

## INTERNATIONAL MONETARY FUND

### **Summary: The Report of the External Panel on the Fund's Dispute Resolution Systems and Implementation Plans**

Prepared by the Human Resources and Legal Departments

April 15, 2002

#### **I. INTRODUCTION AND OVERVIEW**

1. In early 2001, the Fund undertook a comprehensive review of its systems and procedures for resolving employment-related disputes arising between the Fund and its employees. The purposes of the review were to ensure that the Fund's arrangements facilitate the timely and effective resolution of disputes while giving employees fair and impartial channels of recourse and meeting the Fund's institutional needs. The review encompassed both substantive questions (e.g., decisions subject to review, grounds for review, and remedies) and procedural aspects (e.g., opportunity to be heard, conduct of hearings, and time limits).

2. To carry out the review, management appointed an external Panel of three independent experts with extensive international experience in dispute resolution, arbitration and mediation. The Chair and members of the Panel were:

- **Mr. Arnold Zack**, who served as the Panel's Chair, has extensive experience in the arbitration and mediation of employment disputes in both the public and private sector, and consults internationally on the design of dispute resolution systems. He is the author of numerous books and articles on grievance arbitration and mediation; was President of the U.S. National Academy of Arbitrators in 1994–95; and has taught dispute resolution at Yale Law School and at Harvard University's Trade Union Program. Mr. Zack is from the United States.
- **Ms. Sarah Christie** is a mediator and arbitrator in labor relations. She has been Senior Convening Commissioner of the South African Commissions for Conciliation, Mediation, and Arbitration, and a member of the Board of Trustees of the Independent Mediation Service of South Africa. She teaches labor law and dispute resolution at the Institute of Development and Labor Law at the University of Cape Town. Ms. Christie is from South Africa.
- **Mr. Chris de Cooker** is Chief of Staff Regulations and Central Support at the European Space Agency. Before joining the Agency, he was a senior lecturer in international law, the law of international organizations and international administration. He is the author of numerous articles on the law of international

organizations, and the editor of the treatise, “International Administration, Law and Management Practices in International Organizations.” He is a member of the editorial committee of the International Review of Administrative Sciences. Mr. de Cooker is from the Netherlands.

3. In carrying out the study, the Panel consulted extensively with the staff of the Human Resources Department (HRD) and Legal Department (LEG) and departmental Senior Personnel Managers (SPMs) and Administrative Officers (AOs), who have responsibilities for various aspects of human resources management and dispute resolution. The Panel also obtained the views of the current and former Ombudspersons, the Chair and Members of the Grievance Committee, the President and Registrar of the Administrative Tribunal, the Ethics Officer, the Senior Advisor on Diversity, and the Dean of the Executive Board. Throughout the review, the Panel consulted extensively with the Staff Association Committee (SAC), and it arranged to meet or to obtain views by e-mail from a large number of individual staff members on a completely confidential basis. The Panel was provided documentation on the Fund’s human resources policies and procedures, the jurisprudence, practice and procedure of the Grievance Committee and the Administrative Tribunal, and a range of internal studies on staff attitudes, the role of women, and discrimination. Outside the Fund, the Panel consulted officials of other international organizations (listed in Annex III of the Panel’s report), as well as several experts on the operation of dispute resolution systems and international administrative law. The Panel completed the review and submitted its report to management at end-November 2001.

4. The following sections of this paper briefly describe the context for and main components of the Fund’s dispute resolution systems (Section II); summarize the Panel’s overall conclusions (Section III); and set out the Panel’s specific recommendations, together with the plans for their implementation (Section IV). The implementation plans on each set of recommendations are presented in boxes following the summary of the Panel’s proposals. In keeping with the Fund’s commitment to transparency, the Panel’s full report will be posted on the intranet.

### **Conclusions of the panel**

5. The Panel concludes that the Fund (a) has established an extensive internal body of law that appropriately covers the employment terms and conditions of staff and sets out the duties, obligations and rights of staff members; and (b) has comprehensive formal and informal systems for employees to raise concerns regarding its rules and regulations on employment terms and conditions and to resolve employment-related disputes. The Panel’s overall conclusion is that “that the Fund’s body of internal law and dispute resolution systems, processes, and procedures are fundamentally sound and that they compare very favorably to the practices and procedures of other international organizations.” The Panel nevertheless recommends a number of changes or clarifications in the major components of the system and current procedures. The Panel emphasizes that these changes would “build on an already very strong and effective foundation.”

## **General implementation plans**

6. Management has endorsed most of the Panel's findings and recommendations and has approved a plan for their implementation. Both the Panel's recommendations and the implementation plan have the broad support of the SAC, the Ombudsperson, the Chair and members of the Grievance Committee, and the Ethics Officer, although there are some differences of views regarding particulars on which there will be further consultations as implementation proceeds.

7. Most of the Panel's recommendations involve the **process for resolving disputes** and require the amendment or clarification of General Administrative Order No. 31 (Grievance Committee), changes in the Terms of Reference for the Ombudsperson, preparing revised and additional information materials explaining the dispute resolution system and procedures, and implementing revised procedures for carrying out Administrative Review by the HRD. Other recommendations involve **ethics and the conduct of investigations into misconduct** and require the revision of General Administrative Order No. 33 (Conduct of Staff), the Terms of Reference for the Ethics Officer, and guidelines governing the conduct of inquiries and investigations into alleged misconduct. LEG and HRD have started this work in consultation with the SAC, Ombudsperson, Ethics Officer, and Chair of the Grievance Committee; HRD and LEG expect to complete most of the necessary changes during 2002.

8. A third area on which the Panel focuses involves strengthening the Fund's **communications and information** on human resources policies in general and specifically on appeal procedures and dispute resolution resources and procedures. Providing comprehensive and accessible information, as the Panel recommends, requires the reorganization and integration of a wide range of materials available in written documents and on the intranet. HRD plans to develop a systematic communication strategy for this, as well as other areas, during 2002 and to carry out this work during the next one to two years.

9. Finally, HRD will begin during 2002 to expand and strengthen the resources available for **mediation, conciliation, counseling and coaching**, which the Panel recommends in order to help resolve disputes and, more generally, to address various forms of workplace conflict. Resources for this purpose have been included in the FY 2003 Administrative Budget.

## **II. THE FUND'S DISPUTE RESOLUTION SYSTEM**

### **A. The Institutional and Legal Setting**

10. The Fund, like other international organizations, is not subject to the national laws of its member states. In addition, the Fund has certain privileges and immunities, which the Panel notes are essential to safeguard the Fund's international character and independence vis-à-vis member governments, and to enable Fund employees to perform their duties as

international civil servants exclusively in the interests of the organization. However, the Panel also notes that the autonomy of the Fund with respect to national employment laws gives rise to a corollary obligation for the Fund to establish internal laws that reflect broad principles of employment law among its member States and of international administrative law. Because the Fund does not submit disputes over employment terms and conditions to litigation under any national legal system, the Panel concludes that the Fund is further obligated to provide an internal system that allows disputes over employment conditions and employees' rights to be heard and resolved through proceedings that are accessible, independent, authoritative, and fair.

