

**Administrative
Tribunal**
of the
**International
Monetary
Fund**

Statute of the Administrative Tribunal

Commentary on the Statute

Resolutions of the Board of Governors

International Monetary Fund
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Statute of the Administrative Tribunal

Statute of the Administrative Tribunal of the International Monetary Fund

ARTICLE I

There is hereby established a tribunal of the International Monetary Fund (“the Fund”), to be known as the Administrative Tribunal of the International Monetary Fund (“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; or
 - 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.
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 staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund;
 - c. the expression “member of the staff” shall mean:
 - (i) any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff;

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- (ii) any current or former assistant to an Executive Director;
and
 - (iii) any successor in interest to a deceased member of the staff as defined in (i) or (ii) above to the extent that he is entitled to assert a right of such staff member against the Fund;
- d. the calculation of a period of time shall not include the day of the event from which the period runs, and shall include the next working day of the Fund when the last day of the period is not a working day;
- e. the masculine pronoun shall include the feminine pronoun.

ARTICLE III

The Tribunal shall not have any powers beyond those conferred under this Statute. In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts. Nothing in this Statute shall limit or modify the powers of the organs of the Fund under the Articles of Agreement, including the lawful exercise of their discretionary authority in the taking of individual or regulatory decisions, such as those establishing or amending the terms and conditions of employment with the Fund. The Tribunal shall be bound by any interpretation of the Fund's Articles of Agreement decided by the Executive Board, subject to review by the Board of Governors in accordance with Article XXIX of that Agreement.

ARTICLE IV

Any issue concerning the competence of the Tribunal shall be settled by the Tribunal in accordance with this Statute.

ARTICLE V

1. When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the

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Tribunal only after the applicant has exhausted all available channels of administrative review.

2. For purposes of this Statute, where the available channels of administrative review include a procedure established by the Fund for the consideration of complaints and grievances of individual staff members on matters involving the consistency of actions taken in their individual cases with the regulations governing personnel and their conditions of service, administrative review shall be deemed to have been exhausted when:

- a. three months have elapsed since a recommendation on the matter has been made to the Managing Director and the applicant has not received a decision stating that the relief he requested would be granted;
- 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, where the available channels of review do not include the procedure described in Section 2, a channel of administrative review shall be deemed to have been exhausted when:

- a. three months have elapsed since the request for review was 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.

4. 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.

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ARTICLE VI

1. An application challenging the legality of an individual decision shall not be admissible if filed with the Tribunal more than three months after all available channels of administrative review have been exhausted, or, in the absence of such channels, after the notification of the decision.
2. An application challenging the legality of a regulatory decision shall not be admissible if filed with the Tribunal more than three months after the announcement or effective date of the decision, whichever is later; provided that the illegality of a regulatory decision may be asserted at any time in support of an admissible application challenging the legality of an individual decision taken pursuant to such regulatory decision.
3. In exceptional circumstances, the Tribunal may decide at any time, if it considers the delay justified, to waive the time limits prescribed under Sections 1 or 2 of this Article in order to receive an application that would otherwise be inadmissible.
4. The filing of an application shall not have the effect of suspending the implementation of the decision contested.
5. No application may be filed or maintained after the applicant and the Fund have reached an agreement on the settlement of the dispute giving rise to the application.

ARTICLE VII

1. The Tribunal shall be composed of five members, including the President. As of January 1, 2010, the members shall be appointed as follows:
 - a. The President shall be appointed for four years by the Managing Director after consultation with the Staff Association and with the approval of the Executive Board.
 - b. Other members shall be appointed for four years by the Managing Director after appropriate consultation. As a transitional measure, two members shall be appointed for a term of only two years beginning on January 1, 2010.
 - c. The members shall have no prior or present employment relationship with the Fund, must be nationals of a member country of

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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 other members may be reappointed in accordance with the procedures for appointment set forth in Section 1 above, for a maximum of two additional terms; provided that service on the Tribunal prior to January 1, 2010 shall not be taken into account with respect to this limit. 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. Any such interim appointment shall not be taken into account when applying the term limitation.
3. Any member who has a conflict of interest in a case shall recuse himself.
4. The decisions of the Tribunal in a case shall be taken by a panel composed of the President and two other members designated by the President. If the President recuses himself or is otherwise unable to hear a case, the most senior of the members shall act as President for that case, provided that if two or more members are of equal seniority, the eldest shall act as President.
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. The members of the Tribunal shall not be eligible for staff employment with the Fund following the end of their service with the Tribunal.

ARTICLE IX

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

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2. The Managing Director shall designate personnel to serve as a Secretariat to the Tribunal. Such personnel, 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 may require the production of documents held by the Fund, except that the Managing Director may withhold evidence if he determines that the introduction of such evidence might hinder the operation of the Fund because of the secret or confidential nature of the document. Such a determination shall be binding on the Tribunal, provided that the applicant's allegations concerning the contents of any document so withheld shall be deemed to have been demonstrated in the absence of probative evidence to the contrary. The Tribunal may examine witnesses and experts, subject to the same qualification.
2. Subject to the provisions of this Statute, the members of the Tribunal shall, by majority vote, establish the Tribunal's Rules of Procedure. 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, other than members of the Fund's Legal Department, and shall bear the cost thereof, subject to the provisions of Article XIV, Section 4 and Article XV.

