



# General Assembly

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**Programme budget for 2021**

## **Nineteenth annual progress report on the implementation of the capital master plan**

### **Report of the Advisory Committee on Administrative and Budgetary Questions**

#### **I. Introduction**

1. The Advisory Committee on Administrative and Budgetary Questions has considered the nineteenth annual progress report of the Secretary-General on the implementation of the capital master plan ([A/76/288](#)). During its consideration of the report, the Committee received additional information and clarification, concluding with written responses dated 6 October 2021.

2. The report of the Secretary-General is submitted pursuant to section II, paragraph 34, of General Assembly resolution [57/292](#), and contains an update on the status of the project since the issuance of the eighteenth annual progress report ([A/75/302](#)).

#### **II. Arbitration**

3. In his report, the Secretary-General indicates that all construction work and related administrative closeout activities have been completed, with the exception of those related to one remaining arbitration case. The remaining arbitration case arose as a result of an arbitration case brought against Skanska by its electrical subcontractor, in which the subcontractor claimed that it was owed tens of millions of dollars for the work that it performed under several contracts with Skanska as part of the capital master plan. Although Skanska had denied the subcontractor's claims in their entirety, Skanska itself had claimed that, if it were found to owe additional sums to its subcontractor, the liability should be passed on to the United Nations. The United Nations disputed Skanska's claim under the relevant contracts, and the dispute is currently before an arbitral tribunal, as required under such contracts. In an effort to facilitate the arbitration process, the tribunal decided to divide the proceedings into three separate and consecutive phases: (a) the Secretariat subproject; (b) the Conference Building subproject; and (c) various other infrastructure subprojects (for



example, fire alarm and basement power distribution). The arbitral tribunal issued a final decision for the first phase in June 2020, which resulted in a net payment by the United Nations to Skanska and the settlement of retainage to subcontractors, totalling \$3,607,800. A hearing on the merits of the second phase of the case is currently scheduled for May 2022 (A/76/288, paras. 2 and 5). It is noted that no arbitration decisions have been issued during the current reporting period. **The Advisory Committee trusts that more detailed information on the second and third phases of the proceedings will be provided to the General Assembly and in the next progress report in 2022 (see also para. 9 below).**

4. Upon enquiry, the Advisory Committee was informed that there were two separate arbitration proceedings that had arisen out of the capital master plan, with two separate arbitral tribunals. Despite identical contracts and substantially similar claims and defences in both arbitrations, the absence of controlling precedent, coupled with the confidential nature of commercial arbitration, had resulted in inconsistent results between the two arbitrations, with the arbitral tribunal in the first phase awarding a small portion of the total amounts claimed (see para. 8 below).

5. With regard to lessons learned, the Advisory Committee was informed, upon enquiry, of the importance of fully completed, buildable designs, as owner-directed scope and scheduling changes provided an opening for contractors to make claims for more time and money and provided a basis for contractors to defend deficiencies in their performance. Moreover, there should be no change to work without fully documented scope, scheduling and pricing agreed in writing and in advance. **The Advisory Committee notes the lessons learned, and recalls that it previously recommended that the Secretary-General gather lessons learned related to the arbitration cases in the capital master plan with a view to avoiding litigation as much as possible and protecting the rights of the United Nations in other capital projects (A/75/589, para. 7). The Committee recommends that the General Assembly request the Secretary-General to share lessons learned and to ensure that the relevant lessons learned from the capital master plan are applied to other construction projects.**

6. The Advisory Committee was also informed, upon enquiry, that, as the possibility of claims could never be excluded entirely, funding a reserve for handling such claims might be prudent. **The Advisory Committee notes that funding a reserve for handling claims is not usual practice for such projects and may encourage the submission of claims, and recommends that the General Assembly request the Secretary-General to take the necessary measures at the planning, design and execution stages with a view to mitigating any risk of claims, including as a result of owner-directed changes, and to apply lessons learned.**

### III. Financial status

7. The total approved funding for the capital master plan project amounts to \$2,150.4 million, comprising appropriations of \$1,876.7 million for the original project scope, donations of \$14.3 million, combined interest income and working capital reserve of \$159.4 million and funding of \$100.0 million for the enhanced security upgrades. All approved funding in the amount of \$2,150.4 million has been committed in full. All contracts have been closed and all payments finalized, except for invoices relating to the ongoing arbitration cases and the associated legal fees (A/76/288, paras. 10–11). The Advisory Committee was informed, upon enquiry, that the cash available as at 15 September 2021 amounted to \$6.78 million. **The Advisory Committee trusts that an update on the cash available will be provided to the General Assembly at the time of its consideration of the present report.**