11. Authority for the Fund's internal law, including its process for adjudicating employment disputes, ultimately derives from its members as reflected in the Fund's Articles of Agreement and is exercised by the Board of Governors, the Executive Board, and the Managing Director. Because employment laws vary considerably in terms of their general approach and specific processes among the Fund's 183 members, the Panel points out that it would be impossible for the Fund or its staff to comply with the laws of each member country. For the same reason, and also for consistency with the principle of equal treatment to which the Fund adheres in its dealings with member countries, the Panel regards it as inappropriate for the Fund to favor or to rely exclusively, or even predominantly, on the legal system of the host country or any other single member. Conversely, the Panel also maintains that each of the Fund's members should respect the organization's need for an autonomous system of internal law.

### **B. Components of the Fund's Dispute Resolution Systems**

12. The Fund has separate conditions of employment and procedures with respect to staff, on the one hand, and contractual employees, on the other. With respect to staff, the Fund has established an extensive internal body of law that covers the employment terms and conditions and sets out the duties, obligations and rights of staff members. The Panel notes that "various aspects of the Fund's 'law' are furnished in the N-Rules, General Administrative Orders (GAOs), the Code of Conduct, numerous Staff Bulletins, Administrative Circulars, the Terms of Reference of the Ethics Officer and Ombudsperson, booklets on various benefit programs, announcements, and more." The Fund also maintains a range of formal and informal systems through which employees can raise concerns regarding rules and regulations on employment terms and conditions and seek to resolve employment-related disputes. The main components of these systems are the following.

- For more than 20 years, the Fund has made available the services of an **Ombudsperson** who provides independent, impartial and confidential assistance to employees in workplace problems and employment-related disputes. The Ombudsperson is appointed after consultation with the SAC from outside the Fund for a fixed, nonrenewable term. She or he may intervene at the initiative of employees (or managers/supervisors) and seek to mediate or to recommend measures to resolve disputes to the responsible officers. The Ombudsperson issues an annual report that

describes the problems brought to her or his attention, their outcome, and general issues raised by individual cases; she or he also has the obligation to bring systemic issues to the attention of the Managing Director.<sup>1</sup>

- The first step in moving from informal problem solving into formal resolution of a dispute is **Administrative Review**. This process allows a staff member to seek a review of a decision adversely affecting the individual's work or career, benefits, or other condition of employment by the responsible line manager, in the first instance, and then by the Director, HRD. Administrative review is a formal process in which the complainant must identify the decision that is being challenged, the alleged inconsistency of the decision with a Fund rule or regulation, the facts known to the staff member, and the relief sought.<sup>2</sup>
- Staff who believe that they have failed to obtain proper redress through Administrative Review may submit the dispute to the **Grievance Committee**. (This Committee may not consider challenges to the regulations issued by the Executive Board or management.) Grievances are heard by a panel comprising an experienced labor-management arbitrator (as Chair) and two staff members, of whom one is appointed by management and one by the SAC. The Committee may consider a grievance on the basis of the written record, but it usually holds oral hearings; both the staff member and the Fund may call and examine witnesses and obtain relevant documents from the other party; staff members may be assisted by an attorney or other person of their choosing. The Committee's conclusions are submitted as recommendations to the Managing Director. Since the Committee was established in 1980, all of its decisions have been made unanimously, and the Managing Director has accepted all of its recommendations. The Committee issues periodic reports to staff on the cases submitted to it, its recommendations, and the Managing Director's response.
- The final and highest level for the review of administrative decisions is the Fund's **Administrative Tribunal** (IMFAT). The Tribunal, which was established by the Board of Governors in 1992, functions as an independent body with jurisdiction over "any individual or regulatory decision taken in the administration of the staff of the Fund." This means that the IMFAT may review not only whether a rule was correctly interpreted or applied in a specific case, but also the legality of the rule itself. Its jurisdiction accordingly includes the legality of regulatory decisions taken by both management and the Executive Board. The IMFAT decides cases on the basis of the

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<sup>1</sup>The terms of reference for the Ombudsperson and recent annual reports of the Ombudsperson are posted on the Fund's intranet.

<sup>2</sup>Procedures governing both Administrative Review, as well as the Grievance Committee, are set out in GAO No. 31, which is available on the Fund's intranet.

internal law of the Fund and generally recognized principles of international administrative law concerning judicial review of administrative acts. The members of the IMFAT are prominent jurists with experience in international administrative law. Its President is appointed by the Managing Director after consultations with the SAC and with the approval of the Executive Board, and two associate judges, with alternates, are appointed by the Managing Director after appropriate consultation.<sup>3</sup>

13. Staff members on regular or fixed-term appointments, and former staff members, dependents and beneficiaries with respect to claims under benefit plans, with the exception of the **Staff Retirement Plan** (SRP or Plan), have access to all of the components of the Fund's dispute resolution system described above. Separate procedures apply to matters concerning the SRP, because the Plan gives its Committees the exclusive right to make determinations with respect to the interpretation and operation of the Plan. The Plan Committees have established procedures that provide for decisions to be reviewed by the SRP Administration Committee and then by the Administrative Tribunal.<sup>4</sup>

14. Separate procedures apply to contractual employees, whose terms and conditions of employment are defined in their individual contracts. These differ in many respects from the staff rules on employment and benefits that are set out in the N-Rules and GAOs. Contractual employees have access to the Ombudsperson and Administrative Review, but disputes that are not resolved by those means are referred to **binding arbitration** before the Chair of the Grievance Committee sitting as a single arbitrator, rather than to the Grievance Committee or IMFAT.

15. A number of other resources and programs also play a role in addressing various forms of workplace conflict and in resolving disputes. These include the staff of HRD who provide substantial counseling and guidance to both individual staff members and to departmental managers, and each department's SPM, Assistant to Senior Personnel Manager and/or Administrative Officer who devote most and, in some cases, all of their time to human resources management in their department. Additional resources include the Ethics Officer who counsels staff members on questions of ethics and conducts investigations into alleged violations of the Fund's rules and regulations; the Senior Advisor on Diversity who focuses on systemic policies and procedures that help to achieve diversity and to prevent discrimination; and Advisors Against Harassment who are available to provide confidential advice and to arrange interventions on behalf of staff members affected by any form of harassment, but with an emphasis on sexual harassment and intimidation.

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<sup>3</sup>The Statute and Rules of the IMFAT and the Tribunal's judgments are available on the Fund's intranet and also externally on the Internet. The Tribunal has jurisdiction over regulatory decisions made after its establishment in October 1992.

<sup>4</sup>Procedures governing appeals of decisions on the SRP are posted on the Fund's intranet.