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ARTICLE XI

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

ARTICLE XII

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

ARTICLE XIII

1. All decisions of the Tribunal shall be by majority vote.
2. Judgments shall be final, subject to Article XVI and Article XVII, and without appeal.
3. Each judgment shall be in writing and shall state the reasons on which it is based.
4. The deliberations of the Tribunal shall be confidential.

ARTICLE XIV

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

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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 in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant's counsel, be totally or partially borne by the Fund, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.

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

ARTICLE XV

1. The Tribunal may order that reasonable compensation be made by the applicant to the Fund for all or part of the cost of defending the case, if it finds that:

a. the application was manifestly without foundation either in fact or under existing law, unless the applicant demonstrates that the application was based on a good faith argument for an extension, modification, or reversal of existing law; or

b. the applicant intended to delay the resolution of the case or to harass the Fund or any of its officers or employees.

2. The amount awarded by the Tribunal shall be collected by way of deductions from payments owed by the Fund to the applicant or otherwise, as determined by the Managing Director, who may, in particular cases, waive the claim of the Fund against the applicant.

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ARTICLE XVI

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

ARTICLE XVII

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

ARTICLE XVIII

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

ARTICLE XIX

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

ARTICLE XX

1. 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 October 15, 1992, even if the channels

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of administrative review concerning that act have been exhausted only after that date.

2. In the case of decisions taken between October 15, 1992 and the establishment of the Tribunal, the application shall be admissible only if it is filed within three months after the establishment of the Tribunal. For purposes of this provision, the Tribunal shall be deemed to be established when the staff has been notified by the Managing Director that all the members of the Tribunal have been appointed.

ARTICLE XXI

The competence of the Tribunal may be extended to any international organization upon the terms established by a special agreement to be made with each such organization by the Fund. Each such special 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 and shall include, inter alia, provisions concerning the organization's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

Commentary on the Statute

The Commentary on the Proposed Statute was included in the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992). In 2009, by Resolution No. 64-1, the Board of Governors amended Articles VII and VIII of the Statute. The consolidated Commentary reproduced below incorporates the revisions to the Commentary on these Articles included in the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

Commentary on the Proposed Statute

This commentary explains each provision of the proposed statute in turn.¹

ARTICLE I

There is hereby established a tribunal of the International Monetary Fund (“the Fund”), to be known as the Administrative Tribunal of the International Monetary Fund (“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, although provision is made in Article XXI for other international organizations to affiliate with the Fund 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; or

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 (de-

¹The following acronyms will be used herein: Administrative Tribunal of the Bank for International Settlements (“BISAT”); Court of Justice of the European Communities (“CJEC”); European Economic Community (“EEC”); International Court of Justice (“ICJ”); Inter-American Development Bank Administrative Tribunal (“IDBAT”); International Labour Organisation Administrative Tribunal (“ILOAT”); North Atlantic Treaty Organization (“NATO”); Administrative Tribunal of the Organization of American States (“OASAT”); United Nations Administrative Tribunal (“UNAT”); World Bank Administrative Tribunal (“WBAT”).

fined below) that adversely affects him. The statutes of several other tribunals contain similar language as regards jurisdiction.² 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.³ 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, for example, 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.

²E.g., CJEC: EEC Treaty, Article 179; NATO Appeals Board: Resolution of the North Atlantic Council, Article 4.21; Council of Europe Appeals Board: Staff Regulations, Article 59(1).

³The 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 the SRP, Art. 7.1(d), permits the tribunal to exercise such jurisdiction.

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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 staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund;

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 decision after unsuccessfully pursuing the established channels for administrative review of his complaint, including recourse to the Grievance Committee.

The statute makes explicit that the tribunal would have jurisdiction to review regulatory decisions, either directly or in the context of a review of an individual decision based on the regulatory decision. This would encompass, for example, Executive Board decisions regarding employment policy (such as adjustments to compensation, pensions, tax allowance, benefits, and job grading), the SRP, and staff rules and regulations promulgated by management, such as the General Administrative Orders. As provided in Article III, the tribunal would be expected to apply well-established principles for review of actions by decision-

making organs, including noninterference with the proper exercise of authority by those organs.

The statute excludes from the tribunal's competence resolutions taken by the organ establishing the tribunal, that is, the Board of Governors. In this fashion, the Executive Board could, through referral of a decision to the Board of Governors for ultimate approval, foreclose review of the legality of that decision by the tribunal. Underlying this provision is the recognition that the Board of Governors is the organ responsible for establishing the tribunal and determining the scope of its jurisdiction. Therefore, it could, at any time, limit the tribunal's jurisdiction by a resolution. Moreover, the Board of Governors is the highest organ of the Fund, and its resolutions should be regarded as the highest expression, short of an amendment of the Articles, of the will of the membership.