8. It is indicated that the accumulated legal expenses for the arbitration cases to date total \$6,727,300. On the basis of the estimate from the Office of Legal Affairs of the Secretariat, an additional amount of \$600,000 is required from July to December 2021, to be funded from the liquidation of commitments held pending the resolution of all legal proceedings, which would bring the estimated total expenditure for legal expenses by the end of December 2021 to \$7,327,300 (*ibid.*, para. 13). Upon enquiry, the Advisory Committee was informed that the total legal expenses for the arbitration case that was concluded in 2020 amounted to \$1,811,451, of which approximately \$1,350,000 were the fees for the lawyers and paralegals. The total legal expenses for the ongoing arbitration case amounted to \$5,665,784 through 30 June 2021, of which approximately \$4,931,000 were the fees for the lawyers and paralegals. The Committee was further informed that the rate for the lawyers was \$525 per hour and the rate for paralegals was \$180 per hour. In relation to the concluded case, the arbitral tribunal required Skanska to reimburse the United Nations \$750,000 of the total amount of those fees, which has been received in full from Skanska. **The Advisory Committee notes with concern the increasing legal expenses and is of the view that the Office of Legal Affairs should assess how to mitigate the costs of ongoing proceedings. The Committee reiterates that the Secretary-General should undertake further efforts to limit the financial liability of the Organization to the fullest extent possible (see [A/75/589](#), para. 7).**

9. In his report, the Secretary-General indicates that the final unused balance of the project can be determined only after the conclusion of the remaining arbitration proceedings and the settlement of all liabilities. At that time, the Secretary-General will report on the final balance and submit proposals for approval by the General Assembly with respect to the return of any final residual balance to Member States ([A/76/288](#), para. 14). **Taking into account the legal fees, the decision in the first phase of proceedings requiring payment by the United Nations and the cash available, the Advisory Committee trusts that the next progress report will include information on the potential financial implications, if any, of the remaining phases of the proceedings.**

## IV. Other matters

### New energy management tool

10. In his report, the Secretary-General indicates that the new energy management tool project is under implementation but has been delayed to the third quarter of 2022. The new energy management tool is an integral part of a suite of applications (OpenBlue Enterprise Manager) designed as a comprehensive solution for managing buildings and assets. The installation of the applications will be the final phase of a complex, multi-year upgrade of the existing building management system. Upon further review, it proved to be technically difficult and significantly more costly to install a new energy management tool without first completing the other required upgrades, including information technology security upgrades, to the underlying system. The implementation was also delayed by the liquidity crisis and the coronavirus disease (COVID-19) pandemic. The estimated cost of the system upgrade, inclusive of all applications, such as the one for energy management, is \$460,000 and is to be funded from within existing resources under section 29B of the programme budget (*ibid.*, para. 9). **The Advisory Committee notes the delays in implementing the new energy management tool and encourages the Secretariat to strengthen its efforts to ensure the completion of the project.**

### **Implementation of the recommendations of the Board of Auditors**

11. In his report, the Secretary-General indicates that the Administration had nine recommendations of the Board of Auditors that remained outstanding as at 31 December 2019, of which seven have been implemented. The remaining two recommendations are under implementation, pending the outcome of the ongoing arbitration case and the completion of the project to bring the United Nations Headquarters facilities to the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design (*ibid.*, para. 7). Upon enquiry, the Advisory Committee was provided with a table showing the work completed and planned. The Committee was informed that the programme of accessibility improvements to the Headquarters building went beyond achieving compliance with the 2010 ADA Standards for Accessible Design and also addressed recommendations from the Steering Committee on Accessibility, various stakeholders, including Member States and users, an accessibility review of the premises, oversight bodies and the December 2018 study of the Special Rapporteur on the rights of persons with disabilities, as reported in the proposed programme budget for 2021.

12. **The Advisory Committee expects the Secretary-General to fully implement the recommendations of the Board of Auditors. The Committee reiterates the importance of mainstreaming disability inclusion and recalls that, in the context of its report on the proposed programme budget for 2022, it recommended that the General Assembly request the Secretary-General to present, in the proposed programme budget for 2023, consolidated information on the state of accessibility of the premises at Headquarters, offices away from Headquarters and regional commissions, reflecting implemented, ongoing and planned projects to improve accessibility in the built environment at each location, alongside with related costs (see [A/76/7](#) and [A/76/7/Corr.1](#), para. XI.29).** The Advisory Committee will make further comments in the context of the consideration of the report of the Secretary-General on enhancing accessibility for persons with disabilities to conferences and meetings of the United Nations system.

## **V. Conclusion**

13. In paragraph 17 of his report, the Secretary-General indicates that the General Assembly is requested to take note of that report. **Subject to its recommendations and observations in the paragraphs above, the Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General.**