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### PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987

#### Revised estimates under section 28K, Miscellaneous expenses (General insurance)

#### Report of the Secretary-General

#### INTRODUCTION

1. This report is submitted to the General Assembly in accordance with the recommendation made by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) in paragraph 6 of its report (A/40/7/Add.6) on revised estimates for general insurance coverage at Headquarters contained in document A/C.5/40/18 for the biennium 1986-1987. In the light of the continuing escalation of costs of commercial insurance which were and remain particularly acute for general liability insurance, this report examines and makes proposals on the introduction of self-insurance arrangements.

#### I. BACKGROUND

2. An amount of \$598,000 was included under section 28K of the original proposed programme budget for the biennium 1986-1987 for general insurance at Headquarters. Subsequently, on the basis of costs increases experienced during 1985, revised estimates were submitted in document A/C.5/40/18 indicating total requirements for general insurance of \$2,070,600 for the biennium 1986-1987, 924,500 for 1986 and \$1,146,100 for 1987.

3. As indicated in paragraphs 3 to 5 of that document, the revised requirements were the result of a confluence of unfavourable events in the insurance market which led to drastic increases in United Nations premiums in 1985, by SU6.8 per cent for general liability insurance and by 277.6 per cent for property insurance.

4. ACABQ, in paragraph 6 of its related report (A/40/7/Add.6) recommended that only the estimated requirements of \$924,500 for 1986 be approved and that the requirements for 1987 be considered by the General Assembly at its forty-first session in the context of a report of the Secretary-General which would, inter alia, take into account actual developments in 1986 and the latest rate projections for 1987, as well as the outcome of studies on possible alternatives to commercial insurance.

5. The table below provides a breakdown of the actual commercial insurance costs to the United Nations in 1984, 1985 and 1986 together with the estimated requirements proposed for 1987, should the current arrangements be continued.

Table

	1984 <u>contfl</u> \$	1985 <u>costs</u> \$	1986 <u>costs</u> \$	1987 <u>est imate</u> \$
General liability	42 400	291 200	364 000	455 000 b/
Property	108 400	410 400	473 100	591 400 b/
Other insurance	<u>32 400</u>	<u>45 200</u>	<u>75 200</u> a/	<u>72 000</u> c/
<b>Total</b>	<u>183 500</u>	<u>746 800</u>	<u>912 300</u>	<u>1 118 400</u>

a/ Reflects renewal of Headquarters vehicle coverage for 14 months.

b/ Assuming an annual increase of 25 per cent for general liability and property insurance coverage.

c/ Assuming an annual increase of 5 per cent for other insurance coverage based on the 14-month contract for Headquarters vehicle coverage in 1986.

## II. DEVELOPMENTS IN THE CURRENT PROGRAMMES OF GENERAL INSURANCE AT UNITED NATIONS HEADQUARTERS

6. The following paragraphs provide an analysis of developments in respect of the three categories of insurance coverage. Proposals as regards future coverage for each category of insurance and the related cost implications are also submitted for the consideration of the General Assembly.

### A. General liability insurance

7. The current general liability insurance programme consists of:

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(a) \$1 million primary liability coverage per occurrence for compensation to third parties, with a 150,000 deductible, i.e., the United Nations must pay up to the first \$50,000 of any settlement or award;

(b) An additional \$2 million liability coverage over and above the \$1 million primary coverage;

(c) \$100,000 medical malpractice coverage per occurrence for claims arising from the diagnostic and referral services of the United Nations Medical Service.

8. In preparation for the renewal of the general liability coverage on 1 June 1986, inquiries were initiated in the insurance market in March 1986 which indicated that the annual renewal premium would be approximately \$580,000. This amount was \$216,000 more than the actual appropriation for 1986 (\$364,000). Owing to the substantial premium increase indicated, self-insurance for general liability coverage at Headquarters was considered, and a proposal to that effect was submitted to ACABQ in May 1986. Under that proposal, the amount of 1364,000 already appropriated for 1986 would have been used for the establishment of financial and administrative arrangements for a general liability self-insurance programme. These arrangements consist of:

(a) The initial funding of an insurance reserve fund for payment of potential liability claims;

(b) Costs associated with claims processing, legal representation and expert advice on general liability insurance questions, as required;

(c) The purchase, where necessary, of insurance certificates as evidence of insurability for landlords and service contractors at Headquarters who require the United Nations to provide evidence of general liability coverage as part of the terms of existing leases and contracts.