### III. GENERAL CONCLUSIONS OF THE PANEL

16. The Panel concludes that the Fund has established a body of internal law that appropriately covers the employment terms and conditions of staff and sets out the duties, obligations and rights of staff members, and that the Fund maintains comprehensive formal and informal systems for employees to raise concerns regarding its rules and regulations on employment terms and conditions and to resolve employment-related disputes. The Panel's overall assessment is set out in the Executive Summary of its report:

“Our overall conclusions are that the Fund's body of internal law and dispute resolution systems, processes, and procedures are fundamentally sound and that they compare very favorably to the practices and procedures of other international organizations. The Fund's regulations and rules are comprehensive and, for the most part, are accessible to employees. The development and application of policies and rules affecting the interests of staff are subject to regular consultation with the representatives of the staff through the SAC, which contributes significantly to the prevention of subsequent disputes. The Fund's Ombudspersons have played particularly effective roles in advising staff on workplace issues and, through consultations and mediation, informally securing solutions to many disputes. There are also strong formal processes that permit employees to challenge both administrative decisions affecting them individually and broad regulations and rules, significantly including “regulatory decisions” taken by the Executive Board. At each stage in the review and appeal process, Fund staff have clear opportunities to present their case (with assistance by legal counsel, if they wish). The record demonstrates that Fund management is committed to an independent review process for such disputes; management has accepted, without exception, the recommendations of the Grievance Committee and is bound by judgments of the Administrative Tribunal.”

17. The Panel recommends numerous changes in the Fund's present dispute resolution systems, but emphasizes that these would “build on an already very strong and effective foundation.” The broad objectives of the proposed changes, which are also set out in the Executive Summary, are the following:

- **To improve communications and transparency** in order to ensure that employees are well informed about the Fund's rules and regulations, channels for appeals, and the operation and outcomes of the dispute resolution system.
- **To reinforce the present emphasis on conflict prevention** by expanding consultations between the Fund and the staff on employment-related issues, removing potential sources of disputes in various rules and regulations, and augmenting the resources available to assist managers and staff in dealing with workplace conflicts.

- **To strengthen the emphasis on mediation and conciliation**, at the early stage of proceedings on disputes, through greater recourse to the Ombudsperson and expanded use of alternative conflict management tools including mediation, conciliation, coaching and counseling.
- **To enhance access to the dispute resolution system** by changing aspects of the present system and processes that appear to deter employees from using them to resolve disputes, and by making it easier to bring a somewhat wider range of disputes, including those involving alleged discrimination, into the Fund's systems where they can be openly addressed rather than festering below the surface.
- **To increase the efficiency of the dispute resolution processes** in order to resolve disputes as expeditiously and at as low a cost as possible (consistent with due process and fairness).

#### **IV. SPECIFIC RECOMMENDATIONS OF THE PANEL AND IMPLEMENTATION PLANS**

18. The Panel makes recommendations that are intended to improve the effectiveness of the Fund's present dispute resolution system and processes, some of which involve strengthening or clarifying current arrangements, and others of which involve changes in the existing rules and practices. The recommendations cover the following areas:

- A. Information and communications.
- B. Dispute prevention as an objective in human resources policies and procedures.
- C. Role of the Ombudsperson.
- D. Role of the Ethics Officer.
- E. The scope of grievable decisions or acts.
- F. The standard of review applied in grievances.
- G. Administrative review.
- H. Grievance Committee.
- I. Administrative Tribunal.
- J. Arbitration for contractual employees.
- K. Appeals under the Staff Retirement Plan.

The Panel's main conclusions and recommendations in each of these areas and the actions that will be taken to implement them are briefly described below. (The implementation plans are highlighted in a box at the end of each section.)

##### **A. Information and Communications (Paragraphs 64–73 of the Panel's report)**

19. The Panel's recommendations in this area reflect the principle that employees need to have full knowledge of an organization's laws if the laws are to be respected and effective,

and of the organization's mechanisms for resolving disputes if the mechanisms are to have the confidence of the staff. The Panel recognizes that the Fund has generally been effective in informing staff about rules and regulations on various personnel matters, but finds that the information (most of which is currently provided through the GAOs, Staff Bulletins and Circulars, as well as the Code of Conduct) is not as accessible as it should be. "Access," in the sense that the Panel uses the term means that the rules are to be clearly written; that all relevant information is kept up to date; that the information is well organized and readily available; and that employees can easily obtain it when needed. The Panel recommends that more be done to improve the organization of the information by consolidating materials on substantive and procedural rules, cross-referencing related matters, clearly defining the relative status of each element of the rules and regulations; and that access be facilitated mainly by maximizing use of the intranet.<sup>5</sup> The Panel specifically proposes expanded and more systematic efforts:

- To notify staff promptly of changes in HRD's interpretation or application of rules (e.g., regarding benefits and career development) which may apply to other, similarly situated staff;
- To inform staff of deadlines they need to meet (with informed staff then being responsible for doing so); and
- To inform staff (as well as retirees, beneficiaries, and other nonstaff participants in the such plans as the SRP and Medical Benefits Plan (MBP)) of their rights of appeal and the procedures to be followed in appeals. Specifically, whenever requests or claims by staff (or others) are denied, the advice on the decision should include information on procedures and time limits for filing appeals.

20. The Panel also recommends that more information be provided to staff on the outcomes of disputes in the Administrative Review stage and in the Grievance Committee. It recommends, for instance, that the Grievance Committee more fully explain the reasoning underlying its conclusions and, in the event that the Managing Director were ever to reject a recommendation by the Grievance Committee, that he should explain his decision, which he is not required to do at present.

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<sup>5</sup>A related recommendation of the Panel (paragraphs 130–132 on the Scope of Grievable Decisions or Acts) concerns informal practices that, for example, may be adopted from time to time to handle situations that are not expressly covered by existing policies. Decisions made on the basis of such practices may be challenged before the Grievance Committee and Administrative Tribunal on grounds that an individual decision is inconsistent with others, but the practice itself cannot be challenged. The Panel urges the Fund to avoid such practices and to ensure that all policies and procedures governing terms and conditions of employment have proper authorization and be formally announced to staff.

**Box 1. Implementation: Information and Communications**

Management endorses the Panel's recommendations in this area, and HRD has begun their implementation. HRD will develop a communications strategy and plan for improved organization, cross-linking and accessibility of material on general human resources policies and dispute resolution procedures. Notice of changes in policies and procedures will be provided more systematically to staff and, when relevant, retirees, beneficiaries and dependents, and reports on the status and outcomes of Administrative Reviews will be issued beginning in 2002. HRD has already started to regularly provide specific information regarding appeals procedures whenever individual staff, retirees, beneficiaries, or dependents are notified of an adverse decision.

**B. Dispute Prevention as an Objective in Human Resources  
Policies and Procedures  
(Paragraphs 74–99 of the Panel's report)**

21. The Panel identifies a number of areas in which the Fund's rule-making systems and procedures could be improved to reduce the likelihood of disputes arising over their administration. These include broadening consultations with the SAC, reinforcing the consistency of HRD's decisions on personnel policies, and revising specific policies when experience shows that they give rise to possibly avoidable disputes.