- c. the expression "member of the staff" shall mean:**
- (i) any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff;**
 - (ii) any current or former assistant to an Executive Director; and**
 - (iii) any successor in interest to a deceased member of the staff as defined in (i) or (ii) above to the extent that he is entitled to assert a right of such staff member against the Fund;**

The definitions in subsections (c)(i) and (ii) include only staff members (i.e., persons on regular or fixed-term appointments to the staff) and assistants to Executive Directors (i.e., persons employed on the recommendation of an Executive Director to assist him in a clerical, secretarial, or technical capacity).

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. Nor would persons employed under contract to the Fund have access to the tribunal. The Staff Association

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would not be entitled to bring actions in its own name before the tribunal.

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. 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.⁴

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.

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.⁵ 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 the jurisdiction conferred.

⁴For an example of how periods are calculated under this provision, see pp. 24–25 below.

⁵See, e.g., the advisory opinion of the ICJ concerning the competence of the ILOAT in *Judgments of the Administrative Tribunal of the International Labour Organisation*, ICJ Reports (1956) 77, at p. 97.

(second sentence)

In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts.

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.

The reference to recognized principles of international administrative law is intended to limit the powers of the tribunal by making clear that the standards of review applied by the tribunal should not go beyond those applied by other tribunals, and that the tribunal is expected to recognize the limitations observed by other administrative tribunals of international organizations in reviewing the exercise of discretionary authority by the decision-making organs of the Fund. In other words, the fact that the tribunal has been given competence to review employment-related decisions by the Fund would not mean that it had greater latitude in the exercise of that power than that exercised by other administrative tribunals. In particular, the tribunals have reaffirmed, in a variety of contexts, that they will not substitute their judgment for that of the competent organs and will respect the broad, although not unlimited, power of the organization to amend the terms and conditions of employment.

This limitation on the tribunal's power to review regulatory decisions underscores the basic premise that the creation of an administrative tribunal to resolve employment-related disputes would not alter the employment relationship as such between the Fund and its staff—that is, apart from the avenue of recourse it provides, it neither expands nor derogates from the rights and obligations found in the internal law of the organization.

With respect to employment-related matters, the internal law of the Fund includes both formal, or written, sources (such as the Articles of Agreement, the By-Laws and Rules and Regulations, and the General

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Administrative Orders) and unwritten sources. These sources of internal law apply to, and circumscribe, the exercise of discretionary authority by the Executive Board in prescribing the terms and conditions of Fund employment.

With respect to formal sources of law, insofar as the Executive Board derives its authority from the Articles of Agreement, its decisions must be consistent with the Articles as a higher authority of law. Likewise, the Executive Board is also bound by resolutions of the Board of Governors as the highest organ of the Fund.

There are two unwritten sources of law within the internal law of the Fund. First, the administrative practice of the organization may, in certain circumstances, give rise to legal rights and obligations.⁶ Second, certain general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund.

The Fund, like all international organizations, has reserved to itself broad powers to alter the terms and conditions of employment on a prospective basis.⁷ However, an important limitation on the exercise of this authority would be where the Fund has obligated itself, either through a formal commitment or through a consistent and established practice, not to amend that element of employment. In the absence of such a commitment by the Fund, there would be no basis for a finding by the tribunal that a decision changing an element of employment violated the rights of the staff. Moreover, even where the organization has voluntarily undertaken such a commitment, subsequent developments,

⁶For example, in the *de Merode* case, the WBAT held that the World Bank had a legal obligation, arising out of a consistent and established practice, to carry out periodic salary reviews. *de Merode*, WBAT Reports, Dec. No. 1 (1981), at p. 56.

⁷One basic limitation on an organization's power of amendment is the protection of acquired or vested rights, whether or not expressly provided for in the staff regulations. However, even this limitation has been very narrowly construed and interpreted as essentially synonymous with the principle of non-retroactivity. In other words, an amendment cannot deprive a staff member of any benefit or emolument that has been earned or accrued before the effective date of the change. Accordingly, respect for acquired rights would not preclude the organization from prospective alterations in the conditions of employment.

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such as urgent and unavoidable financial imbalances, may authorize certain adjustments if they are reasonably justified.⁸

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, the scope of that review is quite narrow. There are broad and well-recognized principles protecting the exercise of authority by the decision-making organs of an institution from interference by a judicial body. The Fund tribunal would have to respect those principles in reviewing the legality of regulatory decisions.

Likewise, with respect to review of individual decisions involving the exercise of managerial discretion, 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.⁹ This principle is particularly significant with respect to decisions which involve an assessment of an employee's qualifications and abilities, such as promotion decisions 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.¹⁰

At the same time, the reference to general principles is not intended to introduce concepts that are inapplicable to, or inappropriate for, the Fund. With respect to the concern that the application of the principles enunciated by other administrative tribunals may have the unintended result of interfering with the responsibilities entrusted to the Executive Board, it should be noted that, to the extent that a tribunal's decision is dependent on the particular law of the organization in question (such as the precise language of a staff regulation), the decision would be regarded as specific to the organization in question and not part of the general principles of international administrative law. Moreover, in applying general principles of international administrative law, an administrative tribunal cannot derogate from the powers conferred on the

⁸Gretz, UNAT Judgment No. 403 (1987).

⁹E.g., *Durrant-Bell*, WBAT Reports, Dec. No. 24 (1985), at paras. 24, 25.

