

Judgment No. 2001-2

Mr. “P” (No. 2), Applicant v. International Monetary Fund, Respondent

(November 20, 2001)

Introduction

1. On November 19 and 20, 2001, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Michel Gentot, Associate Judges, met to adjudge the case brought against the International Monetary Fund by Mr. “P”, a retiree of the Fund. (A meeting for this purpose scheduled for September 12-14 was cancelled because Judges Ando’s and Gentot’s flights to Washington were cut short due to the events of September 11.)

2. Mr. “P” contests the decision of the Administration Committee of the Staff Retirement Plan (“SRP” or “Plan”) to withhold a portion of his pension payments pursuant to Section 11.3 of the SRP and the corresponding Rules of the Administration Committee. Applicant’s former spouse Ms. “Q” had requested the Committee, under its Rules, to give effect to a provision of a Maryland divorce judgment awarding her a portion (28%) of Applicant’s pension. Mr. “P” objected that the Maryland Judgment was not valid in light of a conflicting and pre-existing Egyptian divorce. Following an examination of the Maryland and Egyptian divorce documents, the Administration Committee determined, under its Rules, that the disputed portion of the pension payments would be withheld and placed in escrow, on the ground that there was a bona fide dispute as to the efficacy, finality or meaning of the Judgment upon which Ms. “Q” had based her request.

3. Mr. “P”’s Application in the Administrative Tribunal challenges the legality of the Administration Committee’s decision to withhold the disputed portion of his pension benefit. Ms. “Q” has been admitted as an Intervenor in the proceedings, seeking to have the Maryland Judgment given effect under the SRP. Respondent asks the Tribunal to sustain the Administration Committee’s decision placing in escrow the disputed amount until such time as the dispute is resolved between the parties.

The Procedure

4. On February 28, 2001, Mr. “P” filed an Application with the Administrative Tribunal. Pursuant to Rule VII, para. 6 of the Tribunal’s Rules of Procedure, the Office of the Registrar advised Applicant that his Application did not fulfill the requirements of paras. 1, 2(c) and 3 of that Rule. Accordingly, Applicant was given additional time to correct the deficiencies. The Application, having been brought into compliance within the indicated period, is considered filed on the original date.¹

¹ Rule VII provides in pertinent part:

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5. The Application was transmitted to Respondent on March 26, 2001. On March 28, 2001, pursuant to Rule XIV, para. 4, the Office of the Registrar issued a summary of the Application within the Fund. Respondent filed its Answer to Mr. "P"'s Application on May 10, 2001. On May 21, 2001, Applicant submitted his Reply. The Fund's Rejoinder was filed on June 20, 2001.

6. On April 10, 2001, Applicant's former spouse Ms. "Q" submitted an Application for Intervention pursuant to Rule XIV² of the Tribunal's Rules of Procedure. As the Application

"Applications

1. Applications shall be filed by the Applicant or his duly authorized representative, following the form attached as Annex A hereto. If an Applicant wishes to be represented, he shall complete the form attached as Annex B hereto.

2. ...Each application shall contain:

...

(c) the decision being challenged, and the authority responsible for the decision;

...

3. The Applicant shall attach as annexes all documents cited in the application in an original or in an unaltered copy and in a complete text unless part of it is obviously irrelevant. Such documents shall include a copy of any report and recommendation of the Grievance Committee in the matter. If a document is not in English, the Applicant shall attach an English translation thereof.

...

6. If the application does not fulfill the requirements established in Paragraphs 1 through 4 above, the Registrar shall advise the Applicant of the deficiencies and give him a reasonable period of time, not less than fifteen days, in which to make the appropriate corrections or additions. If this is done within the period indicated, the application shall be considered filed on the original date. Otherwise, the Registrar shall:

(i) notify the Applicant that the period of time within which to make the appropriate changes has been extended, indicating the length of time thereof;

(ii) make the necessary corrections when the defects in the application do not affect the substance; or

(iii) by order of the President, notify the Applicant that the submission does not constitute an application and cannot be filed as such. ..."

² Rule XIV provides:

"Intervention

1. Any person to whom the Tribunal is open under Article II, Section 1 of the Statute may, before the closure of the written pleadings, apply to intervene in a case on the ground that he has a right which may be

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for Intervention failed to comply fully with Rule VII's requirements for the preparation of an application, which apply *mutatis mutandis* to applications for intervention, the potential intervenor was accorded fifteen days in which to bring the Application for Intervention into compliance. On April 20, 2001, the Application for Intervention, having been supplemented to comply fully with the requirements of Rule VII, para. 3, was transmitted to Applicant and Respondent pursuant to Rule XIV. Under para. 3 of that Rule, Mr. "P" and the Fund each were accorded, simultaneously, thirty days in which to present their views as to the admissibility of Ms. "Q"'s Application for Intervention. Both Applicant and Respondent filed comments opposing the admissibility of the Application for Intervention.

7. Following consideration of the views of the parties, on June 26, 2001, the President of the Administrative Tribunal, in consultation with the other members of the Tribunal, decided to grant the Application for Intervention, and Ms. "Q" was so notified. Consistent with Rule XIV's requirement that an intervenor "participate in the proceedings as a party," all of the pleadings on the merits were transmitted to Ms. "Q" and she was given thirty days in which to file a responsive pleading. The Intervenor's responsive pleading was filed with the Administrative Tribunal on July 24, 2001.

8. Pursuant to his authority under Rule XVII, para. 3 and 4,³ the President of the Administrative Tribunal, on July 9, 2001, issued Requests for Information to each of the

affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application to intervene in accordance with the conditions laid down in this Rule.

2. The rules regarding the preparation and submission of applications specified above shall apply *mutatis mutandis* to the application for intervention.

3. Upon ascertaining that the formal requirements of this Rule have been complied with, the Registrar shall transmit a copy of the application for intervention to the Applicant and to the Fund, each being entitled to present views on the issue of intervention within thirty days. Upon expiration of that deadline, whether or not the parties have replied, the President, in consultation with the other members of the Tribunal, shall decide whether to grant the application to intervene. If intervention is admitted, the intervenor shall thereafter participate in the proceedings as a party.

4. In order to inform the Fund community of proceedings pending before the Tribunal, the Registrar, upon the notification of an application to the Fund, shall, unless the President decides otherwise, issue a summary of the application, without disclosing the name of the Applicant, for circulation within the Fund."

³ Rule XVII, paras. 3 and 4 provide:

"Production of Documents

...

3. The Tribunal may, subject to Article X, Section 1 of the Statute, order the production of documents or other evidence in the possession of the Fund, and may request information which it deems useful to its judgment.

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parties. The Request for Information issued to the Respondent sought information with respect to the Intervenor's current and past employment status with the Fund. The Requests for Information issued to the Applicant and the Intervenor were to ascertain whether any litigation was pending in the courts of any jurisdiction, the outcome of which might be relevant to the Tribunal's consideration of the case. Responses to these Requests were received on July 20, 24 and 25, 2001.

9. On July 12, 2001, Applicant made a request under Rule XI⁴ of the Rules of Procedure to file an additional pleading. The pleading initially had been received by the Office of the Registrar on June 6 and rejected under Rule IX (Reply), as an earlier Reply already had been filed on behalf of Applicant. On July 25, 2001 the President granted Applicant's request to have his additional pleading accepted for filing under Rule XI.

10. Also on July 25, 2001, the President of the Administrative Tribunal, pursuant to his authority under Rule XI and in the exceptional circumstances of the case, issued a call to all three parties to submit, within fifteen days, simultaneous Additional Statements. The Additional Statements provided a final opportunity for the parties to respond to any outstanding matters.

11. The Tribunal decided that oral proceedings, which neither party had requested, would not be held as they were not necessary for the disposition of the case.⁵

The Factual Background of the Case

4. When the Tribunal is not in session, the President shall exercise the powers set forth in this Rule."

⁴ Rule XI provides:

"Additional Pleadings

1. In exceptional cases, the President may, on his own initiative, or at the request of either party, call upon the parties to submit additional written statements or additional documents within a period which he shall fix. The additional documents shall be furnished in the original or in an unaltered copy and accompanied by any necessary translations.

2. The requirements of Rule VII, Paragraphs 4 and 8, or Rule VIII, Paragraphs 2 and 3, as the case may be, shall apply to any written statements and additional documents.

3. Written statements and additional documents shall be transmitted by the Registrar, on receipt, to the other party or parties."

⁵ Article XII of the Tribunal's Statute provides that the Tribunal shall "... decide in each case whether oral proceedings are warranted." Rule XIII, para. 1 of the Rules of Procedure provides that such proceedings shall be held "... if the Tribunal decides that such proceedings are necessary for the disposition of the case."

12. Mr. "P", an Egyptian national, was a staff member of the International Monetary Fund from January 16, 1982 until his disability retirement took effect on August 1, 1998.

13. On July 25, 1989, Mr. "P" married Ms. "Q", also an Egyptian national. The marriage took place in Paris under the authority of the Egyptian consul, who certified that a "legal and religiously recognized marriage took place according to the Holy Book between the bridegroom and the bride." Thereafter, the marriage was registered with Egyptian civil authorities. On the marriage certificate, the "residential address" of Mr. "P" is listed as "Washington USA." For Ms. "Q", an address in Egypt is given.

14. The couple immediately took up residence in Maryland where they lived together as husband and wife for more than eight years until, on September 23, 1997, Ms. "Q" established a separate residence, also in Maryland. Mr. "P" continued to live in Maryland as well, until leaving the United States for Egypt in July 1998.

Proceedings in the Montgomery County Circuit Court

15. On September 30, 1997, Ms. "Q" filed a Complaint for Limited Divorce in the Montgomery County (Maryland) Circuit Court. Mr. "P" filed his Answer on October 28, 1997, and a hearing was held before a Domestic Relations Master on January 21, 1998. On March 3, 1998, the court entered an Order requiring Mr. "P" to pay Ms. "Q" alimony *pendente lite* in the sum of \$2000 per month.

16. Mr. "P" continued to participate in the Maryland proceedings, taking part in an Alternative Dispute Resolution session on May 22 and submitting a Pre-Trial Statement of May 27, 1998. The merits divorce trial was set for January 1999.

17. On June 24, 1998, Ms. "Q", asserting that Mr. "P" had applied for disability retirement and had indicated an intention to return to Egypt if it were granted, filed a Motion for Injunctive Relief with the Montgomery County Circuit Court. The Motion further asserted that Mr. "P" had indicated to Ms. "Q" that he believed that she should have no share in his pension, and that Mr. "P" had been moving assets out of the country. Therefore, contended Ms. "Q", if he were to leave, there would be no means for the Court to enforce the *pendente lite* alimony order. For these reasons, the Motion sought an order of the Court requiring Mr. "P" to execute a direction to the Staff Retirement Plan that \$2000 per month of any disability or other retirement granted to him be paid to Ms. "Q".

18. In a hearing on the Motion, held on the following day, Mr. "P" expressed to the Court his intention to remain within its jurisdiction:

"MR. ["P"]: The second point I would like to make, Your Honor, is that there is no emergency involved. I have just signed a lease for an apartment for a year because I sold my house, and there is no decision by the pension – in fact, my pension evaluation has been going on since 1996, and I have

the medical records here. So they are still undecided. We are months, at best, away from a decision.

...

THE COURT: You are currently paying the support?

MR. ["P"]: Yes. Yes, I am, and I'm not, you know, running away or anything. We are both Egyptian citizens. We are both under the same visa and legal obligations and so on.

But my intention is to pursue this matter and to abide by the law of the land as best as I could. I don't see why there is this feeling that there's an emergency or that I'm packing and leaving tomorrow or that kind of thing. It's totally inaccurate.

...

MR. ["P"]:

...

Finally, Your Honor, as I said, we are both citizens of Egypt, and we are here and we abide by the law of the land here, and it is my intention to pursue this case until the end. I have no other intention.

But there is nothing to fear in Egypt because there is a legal system in Egypt as well, and there are courts, and she could pursue her rights if, for any reason, I, you know, I'm disabled or whatever, you know, etc. So I think all the –

...

THE COURT: She is afraid you are going to leave tonight or very soon.

MR. ["P"]: There is absolutely no – I mean, I have things to prove I'm staying. I have an apartment lease. I have my son who's a permanent resident, and he's going to be a citizen this year. I'm not a fugitive."

(June 25, 1998 Hearing Transcript, pp. 6, 7, 10, 11, 18.)

19. At the conclusion of the hearing, the Court entered the Order requiring that Mr. "P" sign a direction (to be held in the Court's files) that Ms. "Q" be allocated \$2000 per month of any disability or other retirement granted to Mr. "P".⁶

20. Mr. "P", however, refused to comply with the Court's Order and, instead, on July 8, filed a Motion to Alter or Amend Judgment seeking the Court's reconsideration of the

⁶ The direction was based upon the 1995 revision of SRP Section 11.3, which permitted voluntary directions by a Plan participant that a portion of the pension entitlement be paid to a spouse or former spouse on the basis of a court order. See *infra* for the history of the Fund's internal law relating to the giving effect to domestic relations orders.

matter. Mr. "P"'s Motion was followed the next day by the filing by Ms. "Q" of an Emergency Motion for Contempt.

21. On July 15, 1998, the Court entered a Contempt Order against Mr. "P" for failure to comply with its Order of June 25, 1998. The Court ordered furthermore:

"... that a body attachment shall issue to take the Defendant into custody, the Defendant shall be imprisoned at the Montgomery County Detention Center for a period of 179 days or until such earlier time as he shall purge himself of his contempt by directing in writing to the Secretary of the Administration Committee that \$2,000 per month of any disability or other retirement granted to him be paid to the Plaintiff, [Ms. "Q"];"

Mr. "P"'s Disability Retirement from the IMF and Divorce in Egypt

22. Two days later, on July 17, 1998, the Pension Committee of the Staff Retirement Plan approved Mr. "P"'s application for disability retirement (effective August 1, 1998).⁷ Thereafter, on July 22, Mr. "P" appeared before a religious notary in Egypt and obtained a "first revocable divorce" from Ms. "Q". Ms. "Q", as noted on the divorce certificate, was "absent from the sitting," and the divorce made no provision for division of property or support. The divorce was registered with the local Civil Registration Office in Egypt on July 25, 1998.

⁷ A disability retirement pension is calculated under the SRP as follows:

"(b) A disability pension shall become effective upon retirement and shall be equal to the normal pension that would be payable to the participant if his normal retirement date had fallen on the date of his disability retirement, but using for such computation his highest average remuneration and eligible service at the time of his disability retirement. In no event, however, shall such pension be less than the smaller of:

- (i) 50 percent of such highest average gross remuneration; or
- (ii) the normal pension that the participant would have received if he had remained a participant until his normal retirement date without change in such highest average remuneration."

(SRP, Section 4.3 (b).)