22. Regarding the **Staff Association**, the Panel emphasizes that close consultations with the SAC on matters that affect terms and conditions of employment and working conditions is an important means of preventing disputes. The SAC has a key role in ensuring that staff interests are taken into account when new policies and rules that will apply to staff are being developed and, equally, that policies are communicated to and understood by the staff. The Panel recognizes that there are already extensive and effective consultations between the SAC and management, HRD, and the Technology and General Services Department, but it recommends that these be broadened so that the SAC is systematically consulted by all departments and is either included in or consulted by all inter-departmental working groups on matters that affect staff interests.

23. The Panel acknowledges the present practice of allowing a SAC representative to attend appropriate meetings of the Executive Board and the Committee on Administrative Policies on compensation and benefits issues, but recommends that SAC participation in meetings of the Board and its Committees should be broadened to encompass all personnel policy issues, and that Rule N-14 should be amended to allow the SAC to present its views and to take part throughout discussions on issues of compensation and personnel policies, rather than merely remaining (after an initial presentation) as a silent observer. Rule N-14 provides that "persons on the staff of the Fund shall have the right to associate to present their views to the Managing Director and the Executive board, through representatives, on matters pertaining to personnel policies and their conditions of service." In the opinion of the

Legal Department, Rule N-14 does not need to be amended to permit broader participation by the SAC in meetings of the Board or its Committees; the extent of such participation and whether it is determined as a general rule or on a case-by-case basis are within the Board's discretion.

24. On **HRD's decision making**, the Panel emphasizes, on grounds of legal certainty and equal treatment, the importance of the consistent administration of policies and procedures; either the fact or the appearance of inconsistency may lead to disputes and to perceptions of unfair treatment. The Panel accordingly endorses HRD's approach of allowing exceptions to personnel policies for which it is responsible only if there are compelling circumstances, and the exception would not be contrary to the purpose of the rule.<sup>6</sup> The Panel also urges that efforts be made to discourage staff from "shopping around" for favorable decisions and from seeking the intervention of officials who have no direct responsibility for, or even knowledge of, the point at issue. Such interventions may give rise to the perception of unjustified favoritism. To discourage such efforts, the Panel recommends that the official(s) who has the authority to make decisions implementing various rules be specifically designated and that queries regarding decisions on the policies be referred back to that official(s) for consideration.

25. Regarding the **sources of disputes**, the Panel's examination of the Fund's human resources policies and its interviews with staff members led it to conclude that certain policies tend to produce disputes and conflict, some of which could be avoided through either revisions to the policies or through more consistent implementation. The Panel accordingly recommends that HRD should review its policies and procedures in order to identify those that have actually generated disputes, and to consider revisions that would reduce avoidable misunderstandings or conflict.

26. In this context, the Panel cites two areas of HR management—the conduct of performance reviews and retention of personnel records—as examples of programs that could be revised either to alleviate staff concerns or to forestall disputes. On **performance reviews**, the Panel urges that supervisors be held more firmly accountable for giving staff timely notice of performance problems (to avoid disagreements over "surprises" raised in later performance discussions). On **personnel records**, the Panel proposes that "dated" performance reports and records of minor misconduct either be expunged after a period of three to four years or sequestered with access tightly restricted. (This proposal responds to concerns expressed by some staff that such records adversely affect their careers for an unjustifiably long period.)

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<sup>6</sup>In addition, the rule itself would have to provide for the possibility of exceptions to be made.

**Box 2. Implementation: Dispute Prevention as an Objective in Human Resources Policies and Procedures**

Management endorses the Panel's recommendations in this area.

A process for appropriate consultations with the SAC on the part of departments will be developed. Regarding the participation of the SAC in Board and Committee meetings, the nature and extent of such participation is a matter for the Board.

HRD's new organization structure will more clearly identify those responsible for decisions.

Supervisors are regularly reminded of the importance of informing staff about any performance problems at the time they occur, but such reminders can be reinforced by HRD while performance reports are being prepared and through follow-up reviews.

HRD is currently reviewing the information, including information on performance and career development that is kept in personnel records, and the policies concerning access to it for various purposes. Current practices restricting access to records on misconduct will be reinforced, with provisions made to remove records after they have become irrelevant.

**C. The Role of the Ombudsperson  
(Paragraphs 100–104 of the Panel's report)**

27. The Panel strongly commends the effectiveness of the present Ombudsperson and her predecessors, noting that the Ombudsperson's office has been "an open, readily available, and confidential source of support for employees, and occasionally managers, seeking answers to questions, assistance in resolving problems with supervisors, and overcoming conflicts between employees," and that the Ombudspersons have had considerable success in resolving disputes at an early stage through consultations with managers in line departments and HRD, thereby minimizing the need for employees to undertake formal grievances.

28. Reflecting the effectiveness of the Office and the high level of confidence that the staff interviewed by the Panel expressed in the Ombudsperson, the Panel recommends that the Ombudsperson's role be expanded, particularly to give her greater latitude in efforts to resolve disputes while cases are in Administrative Review and before the Grievance Committee and IMFAT.<sup>7</sup> The Panel also proposes that, either through the Office of the Ombudsperson or separately when it would be more appropriate, the Fund expand its recourse to coaching, counseling, and mediation of interpersonal disputes by trained outside professionals, and that additional resources be budgeted to support such efforts. Finally, the

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<sup>7</sup>At present, the Ombudsperson limits her involvement in cases after they have been filed with the Grievance Committee or the IMFAT in order to protect the neutrality of her Office and to avoid being drawn into an advocacy role.

Panel suggests that senior and mid-level managers should be actively encouraged to take advantage of the confidentiality and effectiveness of the office of the Ombudsperson when they believe assistance would be helpful in resolving disputes with subordinate personnel or in reducing workplace tensions or conflict.

**Box 3. Implementation: The Role of the Ombudsperson**

Management endorses these recommendations, and recognizes the important contributions of the Ombudsperson. GAO No. 31 and the Terms of Reference for the Ombudsperson will be revised, as necessary, to support broader and continuing efforts to resolve disputes through mediation, counseling, etc. Additional resources for these purposes are included in the FY 2003 Administrative Budget.