¹⁰See 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).

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organs of the Fund, including the Executive Board, under the Articles of Agreement. This is made explicit in the third sentence of Article III.

(third sentence)

Nothing in this Statute shall limit or modify the powers of the organs of the Fund under the Articles of Agreement, including the lawful exercise of their discretionary authority in the taking of individual or regulatory decisions, such as those establishing or amending the terms and conditions of employment with the Fund.

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.

This provision is consistent with well-established case law in which judicial bodies have repeatedly affirmed their incapacity to substitute their own judgments for those of the authorities in which the discretion has been conferred.¹¹ 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.¹²

(fourth sentence)

The Tribunal shall be bound by any interpretation of the Fund's Articles of Agreement decided by the Executive Board, subject to review by the Board of Governors in accordance with Article XXIX of that Agreement.

¹¹See generally S.A. de Smith, *Judicial Review of Administrative Action*, at 278-79 (4th ed. 1980).

¹²See *von Stauffenberg*, WBAT Reports, Dec. No. 38 (1987), at para. 126; *Decision No. 36*, NATO Appeals Board (1972), Collection of the Decisions (1972).

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The statute also explicitly provides that interpretations of the Articles of Agreement rendered by the Executive Board would be binding on the tribunal. This provision would not deprive the tribunal of the authority to interpret the Articles. However, in situations where the Executive Board has adopted a certain interpretation of the Articles, that interpretation, although subject to review by the Board of Governors in accordance with the procedures of Article XXIX, would be binding on the tribunal in the context of a challenge to a decision. The purpose of this provision is to avoid an irreconcilable conflict between interpretations made by the Executive Board, on the one hand, and the tribunal, on the other hand.

With respect to interpretations of the Articles, there is a distinction between interpretations and findings of legality. An interpretation clarifies the meaning of a provision of the Articles; it does not dispose of a particular case. Therefore, a finding of legality of a particular regulatory or individual decision would still be made by the tribunal. This finding would have to be consistent with the interpretation adopted by the Executive Board. Given that interpretations of the Articles of Agreement by the Executive Board are binding on the Fund and all its members,¹³ this sentence, which makes such interpretations binding on the tribunal as well, adheres to the general principle of consistency within any legal system, in order that the same provision will have only one meaning.

ARTICLE IV

Any issue concerning the competence of the Tribunal shall be settled by the Tribunal in accordance with this Statute.

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,¹⁴ which is intended to allow the tribunal to interpret but not expand its competence with respect to a particular case.

¹³Article XXIX of the Fund's Articles of Agreement.

¹⁴E.g., UNAT Statute, Article 2(3); ILOAT Statute, Article II(7); WBAT Statute, Article III.

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, where the available channels of administrative review include a procedure established by the Fund for the consideration of complaints and grievances of individual staff members on matters involving the consistency of actions taken in their individual cases with the regulations governing personnel and their conditions of service, administrative review shall be deemed to have been exhausted when:

- a. three months have elapsed since a recommendation on the matter has been made to the Managing Director and the applicant has not received a decision stating that the relief he requested would be granted;
- 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, where the available channels of review do not include the procedure described in Section 2, a channel of administrative review shall be deemed to have been exhausted when:

- a. three months have elapsed since the request for review was 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.

4. 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.

COMMENTARY ON THE STATUTE

Article V prescribes an exhaustion of remedies 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.

Under this Article, in situations where administrative review includes recourse to formal procedures established by the Fund for this purpose, 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 a recommendation on the matter had been made to the Managing Director and the applicant 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 situations where recourse to the Grievance Committee or other formal procedure is not applicable, administrative review of a request would be considered as exhausted by any of the outcomes described in Section 3.

ARTICLE VI

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

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

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.

The three-month period would not include the time required for administrative review; the period would not begin to run until administrative review, including recourse to internal committees like the Grievance Committee (if applicable), is fully exhausted and the Managing Director has decided whether to implement the Committee's recommendation. At this point, of course, an applicant should have a reasonably good assessment of the issues presented and the strengths and weaknesses of his case.

Under the current rules of the Grievance Committee, grievants have up to one year from the event giving rise to the grievance to bring an action. In cases where the Grievance Committee would have jurisdiction over the question, this year-long period, which would precede the three-month statute of limitations for the tribunal, should give a staff member ample opportunity to assess whether he or she wishes to proceed with the case.

The comparable period in other international administrative tribunals is generally 60 days or 90 days; except in cases of death, the statute of limitations in other tribunals does not exceed 90 days.¹⁵

An illustration of the interaction of the exhaustion of remedies requirement of Article V and the time limits of Article VI with respect to individual decisions may be helpful. If, on January 2, the Grievance Committee made a recommendation to the Managing Director regard-

¹⁵Compare the WBAT Statute (90 days); UNAT Statute (90 days); IDBAT Statute (60 days).

COMMENTARY ON THE STATUTE

ing the disposition of an individual decision, the three-month period prescribed in Article V, Section 2 would run from January 3 to April 2, inclusive.¹⁶ 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.¹⁷ 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(d). 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. It is considered useful to permit the direct review of regulatory decisions within this limited time period. As a result, the question of legality, and any related issues (such as interpretation or application) could hopefully be firmly resolved before there had been considerable reliance on, or implementation of, the contested decision.