9. ACABQ concurred with the proposal and requested that a report on the implementation of the self-insurance programme be included in this report. Subsequently, certain difficulties arose with regard to legal and contractual issues which made it impracticable to introduce the self-insurance programme by the scheduled date of 1 June 1986. These difficulties are outlined in section 11 below. In addition, the insurance underwriters submitted a revised proposal to provide general liability insurance at an annual cost of \$364,000. In these circumstances, it was decided to defer the pursuance of self-insurance arrangements, pending further examination of certain issues and, in the meantime, to continue the commercial general liability coverage through the end of May 1987.

10. In view of the sky-rocketing premium cost for general liability insurance, the development of a self-insurance scheme by the United Nations had been pursued seriously earlier this year. Two approaches were considered:

(a) Full self-insurance up to the amount of the current liability coverage;

(b) Partial self-insurance supplemented by the purchase of additional coverage through commercial underwriters.

11. Under the full **self-insurance programme**, the Organization would **assume** the additional **responsibility** of the general liability coverage now provided by the commercial arrangements. Such a programme would require the **establishment of** a reserve that would be **sufficient** to cover **payments** resulting from casualty claims now handled by the **insurance underwriters**. This reserve, based on advice in the insurance **industry**, would require eventual **funding of \$1 to \$2 million**; this could be achieved by setting aside a minimum amount of \$205,000 per year over the next 5 to 10 years. In addition to the **self-insurance reserve fund**, it is estimated that potential **administrative costs in respect of claims processing**, legal representation and expert advice on insurance matters would be 925,000 per year.

12. As indicated in paragraph 7 above, the United Nations is currently committed to provide general liability coverage up to 63 million under existing contractual agreements with 20 commercial firms which provide goods and services to United Nations entities at Headquarters (United Nations, United Nations Development Programme, United Nations Children's Fund and United Nations Fund for Population Activities). Should full self-insurance liability coverage be introduced, it would be necessary for the Organization to renegotiate these agreements to reflect this change. It might be necessary in certain contractual cases for the Organization to provide certificates of insurance as evidence of its compliance with its contractual obligations to provide general liability insurance coverage. The purchase of these certificates could result in a further cost of approximately \$130,000 per year.

13. In order to assess the potential risk involved, the table below indicates the premium paid and losses incurred under the general liability programme for the period 1978 to 1986. It should be noted that the losses incurred up to and including 1984 were covered in total by the annual premiums. Since 1985, in order to minimize the premiums, the \$50,000 deductible was introduced. Hence, in addition to the cost of the premiums in 1985 and 1986, the Organization will have to pay the first \$50,000 per claim.

	<u>Premium</u> \$	<u>Losses</u> \$
1978	82 200	55 450
1979	68 505	6 555
1980	80 400	1 000
1981	65 455	36 000
1982	58 900	
1983	56 500	500
1984	42 400	13 250
1985	291 250	13 800
1986	364 000	a/

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a/ Not yet available.

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14. Taking into account all of the above factors, the annual estimated cost for full self-insurance liability coverage is estimated to range from a minimum of \$225,000 for the initial funding of the reserve (\$200,000), claims processing (\$10,000), legal expenses (\$10,000) and expert advice (\$5,000) to a maximum of \$355,000, should it become necessary to obtain certificate of insurance (\$130,000).

15. The second approach, partial self-insurance coverage, would provide the current \$3 million liability coverage with the Organization being liable for the first \$250,000 of any settlement or award and commercial underwriter, assuming the balance up to \$3 million. As in the current programme, the Organization would be responsible for amounts above \$3 million. Inquiries through insurance brokers indicated that there was no interest in the commercial market for this possible arrangement. This approach was therefore abandoned.