Mr. "P"'s First Case in the IMF Administrative Tribunal

23. On July 28, 1998, Ms. "Q" brought to the attention of the Administration Committee of the SRP the Maryland Court's Orders which had required Mr. "P" to execute a direction to the Plan and which had held him in contempt for not doing so. Likewise, Mr. "P" informed the Fund of the Egyptian divorce. On July 29, 1998, the Administration Committee decided to withhold and place in escrow the disputed portion of the pension payments on the ground that there existed a dispute under Section 9.10 of the SRP.⁸

24. On November 20, 1998, Mr. "P" filed an application with the IMF Administrative Tribunal contesting the legality of the Administration Committee's decision. On March 19, 1999, however, the Administration Committee reversed its decision to withhold a portion of Mr. "P"'s pension payment, on the basis of the then applicable SRP provisions (subsequently amended, see below). The Administrative Tribunal, considering that Mr. "P"'s position had been satisfied, issued Order No. 1999-2, (Mr. "P", Applicant v. International Monetary Fund, Respondent) (Mootness of Application) (August 12, 1999), treating as moot the Application that was then pending in the Tribunal.

Further Proceedings in the Montgomery County Circuit Court

25. Meanwhile, proceedings continued in the Montgomery County Circuit Court and a merits divorce trial was held on January 24, 2000. Mr. "P" neither appeared nor was represented at the trial. The record in the Administrative Tribunal is silent as to what notice Mr. "P" (who presumably remained in Egypt) may have had of that trial, but Mr. "P" has not contended that he was without notice of the continuing proceedings in Maryland. Indeed, sometime in the course of those proceedings, Mr. "P" had informed the Maryland Court of the Egyptian divorce.⁹

⁸ SRP Section 9.10 provides:

"**9.10** The Employer may make payment of any pension, annuity, benefit, or other amount hereunder at such place and in such manner as it shall determine. The Employer shall not be required to make any investigation to determine the identity or mailing address of any person entitled to any such payment hereunder. It may, however, defer making any such payment until it is satisfied with respect to the identity and the mailing address of the person or persons entitled to any such payment. If there shall be any dispute, or if the Employer or the Administration Committee shall have any doubt concerning the identity or rights of any person or persons entitled to payments hereunder, the Employer may withhold payment thereof until such dispute shall have been settled or such doubts shall have been satisfied by arbitration or by a court of competent jurisdiction or by a written stipulation binding on all the parties concerned."

⁹ The Family Division Master noted:

"The Defendant submitted to the Court, in connection with an earlier motion, a copy of what appears to be a certificate of 'a first revocable divorce' registered by a religious notary of the Maadi First Division, affiliated to the Maadi Court, Cairo, Egypt."

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26. The Maryland Court expressly considered and rejected Mr. "P"'s argument that the foreign divorce divested it of jurisdiction to grant a final divorce and division of marital property to Ms. "Q":

"4. The instant action was filed by the Plaintiff in 1997. The Defendant was properly served in the action while the parties both resided in the State of Maryland. The Defendant participated in the proceedings in Maryland until July 1998 when he left the United States. The Plaintiff has continued to be domiciled in the State of Maryland throughout. Under these facts, this Court continues to have jurisdiction to grant a final divorce to the Plaintiff, with all applicable relief concerning disposition of marital property. Even had a valid final divorce been obtained by the Defendant abroad, this Court would continue to have authority to enter appropriate orders concerning disposition of marital property under Family Law Article 8-212, Annotated Code of Maryland, and to resolve continuing questions of alimony under Section 11-105, Family Law Article, Annotated Code of Maryland."

(Report and Recommendations of the Family Division Master, January 31, 2000, p. 2.)

27. The Family Division Master also found, *inter alia*, that (a) Mr. "P" had been in arrears of his alimony payments from July 1998 onward, and (b) 56 per cent of his pension entitlement was acquired during his marriage to Ms. "Q". The findings of the Family Division Master were copied to Mr. "P" at his address in Egypt. (Report and Recommendations of the Family Division Master, January 31, 2000, pp. 2, 6.)

28. On the basis of the findings of the Family Division Master, the Montgomery County Circuit Court entered the following Judgment of Absolute Divorce on March 2, 2000:

"ADJUDGED, that the Plaintiff, [Ms. "Q"] be granted an absolute divorce from the Defendant, [Mr. "P"]; and it is further
ORDERED, that the Plaintiff is hereby granted a monetary award in the amount of \$95,016.50; and it is further
ORDERED, that the Plaintiff shall be entitled to a continuing share of the Defendant's ongoing pension entitlement in the amount of 50% of the marital portion (56%) of all monies due the Defendant under his retirement annuity from the

(Report and Recommendations of the Family Division Master, January 31, 2000, p. 1.)

International Monetary Fund, plus a proportionate share of all cost of living supplements; and it is further ORDERED, that the Plaintiff shall be entitled to 100% of all survivor benefits under the Defendant's pension attributable to the portion of the pension earned during the marriage; and it is further ADJUDGED, that the Defendant is in arrears of *pendente lite* alimony in the amount of \$38,000.00 through January 24, 2000; and it is further ORDERED, that the Plaintiff is hereby granted the reasonable necessary costs of her attorney's fees in the amount of \$27,000.00 to be paid by the Defendant; and it is further ORDERED, that judgment is hereby entered in favor of the Plaintiff against the Defendant in the amount of \$160,016.50, representing the amounts awarded herein."

29. According to Applicant and Intervenor, no appeal has been taken by Mr. "P" from the Maryland Judgment of Absolute Divorce. Furthermore, both parties have averred in their responses to the Tribunal's Requests for Information that no litigation is pending in the courts of any jurisdiction that would bear upon the finality of that Judgment.

30. It is the March 2, 2000 Judgment of Absolute Divorce that forms the basis for Ms. "Q"'s March 9, 2000 Request to the Administration Committee of the Staff Retirement Plan. The Committee's decision on that Request is the decision presently contested by both Applicant and Intervenor in the Administrative Tribunal.

The Channels of Administrative Review

31. The case of Mr. "P" (No. 2) v. IMF is the first to come to the Administrative Tribunal through the channels of administrative review established in 1999 by the Administration Committee of the Staff Retirement Plan.¹⁰ The Rules of Procedure of the Administration Committee, which were notified to the staff by Staff Bulletin No. 99/17 (June 23, 1999), are designed to explain when an individual has fulfilled the requirement of exhausting the channels of administrative review on a matter brought before the Administration Committee of the SRP.¹¹ The Committee's Rules of Procedure are, by their terms, designed to be read

¹⁰ Two other applications in the IMFAT contesting decisions under the SRP arose before the promulgation of the Administration Committee's Rules of Procedure. (Mr. "X", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1994-1 (August 31, 1994); Ms. "S", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1995-1 (May 5, 1995).)

¹¹ GAO No. 31, Section 4.03 (iii) expressly excludes from the Grievance Committee's jurisdiction decisions arising under the Staff Retirement Plan that are within the competence of the Administration or Pension Committees of the Plan.

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together with (a) the Fund's Articles of Agreement; (b) the SRP and the rules made thereunder; and (c) the Statute and Rules of Procedure of the Administrative Tribunal. (Administration Committee Rules of Procedure, Rule I (2).)

32. The Rules of Procedure of the Administration Committee provide broadly for "[a]ny person claiming any rights or benefits under the Plan" to submit to the Committee a Request for a Decision "...concerning the administration, application, or interpretation of the Plan in his individual case..." (Administration Committee Rules of Procedure, Rule II (1).) Once a Decision is rendered by the Committee, it is transmitted to the Requestor and to "...any other party who may have become identified to, and accepted by, the Committee as a person with an interest in the Decision..." (Administration Committee Rules of Procedure, Rule II (6).)¹²

33. Rule VIII of the Administration Committee Rules of Procedure permits review of Decisions by the Committee, upon request, or at the Committee's own initiative, within ninety days. An Application for Review of a Decision may be submitted by the original Requestor or by "...any other person claiming any rights or benefits under the Plan, who wishes to dispute a Decision..." (Administration Committee Rules of Procedure, Rule VIII (1).) The Administration Committee must notify the applicant for review of the results thereof, within three months of the application for review. (Administration Committee Rules of Procedure, Rule VIII (4).)

34. Rule X of the Administration Committee Rules of Procedure sets forth the requirements for the exhaustion of the administration review procedures provided by that Committee, for purposes of filing an application with the Administrative Tribunal:

"1. The channel of administrative review for a Request submitted to the Committee shall be deemed to have been exhausted for the purpose of filing an application with the

Under Section 7.2 (b) of the SRP, the Administration Committee is charged, *inter alia*, with:

"...the exclusive right to interpret the Plan; to determine whether any person is or was a staff member, participant, or retired participant; to direct the employer to make disbursements from the Retirement Fund in payment of benefits under the Plan; to determine whether any person has a right to any benefit hereunder and, if so, the amount thereof; and to determine any question arising hereunder in connection with the administration of the Plan or its application to any person claiming any rights or benefits hereunder, and its decision or action in respect thereof shall be conclusive and binding upon all persons interested, subject to appeal in accordance with the procedures of the Administrative Tribunal."

¹² Alternatively, the Administration Committee may refer to the Pension Committee any Request which raises a matter of a general policy nature arising under the Plan or any other matter required to be decided by the Pension Committee under the provisions of the Plan, or which raises questions that the Administration Committee determines should be decided by the Pension Committee. (Administration Committee Rules of Procedure, Rule V.)

Administrative Tribunal of the Fund when, in compliance with Article V of the Statute of the Administrative Tribunal (Statute):

- (a) three months have elapsed since an Application for review of a Decision was submitted to the Committee in accordance with Rule VIII, paragraph 1 and the results of the review have not been notified to the Applicant; or
- (b) the Committee has notified the Applicant of the results of any review of a Decision, or its decision to decline to review a Decision; or
- (c) the conditions set out in Article V, Section 3(c) of the Statute have been met.

2. The channel of administrative review for:

- (a) a Request or a Decision referred by the Committee to the Pension Committee for decision in accordance with Rule V; or
- (b) a matter otherwise before the Pension Committee for decision, shall not be deemed to have been exhausted until a decision has been made by the Pension Committee and notified to the Requestor or a person otherwise seeking the decision. If a Request is referred back by the Pension Committee to the Committee for decision, in accordance with Rule V, paragraph 3, then Rule X, paragraph 1 shall apply.”

(Administration Committee Rules of Procedure, Rule X.)

35. The requirements of Rule X of the Administration Committee Rules of Procedure parallel those of Article V, Section 3 of the Statute of the Administrative Tribunal, and must be read in conjunction with that statutory language:

“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.”

(Statute of the Administrative Tribunal, Article V.) (Emphasis supplied.)

36. Additionally, in considering the exhaustion of administrative review in this case, it is necessary to refer not only to the general requirements of the Administration Committee's Rules of Procedure but also to the specific requirements of the Committee's 1999 Rules Under Section 11.3 of the Staff Retirement Plan, under which this claim arises.¹³ These Rules were notified to the staff by Staff Bulletin No. 99/12 (June 8, 1999) shortly before the promulgation of the Committee's Rules of Procedure. They provide for a spouse or former spouse of an SRP participant (or retired participant) to request the Administration Committee to give effect to a court order requiring that spouse or child support payments or division of marital property be made from SRP benefits that otherwise would be payable to the participant.¹⁴

37. Specifically, the Administration Committee's Rules Under Section 11.3 of the Staff Retirement Plan provide that in the event that the SRP participant fails to make a direction to the Plan pursuant to the relevant court order within thirty working days of its issuance, the spouse or former spouse who is party to the order may submit a Request directly to the Administration Committee to give effect to that order. The participant is thereafter notified of the Request and permitted thirty working days in which either to consent or object to the Request. (1999 Rules of the Administration Committee Under Section 11.3 of the Staff Retirement Plan, 1(b).)

38. In the case of Mr. "P", the relevant court order, the Maryland Judgment of Absolute Divorce, was dated February 11, 2000 and entered by the Clerk of the Court on March 2, 2000. That order states, in relevant part:

"...the Plaintiff [Ms. "Q"] shall be entitled to a continuing share of the Defendant's [Mr. "P"]s ongoing pension entitlement in the amount of 50% of the marital portion (56%) of all monies due the Defendant under his retirement annuity from the International Monetary Fund, plus a proportionate share of all cost of living supplements...."

¹³ These Rules and the evolution of the IMF's policy with respect to giving effect to domestic relations orders are considered in greater detail *infra*.

¹⁴ The basis for these Rules is the 1999 amendment of Section 11.3 of the SRP to provide in part:

"In the event that a participant or retired participant fails to submit a timely written direction in compliance with the court order or decree to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration Committee, a spouse or former spouse of a participant or retired participant who is a party to the court order or decree may request that the Administration Committee give effect to such court order or decree and treat the request in the same manner as if it were a direction from a participant or a retired participant."

39. On March 9, 2000, Ms. "Q" submitted her Request to the Administration Committee to give effect to the order, pursuant to Section 11.3 of the Staff Retirement Plan. On April 10, 2000, the Secretary of the Administration Committee notified Mr. "P", through counsel, of Ms. "Q"'s Request, permitting him thirty working days in which to file his consent or objection to the request. Mr. "P", by counsel, replied on May 15, 2000, opposing the Request.

40. Although neither the Rules of the Administration Committee Under Section 11.3 of the SRP nor the Committee's Rules of Procedure would appear to provide for subsequent pleadings, on June 15, 2000 Ms. "Q"'s counsel filed a Response to Mr. "P"'s May 15, 2000 submission, and on July 10, 2001 Mr. "P"'s counsel replied thereto.

41. As the Fund has informed the Tribunal, the Administration Committee examined the arguments of both parties, and also consulted with an Egyptian lawyer as to the validity of the Egyptian divorce and with the Fund's Legal Department regarding the regularity of the Maryland Judgment. The resulting Decision of the Committee was issued on July 27, 2000 in a letter to Mr. "P"'s attorney, which was copied to Mr. "P", Ms. "Q", and Ms. "Q"'s attorney. That Decision provides in pertinent part:

"Under the Rules, the Committee will not resolve questions where there is a bona fide dispute about the efficacy, finality or meaning of an order or decree and activation of a request and associated payment may be suspended until such dispute or ambiguity is settled. Under Section 11.3 of the SRP and the Rules, the Committee may withhold payments pending resolution of a dispute regarding payments under the SRP and deposit such payments in the Bank-Fund Staff Federal Credit Union in an interest bearing account until entitlement to payment is resolved.

Accordingly, the Committee has decided to withhold from Mr. ["P"]'s early retirement pension the payments claimed by Ms. ["Q"] (28%) and to deposit such payments in escrow until such time as the dispute over entitlement to the payments is satisfactorily resolved. In this connection the Committee encourages the parties to come to a mutual agreement upon which the Committee can take action."

42. Thereafter, on September 27, 2000, Mr. "P" filed an Application for Review of the Administration Committee's Decision. Mr. "P"'s Application for Review by the Administration Committee of its initial Decision was made expressly pursuant to Rule VIII of the Administration Committee's Rules of Procedure, as no right of review is provided within the terms of the Committee's Rules Under Section 11.3 of the SRP. Filing of the Application for Review in the Administration Committee was a necessary predicate to the exhaustion of administrative review prerequisite to the admissibility of the Application in the

Administrative Tribunal. (Ms. “Q” apparently took no action to request review of the Decision of the Administration Committee, which, while resulting in placing in escrow a portion of Mr. “P”’s pension payments, also failed to grant her Request for the Administration Committee to give effect to the Maryland Judgment.)¹⁵

43. On November 30, 2000, the Administration Committee informed Mr. “P” that it found no basis to reverse its Decision of July 27, 2000, holding, accordingly, that the withholding of the disputed portion of the pension would continue “...until this matter has been resolved by the agreement of parties, or otherwise.” Additionally, the Committee’s letter informed Mr. “P” of his right to file an Application with the Administrative Tribunal within three months of the notification. (The letter was copied as well to Ms. “Q” and counsel.)