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 XX.

There could, of course, be cases where an applicant sought to overturn an individual decision on several grounds, e.g., that the decision is either an incorrect application of the underlying regulatory decision, or, alternatively, that the underlying regulatory decision itself is illegal. The Grievance Committee would be competent to consider challenges

¹⁶Or on the next working day, if April 2 is not a working day.

¹⁷If 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.

based on the former grounds but not the latter grounds, insofar as the legality of a regulatory decision was at issue.

In cases involving both types of grounds, the requirements of the tribunal statute regarding exhaustion of remedies and the statute of limitations should be understood as follows. The Grievance Committee would first hear the case and dispose of the issues over which it had jurisdiction (i.e., whether the decision at issue involved a correct interpretation or application of the Fund's rules). If the Grievance Committee rejected his case, the staff member could then proceed to the tribunal. At that time, it would be open to him to raise, as grounds for review, not only the issues that were before the Grievance Committee but also, if appropriate, the legality of the underlying regulatory decision, regardless of whether more than three months had passed since the individual decision at issue had been taken. In essence, the pursuit of administrative remedies as to the issue of interpretation or application would suspend the time period for seeking review of the decision on grounds for which no administrative review is available.

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.

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.

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.¹⁸ This is considered necessary for the efficient opera-

¹⁸E.g., WBAT Statute, Article XII(4).

tion 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. This rule is also consistent with the principle, strictly applied in the employment context, that an aggrieved employee will not be granted a preliminary injunction unless he would suffer irreparable injury without the injunction. In this regard, courts are loath to conclude that an injury would be “irreparable,” given the nature of the employment relationship and the possibility of compensatory relief if the employee ultimately succeeds in his claim. With respect to potential cases where an applicant in G-4 visa status has been terminated and would otherwise be out of visa status under U.S. law pending the pursuit of administrative remedies and the outcome of his case before the tribunal, it would be preferable to address this as an administrative matter in the staff rules on leave. Apart from this situation, it is difficult to envisage a situation in which the harm to an applicant, in the absence of interim measures, would be “irreparable,” as that concept has been construed by the courts. Nevertheless, the statute would not preclude the tribunal from ordering such measures if warranted by the circumstances of a particular case.

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.

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 five members, including the President. As of January 1, 2010, the members shall be appointed as follows:

- a. The President shall be appointed for four years by the Managing Director after consultation with the Staff Association and with the approval of the Executive Board.**
- b. Other members shall be appointed for four years by the Managing Director after appropriate consultation. As a transitional measure, two members shall be appointed for a term of only two years beginning on January 1, 2010.**

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c. The members shall have no prior or present employment relationship with the Fund, 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 statute governs the appointment of the tribunal's members (none of whom may be present or former Fund employees). The President would be appointed by the Managing Director after appropriate consultation, subject to the approval of the Executive Board. Four other members would be appointed by the Managing Director after appropriate consultation.

The President and the other 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.¹⁹

Their terms of service would be four years. As a transitional measure, two members would be appointed on January 1, 2010 for a shorter term of two years in order to stagger future appointments to the tribunal.

2. The President and the other members may be reappointed in accordance with the procedures for appointment set forth in Section 1 above, for a maximum of two additional terms; provided that service on the Tribunal prior to January 1, 2010 shall not be taken into account with respect to this limit. 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. Any such interim appointment shall not be taken into account when applying the term limitation.

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

4. The decisions of the Tribunal in a case shall be taken by a panel composed of the President and two other members designated by the President. If the President recuses himself or is otherwise unable to hear a case, the most senior of the members shall act as

¹⁹E.g., WBAT Statute, Article IV(1); IDBAT Statute, Article III(1).

President for that case, provided that if two or more members are of equal seniority, the eldest shall act as President.

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 members of the tribunal may be reappointed, replaced, or dismissed from their duties.

The President and all members could be reappointed at the end of their terms, for a maximum of two additional terms (although service on the tribunal prior to January 1, 2010 would not be taken into account with respect to this limit). The term served by a member appointed to finish the term of an outgoing member would also not be taken into account when considering the maximum number of terms that one could serve. Such member would therefore be in a position to serve for the same number of full terms as the other members.

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 had a personal relationship with the applicant.

Under Section 4, the decisions of the tribunal in each case are made by a panel of three members (including the President). The panel for each case is designated by the President (or the most senior member acting as President if the President is unable to do so; if two or more members are of the same seniority, the eldest would act as President in that case). The removal of the distinction between associate and alternate members, and the introduction of term limits on appointment, would provide greater opportunity for the tribunal to draw upon a variety of backgrounds and perspectives in its decision making. Accordingly, it is expected that the President, in exercising his authority to designate panels to hear cases, will endeavor to utilize each of the members of the tribunal, enabling them to participate fully in the tribunal's work.

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, dismissal of the member would be authorized

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only if all of the other members 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. The members of the Tribunal shall not be eligible for staff employment with the Fund following the end of their service with the Tribunal.