**D. The Role of the Ethics Officer  
(Paragraphs 105–113 of the Panel’s report)**

29. The Fund established the position of Ethics Officer in 2000; its responsibilities are to conduct inquiries and investigations into alleged violations of the Fund’s rules and regulations and Code of Conduct; to provide advice to management, the Director, HRD, and others, on the application of ethics rules; and to participate in training programs aimed at increasing awareness on ethics issues. In light of the experience that the Fund has gained over the past two years, the Panel recommends that the Terms of Reference for the Ethics Officer be reviewed, with particular attention to the following aspects of the position:

- Concerning the general roles of the Ethics Officer, the Panel recognizes the importance of each of the Ethics Officer’s responsibilities in the Fund’s efforts to maintain the highest level of ethical behavior. However, it questions the appropriateness of having a single official responsible for both the investigative function and advisory/training roles; the Panel’s concern is that staff members may be deterred from seeking needed advice from the Ethics Officer by a fear that they may expose themselves to investigation. The Panel accordingly recommends that responsibility for the investigative function and the advisory and/or training functions be divided.
- The Panel recommends that the guidelines covering the conduct of inquiries and investigations be reviewed to ensure that the requirements of due process are fully met and that the techniques used in investigations are appropriate for dealing with the Fund’s own employees. The panel specifically endorses the present practice of limiting investigations by the Ethics Officer to a finding of fact, with no recommendations on the disciplinary action to be taken; decisions that misconduct

has been committed and on the disciplinary measures, if any, to be imposed are regarded as management functions to be performed by officials not directly involved in investigations. The Panel also recommends that staff members subject to an investigation be given a copy of the full investigative report and have an opportunity to respond to it before (rather than after, as is currently the case) formal charges of misconduct are brought.

#### **Box 4. Implementation: The Role of the Ethics Officer**

In management's view, the advantages of keeping one position responsible for all the functions of the Ethics Officer outweigh the disadvantages. Providing separate positions for advice/training and for investigations could result in inconsistent or conflicting advice, and would raise the overall cost of the ethics function above that which is warranted at this time. The concern about possible conflicts in the roles of the Ethics Officer will be addressed by clearly informing staff that the Ethics Officer may be obligated to undertake an inquiry if staff bring to him information about past actions that may constitute misconduct; staff should rather raise such matters with the Ombudsperson, who can, on behalf of a staff member, secure the advice of the Ethics Officer on a confidential and anonymous basis.

Management endorses the recommended review of the Terms of Reference of the Ethics Officer and the changes proposed by the Panel in the procedures for carrying out inquiries and investigations and deciding disciplinary measures. HRD and LEG have already started this review and expect to complete it and to issue a revised General Administrative Order No. 33 (Conduct of Staff) during 2002. In addition to clarifying the roles and responsibilities of the Ethics Officer, the review will clarify the procedures followed in authorizing investigations and the rights and obligations of staff whose conduct is under investigation.

#### **E. The Scope of Grievable Decisions or Acts (Paragraphs 114–132 of the Panel's report)**

30. The jurisdiction of the Grievance Committee is limited to allegations that a staff member has been adversely affected by a *decision*, and the jurisdiction of the Administrative Tribunal is limited to an *administrative act*, which may encompass any individual or regulatory *decision*. The Panel recommends that the meaning of these terms be clarified to ensure that it is understood that they encompass the following types of situations.

- First, it should be made clear that the refusal or failure of the Fund to take timely or appropriate action—particularly in cases involving allegations of discrimination or harassment—after a staff member notifies the Fund of the situation and requests remedial action would constitute a “decision” or “administrative act” that could be challenged by the affected individual under the jurisdiction of the Grievance Committee and the IMFAT.
- Second, if a failure to act persisted over a long period of time on either a continuous or recurrent basis, the staff member should not be barred from bringing a grievance as

a “continuing violation”, even if this inaction started before the applicable time limit. (The concept of a “continuing violation” has already been recognized by the Grievance Committee.) However, the remedy provided in such cases could only be backdated to the beginning of the applicable statutory period before the grievance was filed (e.g., six months in the case of a career-related matter).

31. The Panel’s principal purpose in recommending these clarifications is to ensure that staff understand that grievable offenses are not limited to a single discrete act or decision. The Panel explains that discrimination and harassment, in particular, may not be immediately apparent; they may take place and adversely affect a staff member through a pattern of acts (or omissions) in which no single incident or decision stands out as an overt violation of Fund policies or rules. The Panel, furthermore, emphasizes that the Fund, like other employers, has an implicit duty to implement the organization’s stated policies, for example, the policies requiring equality of treatment and opportunity and proscribing discrimination and harassment.<sup>8</sup> The Code of Conduct also states that “managers have a responsibility to make themselves available to staff members who may wish to raise concerns in confidence and to deal with such situations in an impartial and sensitive manner.” The Panel concludes that it is reasonable for the staff to assume on the basis of these statements, that the Fund has a duty to act and to respond with investigative, corrective or preventive measures, and that a failure by the Fund to do so should be subject to remedy through the dispute resolution system.

**Box 5. Implementation: The Scope of Grievable Decisions or Acts**

Management generally endorses the Panel’s recommendations in this area but emphasizes that an obligation to act requires that the Fund be given clear notice of the matter and an opportunity to take corrective action.

The meaning of a “decision” and an “act” and the related provisions on the time limits for remedies will be clarified as recommended by the Panel and incorporated in the revision of GAO No. 31 which, together with additional explanatory materials, will be re-issued during 2002.

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<sup>8</sup>It may be noted that the Panel finds that there is considerable misunderstanding and uncertainty among Fund staff regarding the range of conduct that may cause offence or may be perceived as discriminatory or harassing. It recommends that more efforts be made to educate both managers and supervisors in this area. The Panel explains that some forms of discrimination are objectively determinable (e.g., a supervisor’s overt refusal to promote staff from a particular ethnic or religious group) and generally understood as unacceptable, but others, grounded in different social and cultural standards of behavior, are more subtle and subjective. The uncertainty about the range of acceptable conduct and conduct that may be perceived as discriminatory is largely found in the latter area.

HRD and the Senior Advisor on Diversity will review the current information and training programs and will, as needed, develop new materials/programs to strengthen staff understanding of discriminatory, harassing, or otherwise unacceptable behavior.

**F. The Standard of Review Applied in Grievances  
(Paragraphs 133–151 of the Panel’s report)**

32. The present regulations governing the Grievance Committee (GAO No. 31, Rev. 3) set out different standards for the Committee to apply in considering grievances concerning a **nondiscretionary decision** and a **discretionary decision**. In the case of nondiscretionary decisions, the Committee must determine whether the challenged decision was “consistent with and taken in accordance with applicable Fund rules and regulations.” However, in the case of a decision involving the exercise of discretionary authority, the Committee may find in favor of a staff member only if it finds that the decision was “arbitrary, capricious, or discriminatory, or was procedurally defective in a manner that substantially affected the outcome.”

33. With respect to the standard for reviewing discretionary decisions, the Panel concludes that the present language of the standard may deter staff from filing grievances because they are reluctant to characterize a supervisor’s decision as “arbitrary or capricious”; although the phrase is an accepted legal term of art, its meaning is not widely understood, as such negative connotation in common usage is regarded as unduly and inappropriately pejorative. The Grievance Committee has also observed that the burden of proving that conduct rises to this standard is a heavy obligation on the part of a grievant. The Panel also notes that the Grievance Committee standard differs from the one followed by the IMFAT (“the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts”).