44. Mr. “P” filed his Application in the Administrative Tribunal on February 28, 2001.

Summary of Parties’ Principal Contentions

45. Applicant’s principal contentions

Applicant’s principal arguments as presented in the Application and Reply, as well as in additional pleadings, are summarized below.

Applicant’s contentions on the merits

1. The Rules of the Administration Committee of the SRP under §11.3 do not authorize the escrow of pension payments in the circumstances of this case.
2. Rule 1(b) of the Rules of the Administration Committee presumes a foreseeable conclusion to the controversy between the parties, and therefore is not applicable here.
3. The Egyptian divorce, which was granted prior to the Maryland Judgment of Absolute Divorce, was final and legal, and was entitled to recognition under the principles of comity applied by Maryland courts. The Maryland court, therefore, was without subject matter jurisdiction to enter its Judgment of February 11, 2000, as no valid marriage existed at that time.
4. Under Maryland law, the Egyptian divorce is presumed valid absent evidence to the contrary. There can be no showing that the Egyptian divorce, involving two Egyptian nationals, was invalid for lack of jurisdiction, violation of due process, or otherwise offending public policy. Ms. “Q” was served in the Egyptian divorce

¹⁵ Ms. “Q”’s failure to request review in the Administration Committee does not affect her right to participate in the Tribunal’s proceedings as an Intervenor. See *infra*.

action at her domicile in Egypt and her abode in Maryland. Her attorney also received service of process on her behalf at her office in Maryland.

5. Under Egyptian conflict-of-law rules (Egyptian Civil Code, Arts. 12 and 13), the effects of the marriage, including the patrimonial effects, and the consequences of its termination are subject to the law of nationality, i.e. Egyptian law.
6. As Egyptian law mandates a total patrimonial separation of assets between the spouses throughout the marriage and thereafter, Ms. “Q” could not be entitled to claim any rights to Mr. “P”’s pension.

Applicant’s contentions opposing the admissibility of the Application for Intervention

1. Applicant for Intervention lacks standing to intervene. That Ms. “Q” has a right that may be affected by the Judgment to be given by the Tribunal is an insufficient basis for intervention.
2. Whatever rights Ms. “Q” claims to have by virtue of the Maryland Court’s Judgment of Absolute Divorce are legal claims that will have to be resolved by the courts, not the International Monetary Fund.
3. The Articles of Agreement of the International Monetary Fund, as well as the International Organizations Immunities Act, 22 U.S.C. §288 et seq., provide the IMF and its assets immunity from judicial process. Therefore, Ms. “Q”’s remedy, if any, must be found under an express waiver of immunity by the Fund.

46. Respondent’s principal contentions

Respondent’s principal arguments as presented in the Answer and Rejoinder, as well as in additional pleadings, are summarized below.

Respondent’s contentions on the merits

1. The Administration Committee of the SRP acted properly and in accordance with its Rules in deciding to withhold and place in escrow a portion of Applicant’s pension benefits.
2. The Committee properly decided that a bona fide dispute existed as to the application, interpretation, effectiveness, finality or validity of the court order which it had been asked to enforce. The Administration Committee followed a reasonable process by obtaining an opinion from Egyptian legal counsel, advising that the Egyptian divorce was valid under Egyptian law, and relying upon the Fund’s Legal Department that the Maryland Judgment was in order and consistent with the Plan’s provisions and Rules.

3. The legality of the Committee's action would be subject to challenge only if it could be shown that the Committee improperly determined that a bona fide dispute existed.
4. Section 11.3 of the SRP and the Administration Committee's Rules thereunder are valid and legal. They reflect a balancing of the Fund's interest in the equitable treatment of staff of different nationalities with its interest in ensuring that staff (and former staff) not use the organization's immunities to avoid personal legal obligations.
5. Placing the disputed amounts in escrow is intended to protect the rights of both parties, who must resolve the dispute between themselves or through the courts.
6. As an international organization, the Fund may not favor the legal system of one member country over another. There are no universally accepted principles for resolving conflicts such as the one presented in this case.
7. The underlying conflict of laws issue is not appropriate for resolution by the Administration Committee of the SRP and need not be reached by the Administrative Tribunal.

Respondent's contentions opposing the admissibility of the Application for Intervention

1. Ms. "Q" is not a staff member;¹⁶ nor is she an enrollee in, or beneficiary under, the SRP. Therefore, she is not a person to whom the Tribunal is open under Article II, Section 1 of the Statute and, as such, is not a member of the class of persons who are permitted to intervene under Rule XIV of the Tribunal's Rules of Procedure.
2. The provision of Section 11.3 of SRP that permits a spouse or former spouse of an SRP participant to request that a court order be given effect does not create any rights or interests in the SRP, as it specifically provides that "[a] direction or accepted request or payment incident thereto shall not convey to any person an interest in the Retirement Fund of the Plan or give any elective rights under the Plan to such person." (Section 11.3.) Ms. "Q" has no beneficial interest in or rights under the Plan; rather, she is in the position of a creditor vis-à-vis Mr. "P".
3. While the Application for Intervention should be denied, Ms. "Q" should be allowed to submit her views to the Tribunal as an *amicus curiae*, pursuant to Rule XV of the Tribunal's Rules of Procedure, as these views are relevant to the Tribunal's consideration of the Application.

¹⁶ See *infra*.

47. Intervenor's principal contentions

Intervenor's principal arguments as set forth in the Application for Intervention and additional pleadings are summarized below.

Intervenor's contentions on the merits

1. The Maryland Judgment, entitling Ms. "Q" to a portion of Mr. "P"'s pension, is valid and should be given effect immediately.
2. The Maryland Court properly rejected the argument that principles of comity divested the Maryland Court of subject matter jurisdiction.
3. The Maryland Court specifically found that, in the circumstances of the case, it continued to have jurisdiction to grant a final divorce and to order relief concerning the disposition of marital property. The action was filed in 1997 and Mr. "P" participated in the proceedings in Maryland until he left the country in July 1998, while Ms. "Q" has continued to be domiciled in Maryland throughout.
4. The Maryland Court further found that even had a final divorce been obtained abroad by Mr. "P", under Maryland Family Law §8-212 and §11-1105, the Maryland Court would continue to have authority to enter orders concerning the disposition of marital property and support.
5. The Maryland Court properly obtained jurisdiction over Mr. "P", who actively participated in the litigation until July 1998, thereby submitting himself to the Court's jurisdiction.
6. By contrast, the Egyptian divorce would not be binding under principles of comity, as there was no personal jurisdiction over Ms. "Q" in the Egyptian action. Ms. "Q" has no domicile in Egypt. Nor did she receive service in Maryland or via her counsel. The Egyptian divorce offends the public policy of Maryland.
7. The Egyptian action did not involve the exercise of jurisdiction over Ms. "Q" or over any property of the parties, including the IMF pension. As it does not purport to deal with support or marital property issues, the Egyptian action, on its face, is not in conflict with the Maryland Judgment.
8. Prior to his marriage to Ms. "Q", Mr. "P" was divorced by decree of a Virginia court from his first wife, who was also an Egyptian national.

Intervenor's contentions in support of the admissibility of her Application for Intervention

1. Ms. "Q" has a right which may be affected by the Judgment to be given by the Tribunal.
2. Ms. "Q" is a person to whom the Tribunal is open under Article II, Section 1 of the Statute, as the core issue before the Tribunal is that, by order of the Maryland Court, she is a beneficiary of a portion of monthly pension payments from the Fund's SRP.

The Application for Intervention

48. During the pendency of the proceedings, the President of the Administrative Tribunal, pursuant to Rule XIV, para. 3 of the Rules of Procedure, and in consultation with the other members of the Tribunal, decided (for reasons set forth below) to admit the Application for Intervention filed in this case by Applicant's former spouse, Ms. "Q". Mr. "P" had filed an Opposition to the admissibility of Ms. "Q"'s Application for Intervention. The Fund also had opposed Ms. "Q"'s Application for Intervention, suggesting that instead Ms. "Q" should be invited to communicate her views to the Tribunal as *amicus curiae*.

49. Intervention in the Administrative Tribunal is governed by Article X of the Tribunal's Statute and Rule XIV of the Rules of Procedure. Article X, Section 2(b) provides for "intervention by persons to whom the Tribunal is open under Section 1 of Article II, whose rights may be affected by the judgment."¹⁷ Hence, there are two statutory requirements for intervention. First, the intervenor must be a person who is within the Tribunal's jurisdiction *ratione personae*. Second, the intervenor must have a right that may be affected by the judgment to be given by the Tribunal. Both of these statutory requirements are re-affirmed in Rule XIV, para. 1 of the Tribunal's Rules of Procedure.¹⁸

¹⁷ These requirements for intervention in the IMFAT mirror those found in the statutes and rules of procedure of other international administrative tribunals. *See, e.g.*, AsDBAT Statute Art. VI (2) (d); AsDBAT Rules of Procedure, Rule 18; AfDBAT Statute, Art. IX (2) (c); AfDBAT Rules of Procedure, Rule XVII; ILOAT Statute Art. X (c); ILOAT Rules of Procedure, Article 13 (1); UNAT Statute Art. 6 (1) (d); UNAT Rules of Procedure, Art. 19; WBAT Statute Art. VII (2) (d); WBAT Rules of Procedure, Rule 19.

Additionally, the Rules of Procedure of the IDBAT and the OASAT provide not only for intervention by persons to whom the Tribunal is open under its jurisdiction *ratione personae*, but also provide that "[a]ny person whose rights might be affected by the judgment of the Tribunal may be called upon to intervene in the proceedings, either at the request of a party or on the initiative of the Tribunal." (IDBAT Rules of Procedure, Art. 28 (3).) In the OASAT this is known as "compulsory intervention." (*See* OASAT Rules of Procedure, Art. 45.)

¹⁸ Rule XIV, para. 1 provides:

"Intervention

(continued)

50. It should be noted that the requirements for intervention are distinct from those for *amicus curiae*, by which “[t]he Tribunal may, at its discretion, permit any persons, including duly authorized representatives of the Staff Association, to communicate their views to the Tribunal.”¹⁹ (Emphasis supplied.) While an intervenor, once an application for intervention has been granted, “...thereafter participate[s] in the proceedings as a party,”²⁰ an *amicus curiae*, by contrast, does not.

The issue of whether Ms. “Q” is a person to whom the Tribunal is open under Article II, Section 1 of the Statute²¹

51. It is not disputed that Ms. “Q”, having brought the Request in the Administration Committee to give effect to the Maryland Judgment, has interests that may be affected by the judgment of the Tribunal. Therefore, the admissibility of the Application for Intervention turned solely upon whether Ms. “Q” fell within the jurisdiction *ratione personae* of the Administrative Tribunal.²² The question is identical to the question of whether Ms. “Q” could herself have filed an Application with the Tribunal contesting the Decision of the Administration Committee. Hence, it raises the important issue of whether the amendment of Section 11.3 of the SRP, granting rights to spouses and former spouses of SRP participants to

1. Any person to whom the Tribunal is open under Article II, Section 1 of the Statute may, before the closure of the written pleadings, apply to intervene in a case on the ground that he has a right which may be affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application to intervene in accordance with the conditions laid down in this Rule.”

¹⁹ Rule XV.

²⁰ Rule XIV, para. 3.

²¹ Subsequent to the Tribunal’s decision to admit Ms. “Q” as an Intervenor in the case, she was appointed a “member of the staff” of the Fund. As such, she is indisputably a person to whom the Tribunal is open under Article II, Section 1 of the Statute. Nonetheless, at the time that the issue of the admissibility of the Application for Intervention was before the Tribunal, the question was whether the Tribunal was open to a non-staff member spouse (or former spouse) of an SRP participant (or retired participant) who had been adversely affected by the Administration Committee’s Decision regarding the effect to be given to a domestic relations order.

Prior to her appointment to the staff, Ms. “Q” had served as a contractual employee of the Fund. Contractual employees are not encompassed by the IMFAT’s jurisdiction *ratione personae*. (Mr. “A”, Applicant v. International Monetary Fund, Respondent, Judgment No. 1999-1 (August 12, 1999).)

²² It should be noted that, consistent with the practice of other international administrative tribunals, there is no requirement in the IMFAT’s Statute or Rules of Procedure that an Applicant for Intervention must have exhausted channels of administrative review. (See, generally, C.F. Amerasinghe, The Law of the International Civil Service, Vol. I (2nd ed. 1994), pp. 593-594; In re Haas, ILOAT Judgment No. 473 (1982), p. 4; Ferdinand P. Mesch and Robert Y. Siy (No. 3) v. Asian Development Bank, AsDBAT Decision No. 18 (1996), paras. 40-41.)

request the Fund to give effect to domestic relations orders, provides a parallel right of review of such decisions of the Administration Committee in the Administrative Tribunal, in the case in which the decision of the Committee is adverse to the former spouse but not to the SRP participant.²³

52. Article II, Section 1 of the Statute of the Administrative Tribunal prescribes the Tribunal's jurisdiction *ratione personæ* as follows:

“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.”

53. Ms. “Q” contended in support of her Application for Intervention that she was a person to whom the Tribunal is open under Article II, Section 1 of the Statute because the issue before the Tribunal is her claim, by virtue of the Maryland divorce Judgment, to be a beneficiary under the Staff Retirement Plan.

54. The Fund, by contrast, took the position that Ms. “Q” did not have standing under Article II, Section 1 of the Statute because she was neither a staff member,²⁴ nor an enrollee in or beneficiary under the SRP. In the Fund's view, the wording of Section 11.3 of the SRP precludes Ms. “Q” from being regarded as a “beneficiary” under the SRP because it provides that:

“A direction or accepted request or payment incident thereto shall not convey to any person an interest in the Retirement Fund of the Plan or give any elective rights under the Plan to such person.”

²³ In this case, the decision, placing in escrow a portion of Applicant's pension payments, is adverse to the SRP participant as well as to the former spouse, and hence it has not escaped review by the Administrative Tribunal. The only issue as to admissibility is whether the former spouse may participate as a party to the proceedings in the Tribunal.

²⁴ See *supra*.

(Section 11.3, SRP.) Hence, argued the Fund, Ms. “Q”’s position is that of a creditor vis-à-vis Mr. “P” and not that of an owner of an interest in the Retirement Fund or of a beneficiary under the SRP. Having “no beneficial interest in or rights under the Plan,” contended the Fund, Ms. “Q” does not fall within the scope of Article II, Section 1(b) of the Tribunal’s Statute.

55. Mr. “P”, in his Opposition, did not address directly the question of whether Ms. “Q” is a person to whom the Tribunal is open under Article II, Section 1; nonetheless, he stated that Ms. “Q” lacked standing to intervene because having a right that may be affected by the Tribunal’s Judgment is “an insufficient basis” for intervention. In addition, Applicant contended that any interest Ms. “Q” may have should be resolved by the courts and that any remedy she might seek would have to be found under an express waiver of immunity by the International Monetary Fund.