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 confer upon the President and the other members the privileges and immunities enjoyed by officers and employees of the Fund under Article IX, Section 8 of the Articles of 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.

Article VIII also prohibits the Fund from offering a staff position to a former member of the tribunal to avoid any appearance of conflict of interest that might result if a tribunal member were to join the Fund's staff after his service with the tribunal. This provision, however, would not preclude *ad hoc* consulting assignments that may be in the interest of the organization and for which a former member of the IMFAT would be uniquely qualified, whether because of his experience with the tribunal or because of his expertise in another field.

ARTICLE IX

- 1. The Managing Director shall make the administrative arrangements necessary for the functioning of the Tribunal.**
- 2. The Managing Director shall designate personnel to serve as a Secretariat to the Tribunal. Such personnel, 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 personnel who will be assigned for such purpose by the Managing Director, but who will only take instructions from, and act under the direction of, the President of the tribunal in the performance of their duties. Such personnel would be independent from the Fund in the performance of their duties. Administrative tribunals are usually serviced by a small secretariat. The personnel 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 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 associate members in connection with the performance of their duties.

ARTICLE X

- 1. The Tribunal may require the production of documents held by the Fund, except that the Managing Director may withhold evidence if he determines that the introduction of such evidence might hinder the operation of the Fund because of the secret or confidential nature of the document. Such a determination shall be binding on the Tribunal, provided that the applicant's allegations concerning the contents of any document so withheld shall be deemed to have been demonstrated in the absence of probative evidence to the contrary. The Tribunal may examine witnesses and experts, subject to the same qualification.**

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2. Subject to the provisions of this Statute, the members of the Tribunal shall, by majority vote, establish the Tribunal's Rules of Procedure. 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, other than members of the Fund's Legal Department, and shall bear the cost thereof, subject to the provisions of Article XIV, Section 4 and Article XV.

With respect to the issue of document production, the tribunal would be able to require the production of documents from the Fund, except that the Managing Director would retain authority to decide, on a case-by-case basis, whether there was a compelling institutional need to protect the confidentiality of the requested document. In this event, the Managing Director's decision would be binding on the tribunal. However, if an applicant made an assertion regarding the content of a particular document and the Managing Director decided to withhold that document from the tribunal, the applicant's assertion would be prima facie evidence as to that content, and would create a rebuttable presumption as to the accuracy of the assertion. Accordingly, the tribunal would accept the applicant's assertion as to its content, so long as there was no other evidence presented to contradict that assertion. If there was other probative evidence presented, the tribunal would have to weigh all of the evidence before it in order to make an appropriate finding.

Like other tribunals, the tribunal would be able to hear testimony from witnesses and experts, although most administrative tribunals, in practice, rely largely on written evidence and pleadings in deciding cases.

COMMENTARY ON THE STATUTE

Like other administrative tribunals, the tribunal would be authorized to establish, consistent with its statute, its own rules of operation and procedure. The matters listed in the statute are those considered essential, but the list is not exhaustive. The rules would be adopted by a majority of the entire membership of the tribunal, i.e., the President, the associate members, and their alternates.

The rules adopted by the tribunal could address such issues as the procedures for filing applications and other pleadings; the obtaining of information by the tribunal; the presentation of cases and oral proceedings; participation of *amicus curiae*; and the availability of judgments.²⁰ The tribunal could also adopt a rule establishing a procedure for summary dismissal of applications.²¹

Section 3 makes clear that each party may be assisted by counsel in the proceedings. Thus, an applicant would have the opportunity to be assisted by any person of his choice (other than members of the Fund's Legal Department, given the inherent conflict of interest such assistance would pose) at any stage of the case. The tribunal, in adopting its own rules, would be free to prescribe the rules regarding the signing of applications and other pleadings, presentation of oral argument, and other matters concerning the involvement of counsel.

As a general rule, each side would bear its own costs, including attorney's fees; however, the tribunal would have authority under Article XIV to order the Fund to bear the reasonable costs, including attorney's fees, incurred by an applicant in bringing an action that is successful in whole or in part, and, under Article XV, it could award reasonable costs against an applicant whose claims were manifestly without foundation.

²⁰See also Article XVIII of the statute, discussed below.

²¹There is authority in Article 8(3) of the Rules of the ILOAT and in Rule 7(11) of the WBAT, for example, for summary dismissal of cases that are considered to be "clearly irreceivable or devoid of merit." The Rules of Procedure of the tribunal of the Bank for International Settlements authorize summary dismissal of applications that are "manifestly irreceivable in form or manifestly abusive."

ARTICLE XI

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

The tribunal is required to hold its sessions at Fund headquarters. The frequency and scheduling of these sessions would be determined in accordance with rules to be adopted by the tribunal.

ARTICLE XII

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.

As with the WBAT and other tribunals, the Fund tribunal would be empowered to decide whether to hold oral proceedings in a given case.²² However, oral proceedings are somewhat rare in the practice of international administrative tribunals, which generally decide cases on the basis of written submissions, including the record developed in the course of administrative review and the internal appeals process.

