See Article 40 of the Statute of the Court of Justice of the European Community.

ARTICLE XIX

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

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

The statutes of the WBAT and other tribunals provide that the *judgments of the tribunal will be published or made available to* interested persons. It is proposed that the judgments of the Fund tribunal would be made available to interested persons.

This Article further provides that the President would be authorized to decide whether to conceal the identity of the applicant or any other person mentioned in the judgment, such as a witness (e.g., the complainant in a sexual harassment case in which the disciplinary measures imposed on the perpetrator are being challenged), in copies of the judgment. The President would be guided by concerns for protecting the privacy of the individual involved or the confidentiality of the matter to the organization.

ARTICLE XX

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

This provision is similar to its counterpart in the WBAT Statute.

ARTICLE XXI

The Tribunal shall not be competent to pass judgment upon any application challenging the legality or asserting the illegality of an administrative act taken before January 1, 1989, even if the channels of administrative review concerning that act have been exhausted only after that date.

As a result of this Article, the tribunal would be competent to hear cases involving only those decisions taken after January 1, 1989. It is considered appropriate to provide for a prospective starting date in order for the management and the administration to decide on appropriate channels of administrative review as a prerequisite to the

filing of an application with the tribunal. With respect to regulatory decisions, the legality of a regulatory decision taken before the starting date could not be raised as an issue, either as a direct challenge or asserted in support of an application challenging an individual decision. Thus, only regulatory decisions taken after the starting date, or modifications of or amendments to existing regulatory decisions, would be subject to review by the tribunal.

With respect to individual decisions taken before January 1, 1989, a staff member could continue to avail himself of the Grievance Committee, assuming it was competent to hear the case. Accordingly, there would be a transition period after the establishment of the tribunal during which the Grievance Committee would continue to exist until the expiration of the statute of limitations for grievances arising out of decisions taken before the starting date.

## III. Conclusion

Based on the above discussion, certain observations may be made as to whether a decision to permit Fund staff access to a tribunal would be best served by affiliation with the WBAT or establishment of a tribunal to serve the Fund exclusively.

On the one hand, there would appear to be several possible advantages to affiliation with the WBAT, in that a common tribunal between the Bank and the Fund would eliminate the risk of conflicting decisions regarding the interpretation or legality of policies common to both organizations. Moreover, affiliation with the WBAT would mean that Fund staff members would have access to the same forum as Bank staff members, thus obviating any argument of disparate treatment as regards channels of judicial review. Finally, in the short term, it may be more convenient from a purely administrative standpoint to join an entity that is already in existence and whose staff and mode of operation is already in place.

On the other hand, several disadvantages would be involved in joining the WBAT. First, the WBAT Statute would have to be amended to provide the Fund with a formal role to play in the critical element of appointment of the WBAT members. These amendments would have to be negotiated with the Bank, acceptable to both organizations, and approved by the Bank's Board of Governors. Second, the WBAT's mode of operation --i.e., the convening of seven members from around the world twice a year--could have an adverse impact both on the length of time it would take the tribunal to decide a case, and on the costs to be borne by the Fund under whatever cost-sharing agreement was reached with the Bank. Finally, the application of the WBAT's jurisprudence to the Fund could be inappropriate and could, in a given case, result in a misinterpretation of the underlying intention of the organ which took the decision at issue.

In the view of the staff, and taking into account these considerations, it is preferable for the Fund to establish its own tribunal rather than to affiliate with the WBAT. The system envisaged in the draft statute would, in particular, tend to (i) reduce the complexity of the review process generally, with resultant savings in terms of time and cost; (ii) avoid the application to the Fund by an outside tribunal of policies and precedents that may be suited to another organization but not to the Fund; and (iii) give the Fund and its staff a greater sense of involvement in the tribunal.

Moreover, the draft statute benefits from examination of the experience of other tribunals over the years, for instance, the way in which they have interpreted such issues as competence, the concept of "administrative act," and the limitations to which the tribunal, as a judicial body, would be subject. The provisions of the draft statute are thus explicit on these and several other points.

Accordingly, the following draft decision is proposed for adoption by the Executive Board:

Proposed Decision

The management is authorized to prepare, for the formal approval of the Executive Board, the following documents:

(a) a draft statute for an administrative tribunal of the Fund along the lines of that set forth in Attachment I;

(b) a report of the Executive Board to the Board of Governors and a proposed resolution calling for the approval of the draft statute;

(c) a letter of transmittal from the Secretary to the members of the Fund transmitting the report of the Executive Board and the proposed resolution, including the draft statute, to the Board of Governors.

# STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

## ARTICLE I

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

## ARTICLE II

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

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

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

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

2. For purposes of this Statute:

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

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

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

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

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

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

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

e. the masculine pronoun shall include the feminine pronoun.

ARTICLE III

The Tribunal shall not have any powers beyond those conferred under this Statute. In deciding on an application, the Tribunal shall apply the legal principles that are generally recognized for the judicial review of administrative acts. Nothing in this Statute shall limit or modify the powers of the organs of the Fund under its Articles of Agreement, including the power to establish and amend the terms and conditions of employment with the Fund.

ARTICLE IV

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

ARTICLE V

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

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

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

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

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

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

ARTICLE VI

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

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

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

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

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

ARTICLE VII

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE VIII

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

## ARTICLE IX

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

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

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

ARTICLE X

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

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

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

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

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

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

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

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

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

ARTICLE XI

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

2. The Rules of Procedure shall include provisions concerning:

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

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

c. presentation of testimony and other evidence;

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

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

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

ARTICLE XII

The Tribunal shall hold its sessions at the Fund's headquarters at dates to be fixed in accordance with its Rules of Procedure.

ARTICLE XIII

The Tribunal shall decide in each case whether oral proceedings are warranted. Oral proceedings shall be open to all interested persons, unless the Tribunal decides that exceptional circumstances require that they be held in private.

ARTICLE XIV

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

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

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

4. The deliberations of the Tribunal shall be confidential.

ARTICLE XV

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

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

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

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

5. When a procedure prescribed in the rules of the Fund for the taking of a decision has not been observed, the Tribunal may, at the request of the Managing Director, adjourn the proceedings for institution of the required procedure or for adoption of appropriate corrective measures, for which the Tribunal shall establish a time certain.

ARTICLE XVI

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

ARTICLE XVII

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

ARTICLE XVIII

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

ARTICLE XIX

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

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

ARTICLE XX

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

ARTICLE XXI

The Tribunal shall not be competent to pass judgment upon any application challenging the legality or asserting the illegality of an administrative act taken before January 1, 1989, even if the channels of administrative review concerning that act have been exhausted only after that date.