16. Taking into account all of the considerations outlined above, including in particular the estimated premium cost in 1987 of \$455,000 for the current general liability coverage, it is proposed that a self-insurance program be introduced in 1987 in respect of general liability insurance at Headquarters and that a reserve fund be established from which any necessary payments might be made to meet casualty claims. The estimated costs are as follows:

	\$
Initial instalment to reserve fund	200 000
Claims processing	10 000
Legal expenses	10 000
Expert advice	5 000
Insurance certificates	130 000
	<u>355 000</u>

#### B. Property insurance

17. The current property insurance policy at Headquarters consists of:

(a) \$5 million primary coverage for the loss or damage to United Nations property 1/ with a deductible of \$100,000~

(b) An additional coverage from \$5 million up to the replacement cost of United Nations property 1/ (see para. 18 below).

18. At present, the value of United Nations property 1/ at Headquarters is estimated to be some \$421 million. Should a major catastrophe occur, it seems neither prudent nor feasible for the Organization to assume through self-insurance the entire risk involved. Under the approach of partial self-insurance, the Organization would have to establish a reserve fund for the primary coverage in event of loss to property, i.e., \$5 million. The accumulation of this reserve over

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a period of, say, 10 years would require **setting aside \$500,000** per year on the assumption that there would be no need to replenish the reserve fund following losses. As indicated in paragraph 5 above, the **total** annual premium cost for 1986 is **\$473,100**. Of this **amount**, \$145,600 relate to the \$5 million primary coverage. The annual amount that would **have to be set aside as a reserve (\$500,000)** would, therefore, be far in excess of the **present cost** of the primary coverage. Even if premiums continue to increase at the current rate, the **annual** contribution to a reserve of \$5 million would still **be** greater over the next five years than the portion of the total premium **cost** related to the primary **coverage**. Under these circumstances, it is **recommended** that the Organisation continue commercial arrangements for **insurance** coverage in **respect** of loss of and damage to property at an estimated cost of \$591,400 for 1987.

### C. Other insurance

19. The Organization currently has **other** insurance coverage<sup>8</sup> which provide for:

(a) World-wide coverage up to \$5 **million** per **occurrence** against all claims arising from death or disability of individuals while on official travel by air;

(b) Coverage for third-party **liability** for bodily injury, death and property damage up to \$20 million per occurrence in **connection** with the official use of chartered or military **aircraft**;

(c) Headquarters vehicle third-party liability and property damage coverage up to \$1 million per incident, with added **coverage** for bodily injury of \$500,000 and for death of \$1 million;

(d) Coverage up to a total amount of **\$547,000** for the works of art on loan to the United Nations at New York.

20. As **indicated** in the table in **paragraph** 5 above, the 1986 cost for these insurance **coverages** amounted to \$75,200 which represented an annual increase of some **51** per cent over the 1985 costs. The increase related **primarily** to the **coverages** for third-party liability for the official use of chartered or military aircraft (**para. 19 (b)** above) and for **Headquarters** vehicle third-party liability and property damage, including the changeover in policy period resulting in a one-time **14-month** coverage in 1986 (**para. 19 (c)** above).

21. The current **indicators given** by **commercial** insurance brokers were that the market would stabilize and **that** the estimated increase for 1987 for the types of insurance described in paragraph **18** above **would be** in the order of 5 per cent. Consequently, it is **recommended** that **commercial** insurance for these coverages be continued in 1987 at an estimated **cost** of **\$72,000**.

### III. LEGAL AND CONTRACTUAL ISSUES

22. Current contracts between the Organisation and contractors providing goods or services at Headquarters **require** the provision of general liability coverage

**insuring** them against **claims** from third parties. Some of these contracts require the United Nations to provide **commercial** liability insurance. Therefore, in the event that a self-insurance liability programme is introduced, it would be necessary to

(a) Renegotiate the contracts and leases with a view to excluding commercial liability insurance requirements) or

(b) Terminate the contracts or allow **them** to expire at the end of **their** terms.

