



# General Assembly

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## Seventy-fifth session

Agenda item 140

### Programme budget for 2020

## **Eighteenth 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 eighteenth annual progress report of the Secretary-General on the implementation of the capital master plan ([A/75/302](#)). During its consideration of the report, the Advisory Committee met online with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses dated 22 October 2020.

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 seventeenth annual progress report ([A/74/302](#)).

#### **II. Remaining activities**

3. As reported in the seventeenth annual progress report, all construction work and related administrative closeout activities have been completed, except for those related to two arbitration cases ([A/75/302](#), paras. 3 and 18).

4. The first case arose as a result of an arbitration brought against Skanska by its electrical subcontractor, and was divided by the arbitral tribunal into three separate and consecutive phases, with one phase for each of the three subprojects under dispute: (a) the Secretariat subproject; (b) the Conference Building subproject; and (c) various other infrastructure subprojects (*ibid.*, para. 19). The Advisory Committee was informed, upon enquiry, that phase one concluded on 30 June 2020 with a decision by the arbitral tribunal, which was final and binding on the parties, whereby the United Nations was to pay Skanska a total amount of \$3,220,600 comprising: (a) \$2,603,600 corresponding to the subcontractor's actual constructions costs, which



Skanska must pay to the subcontractor; (b) \$429,900 for Skanska's contractual 16.512 per cent markup on the construction costs of \$2,603,600; and (c) \$187,100 in interest payable on the construction costs. The Committee was further informed that, in phase one, the Organization faced an overall potential liability of \$31.5 million, reflecting \$16.5 million claimed by the subcontractor, \$2.7 million corresponding to Skanska's markup under the construction management agreement and \$12.4 million in legal expenses of Skanska and its subcontractor.

5. The Advisory Committee was informed, upon enquiry, that the Secretariat could not predict when proceedings in the remaining two phases of the first arbitration would conclude, although it was unlikely that they would be completed before the seventy-seventh session of the General Assembly. Similarly, the Secretariat could not assess the overall financial obligation of the Organization for the two phases, as the subcontractor had yet to provide details to the arbitral tribunal regarding its multimillion dollar claims of alleged unpaid costs. It was noted that the entire amount of the original claim was \$67.6 million, and \$16.5 million was ultimately claimed in connection with phase one. The Committee was informed that the parties were holding discussions regarding phase two based on the arbitral tribunal's decision in phase one.

6. With respect to the second arbitration case, which involves claims in excess of \$4 million by Skanska's mechanical systems subcontractor, the Secretary-General indicated that the arbitral tribunal issued its final decision in April 2020, rejecting all substantive claims against the United Nations and determining that Skanska was required to reimburse to the Organization \$550,000 in legal fees (*ibid.*, para. 20).

**7. The Advisory Committee trusts that the Secretary-General will closely monitor the remaining proceedings, undertake further efforts to limit the financial liability of the Organization to the extent possible and provide updated information in his next progress report. The Committee also recommends that the General Assembly request the Secretary-General to 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.**

### III. Financial status

8. The report of the Secretary-General indicates that the estimated final cost of the project remains unchanged at \$2,150.4 million, with all approved funding committed in full (*ibid.*, paras. 11–13). As at 1 July 2020, the accumulated legal expenses for both arbitration cases totalled \$6,688,500. An additional requirement for counsel fees for the remainder of 2020 in the estimated amount of \$261,800 is to be offset by a net reimbursement of \$550,000 in legal fees associated with the second arbitration case. The payment of \$3,220,600 to Skanska determined by the arbitral tribunal in phase one of the first arbitration case is to be funded from the liquidation of commitments held pending the resolution of all legal proceedings (*ibid.*, para. 14). Any final unused balance of the project can be determined only after the conclusion of the litigation processes and the settlement of all liabilities (*ibid.*, para. 15; see also para. 12 below). The Advisory Committee was informed, upon enquiry, that the cash available in the capital master plan account as at 30 September 2020 amounted to \$10.1 million before the payment of \$3,220,600 determined by the arbitral tribunal, and that it was not possible to ascertain whether the available cash balance would be sufficient to cover future litigation costs and outcomes, given the unknown timeline of the ongoing proceedings and the final amount of the claims (see also para. 5 above).

9. **The Advisory Committee recommends that the General Assembly request the Secretary-General to provide updated information on the evolution of the financial status of the project as well as the financial impact of the potential and actual liabilities resulting from the pending arbitration proceedings, legal expenses and any other related costs in his next progress report.**

## IV. Other matters

### Utility efficiencies

10. In his report, in response to a previous recommendation of the Advisory Committee to use actual data to substantiate the improved environmental performance achieved by the project (A/70/441, para. 17), which was endorsed by the General Assembly in paragraph 12 of its resolution 70/239, the Secretary-General provides information on efficiencies, comparing data from the Headquarters baseline environmental assessment conducted by the United Nations Environment Programme with the utility consumption information collected for the United Nations system greenhouse gas inventory annually. Compared with the 2007 baseline, the actual average reduction in energy consumption for 2016 and 2017 was 65 per cent, exceeding the projected reduction of 50 per cent, and the actual average reduction in water consumption was 76 per cent, exceeding the projected reduction of 40 per cent (A/75/302, paras. 6–9). The Committee was informed, upon enquiry, that changes in consumption beyond 2017 could not be attributed solely to the capital master plan, as evidenced, for instance, by the 54 per cent increase in water usage in the Secretariat building from 2017 to 2019, which was in part due to the higher rate of floor occupancy related to the flexible workplace project (see also A/75/7, paras. VIII.41 and VIII.42). **The Advisory Committee trusts that the Secretary-General will continue to closely monitor utility consumption, optimize energy usage and report on efficiency gains (see also A/75/7, para. XIII.3).** The Committee discusses utility consumption further in its report on the flexible workplace project.

11. It is indicated in the report of the Secretary-General that the Energy Dashboard and Reporting Tool has limitations and will not be supported by the vendor in the future (A/75/302, annex, recommendation 6). The Advisory Committee was informed, upon enquiry, that this system will be replaced by a new energy management software which would allow for energy prediction up to 24 hours in advance and enable a more accurate picture of energy reduction initiatives. The software is undergoing an information technology security assessment and implementation is expected within six months. Any related costs will be covered from within the regular budget resources for facilities maintenance. **The Advisory Committee trusts that the Secretary-General will provide updated information on the implementation of the new energy management tool and its costs in his next progress report.**

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

12. The Advisory Committee was informed that seven of the nine remaining recommendations of the Board of Auditors have been closed since the issuance of the report of the Secretary-General. One recommendation related to the use of final project savings remains open, pending the outcome of the arbitration proceedings (ibid., recommendation 3). The other open recommendation relates to accessibility and is under implementation. In his report, the Secretary-General indicates that work on accessibility projects is in the first of three phases and has been temporarily placed on hold due to restrictions related to the COVID-19 pandemic. It is unclear whether the projects will be completed within the original timeline of the end of 2022, as their

progress depends on funding availability and the evolution of the pandemic (ibid., recommendation 8). **The Advisory Committee trusts that the Secretary-General will provide updated information on the progress of the accessibility works to the General Assembly at the time of its consideration of the present report.**

## V. Conclusion

13. The General Assembly is requested to take note of the report of the Secretary-General ([A/75/302](#), para. 21). **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.**

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