The issue of whether Ms. “Q” is a “beneficiary” under the SRP for purposes of Article II, Section 1 of the Statute of the Administrative Tribunal

56. The essence of the Fund’s opposition to the admissibility of the Application for Intervention was its contention, based upon language in Section 11.3 of the SRP, that a person receiving benefits under the Plan as the result of a direction or accepted request under that Section is not a “beneficiary” under the Plan. The question presented was whether the terms of the SRP preclude the Tribunal from exercising jurisdiction over Ms. “Q” as “...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.” (Statute, Article II, Section 1 (b).)

57. The Administrative Tribunal recently had occasion to examine the reach of its jurisdiction *ratione personæ* with respect to non-staff members challenging decisions under the Fund’s benefit plans. In Estate of Mr. “D”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application), IMFAT Judgment No. 2001-1 (March 30, 2001), the Tribunal exercised jurisdiction over a successor in interest to a non-staff enrollee in the Fund’s Medical Benefits Plan. As the category of interest represented by the Estate of Mr. “D” is not one provided for expressly by the language of the Statute,²⁵ the Tribunal looked to the published Commentary on the Statute, which explains the intent of the jurisdictional provision as follows:

²⁵ Article II, Section 2(c)(iii) of the Statute does provide for jurisdiction over a successor in interest to a “member of the staff.” The Tribunal therefore considered “...whether that omission [of express jurisdiction over successors in interest to non-staff enrollees in Fund benefit plans] is an inadvertent vacuum in the ambit of jurisdictional terms or an intentional decision by the Statute’s drafters that the interests of a staff member enrollee should survive that person’s death but that the interests of a non-staff member enrollee should not,” and found no basis to conclude that the exclusion was intentional. (Estate of Mr. “D”, para. 62.)

“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. [Footnote omitted.] *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.*”

(Report of the Executive Board, p. 13.) (Emphasis supplied.) (See Estate of Mr. “D”, para. 59.) Based on the Commentary, the Tribunal concluded that the examples provided of those persons covered by Section 1(b) were not meant to be exhaustive and that the structure of the Fund’s benefit plans supported the view that successors in interest to non-staff enrollees were to be included within the Tribunal’s jurisdiction. (Estate of Mr. “D”, para. 63.)

58. The Tribunal’s conclusion in Estate of Mr. “D” is readily distinguishable from that reached in Mr. “A”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-1 (August 12, 1999). In Mr. “A”, the Tribunal held, based on the Statute’s legislative history, that exclusion of contractual employees from the Tribunal’s jurisdiction *ratione personæ* was not only explicit, but intentional, reflecting a considered choice of the Statute’s drafters. Furthermore, the terms of the Statute’s jurisdictional provision expressly define “member of the staff” as “any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff” (Art. II, para. 1.a.) and Mr. “A”’s letter of appointment expressly stated that he would “not be a staff member of the Fund.” (Mr. “A”, para. 61.)

59. The question raised by the present case was whether there is any language in the SRP that would preclude the Tribunal’s exercise of jurisdiction over the Applicant for Intervention. As noted above, the Fund has argued that Section 11.3 of the SRP should be read to exclude from the Tribunal’s jurisdiction *ratione personæ* persons such as Ms. “Q” because that provision states that acceptance of a Request to give effect to a domestic relations order does “not convey to any person an interest in the Retirement Fund of the Plan or give any elective rights under the Plan to such person.”

60. However, nowhere in Section 11.3 is it stated that a person who receives benefits on the basis of a direction or accepted request under that Section is *not* a “beneficiary” under the Plan. While Section 11.3 does use the term “designee” to refer to such person, it also speaks

of the “benefit payable to the spouse or former spouse” (emphasis supplied). Perhaps more importantly, the term “beneficiary” is not defined anywhere within the SRP Plan document.²⁶ The fact that such a person has no “elective rights” under the Plan is not dispositive, as such rights to election, for example, of an early retirement pension (Section 4.2), a reduced pension with a pension to a survivor (Section 4.6), or commutation of a portion of the pension to a lump sum payment (Section 15.1), are rights generally reserved only to SRP *participants* (or retired participants).²⁷ Hence, under the language of the Plan, the absence of “elective rights” does not preclude a person from being a “beneficiary.”

61. Moreover, in interpreting the jurisdictional provision of the Statute of the Administrative Tribunal, the “elective rights” referred to by Section 11.3 are to be distinguished from “rights” under the Plan more generally, as referred to by the Statute’s Commentary. The Tribunal in Estate of Mr. “D” emphasized that Article II, Section 1(b) of the Statute is designed to allow individuals who are not members of the staff, but who “have rights under these [benefit] plans,” to have their claims under these plans adjudicated by the Administrative Tribunal.²⁸ It cannot be disputed that Section 11.3 grants rights under the Plan to persons such as the Applicant for Intervention to request the Administration Committee to give effect to applicable domestic relations orders, and that the SRP’s Administration Committee has created an administrative review procedure which is open to “any person claiming any rights or benefits under the Plan,”²⁹ a procedure which Ms. “Q” initiated with her Request to the Administration Committee to give effect to the Maryland Judgment.³⁰

62. The parties have not raised the issue of whether it is necessary to examine the merits of Ms. “Q”’s claim under SRP Section 11.3 in order to decide the jurisdictional question of the admissibility of the Application for Intervention. In Mr. “A”, the IMFAT rejected the applicant’s contention that it was necessary to examine the merits of the claim in order to

²⁶ See SRP, Article I – Definitions.

²⁷ One exception is election of the currency of payment, which is available to a survivor as well as to a retired participant. (SRP, Section 16.3.)

²⁸ The jurisdictional provisions of the statutes of several other international administrative tribunals do not employ the term “beneficiary,” but rather include “...any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.” (WBAT Statute, Art. II (3); AfDBAT Statute, Art. II (1) (ii). Another variation is UNAT Statute, Art. 13 (2) (b) which extends that tribunal’s jurisdiction to “[a]ny other person who can show that he is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.”

²⁹ Administration Committee Rules of Procedure, Rule II (1).

³⁰ In Estate of Mr. “D”, the Tribunal took note of the importance of coordination between the jurisdiction of the Administrative Tribunal and the Fund’s underlying administrative review procedures. (See para. 84, interpreting GAO No. 31 to afford Grievance Committee review to successors in interest to non-staff enrollees in the Fund’s Medical Benefits Plan.)

decide the jurisdictional question of the admissibility of his application. While the Tribunal observed that there was jurisprudence in other international administrative tribunals to support the view that it may sometimes be necessary to examine the merits in order to decide a jurisdictional matter, it was not necessary to do so in the case of Mr. “A”, given the express jurisdictional language of the applicable statutory provision and of applicant’s contract of employment. (Mr. “A”, paras. 63-86, 100(6).)

63. In the present case, the question of the admissibility of the Application for Intervention was decided by the IMFAT President in consultation with the Associate Judges on the basis that Ms. “Q” is a person who has a right under the benefit plan in question. That right, as stated in SRP Section 11.3, is of a “... spouse or former spouse of a participant or retired participant who is a party to the court order or decree [to] request that the Administration Committee give effect to such court order or decree and treat the request in the same manner as if it were a direction from a participant or a retired participant.” (SRP, Section 11.3.)

64. It is also noted that the scope of the Administrative Tribunal’s jurisdiction *ratione personæ* under Article II, Section (1)(b) is a narrow one, embodying a limitation on its jurisdiction *ratione materiæ* in such cases to challenges to administrative acts taken under the applicable benefit plan and adversely affecting the applicant.

65. Accordingly, the President of the Administrative Tribunal concluded that, consistent with the Statute’s legislative history and the Tribunal’s jurisprudence, the Applicant for Intervention was, for purposes of Article II, Section 1 of the Tribunal’s Statute, a beneficiary under a Fund benefit plan, for purposes of challenging the legality of the Administration Committee’s Decision on her Request to give effect to the Maryland order. Accordingly, Ms. “Q”’s Application for Intervention was granted.

Implementation of the requirement of Rule XIV, para. 3 that the Intervenor “participate in the proceedings as a party”

66. Ms. “Q”’s Application for Intervention having been granted, the Tribunal proceeded to implement the requirement of Rule XIV, para. 3 that an intervenor “participate in the proceedings as a party.” The significance of the provision is twofold. First, by granting Ms. “Q”’s request to participate as a party, the Tribunal is able to adjudicate with finality her rights vis-à-vis the administrative act of the Fund that is the subject of Mr. “P”’s Application, i.e. the contested Decision of the Administration Committee. Second, from a procedural perspective, participation as a party has given Ms. “Q” the opportunity to engage in an exchange of pleadings with the other parties, providing her notice of the Applicant’s and Respondent’s respective arguments and an opportunity to respond to these arguments.³¹

³¹ It may be noted that the circumstances of this case are unusual inasmuch as an intervenor typically shares a similar factual and legal position to that of an applicant. (See C.F. Amerasinghe, The Law of the International Civil Service, Vol. I (2nd ed. 1994), p. 594.) In this case, both Mr. “P” and Ms. “Q” are adversely affected by the

67. The Tribunal considered how to implement the exchange of pleadings in light of the procedural posture of the case. The Rules of Procedure make no provision for suspension of the exchange of the pleadings on the merits while an application for intervention is pending. Therefore, in this case, at the conclusion of the period for submission of the parties' views on the admissibility of the Application for Intervention, only one pleading on the merits remained to be filed, i.e. Respondent's Rejoinder.

68. The Tribunal also considered that the procedure should take account of the fact that the Application for Intervention itself might be considered as an initial presentation of Ms. "Q"'s position on the merits, as the factual presentation and legal argumentation found in the Application for Intervention had not been limited to the issue of its admissibility. Therefore, the Application for Intervention might be regarded as analogous to Mr. "P"'s Application and the Fund's Answer. As Ms. "Q" had not, however, had an opportunity for a responsive pleading (analogous to the Reply of Applicant and the Rejoinder of Respondent), she was given thirty days from the notification of the admissibility of the Application for Intervention in which to file such a pleading, to address the pleadings on the merits filed by Applicant and Respondent.³²

Consideration of the Issues of the Case

The Fund's Internal Law Regarding the Effect to be Given to Domestic Relations Orders

69. The case of Mr. "P" (No. 2) v. IMF arises under the Fund's revised policy, adopted in 1999, of giving effect, upon request of a spouse or former spouse of an SRP participant or retired participant, to a court order requiring that spouse or child support payments or the division of marital property be made from SRP benefits that otherwise would be payable to the participant. The evolution of the Fund's policy (and the policies of other international organizations headquartered in the United States) with regard to the effect to be given to local court orders arising from marital relationships has been significantly influenced in recent years by adverse publicity surrounding the failure of some international civil servants to comply with such orders and by the response that the United States Government has adopted.

same administrative act of Respondent (a Decision by the Administration Committee of the SRP in which neither achieved the outcome he or she sought). Nonetheless, their interests on the merits (i.e. the resolution of the question of whether the Maryland Judgment should be given effect by the Administration Committee) are adverse to one another's.

³² As noted *supra*, the President of the Administrative Tribunal, in the exceptional circumstances of the case, thereafter called upon the parties to submit Additional Statements under Rule XI of the Tribunal's Rules of Procedure.

The IMF's Immunity from Judicial Process

70. The problem of non-compliance by international civil servants with the domestic relations orders of local courts arises directly from the privileges and immunities of international organizations as provided, for example, in the IMF Articles of Agreement, and codified in the statutory law of the United States.

71. Article IX of the IMF Articles of Agreement provides in pertinent part:

“Article IX

Status, Immunities, and Privileges

Section 1. *Purposes of Article*

To enable the Fund to fulfill the functions with which it is entrusted, the status, immunities, and privileges set forth in this Article shall be accorded to the Fund in the territories of each member.

Section 2. *Status of the Fund*

The Fund shall possess full juridical personality, and in particular, the capacity:

(i) to contract;

(ii) to acquire and dispose of immovable and movable property; and

(iii) to institute legal proceedings.

Section 3. *Immunity from judicial process*

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

Section 4. *Immunity from other action*

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition,

confiscation, expropriation, or any other form of seizure by executive or legislative action.

Section. 5 *Immunity of archives*

The archives of the Fund shall be inviolable.

Section 6. *Freedom of assets from restrictions*

To the extent necessary to carry out the activities provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

Section 7. *Privilege for communications*

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

...

Section 10. *Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken.”

The Fund is also a Specialized Agency under the United Nations Convention on the Privileges and Immunities of the Specialized Agencies, which provides in similar terms for the privileges and immunities of those organizations.³³ Article VI, Section 23 of that Convention also provides:

“Each specialized agency shall co-operate at all times with the appropriate authorities of member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connexion with the privileges, immunities and facilities mentioned in this article.”

³³ See Selected Decisions and Selected Documents of the International Monetary Fund, Eighteenth Issue, Washington, D.C., June 30, 1993, pp. 574-592.

72. Moreover, in the United States, the IMF is covered by the International Organizations Immunities Act, 22 U.S.C. § 288 et seq. (“IOIA”), which codifies under U.S. law recognition by the United States Government of the Fund’s privileges and immunities. Section 288a provides in part:

“Sec. 288a. Privileges, exemptions, and immunities of international organizations

International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

...

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

...”

73. The United States Court of Appeals for the District of Columbia Circuit has upheld the immunity of international organizations under the IOIA in wage garnishment actions, Atkinson v. Inter-American Development Bank, 156 F. 3d 1335 (D.C. Cir. 1988), and the practice of the International Monetary Fund had been to decline to comply with such orders, based upon its immunity from judicial process. Furthermore, Section 9.1 of the Fund’s Staff Retirement Plan provides that all contributions, assets, funds, and income of the Plan are the property of the IMF.³⁴

³⁴ “9.1 All the contributions made by the Employer and by participants pursuant to Article 6 hereof, and all other assets, funds, and income of the Plan, shall be transferred to and become the property of the Employer, and shall be held and administered by the Employer, separately from its other property and assets, as the Retirement Fund, solely for use in providing the benefits and paying the expenses of the Plan, and no part of the corpus or income of the Retirement Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of participants and retired participants or their beneficiaries under the Plan, prior to the satisfaction of all liabilities with respect to such participants, retired participants, and beneficiaries. No person shall have any interest in or right to any part of the Retirement Fund or of the earnings thereof or any rights in, or to, or under

(continued)

74. As the IMF's immunities protect both the Organization and its retirement fund from judicial process, the Fund in recent years has taken alternative steps to provide mechanisms for giving effect to court orders arising from marital relationships, while at the same time preserving its immunities.

1995 Changes to the Staff Retirement Plan

75. In 1995, the IMF took an initial step toward revising its policy with respect to giving effect to domestic relations orders by amending Section 11.3 of the SRP to allow participants and retired participants--on a voluntary basis--to direct the Plan to make payments to spouses or former spouses pursuant to legal separation or divorce, as required by a court order or decree:

“From June 1, 1995, the Plan will permit a participant or retired participant to make an irrevocable instruction to have the Plan pay a part of his or her pension benefits to a former spouse, provided that the instruction is made to satisfy the marital obligations of a divorce or legal separation, and that the sum to be paid represents an amount needed to meet alimony or support obligations, or to effect a division of assets relating to a divorce or legal separation.”