34. In light of these concerns, the Panel recommends that the standard of review of the Grievance Committee be revised to bring it more into line with that of the IMFAT and to make available to staff a more complete and understandable description of the factors and criteria that the Committee takes into account. The Panel proposes the following standard of review, which would cover both nondiscretionary and discretionary decisions:

*“The Grievance Committee would be authorized to consider whether individual decisions taken in the administration of the staff are consistent with applicable Fund rules and regulations, in particular, whether the challenged decision was:*

- *taken by an authority or organ that did not have authority to take the decision;*
- *inconsistent with applicable Fund rules or regulations or otherwise based on an error of law;*

- *based on erroneous facts or in disregard of essential facts; or*
- *taken in violation of applicable procedures in a manner that affected the outcome.*

*And, in the case of a decision taken in the exercise of discretionary authority, was:*

- *improperly influenced by irrelevant factors, including bias, discrimination or ulterior motive; or*
- *was based on a manifestly erroneous assessment of the information to be properly considered.<sup>9</sup>*

*If any of these grounds are established by a preponderance of the evidence, the Grievance Committee would conclude that the decision is invalid, and would recommend appropriate remedies to the Managing Director in its Report and Recommendation.”*

35. The Panel expects this alternative formulation to make the Grievance Committee process somewhat more accessible to employees and to reduce the level of emotion in the grievance process, thereby facilitating the resolution of disputes. To assist both staff and line managers to understand the revised standard, the Panel proposes that explanatory materials on it be issued to staff.

**Box 6. Implementation: The Standard of Review  
Applied in Grievances**

Management endorses the recommended standard. It will be incorporated in the revision of GAO No. 31, and also reflected in the revised procedures for Administrative Review.

**G. Administrative Review  
(Paragraphs 152–163 of the Panel’s report)**

36. In the dispute resolution system, Administrative Review, which is conducted by the department head responsible for the decision under challenge and then by the Director, HRD serves two purposes: it gives finality to the Fund’s administrative decision, and it provides the occasion for senior managers to re-examine the decision, to confirm or revise it, or to

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<sup>9</sup>This criterion would cover the concept of proportionality, for example, in disciplinary matters.

identify some other solution, before the matter moves to more formal adjudication before the Grievance Committee or Administrative Tribunal. The Panel's assessment is that the current implementation of Administrative Review is not as effective or useful as it might be in resolving disputes at this relatively early stage. In the Panel's view, the process tends to be overly legalistic and prematurely adversarial, and it places too great a burden of documentation and argument on the staff member.

37. The Panel recommends changes in Administrative Review that are intended to make it more accessible and user-friendly to staff; that would place greater emphasis on its role as a means of resolving disputes; and that would attempt to defer any adversarial legal confrontation until the unresolved problem is actually declared as a formal dispute before the Grievance Committee. The Panel considers the Administrative Review process within HRD as a better setting than an adversarial hearing for trying to disentangle the various elements of a complaint, which may include actual violations of rules or procedures, interpersonal conflicts, genuine misunderstandings, and perceptions of unfair treatment.

38. Specifically, the Panel proposes that the purpose of Administrative Review be broadened beyond determining if the original decision was valid or in need of amendment. Administrative Review should also be employed as an opportunity to consider alternative solutions and to seek nonconfrontational resolution of the dispute, acceptable to both parties, before submitting the matter to the Grievance Committee. In this process, HRD should utilize the full range of conflict-management tools available to it, including recourse to the Ombudsperson, mediation, conciliation, coaching and counseling. In addition, the Panel recommends that the burden on the staff member of documentation and argument be reduced to ease access; and that HRD adopt formal procedures that support, to the extent possible, the independence of the reviewing officer in order to build confidence in the process.

**Box 7. Implementation: Administrative Review**

Management endorses the Panel's recommendations in this area.

HRD has already started to follow the approach to Administrative Review recommended by the Panel; while continuing to examine the legality and appropriateness of the decision in question, added efforts are and will be made to find solutions to disputes during this stage. Formal procedures on the conduct of Administrative Review, including measures to increase the independence of the review, have been developed and will be issued to staff, together with the revision of GAO No. 31. The changes will include authority for the Director, HRD to waive Administrative Review when justified by the circumstances of the case.

## **H. The Grievance Committee (Paragraphs 164–198 of the Panel’s report)**

39. The Panel broadly endorses the role and operation of the Grievance Committee, the continuation of the current tripartite composition of the Committee, and the current procedures for the appointment and terms of office of the Chair and members/alternates by management and the SAC. As evidence of the appropriateness of these arrangements and of the Committee’s effectiveness, the Panel calls attention to the fact that all of the its recommendations over a period of 20 years have been reached unanimously and that the Managing Director has accepted all of the Committee’s recommendations.

40. The Panel’s main proposals regarding the Grievance Committee are those discussed above on the scope of grievable decisions and the standard of review. Consistent with its proposals in the area of communications, the Panel recommends that the Committee’s reports on cases should more fully explain its reasoning and the basis for its conclusions. The Panel also offers recommendations that are intended to improve the efficiency of the Committee’s operations and to encourage greater recourse to mediation, rather than continuing litigation, when that might be productive. These include:

- The Grievance Committee should be more prepared to dispose of certain matters summarily, and to make recommendations to management without protracted hearings. The Panel proposes that cases could be summarily dismissed (a) if they have negligible impact on the staff member, (b) if they are vexatious, that is, brought primarily to impose an administrative burden or costs on the Fund, and/or (c) if they clearly intrude into the prerogatives of management in directing the operations of the Fund.
- The Committee should be encouraged to suspend the proceedings (with the mutual agreement of the parties) to allow settlement discussions to take place. If the Grievance Committee considers that the grievance involves either a dispute that appears amenable to a mediated solution or interpersonal relations between the claimant and other staff members, the Committee should have the discretion to recommend the parties submit to mediation by the Ombudsperson or other specialized mediators.

### **Box 8. Implementation: The Grievance Committee**

Management endorses the Panel’s recommendations in this area. The Committee already has the authority to summarily dismiss cases and to expedite proceedings. This authority and revised reporting procedures will be incorporated in the revision of GAO No. 31 and/or explained in a Staff Bulletin when the GAO is reissued.

Arrangements will be worked out between the Chair of the Committee and the Ombudsperson to refer matters for mediation through her office or by other means when there is reason to believe

this would be useful.

### **I. The Administrative Tribunal (Paragraphs 199–215 of the Panel’s report)**

41. The Panel observes that “the IMFAT is an important and authoritative body, with broad jurisdiction over Fund decisions on employment-related matters affecting individuals and “regulatory decisions” concerning the terms and conditions of staff employment that are adopted by either management or the Executive Board.” The main aspects of the Tribunal’s operation on which the Panel focuses its attention are the jurisdiction of the Tribunal over regulations adopted before the Tribunal was established in October 1992, questions dealing with the standing of the SAC and the possibility of “class actions” before the Tribunal, the remedies that the Tribunal may order, and improvements in the transparency of the Tribunal’s operation.