**23.** One point to be kept **in** mind in deciding whether the Organisation should **self-insure** its general liability risk is that, while the United Nations is immune from **suit** in national or State courts **under** the Convention on the Privileges and **Immunities** of the United Nations (hereunder referred to as the "Convention"), and the International Organisations Immunities Act, Public Law 79-291, section 2 (b), its insurance underwriter is subject to the jurisdiction of those courts and can therefore be sued in them, if it does not otherwise settle a **claim**. In other words, as long **as** the United Nations is insured by an outside **carrier**, such litigation can **be** carried out in the **courts** in the **form** of suits filed against the insurers (which are contractually precluded from asserting the immunity of the United Nations) - a procedure that satisfies the **Organization's** obligations under section 29 (a) of the Convention to provide a procedure whereby persons who have unresolved disputes with the United Nations must be offered a suitable means for settling them. If the **Organization were** completely to cancel **its commercial** insurance and thus self-insure, **it would** no longer have this convenient means of having general liability claims resolved **while** avoiding submitting itself to the jurisdiction of national courts.

**24.** The United Nations could, of course, **agree** that such claims be **submitted** to arbitration. However, aside **from** the fact that this might be cumbersome **and** expensive, closing **of** the courts to claimants may be objectionable **from** a policy point of view. Whether litigation is carried out in courts or in arbitral **tribunals**, **the** question arises as to who is to represent the **Organization**. As a claims-processing concern may not be in a position to handle these functions, it would either be necessary to engage one or more law firms or to strengthen the Office of Legal Affairs suitably. To what extent this would need **to be** provided would depend on the extent of the litigation to be undertaken. In this connection, it should be noted that until now insurers of the United Nations have generally been able to settle third party liability claims without **recourse** to litigation.

**25.** In conjunction with the proposal to introduce self-insurance for general liability coverage, consideration has been given to limiting the legal liability of the United Nations for payment of compensation for damages. In this connection, section 8 of the Headquarters Agreement between the United Nations and the host country provides for the application of the laws of the host country except where a regulation of the United Nations "made for the purpose of establishing . . . conditions for the full execution of its functions" provides otherwise. To date, three such regulations have been approved by the General Assembly that exempt the **Organization** from the application of the laws of the host country in respect of

(a) Hours of operation of retail services and facilities, e.g. cafeteria,

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(b) Qualifications for the performance of professional or other special occupational **services**;

(c) Social security for United Nations **staff** members (including Appendix D **compensations**).

26. A new Headquarters regulation **could be enacted** to limit the **Organization's** liability **under** the laws of the host country and consequently reduce its **exposure** to **excessive claims**. Such a regulation might limit liability:

(a) In terms of **categories of** people, for example by exempting the United Nations from liability in respect of **visitors**;

(b) In terms of the degree of **negligence of** the **United Nations**, for example by **exempting** the **United Nations** from liability **arising** out of **negligence of its** employees **wh** **is** less than **gross negligence**;

(c) In terms of the nature and/or amount of the claim, for example by **excluding certain** types of damages, such as for pain and **suffering** and **punitive or** moral **damages**, and by limiting compensation to that authorized under the Staff Rules.

27. It **is** proposed that the amount of compensation or damages **payable** by the **United Nations**, its agents or contractors, for their acts or omissions which occur within **the Headquarters** district be limited as follows:

(a) **Compensation** to a claimant for economic **loss**, such **as** loss of employment as a **result** of injury, be **limited** to the amount of **compensation** payable to **members** of commissions, committees or similar bodies in the event of death, injury or illness attributable to service with the United Nations, and **reasonable** compensation for damage to or destruction or loss of **property**;

(b) Compensation for other than economic loss would be limited to a maximum **\$100,000 for** pain and **suffering**, while no amount would be **recoverable** against the **United Nations** as punitive or moral damages.

The limitation in (b) above would be consistent with proposed or enacted **legislation** in the host country to limit the amount of damages payable by it.