(Staff Bulletin No. 95/4 (March 16, 1995).) In May 1996, Rules of the Administration Committee under the amended Section 11.3 were notified to the staff. These Rules clarified that activation of a direction to the Plan was contingent on review of the applicable court order by the Fund's Legal Department to determine that it was “in order . . . and not inconsistent with the provisions of the Plan and the [Administration Committee's] Rules.” (Rule 1(a), 1995 Rules of the Administration Committee under Section 11.3 of the Staff Retirement Plan.) The Administration Committee Rules also provided for suspension of both the direction and associated payment pending resolution of a dispute between the parties with respect to the court order or decree.³⁵

the Plan, or any part of the assets thereof, except as and to the extent expressly provided in the Plan.” (SRP, Section 9.1.)

³⁵ “1. (b) The Administration Committee will not (i) interpret agreements between spouses or former spouses, directions to pay or orders or decrees of courts in cases of ambiguity, or (ii) resolve questions where there is a *bona fide* dispute about the efficacy, finality or meaning of an order or decree. In these cases, activation of the direction and any associated payment may be suspended until such ambiguity or dispute shall have been settled.”

(Rule 1(b), 1995 Rules of the Administration Committee Under Section 11.3 of the Staff Retirement Plan.)

76. It was under the 1995 amendment of SRP Section 11.3 and the associated Rules of the Administration Committee that Mr. “P”’s first case before the Administrative Tribunal had arisen.³⁶

1998 Code of Conduct

77. In July 1998, the Fund issued a Code of Conduct governing current staff members, both in the workplace and externally. While addressing a wide variety of ethical matters, such as financial disclosure and clearance of publications, the Code of Conduct is explicit that it is a violation of the Code for a member of the staff to fail to comply with court-mandated spousal or child support obligations:

“II. Basic Standard of Conduct

...

8. The Fund respects the privacy of staff members and does not wish to interfere with their personal lives and behavior outside the workplace. However, the status of an international civil servant carries certain obligations as regards conduct, both at work and elsewhere. *The Fund attaches great importance to the observance of local laws by staff members, as well as the avoidance of actions that could be perceived as an abuse of the privileges and immunities conferred on the Fund and its staff, as the failure to do so would reflect adversely on the Fund. For example, staff members are expected to meet their private legal obligations to pay child support and alimony, and to comply with applicable laws concerning the treatment of G-5 domestic employees, as this program is available as a special privilege for international organization personnel. The Fund would also be seriously concerned about notoriously disgraceful conduct by a staff member involving domestic violence or abuse of family members.*

9. The Fund is not in a position to investigate allegations that a staff member has violated local law. However, if concerns about a staff member’s behavior outside the workplace are brought to its attention by third parties, it is both appropriate and prudent that the staff member be informed about the matter. *It is not the Fund’s role to determine whether*

³⁶ Order No. 1999-2 (Mr. “P”, Applicant v. International Monetary Fund, Respondent) (Mootness of Application) (August 12, 1999).

local laws have been violated by a staff member, as that is for the domestic courts to decide. However, if the Fund receives a lawful order from a court or other governmental authority instructing it to withhold an amount of salary to be paid to a staff member to satisfy an outstanding legal obligation, the Fund will not allow the staff member to take undue advantage of the fact that it is immune from such orders.”

(IMF Code of Conduct, p. 6.) (Emphasis supplied.)

“VII. Examples

Basic standard of conduct

1. A staff member fails to pay his or her spousal or child support obligations, notwithstanding a court order to do so. Does this violate the Fund’s standards of conduct?

Yes. Staff members may not take improper advantage of the fact that the Fund is not subject to mandatory wage garnishments in order to avoid such obligations.”

(IMF Code of Conduct, p. 16.) (Italic in original.)

1998 Diplomatic Note of the United States Secretary of State

78. On July 8, 1998, the United States Secretary of State sent a Diplomatic Note to the IMF Managing Director and all of the other Chiefs of International Organizations designated under the International Organizations Immunities Act. The purpose of the Diplomatic Note, as set forth in a covering letter, was to seek the organizations’

“... voluntary efforts to ensure that court-ordered child- and spouse-support payments involving employees of their organizations are made, and that employees are not permitted to use the organizations’ immunity to shield themselves from their personal obligations.”

The letter goes on to discuss the social responsibility of the organization to protect the welfare of the spouses and children of its staff members:

“...the natural instinct to ‘protect’ the organization by invoking immunity may not serve *our greater interest in protecting the welfare of children and spouses who have been a part of the IMF community. Invoking immunity, if unaccompanied by measures which effectively address the difficulties that*

institutional immunity creates for spouses and children, is wrong. I believe that the International Monetary Fund must be a model for the highest standards of social responsibility, and thus the means must be found to carry out the right and just course of action. Neither of us wants the International Monetary Fund to protect – or to be seen as protecting – individuals who refuse to provide for their children and former spouse.”

(Letter from U.S. Secretary of State to IMF Managing Director, July 8, 1998.)
(Emphasis supplied.)

79. The Diplomatic Note itself observed:

“... it is highly inappropriate for international organizations to allow their privileges and immunities to be used by employees of the organizations to avoid meeting their court-ordered obligations to divorced spouses and dependent children. Recent cases drawn to the attention of the Department of State indicate that the practices and policies of some international organizations are not effective in ensuring prompt compliance with court orders in family separations and divorce proceedings involving employees of the organizations.”

Therefore, continues the Note:

“The Secretary of State requests that steps be taken promptly to ensure that all international organizations designated under the IOIA voluntarily provide court-ordered or subpoenaed information required to determine the salary and benefits of an employee involved in divorce and family law proceedings, and that all international organizations voluntarily take steps to enforce court-ordered payments to divorced spouses and dependent children.”

The Diplomatic Note concludes by warning that:

“...the perception that immunities are being used to avoid just financial obligations is likely to lead to the imposition of non-voluntary remedies which may result in either a diminution of privileges and immunities under the IOIA or protracted litigation, neither of which is in the best interest of the international organizations community.”

(Diplomatic Note from U.S. Secretary of State to Chiefs of International Organizations designated under the International Organizations Immunities Act, July 8, 1998.)

1999 Revisions to the Fund's Internal Law

80. As a result of the mounting concern surrounding the issue, the IMF formed a working group to consider measures to address the problem of non-compliance with court orders arising from marital relationships.³⁷ By mid-1999, the Fund had adopted several significant changes to its internal law. For the first time, mechanisms were put into place to give effect to such orders, with regard to both current and former members of the staff, at the request of a spouse or former spouse of a staff member or retiree. It is under these 1999 revisions that the present case of Mr. "P" arises.

Staff Bulletin No. 99/11

81. On May 4, 1999, the Fund issued Staff Bulletin No. 99/11, announcing two changes in policy. First, under the new policy, the Fund will respond directly to court orders which seek information, in the context of divorce and child support proceedings, as to an employee or former employee's compensation, SRP benefits and beneficiaries. Second, at the request of a spouse or former spouse, the Fund will give effect to wage garnishment or withholding orders. In the latter case, the affected employee or former employee is given notice and an opportunity to object to the Fund's intention to give effect to the order.³⁸

³⁷ See Staff Bulletin No. 99/11 (May 4, 1999), p. 2.

³⁸ **"Requirements and Conditions for Giving Effect to Court Orders for Garnishment or Withholding from Wages for Spouse or Child Support**

...

3. The Fund employee in question will be given written notice and a copy of such request and will be given at least ten working days to object to the Fund complying with the request.

4. If the employee objects to the Fund giving effect to the court order, the employee may challenge the adequacy of the order for failure to meet the criteria set forth below:

- The order resulted from proceedings in which (i) a reasonable method of notification was employed; (ii) a reasonable opportunity to be heard and to contest the proposed actions was afforded to the persons affected; and (iii) the judgment was rendered by a court of competent jurisdiction and in accordance with such requirements as were necessary for the valid exercise of power by the court.
- The order was the product of fair proceedings.
- The order is final and binding on the parties and not subject to or pending appeal.

(continued)

82. In making these changes in policy, the Fund emphasized that the new procedures were being undertaken “voluntarily”, and “without waiving [the Fund’s] privileges and immunities.”³⁹ The Staff Bulletin also referred to the Diplomatic Note of the U.S. Secretary of State and the background of the issues involved. Finally, the Staff Bulletin noted that while the Fund’s Code of Conduct regulates current staff members, the new policies being announced would apply to retirees as well:

“3. Please bear in mind that the Fund has always insisted that staff meet their legal obligations and comply with court orders. The standards of conduct required by the Fund are set out in the Rules and Regulations and in the Code of Conduct. [Footnote omitted.] The changes announced in this Bulletin simply reinforce the importance the Fund places on its **employees--both active and retired**--honoring their personal legal obligations and conducting themselves in a manner that does not reflect negatively on the Fund as an employer. Measures similar to those announced in this Bulletin have already been taken by the World Bank and are under consideration by several other international organizations.”

(Staff Bulletin No. 99/11 (May 4, 1999, p. 1).) (Emphasis in original.)

Staff Bulletin No. 99/12 – 1999 Revision of SRP Section 11.3

83. In Staff Bulletin No. 99/12, the Fund announced changes to Section 11.3 of the Staff Retirement Plan approved by the Fund’s Executive Board on May 26, 1999. The Staff Bulletin also attached new rules of the Administration Committee under the revised SRP Section 11.3. In notifying the staff of these changes, the Staff Bulletin emphasized that the new policy was designed specifically to address the problem of retired SRP participants who have moved out of the jurisdiction of the court that issued the applicable domestic relations order, and who, as former staff, are no longer governed by the Code of Conduct:

-
- The order does not conflict with and is not inconsistent with any other valid court order or decree.

A court order will be given effect unless the employee demonstrates that the court order does not satisfy the criteria set forth above, in which case the parties concerned will be notified in writing of the reasons for such determination.”

(Staff Bulletin No. 99/11 (May 4, 1999), Attachment.)

³⁹ Staff Bulletin No. 99/11, pp. 1, 2.

“Under the previous provisions, a participant could avoid compliance with court orders that required spouse and child support to be paid from the participant’s SRP benefits by simply not making a direction to the Plan. Because of the Fund’s immunities, neither the Fund nor the SRP can be required to give effect to court orders with respect to any such payments to spouses or others. *Therefore, a participant subject to a court order could ignore the order and avoid its enforcement by moving outside the area where the court had jurisdiction or where its orders would be given effect. While the Fund can insist that serving staff members fulfill their personal legal obligations under the Fund’s Rules and Regulations and Code of Conduct, the Fund has no comparable authority with respect to a retired participant who fails to comply with a court order.*”

(Staff Bulletin No. 99/12 (June 9, 1999) p. 1.) (Emphasis supplied.)

84. The 1999 amendment of SRP Section 11.3 expands the reach of the 1995 revision by authorizing the SRP’s Administration Committee to give effect to an applicable domestic relations order not solely upon the voluntary direction of the Plan participant but, alternatively, upon the request of the affected spouse or former spouse:

“11.3 Notwithstanding the provisions set forth in Section 11.1, a participant or retired participant may, pursuant to a legal obligation arising from a marital relationship (which shall be understood to include an obligation to make child support payments) evidenced by an order of a court or by a settlement agreement incorporated into a divorce or separation decree, direct in writing to the Secretary of the Administration Committee that a benefit that would otherwise be payable to him during his life under the Plan be paid to one or more former spouses or a current spouse from whom there is a decree of legal separation.

...

In the event that a participant or retired participant fails to submit a timely written direction in compliance with the court order or decree to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration Committee, a spouse or former spouse of a participant or retired participant who is a party to the court order or decree may request that the Administration Committee give effect to such court order or

decree and treat the request in the same manner as if it were a direction from a participant or a retired participant.”

(SRP Section 11.3 (1999 Revision).)

Section 11.3 also authorizes the withholding of disputed amounts pending resolution of a dispute:

“Pending the Administration Committee’s consideration of such request or the resolution of a dispute between a participant or retired participant and the spouse or former spouse regarding payment of amounts payable under the Plan, the Administration Committee may withhold, in whole or in part, payments otherwise payable to the participant or retired participant or the spouse or former spouse.”

(SRP Section 11.3 (1999 Revision).)

1999 Rules of the Administration Committee under SRP Section 11.3

85. The 1999 Rules of the Administration Committee under SRP Section 11.3 elaborate the procedures by which a court order for spousal or child support or division of marital property may be given effect at the request of a spouse or former spouse of an SRP participant or retired participant. These Rules provide for notice to the Plan participant and an opportunity to respond to the request:

“The Secretary of the Administration Committee will give a participant or retired participant written notice of such a request from a spouse or former spouse. The participant or retired participant will be allowed, as the Administration Committee shall specify, at least thirty (30) working days either to consent or to object to the request, giving a full written explanation for any objection.”

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 1 (b).)

86. Furthermore, the Rules also set forth four substantive criteria under which a court order is accorded a presumption of validity:

“2 Unless a participant or retired participant, spouse or former spouse objects, the Administration Committee may presume that a court order or decree concerning the payment of amounts from the Staff Retirement Plan

(A) is valid by reason that:

- (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
- (2) the judgment has been rendered by a court of competent jurisdiction rendition [sic] and in accordance with such requirements of the state of as are necessary for the valid exercise of power by the court;

(B) is the product of fair proceedings;

(C) is final and binding on the parties; and

(D) does not conflict and is not inconsistent with any other valid court order or decree.”

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 2).) In the case of an objection, the Committee will assess the adequacy of the court order by reference to the same criteria:

“If a party objects to giving effect to a court order or decree, the Administration Committee will assess its adequacy based on the criteria listed in (A) through (D) in the preceding sentence. The Administration Committee will not review the court order or decree concerning the merits of the case and will not attempt to review the judgment of the court regarding the rights or equities between the parties.”

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 2).) Finally, the order will not be given effect if it fails to satisfy any of the stated criteria:

“If the Administration Committee finds that the court order or decree does not satisfy any one or more of the criteria listed in (A) through (D) above, the parties will be notified of its conclusions and the order or decree will not be given effect unless and until the deficiencies are remedied. In addition, if there is an inconsistency or conflict under (D) above with the court order or decree that was the basis of a prior direction or accepted request, the Administration Committee will notify the parties that neither order or decree will be given effect unless and until the conflict or inconsistencies are resolved.”

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 2).)

87. Finally, the Rules place limitations on the Administration Committee's authority to act upon a request. The Committee will take no final action in the circumstance that there is a "bona fide dispute" regarding the validity of the court order in question, but may place in escrow the disputed amount:

"If the Administration Committee is satisfied that there is a bona fide dispute as to the application, interpretation, effectiveness, finality or validity of the court order or decree, no action shall be taken on the request unless and until the matter is resolved to the satisfaction of the Administration Committee."

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 1 (b).)