42. **Pre-1992 jurisdiction.** Under its Statute, the Tribunal does not have jurisdiction over regulations that pre-date its establishment in October 1992. The Panel acknowledges that individual administrative decisions made before that date should be dealt within in accordance with the substantive law prevailing at that time, and that it would be inequitable to now open pre-1992 regulatory decisions to challenge when earlier claims of employees have been barred. It nevertheless remains concerned that the “time-bar” effectively deprives Fund staff of a legal channel for resolving disputes over potentially significant aspects of their employment even if post-1992 developments eventually render the original decision manifestly unfair, unreasonable, or discriminatory in their outcome. The Panel concludes, however, that the appropriate channel for resolving such disputes is through consultations and administrative action rather than recourse to the Tribunal. Thus, the Panel proposes that if the Fund were to conclude that a pre-1992 regulation has come to have an unreasonable or discriminatory effect on staff, the Fund itself should take the initiative to modify the regulation; in this regard, the SAC could advocate remedial changes as part of the consultation process.

43. **Questions of standing.** The IMFAT Statute gives only individual employees (including individual retirees, beneficiaries, and certain dependents) the right to bring claims before the Tribunal. However, the SAC (or any interested group of staff) may file *amicus curiae* briefs and assist individual applicants in obtaining legal representation. The Panel considered whether the SAC should be allowed, as an organization, to bring to the Tribunal class actions on behalf of a group of staff members, actions on behalf of an individual who prefers to remain anonymous, and cases in which the issues concern the Staff Association itself. The Panel concludes that such measures are unnecessary. With respect to “class actions,” the Tribunal may already apply a decision in one case to other similar cases pending before it, and Article XIV of the IMFAT Statute already makes it incumbent on the Fund to apply corrective measures to each staff member adversely affected by a regulatory decision that the Tribunal annuls, not only the individual who brought the case. The Panel does not consider it appropriate for the SAC to bring an action on behalf of an individual who is

himself unwilling to assert that right openly; it considers the present ability of the SAC to provide assistance to staff to be sufficient. And the Panel points out that any staff member, including the Chair or other officer of the SAC, may already claim before the Grievance Committee or IMFAT that changes to arrangements (e.g., for consultation or the provision of facilities) previously agreed between the Fund and SAC violate the right of association established by Rule N-14 (cited in paragraph 25).

44. **Remedies.** The Panel also discusses the remedy of reinstatement in cases involving the termination of a staff member's employment and the award of costs against staff members.

- **Reinstatement.** Under its Statute, the Tribunal may determine that the reinstatement of a staff member is an appropriate remedy, but it is also required in such cases to establish an amount of compensation to be paid as an alternative remedy if the Managing Director decides, in the interest of the Fund, against reinstatement; the amount of such compensation is normally limited to 300 percent of annual salary other than in exceptional cases. The Panel notes that the remedy of reinstatement involves competing considerations. On the one hand, it believes that reinstatement should be the primary remedy in a termination case if the IMFAT were to find, for example, that there were simply no valid grounds to terminate the employment of the staff member, that the decision to terminate involved manifest bad faith on the part of the Fund, and/or that termination was patently disproportionate to the offense involved. On the other hand, it acknowledges that reinstatement would not be an appropriate remedy if the continued employment relationship has been irreparably damaged or if the trust relationship inherent in employment—particularly at senior levels—has broken down. While recommending no change in the present IMFAT Statute, the Panel proposes that the Tribunal revise its procedures to provide in these cases for separate pleadings and consideration of the remedy. Such separate hearings would permit the Fund to address fully the institutional consequences of reinstatement and the staff member to set out his or her claim for compensation, including whether exceptional circumstances warrant an amount greater than three years' salary, in the event that the IMFAT orders and the Fund decides against reinstatement.
- **Award of costs against an Applicant.** The IMFAT Statute authorizes the Tribunal to require an unsuccessful claimant to compensate the Fund for some or all of its costs if the claimant's case is manifestly without foundation in fact or under existing law. This provision is intended to deter the abuse of the review process and the filing of cases that are frivolous or vexatious. The Panel acknowledges the legitimacy of this concern and notes that the IMFAT has never awarded costs against a staff member. The Panel nevertheless is concerned that the possibility of an award of costs may have a chilling effect, because staff may not recognize that their case lacks merit and they cannot always know in advance whether the Tribunal will regard their case as frivolous. To address these concerns, the Panel recommends that a policy be adopted

formally restricting the circumstances (e.g., cases involving false or fraudulent claims) in which the Fund would ask the Tribunal to award costs against a claimant.

45. **Transparency.** The Panel recommends two measures that it believes would increase the transparency of the Tribunal's operations. First, the Panel suggests that the Tribunal hold oral hearings whenever either party so requests. The IMFAT has, to date, decided cases on the basis of the written record, but its rules permit oral hearings when they "are necessary for the disposition of the case." The Panel believes that oral hearings, which could be limited to legal argument and/or to cases in which oral hearings had not already been held before the Grievance Committee, would enhance the credibility of the Tribunal and help to demystify its operations. Second, the Panel recommends that the Tribunal's announcements of cases pending with it provide more information than has been its practice; more complete descriptions would better enable staff members and the SAC to determine if cases raise either systemic issues or issues of potential significance individually on which staff members or SAC might wish to file *amicus curiae* briefs or to assist the claimant.

#### **Box 9. Implementation: The Administrative Tribunal**

Management endorses the Panel's recommendations in this area and agrees with the Panel's conclusions on the questions of standing.

HRD and LEG have consulted the President of the Tribunal. The IMFAT will consider having separate argument on remedies in cases involving the possible reinstatement of a staff member. The Registrar of the Tribunal will, to the extent possible, provide information that gives a fuller sense of cases and the issues they raise. Management will issue a statement clarifying the circumstances in which it would seek an award of costs against a claimant. None of these changes would require the Board of Governors to amend the IMFAT Statute.

Neither management nor the Tribunal believe that oral hearings are needed as a matter of course, but the Tribunal is open to such hearings when warranted in a particular case. (Such hearings would increase the time and cost of Tribunal proceedings for both parties, and they could conflict with the anonymity of cases.)

#### **J. Arbitration for Contractual Employees (Paragraphs 216-223 of the Panel's report)**

46. Disputes regarding the terms and conditions of employment of contractual employees are addressed through Administrative Review and, failing resolution by that means, by binding arbitration before the Chair of the Grievance Committee acting as a sole arbitrator. Contractual employees do not have recourse to either the Grievance Committee or the Administrative Tribunal. Although most of the international organizations examined by the Panel apply the same dispute resolution process to all categories of employees, the Panel concluded that the Fund's separate arbitration process is not inappropriate: contractual

employees are not hired under the same process as staff, and their recruitment is generally subject to less rigorous international competition.<sup>10</sup> Provided that the terms and conditions of their employment, together with any restrictions imposed on them by their status, are fully explained to contractual personnel during their recruitment and at the time of hire, the Panel concludes that no employee right or legitimate interest is violated by the Fund's reliance on arbitration for resolving all disputes between contractual employees and the Fund.