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 XIII

- 1. All decisions of the Tribunal shall be by majority vote.**
- 2. Judgments shall be final, subject to Article XVI and Article XVII, and without appeal.**
- 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.**

²²Under the Rules of the UNAT, Article 15(1), oral proceedings are held "if the presiding member so decides or if either party so requests and the presiding member agrees." In the ILOAT, they are held "if the Tribunal so decides, either on its own motion or on the request of one of the parties" (Article 16).

COMMENTARY ON THE STATUTE

As with other tribunals, decisions would be taken by majority vote and would not require unanimity. Although dissents would not need to be registered, dissenting opinions would be possible under the statute.

Judgments of the tribunal would be final and without appeal. Further recourse to the ICJ would not 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 XIV

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 XIV, 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 of a staff member.

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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.²³ If a regulatory decision had been in effect by the organization for over three months, an application directly challenging its legality would not be admissible. 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. Thus, previous decisions taken in reliance on, or on the basis of, the regulatory decision would not be invalidated; the organization could decide as a policy matter whether, and to what extent, to reopen those decisions and take further action in light of the tribunal's judgment. 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 other individual decisions would themselves be subject to challenge, within the applicable time limits for such claims.

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 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.²⁴ For example, if

²³Other 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.

²⁴The statutes of most international administrative tribunals permit the award of monetary compensation as an alternative to be chosen by the organization's management in lieu of nonmonetary remedies. Of the major administrative tribunals, three (ILOAT, EC Court of Justice, Council of Europe Appeals Board) have no limit on the amount of monetary compensation to be awarded, three (UNAT, OASAT, IDBAT) 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."

the tribunal prescribed, as a corrective measure, that a staff member be reinstated, the Managing Director might conclude that such a remedy was not possible or advisable. Such a situation might arise where the applicant's position 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 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, 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 in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant's counsel, be totally or partially borne by the Fund, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.

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Section 4 authorizes the tribunal to award reasonable costs, including attorney's fees, to a successful applicant, in an amount to be determined by the tribunal, taking into account the factors set forth in the provision. 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."²⁵ The tribunals have, however, been rather conservative and cautious in deciding whether, and to what extent, to award costs in a case.²⁶

Under this provision, the tribunal would be authorized to award costs against the Fund only where an applicant has succeeded in whole or in part, i.e., the tribunal's decision has found in favor of all or a portion of his claims for relief. With respect to determining the amount of costs incurred that were "reasonable" under the circumstances, the tribunal would be expected to take into account such factors as the nature and complexity of the case, as well as the nature and quality of the work performed and the amount of the fees in relation to prevailing rates. These factors reflect the practice of other tribunals²⁷ and domestic courts in making similar assessments. As the tribunals have recognized, there may be circumstances where, although an applicant has succeeded in one aspect of his claims, the bulk of his claims has been rejected by the tribunal, and considerable and unnecessary time has been devoted to the consideration of these claims.²⁸ In such circum-

²⁵A/CN.5/R.2 (Dec. 18, 1950).

²⁶E.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.

²⁷See *Lamadie*, ILOAT Judgment No. 262 (1975), at p. 7.

²⁸In *Carrillo*, ILOAT Judgment No. 272 (1976), the applicant obtained only partial satisfaction, and the point decided by the tribunal was relatively simple. The record, however, was far more voluminous than necessary for the tribunal's information. Therefore,

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stances, it would not be fair or reasonable to have an automatic requirement that the organization bear the applicant's costs. Similarly, the effort expended by the applicant's counsel, and the consequent costs, may have been wholly disproportionate to the magnitude and nature of the issues involved. Thus, it is considered appropriate to give the tribunal discretion to determine whether, and to what extent, to award costs to a successful applicant.

The tribunal would be authorized to award costs only to the parties, i.e., an applicant or the Fund (see Article XV), and could not award costs to other persons.

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.

Section 5 of Article XIV 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.²⁹

ARTICLE XV

1. The Tribunal may order that reasonable compensation be made by the applicant to the Fund for all or part of the cost of defending the case, if it finds that:

- a. the application was manifestly without foundation either in fact or under existing law, unless the applicant demonstrates that the application was based on a good faith argument for an extension, modification, or reversal of existing law; or**
- b. the applicant intended to delay the resolution of the case or to harass the Fund or any of its officers or employees.**

2. The amount awarded by the Tribunal shall be collected by way of deductions from payments owed by the Fund to the applicant or

the ILOAT awarded the staff member only one-tenth of the amount claimed for legal fees as costs reasonably incurred.

²⁹ There is a comparable provision in Article XII of the WBAT Statute.

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otherwise, as determined by the Managing Director, who may, in particular cases, waive the claim of the Fund against the applicant.

This Article authorizes the tribunal, either on its own or upon a motion by the Fund, to assess an amount in respect of the reasonable costs incurred by the Fund in defending the case against applicants who bring cases which the tribunal determines are patently without foundation. The award of costs, which would not include the expenses incurred by the Fund in the operation of the tribunal, could be enforced through deductions from amounts to the applicant 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.

This provision is intended to 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,³⁰ the tribunal must hear the case and dispose of the matter on the merits. This could involve lengthy proceedings and substantial costs, including the commitment of staff time, even if the tribunal ultimately concluded that the applicant's claims were manifestly without any basis in law or fact. Such cases can be expected to be very rare, but when they arise they can be prolonged and costly. This provision is directed at applications that amount to an abuse of the review process³¹; it is not intended to deter an application based on a good faith argument for an extension, modification, or reversal of existing law.