"(c) The Administration Committee will not (i) interpret agreements between spouses or former spouses, directions or accepted requests to pay or orders or decrees of courts in cases of ambiguity, or (ii) resolve questions where there is a *bona fide* dispute about the efficacy, finality or meaning of an order or decree. In these cases, activation of the direction or accepted request and any associated payment may be suspended until such ambiguity or dispute shall have been settled in the judgment of the Administration Committee."

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 1 (c).)

Issues of the Conflict of Laws Relevant to the Dispute

88. Underlying the dispute between the Applicant and Intervenor in this case are differing approaches to the law of divorce, and to choice of law, under the law of Egypt and the United States (State of Maryland). These differences and their consequences may be summarized as follows.

The Egyptian Divorce in the Context of Egyptian Law

89. On July 22, 1998, Mr. "P" obtained a "first revocable divorce" from Ms. "Q" by declaration before a religious notary in Egypt. Ms. "Q" was not present, nor did she have prior notice of the declaration. The divorce involved no provision for marital support or division of property.

90. The validity of such a divorce under Egyptian law is supported by the record before the Tribunal. According to the explanation of Egyptian law provided to the IMF Legal

Department by a qualified Egyptian attorney,⁴⁰ a Moslem husband may unilaterally, and without the presence of or prior notice to the wife, effect a divorce by declaration before a religious notary:

“... under Egyptian Law, a Moslem husband may divorce his wife by making declaration to this effect before a duly licensed Religious Notary in the presence of two witnesses notwithstanding wife being present or not. This means that the husband does not need to go to court in order to obtain a divorce order.

...

In other words, there had been no legal proceedings initiated with any court in Egypt, nor were such proceedings at all required, in order for the husband to obtain the divorce he seeks.

...

I reiterate that this is not a divorce judgment.”

Access to divorce differs for a wife, who, by contrast, must bring a court action to effect a divorce, unless there has been an agreement otherwise in the contract of marriage.

91. The meaning of the term “first revocable divorce” is explained by the Egyptian attorney as follows. The husband has a two-month period in which, at his own prerogative, he may restore the marital relationship. Once the two-month period has elapsed, however, the divorce is considered final. There is no dispute that in this case the two-month period has run without the marital relationship having been restored under Egyptian law, and that it had run before the entry of the Judgment of Absolute Divorce by the Maryland Court.

92. Egyptian law does not provide for mandatory division of property as a consequence of divorce. According to the explanation provided by the Egyptian lawyer, division of property could, however, be effected through an agreement made at the time of marriage. In the absence of such an agreement, the divorced wife would have the right to seek a court judgment for a deferred portion of the dowry as agreed in the certificate of marriage, as well as for “living support alimony” of one year, and for “enjoyment alimony” of two years. Apparently no such court action in Egypt, if available to her, was undertaken by Ms. “Q” who continued to pursue the divorce proceedings in Maryland.

⁴⁰ Neither Applicant nor Intervenor has challenged the explanation of Egyptian law provided therein.

93. As to the enforceability in Egypt of a U.S. court order for division of marital property, the Egyptian lawyer expressed the following view:

“It is to be mentioned here that any U.S. Court judgment for a division of property between the spouses would not be enforceable in Egypt in connection with any of the husband’s property located in Egypt as such judgment would be deemed inconsistent with Egypt’s Public Policy.”

(Emphasis in original.) Applicant has annexed to his Application an opinion by another Egyptian attorney who likewise asserts:

“As an absolute rule of mandatory application under Egyptian Law, there is a total patrimonial separation of assets between the two spouses, throughout the period of marriage, and *a fortiori* after the coming to an end of the marital relationship.”

94. It is also noted that, apparently in an effort to extinguish any possible claims of Ms. “Q” under Egyptian law as a result of the July 1998 divorce, Mr. “P” has filed a declaratory court action in Egypt “... requesting a ruling deciding the clearance of the claimant of any financial liabilities. ...” According to information provided in Applicant’s Additional Statement, that action is presently pending.

The Issue of Notice of the Egyptian Divorce

95. Considerable attention has been drawn by the parties in this case to the issue of what notice Ms. “Q” has had of the Egyptian divorce. This controversy must be understood in the context of the requirements of Egyptian law.

96. The Egyptian attorney advising the Fund emphasized:

“The divorce declaration by the husband is documented in an official certificate (per form enclosed with your letter) to be duly signed by Notary, husband and the two witnesses. The Notary would then enter such divorce declaration into a special ledger kept for this purpose with the Court of Jurisdiction. Meantime, copy of such declaration is formally served on the divorced wife at the address stated by the husband, at his own responsibility, in the divorce certificate.

...

... no court proceedings did take place for consummating the divorce in question and, consequently, no need for serving notice has arisen.”

Hence, notice is to be given to the wife (“at the address stated by the husband”) only *after* the divorce has been declared by the husband. “Notice,” in this sense, is not relevant to the issue of having an opportunity to be heard, as there are no adversary legal proceedings contemplated. Applicant confirms that a “proof of service” is “... required only for notification purposes and does not affect the legality or finality of the divorce.”

97. Nonetheless, much has been made in the pleadings before the Administrative Tribunal of a factual dispute between Applicant and Intervenor as to whether Ms. “Q” “... was served or received notice of the Egyptian proceedings.” Accordingly, Applicant has asserted:

“Ms. [“Q”] was served in the Egyptian divorce action at her domicile in Egypt and at her abode in Maryland. Her attorney also received service of process on her behalf at her office in Maryland.”

In addition, Applicant has attached documentation that the divorce certificate was delivered on August 30, 1998 --more than a month after the declaration of divorce-- to a neighbor of Ms. “Q” in Cairo who Applicant contends was authorized to receive it on Ms. “Q”’s behalf.

98. Ms. “Q” denies that she was served in Egypt or Maryland with documents relating to an Egyptian divorce proceeding:

“... Ms. [“Q”] was not personally served with process in the purported Egyptian action and had no notice of any proceeding, and no opportunity to be heard there.”

Likewise, Ms. “Q”’s counsel denies having received “service of process of an Egyptian proceeding involving Ms. [“Q”].”⁴¹

99. Underlying the dispute regarding “notice” of the Egyptian divorce is a dispute as to Ms. “Q”’s true domicile. Applicant contends that Ms. “Q”

“... does maintain a domicile in Cairo, Egypt, A friend and neighbor, ..., who lives in the same building, is authorized to collect Ms. [“Q”]’s mail, pay her utilities, and look after the apartment in her absence.”

⁴¹ It is not disputed, however, that Ms. “Q” and her counsel soon *after* the fact of the Egyptian divorce learned of its existence through the 1998 dispute before the SRP Administration Committee and the litigation pending in Maryland.

100. Ms. “Q”, by contrast, maintains in a sworn statement attached to her Application for Intervention:

“1. I am resident and domiciliary of the state of Maryland, and have been since August, 1989.

2. I do not maintain a domicile in Egypt.

...

4. To the extent that an Affidavit submitted by Mr. [“P”] sets forth that I was informed of anything at my quarters in Egypt and/or served with any documents in Egypt, his assertions are absolutely untrue.

...

6. I was not served with any documents relating to an Egyptian divorce proceedings at my abode in Maryland.

7. I did not appear at any divorce proceeding in Egypt.

...”

101. As considered *infra*, the issues of notice and of domicile also have relevance with respect to the application of Maryland law.

Conflict of Laws Rules of Egypt

102. Applicant maintains, and it has not been disputed by the other parties, that the conflict of laws rules of Egypt support the validity in Egypt of the Egyptian divorce.⁴² These conflict of laws rules, as set forth in the Egyptian Civil Code, provide as follows:

“Conflicts of laws as to place:

Art. 10 – Egyptian law will rule to determine the nature of a legal relationship in order to ascertain the law applicable in the event of a conflict between various laws in any particular suit.

⁴² Intervenor has noted in her Reply that several of the questions propounded by the Fund’s Legal Department to the Egyptian attorney were not directly answered by him. These questions included ones designed to ascertain the effect with respect to the Egyptian divorce of ongoing divorce proceedings in the United States.

Art. 11 – The status and the legal capacity of persons are governed by the law of the country to which they belong by reason of their nationality.¹ ...

Art. 12 – The fundamental conditions relating to the validity, of marriage are governed by the (national)² law of each of the two spouses.

Art. 13. – The effects of marriage, including its effects upon the property of the spouses, are regulated by the law of the country to which the husband belongs at the time of the conclusion of the marriage.

Repudiation of marriage is governed by the law of the country to which the husband belongs³ at the time of repudiation, whereas divorce and separation are governed by the law of the country to which the husband belongs at the time of the commencement of the legal proceedings.

Art. 14 – If, in the cases provided for in the two preceding articles one of the two spouses is an Egyptian at the time of the conclusion of the marriage, Egyptian law alone shall apply except as regards the legal capacity to marry.

Art. 15 – Obligations as regards payment of alimony to relatives are governed by the (national) law of the person liable for such payment.

...

1. The phrase ‘law of the country to which they belong by reason of their nationality’ is the literal translation of the Arabic text. The phrase used in the French official translation is ‘their national law’.

2. Neither the word ‘national’ nor the words ‘of the country to which the husband belongs’ appear in the Arabic text. The word ‘national’ has however been inserted in the official French translation.

3. The phrase ‘the law of the country to which the husband belongs’ is the literal translation of the Arabic text. The words used in the French official translation are however ‘the national law’.”

(Egyptian Civil Code.)

103. Accordingly, Applicant maintains that both the marriage and divorce of July 1998 of Mr. “P” and Ms. “Q” are governed by the law of Egypt:

“(C) ... According to the explicit wording of Article 13, all the effects of the marriage, including the patrimonial effects, as well as the consequences of termination of the relationship are subject to the law of nationality, which is Egyptian Law.

(D) As an absolute rule of mandatory application under Egyptian Law, there is a total patrimonial separation of assets between the two spouses, throughout the period of marriage, and *a fortiori* after the coming to an end of the marital relationship.

(E) Consequently, within the context of the present case, [Ms. “Q”] could not be entitled, under Egyptian Law, to claim any rights on the sums of money allocated by the International Monetary Fund as retirement pension to [Mr. “P”].

(F) The above-stated lack of standing to claim any rights on the pension payments [received] by [Mr. “P”] is clearly the rule in conformity with Egyptian Law which governs the relationship that existed with the former wife and which continues to prevail after the divorce which took place in July 1998.

(G) Whatever contrary decision emerges as a result of the ‘Judgement of Absolute Divorce’ rendered on February 11th, 2000, rendered by the Circuit Court of Montgomery County, Maryland, U.S.A., against [Mr. “P”] could not have any effect under Egyptian Law, as the Divorce already took place in July 1998 and the total separation of property rights between the two spouses represents the mandatory applicable rule.”

The Maryland Divorce in the Context of Maryland Law

104. Unlike the Egyptian divorce, the Judgment of Absolute Divorce entered by the Montgomery County Circuit Court on March 2, 2000 was the product of adversary legal proceedings, initiated by the filing by Ms. “Q” of a Complaint for divorce. Mr. “P” participated fully in the court proceedings, filing pleadings and appearing at hearings, until he left the United States in July 1998.

105. The Maryland divorce judgment is based upon findings of fact made by a Domestic Relations Master who recommended the divorce be granted on the basis of the two-year separation of the parties. Consistent with Maryland law, the Domestic Relations Master assessed a series of factors in recommending the division of marital property to be ordered by the Court. These factors included: the contributions, monetary and non-monetary, of each party to the well-being of the family; the value of all property interests of each party; the

economic circumstances of each party; the circumstances that contributed to the estrangement of the parties; the duration of the marriage; and the age, physical and mental condition of each party. Furthermore, consideration was given to how and when specific marital property, including Mr. "P"'s IMF pension entitlement, was acquired. As a result of this assessment, and consonant with Maryland's law of divorce, the Court ordered a monetary award to Ms. "Q" representing one-half of the total marital property (less the value of her personal property and one-half interest in an automobile); a continuing share (28%) of Mr. "P"'s IMF pension entitlement (an amount representing one-half of the amount of the pension earned during Mr. "P"'s marriage to Ms "Q"); survivor benefits under the pension attributable to the portion earned during the marriage; judgment for the amount of *pendente lite* alimony payments that Mr. "P" had ceased to make after he left the country; and attorney's fees.

Conflict of Laws and the Maryland Court's Application of the Doctrine of Divisible Divorce

106. The Maryland Court, in entering the Judgment of Absolute Divorce, expressly considered the conflict of laws issue posed by Mr. "P"'s obtaining a divorce in Egypt during the pendency of the Maryland proceedings. The Court held, under Maryland law, that it retained jurisdiction to grant a divorce and to order a division of marital property on the grounds that Ms. "Q" had remained domiciled in Maryland and that there was no exercise of personal jurisdiction over Ms. "Q" by an Egyptian court in a divorce action:

"3. The Defendant submitted to the Court, in connection with an earlier motion, a copy of what appears to be a certificate of 'a first revocable divorce' registered by a religious notary of the Maadi First Division, affiliated to the Maadi Court, Cairo, Egypt.

The Plaintiff testified that she was not given any notification of divorce proceedings in Egypt, and did not participate in such proceedings.

4. The instant action was filed by the Plaintiff in 1997. The Defendant was properly served in the action while the parties both resided in the State of Maryland. The Defendant participated in the proceedings in Maryland until July 1998 when he left the United States. The Plaintiff has continued to be domiciled in the State of Maryland throughout.

Under these facts, this Court continues to have jurisdiction to grant a final divorce to the Plaintiff, with all applicable relief concerning disposition of marital property. Even had a valid final divorce been obtained by the Defendant abroad, this Court would continue to have authority to enter appropriate orders

concerning disposition of marital property under Family Law Article 8-212, Annotated Code of Maryland, and to resolve continuing questions of alimony under Section 11-105, Family Law Article, Annotated Code of Maryland.”

(Report and Recommendations of the Family Division Master, January 31, 2000, pp. 1-2.)

107. The cited statutory provisions read as follows:

“§ 8-212. Exercise of powers after foreign divorce or annulment.

If an annulment or a divorce has been granted by a court in a foreign jurisdiction, a court in this State may exercise the powers under this subtitle if:

(1) 1 of the parties was domiciled in this State when the foreign proceeding was commenced; and

(2) the court in the other jurisdiction lacked or did not exercise personal jurisdiction over the party domiciled in this State or jurisdiction over the property at issue. (CJ § 3-6A-02; 1984, ch. 296, § 2.)”

(Family Law Article, Subtitle 2 “Property Disposition in Annulment and Divorce,” Maryland Annotated Code.)

“§ 11-105. Same – Following decree by another jurisdiction.

If an annulment or a limited or absolute divorce has been granted by a court in another jurisdiction, a court in this State may award alimony to either party if:

(1) the court in the other jurisdiction lacked or did not exercise personal jurisdiction over the party seeking alimony; and

(2) the party seeking alimony was domiciled in this State at least 1 year before the annulment or divorce was granted. (An. Code 1957, art. 16, § 1; 1984, ch. 296 § 2.)”

(Family Law Article, Maryland Annotated Code.)

108. These Maryland Code provisions represent a codification of the state law doctrine of “divisible divorce.” The operation and rationale for this choice of law rule was described by the United States Supreme Court in Estin v. Estin, 334 U.S. 541 (1948).