47. The scope of the issues subject to arbitration is currently defined in terms of claims that the Fund has breached the provisions expressly set out in the individual's employment contract or in the policies and procedures governing contractual employment and benefits. However, the Panel notes that all employees, whatever their status, have certain implied rights and obligations, which arise from the employment relationship and flow from general principles of the international civil service, even if they are not explicitly stated in the formal contract. For these reasons, the Panel recommends that the scope of the matters subject to arbitration should be slightly expanded to permit challenges to decisions that have allegedly adversely affected the contractual employee's general rights and legitimate interests. As a hypothetical example, the Panel posits a situation in which a decision to renew or not renew a contract required the prior conduct of a performance assessment, and it suggests that an employee should be able to challenge the nonrenewal if the assessment were not carried out or were materially flawed.

48. The Panel supports the retention of the present exclusion from arbitration of questions regarding both the continuation of contractual employment and of any change in status from contractual to staff status; the Panel agrees that the selection of staff is an entirely discretionary prerogative of the Fund. It nevertheless suggests that in cases where the correction of a contract violation or finding of abuse of discretion conflicts with the Fund having terminated or not renewed the contract, the arbitrator could order either compensation or the extension of the contract for the limited and specific purpose of rectifying that wrong.

**Box 10. Implementation: Arbitration for Contractual Employees**

Management endorses the Panel's recommendation on the understanding that the issue of nonrenewal of contracts arises primarily for headquarters-based contractual employees who are hired on medium term appointments or longer (i.e., at least one year). The scope of matters subject to arbitration will be re-examined in light of the Panel's concerns, as well as the principles of the new Categories of Employment

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<sup>10</sup>The Panel recognized that the Fund has adopted a new employment framework that is intended to define clearly the circumstances in which persons will be employed on a contractual basis and on staff appointments, and has largely brought its actual employment practices into line with the new framework. (See the papers on Categories of Employment, EBAP/00/82, 7/7/00 and EBAP/98/137.)

framework, and duly reflected in employment relationships with contractuels.

**K. Appeals Procedures Under the Staff Retirement Plan  
(Annex IV of the Panel's report)**

49. The Committees responsible for the SRP, which have exclusive responsibility for the administration of the Plan, have adopted appeals procedures that apply to disputes concerning the interpretation and application of the Plan. As already mentioned, these procedures allow decisions to be appealed in the first instance to the SRP Administration Committee and then to the Administrative Tribunal. Such appeals may be lodged by active or retired participants in the Plan, by beneficiaries, and by any person claiming a benefit under the Plan. In addition, the Plan (Section 11.3) since 1999 has permitted a legally separated or divorced spouse to seek compliance, without the participant's concurrence, with court orders that direct a portion of a participant's SRP benefits to be paid to a (former) spouse. The procedures of the SRP Administration Committee give participants the opportunity to contest such claims by a (former) spouse before they are put into effect, and both parties may appeal the Committee's decision to the IMFAT.<sup>11</sup>

50. The Panel endorses these arrangements and, in particular, commends the direct access provided to (former) spouses with respect to court-ordered divisions of SRP benefits. Recognizing that retirees, (former) spouses, and beneficiaries do not have the same access as staff to information on the Plan and applicable appeal procedures, the Panel recommends that the Administration Committee make special efforts to communicate its rules, changes in policies and procedures, and appeal procedures to such persons.

**Box 11. Implementation: Appeals Procedures Under the Staff Retirement Plan**

Management endorses the Panel's recommendation. Information on appeals procedures will be regularly provided whenever staff, retirees, beneficiaries or dependents are notified of an adverse decision. The SRP Administration Committee will consult with the Retirees' Association on other means of improving retirees' access to information on appeal procedures and channels.

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<sup>11</sup>The Administration Committee will not attempt to resolve disputes between the parties on the validity or meaning of a court order or between conflicting court orders, but the Committee may suspend the payments at issue (placing the funds in escrow) until the parties themselves resolve the dispute. The Administrative Tribunal has affirmed the legality of these procedures (See Judgment No. 2001-2, Mr. "P" (No. 2), v. IMF.) Section 11.3 has recently been further amended to allow court-ordered payments of SRP benefits directly to a participant's children, born in a marriage or out of wedlock.

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## **Terms of Reference for the Review of the Fund's Dispute Resolution Systems**

### **Introduction**

As part of the ongoing effort to ensure the adequacy of the Fund's dispute resolution system for staff and other employees, a comprehensive review of the existing system will be undertaken. For purposes of this review, the term "employees" includes all staff,<sup>12</sup> contractual employees, and assistants in Executive Directors' Offices.

### **Objectives and output**

The primary objectives of the review are to assess the extent to which the system facilitates the resolution of employment-related disputes in a timely and cost-effective manner, while providing employees with fair and impartial channels of recourse and meeting the institutional needs of the Fund. The review should result in a report analyzing the strengths and shortcomings of the current system and its implementation, based on the particular needs of the Fund, while taking into account the practices of other international organizations and other practices, where relevant, with a view to identifying elements that could be adapted to the Fund. The report should make recommendations as to changes considered necessary or appropriate to make the system more effective and less burdensome.

### **Scope of review**

The review will cover informal mechanisms for resolving disputes (supervisors, SPMs, Human Resource Officers, advisors against harassment, and the Ombudsperson), as well as formal mechanisms (binding arbitration for contractual employees, administrative review by the Director of HRD and/or the Managing Director, relevant functions of the Ethics Officer, the Grievance Committee, and the Administrative Tribunal). With respect to formal mechanisms, the review will encompass both the **procedural** (e.g., opportunity to be heard; conduct of hearings; time limits) and **substantive** (e.g., decisions subject to review; grounds for review; remedies) aspects of the dispute resolution system.

### **Review panel**

The review will be conducted by a panel convened by HRD consisting of three external members with expertise in the relevant legal, human resources, and organizational fields, one of whom will chair the panel. The external members shall be selected with a view to geographical diversity. As convener of the panel, HRD will arrange for the provision of administrative support to the panel and will facilitate the panel's work, including making

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<sup>12</sup>The term "staff" refers to any person whose current or former letter of appointment, whether regular or fixed-term, provides that he/she shall be a member of the staff; it includes the Deputy Managing Directors.

arrangements for interviews and access to information as provided in these Terms of Reference. A record of the meetings of the panel will be kept. The report will set forth the recommendations of the panel; the panel will brief representatives from management and SAC on its preliminary conclusions and observations prior to finalizing its report.

**Access to information**

The panel will have access to all relevant information, except for personnel-related information that cannot be made available for reasons of confidentiality without the consent of the affected party. For purposes of conducting such interviews as it deems appropriate, the panel may request interviews with Fund employees, including grievants and managers whose decisions have been the subject of a review, present and former members of the Grievance Committee (including its Chairman), and members of the Administrative Tribunal and its Registry. As part of its analysis of comparative international practice, the panel will also have the opportunity to interview personnel at selected international organizations.

March 7, 2001