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PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987

Judgement No. 370 of the United Nations Administrative Tribunal
related to the suspension of class 12 post adjustment in
New York as at 1 December 1984Report of the Secretary-General

1. The General Assembly, in paragraph 1 (c) of resolution 39/27 of 30 November 1984, requested the International Civil Service Commission (ICSC) to "take the necessary measures to suspend implementation of the increase in post adjustment of New York envisaged for December 1984" and to "take whatever related measures are required in respect of the post adjustment levels at other duty stations to ensure equivalence of purchasing power as soon as possible at all duty stations in relation to the level of net remuneration in New York". The Chairman of the Commission, after consulting with the other members, announced on 11 December 1984 to all parties concerned that the Commission had agreed to implement the request of the Assembly. The Commission ratified this decision at its next regular session in March 1985.
2. As a consequence, the Secretary-General did not implement post adjustment class 12 in New York on 1 December 1984, but instead continued to apply class 11. Furthermore, increases in post adjustment that would have become due on 1 January 1985 in Washington, D.C. (United States of America) and in Yugoslavia and on 1 February 1985 in Iraq, if the New York post adjustment had not been frozen, were also not implemented.
3. Six staff members appealed the validity of this suspension to the United Nations Administrative Tribunal, which rejected interventions by other staff members on the basis that its decision would be applied not only to the six applicants but also to all similarly situated staff members.

4. The Tribunal heard the appeal at its spring session in 1986 and on 6 June it delivered judgement No. 370 holding that the suspension implemented by the Commission at the request of the General Assembly was valid, but only from 1 April 1985, i.e., upon the ratification of its earlier decision by the Commission at its regular session in March 1985.

5. The Tribunal held that the means by which the earlier decision of the Commission had been taken in December 1984 did not comply with certain procedural requirements and therefore had "no legal force". As a result, the Tribunal ordered, in the case of New York, the payment of remuneration at the level of post adjustment class 12 for the four-month period from 1 December 1984 to 31 March 1985 or the payment of damages equivalent to the difference between that amount and the class 11 post adjustment that had actually been paid. In view of the position taken by the Tribunal, as described in paragraph 3 above, its decision relates not only to the six applicants but also to all similarly situated staff members.

6. On 9 September 1986, the Committee on Applications for Review of Administrative Tribunal Judgements declined the application by one of the applicants in the Tribunal proceedings to request the International Court of Justice to give an advisory opinion on the validity of the Tribunal's judgement. The Tribunal's judgement No. 370 has therefore become final. As the Organization is legally bound to implement judgements of the Tribunal when they become final, there is an obligation on the part of the Secretary-General to pay the amounts ordered by the Tribunal to the six applicants as well as to other staff members similarly situated.

7. For New York, as indicated in paragraph 5 above, this could be done either by rescinding the decision not to implement class 12 post adjustment for the four months in question (December 1984-March 1985) or by paying damages equivalent to the difference between class 12 or class 11 post adjustment that had actually been paid. It would be the intention of the Secretary-General to implement the Tribunal's judgement by following the latter course of action. However, in the light of the current financial situation of the Organization, the Secretary-General intends to delay actual payment until sometime in 1987.

8. The financial implications for the United Nations of paying damages equivalent to the amounts of one additional class of post adjustment for four months in New York, for three months in Washington, D.C. and Yugoslavia and for two months in Iraq, to staff members on board for the periods in question can be summarized as follows:

<u>Duty station/ country</u>	<u>Regular budget</u>		<u>Other sources of funds a/</u>		<u>Total cost</u> \$
	<u>Number of staff</u>	<u>Cost</u> \$	<u>Number of staff</u>	<u>Cost</u> \$	
New York	1 885	1 508 000	745	595 000	2 103 000
Washington, D.C.	1	300	6	1 800	2 100
Yugoslavia			6	2 800	2 800
Iraq	82	16 000	14	3 000	19 000
	<u>1 968</u>	<u>1 524 300</u>	<u>771</u>	<u>602 600</u>	<u>2 126 900</u>

a/ Including the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR) and extrabudgetary funds of the United Nations.

9. It will be recalled that financial implications were presented to the General Assembly at its thirty-eighth session regarding the implementation of the Commission's recommendations on post adjustment, including, inter alia, the introduction of class 12 post adjustment in New York as at 1 December 1984. In view of the decision of the Assembly referred to in paragraph 1 above, however, no provisions were made in the programme budget for the biennium 1984-1985 for the introduction of class 12 in New York as of 1 December 1984 and consequently no funds were appropriated for that purpose. It is therefore proposed to charge the additional expenditures shown in paragraph 8 above (\$1,524,300) against the overall balance of appropriations for the biennium 1984-1985 to be retained as a result of the suspension of Financial Regulations 4.3, 4.4 and 5.2(d).