109. The Estin case arose under the Full Faith and Credit Clause of the United States Constitution, which provides that, “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” With the adoption of the Constitution, the Full Faith and Credit Clause replaced the principles of comity that had governed relations between the States when they were independent sovereigns. The Full Faith and Credit Clause made mandatory the “... submission by one State even to hostile policies, reflected in the judgment of another State, because the practical operation of the federal system, which the Constitution designed, demanded it.” Estin, 334 U.S. at 546. The question presented to the Supreme Court in Estin was whether, under the Full Faith and Credit Clause, the State of New York could continue to enforce a support and maintenance order incident to legal separation when subsequent to that order, the husband – having changed his domicile to Nevada – had obtained an ex parte divorce in that state and, under Nevada law, divorce extinguished an obligation for support.

110. The Supreme Court distinguished the Estin case from one in which a wife might be personally served or appear in the divorce proceedings in the other state. In Estin, the notice to the wife (who remained domiciled in New York) of the Nevada proceedings was by publication (“constructive service”) and she did not appear in the Nevada Court.

111. The Court in Estin at the same time reaffirmed an earlier decision, Williams v. North Carolina, 317 U.S. 287 (1942), in which it had held that a divorce decree granted by a state to one of its domiciliaries is entitled to full faith and credit in a bigamy prosecution in another state. (The Court noted that, in that case, it had held that the finding of domicile by the divorce-granting state is entitled to *prima facie* weight but is not conclusive in another state and may be relitigated there.) The holding in Estin is that even in circumstances in which a change in marital status of a domiciliary may be entitled to full faith and credit, the state in which a spouse receiving support remains domiciled may retain jurisdiction to enforce the support order earlier granted by its courts if that spouse did not participate in the divorce proceedings in the other state.

112. The Court explained its rationale in terms of the interests of the state in the welfare of its domiciliary:

“In this case New York evinced a concern with this broken marriage when both parties were domiciled in New York and before Nevada had any concern with it. New York was rightly concerned lest the abandoned spouse be left impoverished and perhaps become a public charge. The problem of her livelihood and support is plainly a matter in which her community had a legitimate interest. The New York court, having jurisdiction over both parties, undertook to protect her by granting her a judgment of permanent alimony. Nevada, however, apparently follows the rule that dissolution of the marriage puts an end to a support order. ... But the question is whether Nevada could under any circumstances adjudicate rights of respondent under

the New York judgment when she was not personally served or did not appear in the proceeding.

...

... we are aware of no power which the State of domicile of the debtor has to determine the personal rights of the creditor in the intangible unless the creditor has been personally served or appears in the proceeding.”⁴³

Estin, 334 U.S. at 547, 548.

113. The Court concluded by articulating the rule of “divisible divorce”:

“... the fact that marital capacity was changed does not mean that every other legal incidence of the marriage was necessarily affected.

...An absolutist might quarrel with the result and demand a rule that once a divorce is granted, the whole of the marriage relation is dissolved, leaving no roots or tendrils of any kind. But there are few areas of the law in black and white. The greys are dominant and even among them the shades are innumerable. For the eternal problem of the law is one of making accommodations between conflicting interests.

...

The result in this situation is to make the divorce divisible – to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony. It accommodates the interests of both Nevada and New York in this broken marriage by restricting each State to the matters of her dominant concern.”

Estin, 334 U.S. at 545, 547. The Maryland Court’s decision in the divorce action brought by Ms. “Q” against Mr. “P” reflects the policies underlying the Supreme Court’s ruling in Estin.

⁴³ This statement is in contrast with Egyptian Civil Code, Article 15: “Obligations as regards payment of alimony to relatives are governed by the (national) law of the person liable for such payment.”

Applicant's Argument that the Maryland Court Misapplied Maryland Law

114. Applicant has argued before the Administrative Tribunal that the Maryland Court misapplied Maryland law when it granted the Judgment of Absolute Divorce and ordered a division of marital property between the parties. In Applicant's view, the Maryland Court, applying principles of comity among nations, should have recognized the validity of the Egyptian divorce and on that basis should have held that it no longer retained jurisdiction as the parties were no longer married. Applicant's argument would appear either to overlook the statutory grounds upon which the Court rested its decision or to assert that those grounds were not applicable because – according to Applicant – Ms. "Q"'s domicile was Egypt and there was personal jurisdiction over Ms. "Q" with respect to the Egyptian divorce.

115. Intervenor contends that Maryland law, as embodied in the statutory provisions providing for divisibility of divorce, was properly applied by the Maryland Court in the circumstances of the case. Intervenor further asserts that, even in the absence of these statutory provisions, under principles of comity, the Egyptian divorce would not be entitled to recognition in Maryland because it offends the public policy of Maryland. Specifically, in the view of Intervenor, the Egyptian divorce was not the product of fair proceedings as Ms. "Q" did not have notice of and did not appear in a divorce proceeding in Egypt. Furthermore, the Egyptian divorce was effected after Mr. "P" had submitted himself to the jurisdiction of the Maryland Court and later fled the United States while in contempt of an order of the Maryland Court and in contravention of his statements to the Court that he would not leave.

116. In support of his position, Mr. "P" cites the Maryland case of Wolff v. Wolff, 40 Md. App. 168, 389 A.2d 413 (1978) *affd*, 285 Md. 185, 401 A.2d 479 (1979). In Wolff, the Maryland Court of Special Appeals considered the jurisdiction of the trial court to entertain a suit for enforcement of the alimony provision of an English divorce decree and concluded that the decree "... may be entitled to recognition under general principles of comity." (389 A.2d at 418.)

117. The Maryland Court, however, in Wolff qualified its ruling as follows:

"A decree of divorce will not be recognized by comity where it was obtained by a procedure which denies due process of law in the real sense of the term, or was obtained by fraud, or where the divorce offends the public policy of the state in which recognition is sought, or where the foreign court lacked jurisdiction."

Wolff, 389 A.2d at 418-19.

118. Two additional observations may be made concerning the Wolff case. First, the decision did not appear to involve an issue of any competing divorce decree. Second, in Wolff, the exercise of jurisdiction by the Maryland Court had the effect of supporting --rather than defeating -- the award of marital support. Indeed, Maryland public policy favoring the enforcement of support orders was one basis for the court's decision:

“... ‘when a court of competent jurisdiction over the subject-matter and the parties decrees a divorce, and alimony to the wife as its incident, and is unable of itself to enforce the decree summarily upon the husband, ... courts of equity will interfere to prevent the decree from being defeated by fraud.’”

Wolff, 389 A.2d at 419-20, quoting Barber v. Barber, 62 U.S. 582, 690-91 (1858):

“The fact that Maryland considers the obligation to pay alimony a duty, resting upon sound public policy, and not merely a debt collectible in an action at law, supports, we think, our holding that equity courts have jurisdiction to enforce the alimony provisions of foreign country decrees when such decrees are subject to recognition in this State.”

Wolff, 389 A.2d at 421. Hence, the ruling in Wolff would seem to have little applicability in support of Applicant's argument that the Maryland Court misapplied Maryland law.

The issue of the Administrative Tribunal's authority to decide whether the Maryland Judgment should be given effect under Section 11.3 of the Staff Retirement Plan

119. An essential issue raised by this case is the Administrative Tribunal's authority to resolve on the merits the question of whether the Maryland Judgment of Absolute Divorce, awarding Ms. “Q” an ongoing share of Mr. “P”'s pension entitlement, should be given effect under SRP Section 11.3 and the Administration Committee's Rules thereunder. Respondent has argued in its Answer:

“... the sole issues before this Tribunal are: first, whether the Committee acted properly and in accordance with the Rules in deciding to place into escrow a portion of Applicant's pension benefits; and second, whether the Rules which authorize the withholding of that portion of his pension benefits by the Fund are legal.

The unresolved questions of family law concerning the conflicting divorce decrees which provide the underlying basis for the Committee's decision, and the resolution of a supra-national conflict of jurisdiction regarding the divorce decrees issued in Egypt and Maryland in divorce matters are not

appropriate for resolution by the Committee, and need not be reached by the Tribunal in order to resolve the issues outlined above.”

The Fund contends furthermore:

“The legality of the Committee’s action could only be challenged if it could be shown that the Committee improperly determined that a *bona fide* dispute existed.”

By contrast, Applicant and Intervenor both seek a decision on the merits from the Tribunal, determining whether the Maryland Judgment should be given effect under SRP Section 11.3.

120. It must be noted at the outset that the IMF Administrative Tribunal, as it has observed in its jurisprudence,⁴⁴ is a tribunal of limited jurisdiction. Its authority is conferred exclusively by its Statute:

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

(Statute, Article III (first sentence).) The Administrative Tribunal’s authority to pass upon the underlying question in this case, i.e. whether the Maryland Judgment should be given effect under SRP Section 11.3, may be determined by reference to three statutory factors: the Tribunal’s subject matter jurisdiction; its remedial authority; and the law that it is authorized to apply.

The Administrative Tribunal’s Jurisdiction *ratione materiae*

121. The Tribunal’s jurisdiction *ratione materiae* is prescribed as follows:

“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

⁴⁴ See Mr. “A” Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-1 (August 12, 1999), paras. 56-59, 96; Mr. “V”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-2 (August 13, 1999), para. 110.

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;
- ...”

122. Hence, the subject matter jurisdiction, which the Administrative Tribunal clearly possesses, is limited to review of the legality of administrative acts. Accordingly, the authority of the Administrative Tribunal to resolve the underlying dispute in this case must be predicated upon a finding of error in the contested decision of the Administration Committee. If the Tribunal concludes that the Committee did not properly apply SRP Section 11.3 or the Rules thereunder, or that these regulations are themselves invalid, then the Tribunal would be authorized to invoke its remedial authority to correct the effects of the decision.

The Administrative Tribunal’s Remedial Authority

123. The Tribunal’s remedial powers are set forth in Article XIV of the Statute:

“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.

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.”

124. Article XIV, Section 1 authorizes the Tribunal to take all measures required to correct the effects of an erroneous decision.

The Law to be Applied by the Administrative Tribunal

125. The second sentence of Article III provides:

“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.”

It is this statutory provision, prescribing the law to be applied by the Administrative Tribunal, that guides the Administrative Tribunal in determining whether the Administration Committee's decision should be rescinded.

The Character of the "Regulatory Decision"

126. The administrative act contested in this case is the decision of the SRP Administration Committee to place in escrow the disputed portion of Mr. "P"'s pension entitlement. While the focus of the dispute in the Tribunal is the legality of the "individual decision," Applicant also appears to challenge the legality of the underlying pension regulations, i.e. the "regulatory decision."

127. Applicant asserts that whatever rights Ms. "Q" claims to have by virtue of the Maryland divorce judgment are "legal claims which will have to be resolved by the courts," and that "Ms. ["Q"'s] remedy, if any, must be found under an express waiver [of immunity] of the IMF." Applicant thus puts into question whether Section 11.3 of the SRP, authorizing the Committee to give effect, under prescribed conditions, to local court orders, is legal under the applicable law of the Fund.⁴⁵

128. Pursuant to Article III, the Administrative Tribunal must apply the internal law of the Fund in deciding on an application. The IMF Articles of Agreement are among the governing sources of the Fund's internal law to which the published Commentary on the Tribunal's Statute expressly refers.⁴⁶ Furthermore, the primacy of the Articles of Agreement in the Fund's internal law is referred to both in the Commentary and the text of the Statute of the Administrative Tribunal.⁴⁷ Accordingly, the legality of a regulatory decision of the Fund may not be sustained if it is inconsistent with the higher authority of the Articles of Agreement.

⁴⁵ As the Commentary on the Tribunal's Statute makes clear, it is "... the function of the tribunal, as a judicial body, to determine whether a decision transgressed the applicable law of the Fund." (Report of the Executive Board, p. 13.)

⁴⁶ "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 Administrative Orders) and unwritten sources."

(Report of the Executive Board, pp. 16-17.)

⁴⁷ The Commentary observes:

"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."

(continued)

129. As reviewed *supra*, Article IX, Section 3 of the Fund's Articles of Agreement provides for immunity from judicial process of the IMF and its retirement fund:

“Section 3. *Immunity from judicial process*

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.”

Applicant appears to argue that the policy embodied in SRP Section 11.3 and the Administration Committee Rules thereunder of giving effect to local court orders, without an express waiver of immunity, violates this provision. Applicant does not elaborate on this argument and the Fund has not expressly addressed it before the Tribunal. Nonetheless, the Fund, in documents explaining its decision to create mechanisms to give effect to court orders for family support and division of marital property, has asserted that such decisions are taken “voluntarily” and “without waiving [the Fund’s] privileges and immunities.” (Staff Bulletin No. 99/11, pp. 1, 2.)

130. This position is supported by the fact that Respondent, by SRP Section 11.3 and the Rules thereunder, does not subject itself to the jurisdiction of any court, nor does the Fund comply automatically with court orders. Instead, the Fund has incorporated into its internal law a policy of giving effect, on a case by case basis, to a particular type of court order. The order is given effect only after procedures are followed, within the Fund, allowing for consideration of the views of the affected parties. A decision is then rendered by the Administration Committee, subject to appeal to the Administrative Tribunal.

131. Applicant has not explained how the process employed under SRP Section 11.3 might contravene the Fund’s immunities as prescribed in the Articles of Agreement or why an

(Report of the Executive Board, p. 18.)

Article III provides in part:

“Article III

...

“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.”

“express waiver” would be required to give effect to the policy. The policy, approved by the Fund’s Executive Board in its authoritative interpretation of the Articles of Agreement, governs this Tribunal. In light of it, the Administrative Tribunal concludes that the “regulatory decision” does not violate the Articles of Agreement.

The Legality of the “Individual Decision”

132. The challenge to the legality of the individual decision may be stated as follows: Did the Administration Committee properly apply SRP Section 11.3 and the Rules thereunder in the circumstances of the case?

133. Respondent has taken the view that the challenge to the individual decision is limited to the question of whether a bona fide dispute exists that would justify the withholding of the disputed amount. Applicant and Intervenor have argued, in effect, that the dispute is not “bona fide,” inasmuch as each regards the other’s position as without merit. Each contends that his or her viewpoint should prevail by proper application of the Rules.

134. In addition, Applicant raises other challenges to the legality of the individual decision. First, he contends that SRP Section 11.3 is not applicable to orders for division of marital property but only to support orders. Second, he challenges the legality, in the circumstances of the case, of the decision to hold the disputed portion in escrow when, in his view, there is no foreseeable resolution to the dispute between the parties. (Respondent has characterized this latter argument as a challenge to the “regulatory decision.”)

Does SRP Section 11.3 apply to orders for the division of marital property?

135. Applicant has disputed the application of SRP Section 11.3 in the circumstances of the case on the ground that the Court Judgment that forms the basis of Ms. “Q”’s request to the Administration Committee is an order for the division of marital property rather than spousal support.