28. It is, **therefore**, recommended that a **new** regulation, as set out in the annex to this document, be approved by the General Assembly in **accordance with** the provisions of General Assembly resolution 481 (V) **2/** of 12 December 1950.

#### IV SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

##### General liability insurance

29. As indicated in paragraph 16 above, it **is** recommended that a **self-insurance** programme to cover the **general liability** risk be introduced at Headquarters in 1987 and that a reserve fund **be established** from which any necessary payments might be **made** to satisfy **casualty** claims.

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### Property and other insurance

30. As indicated in paragraphs 18 and 21 above, it is recommended that the current arrangement<sup>8</sup> for the provision of commercial coverage for property and other types of insurance, as described in paragraphs 17 and 19 above be continued.

### Adoption of new regulation

31. As indicated in paragraph 28 above, it is recommended that a new regulation as set out in the annex to this document be approved by the General Assembly to limit the general liability risk at Headquarters.

## V. RESOURCE REQUIREMENTS FOR 1987

32. On the assumption that the recommendations contained in paragraphs 29 to 31 meet with the approval of the General Assembly, resource requirements for General insurance, Headquarters, under section 28K are estimated at \$1,930,700. Of this amount \$924,500 have already been appropriated by the General Assembly at its fortieth session. An additional appropriation of \$1,006,200, details of which are broken down below, is therefore requested under section 28K.

### (a) General liability insurance (pats. 16)

Costs for the Organization to become self-insured:

	\$	\$
(i) Initial instalment to reserve fund	200 000	
(ii) Claims processing	10 000	
(iii) Legal expenses	10 000	
(iv) Expert advice	5 000	
(v) Insurance certificates;	130 000	355 000
(b) <u>Property insurance</u> (para. 18)		591 400
(c) <u>Other insurance</u> (para. 21)		<u>72 000</u>
Subtotal		<u>1 018 400</u>
<u>Less</u>		
Balance available from 1986 appropriation		<u>12 200</u>
Total		<u><u>1 006 200</u></u>

### Notes

1/ United Nations-owned buildings, including their contents and other United Nations property in rented space.

2/ General Assembly resolution 481 (V) of 12 December 1950 prescribes the method for giving effect to section 8 of the Headquarters Agreement. Paragraph 1 of the resolution requests the Secretary-General to present to the General Assembly for approval any draft regulation within the provisions of the Headquarters Agreement which may, in his opinion, be necessary for the full execution of the functions of the United Nations.

Annex

**DRAFT REGULATION**

Limitation of damages in respect of acts occurring  
within the Headquarters district

For the purpose of placing reasonable limits on the amount of compensation or damages payable by the United Nations in respect of acts or omissions occurring within the Headquarters district:

1. In any tort action or in respect of any tort claim by any person against the United Nations or against any person, including a corporation, acting on behalf of the United Nations, whether as a member of its staff, an expert or a contractor, arising out of any act or omission, whether accidental or otherwise, in the Headquarters District, no person shall be entitled to:

(a) Compensation or damages for economic loss, as defined herein, in excess of

(i) the limits prescribed for death, injury or illness in the Rules governing Compensation to Members of Commissions, Committees or Similar Bodies in the Event of Death, Injury or Illness Attributable to Service with the United Nations applied ☐ mutatis mutandis;

(ii) reasonable amounts for damaged, destroyed or lost property)

(b) Compensation or damages in excess of 1100,000 for any non-economic loss;

(c) Any punitive or moral damages.

2. As used in this Regulation:

(a) "Economic loss" means the reasonable cost of repairing or replacing property, and, in respect of death, injury or illness, any reasonable past, present and estimated future:

- (i) health care expenses,
- (ii) rehabilitation expenses,
- (iii) loss of earnings,
- (iv) loss of financial support,
- (v) cost of homemaker services,
- (vi) transportation expenses,
- (vii) burial expenses,
- (viii) legal expenses.

(b) "Headquarters district" means the district by that name as defined in section 1 of the Agreement of 26 June 1947 between the United Nations and the United States of America regarding the Headquarters of the United Nations.