ARTICLE XVI

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

³⁰The tribunal would also be authorized to adopt a rule providing for summary dismissal of applications. This would permit disposal of a case that was clearly irreceivable, thus minimizing the time and expense involved.

³¹Compare Article III of the Statute of the Appeals Board of the Council of Europe, which authorizes the Board, "if it considers that an appeal constituted an abuse of procedure, [to] order the appellant to pay all or part of the costs incurred."

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 tribunal 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 XVII

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

Article XVII 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.³² The ability of the tribunal to interpret its own judgments where the parties are unable to discern the intended meaning would help to ensure that judgments are given effect in accordance with the tribunal's findings and conclusions.

ARTICLE XVIII

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.

³²See Article 40 of the Statute of the CJEC.

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2. A copy shall also be made available by the Secretariat on request to any interested person, 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.

Judgments of the Fund tribunal are to be made available to interested persons upon request; they would be in the public domain and could be cited or published.³³ 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 XIX

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

This provision is similar to its counterpart in the WBAT Statute. It would thus remain open to the Board of Governors, as the organ responsible for formally authorizing the establishment of a tribunal and approving the statute, to amend or abrogate the statute of the tribunal after its establishment. In this fashion, the nature of the judicial function performed by the tribunal could be limited or altered with respect to future cases.

ARTICLE XX

1. 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 October 15, 1992, even if the channels of administrative review concerning that act have been exhausted only after that date.

³³The statutes of the WBAT and other tribunals provide that the judgments of the tribunal will be published or made available to interested persons.

2. In the case of decisions taken between October 15, 1992 and the establishment of the Tribunal, the application shall be admissible only if it is filed within three months after the establishment of the Tribunal. For purposes of this provision, the Tribunal shall be deemed to be established when the staff has been notified by the Managing Director that all the members of the Tribunal have been appointed.

As a result of this Article, the tribunal would be competent to hear cases involving only those decisions taken on or after the effective starting date of the tribunal's jurisdiction, which is the date on which the Executive Board formally approved the transmittal of the proposed statute to the Board of Governors. Accordingly, administrative acts taken on or after October 15, 1992 would be reviewable by the tribunal. Administrative acts taken before that date would not be reviewable, even if administrative review of the act was still pending on the effective starting date of the tribunal's jurisdiction. Section 2 provides a transitional provision to extend the period of time specified in Article VI for the initiation of proceedings before the tribunal.

ARTICLE XXI

The competence of the Tribunal may be extended to any international organization upon the terms established by a special agreement to be made with each such organization by the Fund. Each such special 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 and shall include, inter alia, provisions concerning the organization's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

Article XXI would permit the affiliation of other international organizations with the tribunal pursuant to an agreement with the Fund. As a condition of such affiliation, the organization would have to agree to be bound by the tribunal's judgments, including the obligation to pay compensation as awarded by the tribunal. The agreement with the Fund would need to cover such areas as the sharing of the tribunal's

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expenses by the affiliating organization and its role in the administrative arrangements of the tribunal. The affiliating organization would not, however, have any authority with respect to appointment of the tribunal's members or amendment of the governing statute.

Resolutions of the Board of Governors

Resolution No. 48-1 Establishment of the Administrative Tribunal of the International Monetary Fund

WHEREAS the Executive Board has considered the establishment of an administrative tribunal to serve the Fund; and

WHEREAS the Executive Board has proposed a statute for the establishment of such a tribunal and prepared a Report on the same; and

WHEREAS the Chairman of the Board of Governors has requested the Secretary of the Fund to bring the proposal of the Executive Board before the Board of Governors; and

WHEREAS the Report of the Executive Board setting forth its proposal has been submitted to the Board of Governors by the Secretary of the Fund; and

WHEREAS the Executive Board has requested the Board of Governors to vote on the following resolution without meeting, pursuant to Section 13 of the By-Laws of the Fund;

NOW, THEREFORE, the Board of Governors, noting the said Report of the Executive Board, hereby RESOLVES that the proposed Statute of the Administrative Tribunal of the International Monetary Fund is hereby adopted.

Resolution No. 64-1

Amendments to the Statute of the Administrative Tribunal of the International Monetary Fund

WHEREAS the Executive Board has considered the desirability of amending the statute of the Administrative Tribunal of the International Monetary Fund; and

WHEREAS the Executive Board has proposed a number of amendments to Articles VII and VIII of said statute and prepared a Report on the same; and

WHEREAS the Report of the Executive Board setting forth its proposal has been submitted to the Board of Governors by the Secretary of the Fund; and

WHEREAS the Executive Board has requested the Board of Governors to vote on the following resolution without a meeting, pursuant to Section 13 of the By-Laws of the Fund;

NOW, THEREFORE, the Board of Governors, noting the proposed amendments and the said Report of the Executive Board, hereby RESOLVES that the proposed amendments to Articles VII and VIII of the statute of the Administrative Tribunal of the International Monetary Fund attached to this Resolution are approved.