136. As Respondent has pointed out in its Additional Statement, it is clear from the terms of SRP Section 11.3 that the provision applies broadly to a “legal obligation arising from a marital relationship.” (SRP Section 11.3.) Furthermore, specific references made in the text to the division of marital property reveal that the provision encompasses such orders:

“The benefit payable to the spouse or former spouse shall not exceed: (1) 50 percent of the portion of the participant’s or retired participant’s benefit that is attributable to his eligible service during the couple’s marriage whenever the obligation or obligations to which the court order or decree relates are for support of the spouse or former spouse or *division of marital property* or both, and (2) 66 2/3 percent of the benefit payable to the participant or retired participant whenever the obligation or obligations to which the court order or decree relates includes child support, provided, however, that the amounts

payable as support of the spouse and *division of marital property* remain subject to the limits under (1), above, and any increase that exceeds those limits must be directly related to the amount of the child support portion of such court order or decree.”

(SRP Section 11.3.) (Emphasis supplied.) (A similar reference is found in Rule 3 of the Rules of the Administration Committee under Section 11.3.)

137. The Administrative Tribunal accordingly concludes that Applicant’s contention that SRP Section 11.3 applies only to support orders is without merit.

Did the Administration Committee act erroneously by withholding a portion of Applicant’s pension entitlement in the circumstance that there is no foreseeable resolution of the dispute between the parties?

138. Applicant contends that a “reasonable interpretation of Rule 1(b) is that there must be a foreseeable conclusion to the controversy between the parties,” and that as the foreseeability of such a conclusion “is certainly not the case here,” the Rule is inapplicable in the circumstances of the case.⁴⁸ In response, the Fund has framed Applicant’s argument as a challenge not only to the “individual decision” in the case of Mr. “P” but also to the underlying “regulatory decision.”

139. It may be observed that the lack of foreseeability to the resolution of the dispute in this case is borne out by the record before the Tribunal, in which the parties have reported that there are no pending court proceedings that might bear upon the finality or validity of the Maryland Judgment. Hence, the only foreseeable resolution would be either through a negotiated settlement between the parties or by a decision on the merits by the Administrative Tribunal.

140. The Fund defends the legality of the Rules, and the underlying provision of SRP Section 11.3, on the basis that they “... place[] the onus on the parties to resolve what are essentially private, domestic disputes ...” in the circumstance in which there are no universally accepted principles for resolving conflicts of law and jurisdiction. In the Fund’s view, the Rules create an incentive for the parties to resolve the dispute between themselves while maintaining the Fund’s neutrality vis-à-vis differing legal systems:

“Contrary to Applicant’s assertion, the Rule does admit of a foreseeable conclusion. However, that conclusion is one which must be agreed upon or pursued by the parties themselves, or resolved in the courts, without the intervention of the Fund as

⁴⁸ While Applicant refers to Rule 1(b), it is Rule 1(c) that authorizes suspension of a disputed payment “...until such...dispute shall have been settled in the judgment of the Administration Committee.”

employer. Although it is understood that these matters may be difficult to resolve, the Rules are premised on the expectation that the financial interests of both parties in the disputed payments would provide sufficient motivation for them to reach agreement or compromise.

To do otherwise would require the Committee to give greater credence to either the Maryland or the Egyptian legal system, and would be inconsistent with the Fund's general principle of uniformity of treatment of its members. The approach reflected in Section 11.3 avoids the need for the Committee to act in a manner that is partial to any particular legal system or to one of the parties. Consistent with this objective, the withholding of the disputed portion of the pension benefits pending resolution of the dispute by the parties themselves maintains the neutrality of the Fund vis-à-vis a domestic law matter, maintains the status quo and is a prudent measure that avoids the Fund making payments that might be deemed inappropriate once the dispute is resolved."

141. At the same time, Section 7.2 (b) of the Staff Retirement Plan provides that decisions by the Administration Committee to determine *inter alia* whether any person has a right to any benefit under the Plan, and the amount thereof, are subject to review by the Administrative Tribunal:

"7.2 Administration Committee

...

(b) ... Except as may be herein otherwise expressly provided, the Administration Committee shall have the exclusive right to interpret the Plan; to determine whether any person is or was a staff member, participant, or retired participant; to direct the employer to make disbursements from the Retirement Fund in payment of benefits under the Plan; to determine whether any person has a right to any benefit hereunder and, if so, the amount thereof; and to determine any question arising hereunder in connection with the administration of the Plan or its application to any person claiming any rights or benefits hereunder, and its decision or action in respect thereof shall be conclusive and binding upon all persons interested, subject to appeal in accordance with the procedures of the Administrative Tribunal. ..."

Likewise, the Tribunal's Statute places review of such decisions within its jurisdiction *ratione materiae*.⁴⁹ The significance of the Tribunal's appellate authority is illustrated by the present case. Absent it, the Applicant and the Intervenor could find themselves indefinitely without third party remedy. Even if there were merit to the Applicant's contention that the Administration Committee acted erroneously in withholding when there was no foreseeable resolution of the dispute --a contention which is necessarily conjectural-- that Objection can be overcome by recourse to this Tribunal.

Did the Administration Committee properly conclude that there exists a "bona fide dispute" under Rule 1(c)?

142. In Respondent's view, the fundamental question in this case is whether the Administration Committee was correct in determining that a bona fide dispute exists, under the applicable provisions of the Committee's Rules, so as to justify the Committee's decision to withhold the amount in dispute. Rule 1(c) provides:

"(c) The Administration Committee will not (i) interpret agreements between spouses or former spouses, directions or accepted requests to pay or orders or decrees of courts in cases of ambiguity, or (ii) resolve questions where there is a *bona fide* dispute about the efficacy, finality or meaning of an order or decree. In these cases, activation of the direction or accepted request and any associated payment may be suspended until such ambiguity or dispute shall have been settled in the judgment of the Administration Committee."

143. Rule 2 of the Administration Committee Rules under SRP Section 11.3 directs that in the case of an objection to the giving effect to a court order or decree, the Committee will assess the adequacy of the order in light of four factors (A) through (D) to determine whether the order:

⁴⁹ Article II 1(b) provides:

"ARTICLE II

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

...

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."

“(A) is valid by reason that:

- (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
- (2) the judgment has been rendered by a court of competent jurisdiction rendition [sic] and in accordance with such requirements of the state of as are necessary for the valid exercise of power by the court;

(B) is the product of fair proceedings;

(C) is final and binding on the parties; and

(D) does not conflict and is not inconsistent with any other valid court order or decree.”

In the absence of an objection, the presence of these factors affords a presumption of validity to the court order or decree. (Rule 2.) Apparently because it was not clear to the Committee whether the Maryland Judgment met the specified criteria in light of the objection raised by Mr. “P”, it concluded that a bona fide dispute existed under the terms of Rule 1(c).

144. In reviewing the soundness of the Committee’s decision, each factor must be considered in turn.

“(A) is valid by reason that:

- (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
- (2) the judgment has been rendered by a court of competent jurisdiction rendition [sic] and in accordance with such requirements of the state of as are necessary for the valid exercise of power by the court;”

The nub of the controversy between the parties is whether under Rule 2(A)(2) the Judgment that Ms. “Q” seeks to have given effect was rendered by a “court of competent jurisdiction.” That a reasonable method of notification and a reasonable opportunity to be heard were employed by the Maryland Court has not been contested by Mr. “P”. Intervenor has

contrasted the adversary proceedings employed by the Maryland Court with the ex parte divorce declaration effected by Mr. "P" in Egypt.

- "(B) is the product of fair proceedings;"

It is not the fairness of the proceedings in Maryland that is at issue, but rather whether the Court had jurisdiction.

- "(C) is final and binding on the parties;"

The finality of the Maryland Judgment is supported by the fact that no appeal has been taken and both Applicant and Intervenor have averred to the Administrative Tribunal that no litigation is pending that would bear upon its validity. Whether or not the judgment is binding on the parties raises once more the question of the Court's jurisdiction.

- "(D) does not conflict and is not inconsistent with any other valid court order or decree."

The relevance of Rule 2(D) is unclear in the circumstances of the case. *Prima facie*, the Egyptian divorce represents a conflicting court order or decree. Intervenor has pointed out, however, that the Egyptian divorce is not, in terms, a court order or decree (although its validity may be equivalent thereto), and that the terms of the divorce do not reach the question of the division of marital property. Moreover, the text of the Rule suggests that factor "D" relates to a court order or decree that formed the basis of a *prior direction or accepted request* under the Plan.⁵⁰ Certainly, the Egyptian divorce declaration is not such an order.

145. In the view of the Administrative Tribunal, the Administration Committee's decision that there exists a "bona fide dispute" as to the efficacy, finality or meaning of the Maryland Judgment, supporting its decision to maintain the disputed portion of the pension payment in escrow, was understandable. Nevertheless, for the reasons set forth below, the Tribunal has concluded that that decision was in error and must be rescinded.

146. Under its Statute, the Administrative Tribunal has no competence to pass upon the validity of municipal law as interpreted and applied by the legal authorities of either Maryland or Egypt.⁵¹ Hence, whether the Maryland Court correctly applied Maryland law

⁵⁰ "...if there is an inconsistency or conflict under (D) above with the court order or decree that was the basis of a prior direction or accepted request, the Administration Committee will notify the parties that neither order or decree will be given effect unless and until the conflict or inconsistencies are resolved." (Rule 2).

⁵¹ See also Jean-Michel Verdier v. International Bank for Reconstruction and Development, WBAT Order (May 15, 1998):

"The request of the Applicant to the Tribunal thus to declare invalid his acceptance of the settlement of his claims necessarily involves his asking the Tribunal to review and to declare invalid the procedures

(continued)

may be regarded as a question that only the Maryland courts are competent to answer. As no appeal has been taken, the Administrative Tribunal regards the Circuit Court decision as the prevailing statement of Maryland law under the circumstances of the case. Similar considerations apply to the validity of the Egyptian divorce.

147. The Tribunal accordingly must take as its starting point, supported by the record in this case, that the Maryland Judgment of Absolute Divorce is valid under Maryland law and that the Egyptian divorce as recorded by a religious notary and registered with Egyptian civil authorities is valid under Egyptian law.

148. The difficulty posed in this case is well articulated in the following commentary by a former senior legal advisor of the International Labour Organisation:

“An alternative possibility is to accept any formal legal document issued by an authority competent for the purpose in the country of issue, or to do so at least unless or until the validity of such a document has been denied by the judgment of a court of the staff member’s nationality or domicile, as the case may be. Such an approach – followed by a number of organizations – can be justified, on the one hand, by the respect owed by the organization to the legal institutions of all its Members and, on the other, by the lack of competence of the organization to review the acts of these institutions and their recognition, or otherwise, elsewhere. As an administrative arrangement, for such purposes as family allowances or travel, it probably corresponds to the current facts of the staff member’s family situation and provides a practical solution. However, it would not seem to be a legal solution that could be applied by an administrative tribunal called upon to adjudicate on two conflicting claims to a pension;

...

In effect, there is not at present any generally valid solution to problems of family law as seen from an international ‘forum’.”

F. Morgenstern, Legal Problems of International Organizations (1986), pp. 44-45.

followed, and the decisions made by the French judicial authorities in accordance with French law, with a view to protecting his interests. *This Tribunal manifestly has no jurisdiction to pass judgment upon the application of the provisions of the French “Code Civil” by the French judiciary.* The Tribunal, therefore, finds that the Request is clearly irreceivable and, consequently, must be summarily dismissed.”

Verdier, para. 6. (Emphasis supplied.)

149. The problem may be particularly acute, Ms. Morgenstern points out, when "...the organization may be called upon to deal with legal situations in respect of which there exists a conflict of laws, without being able to draw upon rules reflecting a public policy of its own." (Id., p. 37.)

150. Such a situation may be distinguished from that before this Tribunal, in which a public policy of the organization has, indeed, been determined by the Managing Director with the approval of the Executive Board.

151. In seeking a reasoned solution to the issue posed in this case, within the framework of the Fund's internal law, the following factors may be weighed. The Fund's policy embodied in SRP Section 11.3, and the Rules of the Administration Committee thereunder, comports with the law of the host country. The underlying purpose of the policy is to encourage enforcement of orders for family support and division of marital property, and hence the policy favors legal systems in which such measures are recognized. The interest of the host country in the giving effect to orders rendered therein may be analogized, under the doctrine of "divisible divorce," to the interest of the forum in the welfare of its domiciliary.

152. Moreover, the Fund's internal law favors legal decisions that are the result of adversary proceedings, in which reasonable notice and the opportunity to be heard are the essential elements. Proceedings involving notice and hearing are expressly accorded a presumption of validity under Rule 2 of the Administration Committee Rules of Procedure under SRP Section 11.3. The Fund's internal law more generally, as articulated in the Commentary on the Tribunal's Statute, specifies that "...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." (Report of the Executive Board, p. 18.). The jurisprudence of the Administrative Tribunal has applied notice and hearing as essential principles of international administrative law. *See, e.g., Ms. "C", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), para. 37; *Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent, (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), paras. 116-128.

153. The Administrative Tribunal has weighed as well the following factors. Until July 1998, Mr. "P" had submitted himself to the jurisdiction of the Maryland Court to adjudicate the termination of his marriage to Ms. "Q". Having told the Maryland Court that he would not leave its jurisdiction, he summarily left for Egypt and declared a divorce from Ms. "Q", thereafter repudiating the jurisdiction of the Maryland Court. SRP Section 11.3, and the Administration Committee Rules thereunder, were expressly designed to apply to retired participants who have moved outside the jurisdiction of the court issuing the applicable order. (Staff Bulletin No. 99/12, p. 1.) As an element of its employment policy, the Fund may condition receipt of retirement benefits on compliance with valid orders for family support or division of marital property.

154. It is moreover important to recall that the Egyptian divorce contains no provisions governing the disposition of marital assets. Only the Maryland Court Judgment treats the division of marital property and it does so in clear and specific terms. The Maryland Court held that, even had a valid final divorce been obtained in Egypt, the Maryland Court would continue to have authority to issue orders concerning disposition of marital property under Maryland law, in the interest and welfare of a domiciliary of the State of Maryland. In that sense, it saw no conflict between the existence of the Egyptian divorce and the disposition of the case before it in accordance with Maryland law.

155. It is furthermore of cardinal importance to recall that the Maryland Court Judgment conformed to the criteria of enforceability set out in the internal law of the Fund, notably in Rule 2 of the Administration Committee's Rules under SRP Section 11.3.

156. In the light of these factors, the Administrative Tribunal concludes that the request of the Intervenor should have been given effect under the Staff Retirement Plan by the Administration Committee. In so concluding, the Administrative Tribunal does not enforce the law of Maryland and decline to enforce the law of Egypt. Its decision rather responds to what may be termed the public policy of its forum, namely, the internal law of the Fund.

157. The Tribunal notes the provisions of Article XIV, Section 4 of the Statute in respect of the discretionary award of reasonable costs to be borne by the Fund where an application is adjudged to be well-founded. In the circumstances of this case, the Tribunal rules that the Applicant, the Fund and the Intervenor shall bear their own legal costs.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

The decision of the Administration Committee placing in escrow the disputed portion of the pension of the Applicant is rescinded and the Respondent is directed to pay to the Intervenor the amount now held in escrow, including interest, and, in future, to pay to the Intervenor the proportion (28%) of the pension of the Applicant as requested by the Intervenor.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

Stephen M. Schwebel, President

Celia Goldman, Registrar

Washington, D.C.
November 20, 2001