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Programme budget for 2022

Twentieth 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 twentieth annual progress report of the Secretary-General on the implementation of the capital master plan ([A/77/299](#)). During its consideration of the report, the Committee received additional information and clarification, concluding with written responses dated 28 September 2022.

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 nineteenth annual progress report ([A/76/288](#)).

II. Arbitration

3. In his report, the Secretary-General indicates that, as reported in previous progress reports, all construction work and related administrative close-out activities have been completed, with the exception of those related to one remaining arbitration case. The Organization remains engaged in the arbitration case, which 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 therefor 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. The arbitration proceedings are divided into three separate and consecutive phases: (a) the Secretariat subproject; (b) the Conference Building subproject; and (c) various other



infrastructure subprojects (e.g., 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/77/299, paras. 3–5). A hearing on the merits of the second phase of the case has been rescheduled for October 2022. It is noted that no arbitration decisions have been issued during the current reporting period (see also A/76/498, para. 3).

4. Upon enquiry, the Advisory Committee was informed that there had not been a collective decision by the three parties to arrive at an amicable solution and unanimously agree to close the arbitration proceedings. In addition, the Organization and Skanska were not uniformly aligned in interest in the arbitration proceeding at hand; furthermore, there was no joint defence agreement between the Organization and Skanska. With regard to the third phase of the arbitration case, the Committee was informed, upon enquiry, that all parties to the arbitration would decide on continuing to that phase, depending on the arbitral tribunal's decision on the second phase. If there was to be a third phase, its schedule would be decided collectively by the Organization, Skanska and Skanska's subcontractor, in consultation with the arbitral tribunal. **The Advisory Committee trusts that more detailed information on the second and, if applicable, third phases of the proceedings will be provided to the General Assembly at the time of its consideration of the present report and in the next progress report in 2023.**

5. The Advisory Committee was also informed, upon enquiry, that the Secretariat could not determine with certainty whether a third party might seek to bring action against the Organization in the future relating to the capital master plan after conclusion of the current arbitration case. However, Skanska could not make any claims against the Organization pursuant to such contracts once final payment under such contracts had been made. Regarding further negotiations of the matters at issue in the arbitration proceeding, the Committee was also informed that, in accordance with article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, and pursuant to the terms of the contracts among the parties, the tribunal's decisions and its awards with respect to the phases were final, legally binding on all parties and not subject to further appeal. **The Advisory Committee recommends that the General Assembly request the Secretary-General to continue to take the necessary steps to limit the liabilities on and protect the rights of the United Nations in capital projects.**

6. With regard to lessons learned, the Advisory Committee was informed, upon enquiry, that the lessons learned from the arbitration proceedings had been integrated into subsequent major United Nations construction projects through an emphasis by the Secretariat on United Nations construction project teams to have robust change management procedures and project team staffing to follow through diligently on such procedures. The Committee was informed that, on the basis of an analysis of the first phase of the arbitration, the United Nations legal team had surmised that there were certain analytical approaches (e.g., the use of fact witnesses and detailed analysis of change orders made during the course of construction), written reporting processes and argument styles that appeared to resonate with the tribunal panel members. Accordingly, for the second phase, the United Nations legal team had refined its approach through the written briefs already submitted and its preparations for the upcoming hearing. Moreover, once the arbitral tribunal had rendered all decisions, the Secretary-General would take into consideration the tribunal's decisions and determine any necessary adjustments to United Nations construction principles and practices to further protect the interests of the Organization with respect to the implementation of major capital projects. **The Advisory Committee notes the lessons learned, reiterates its previous recommendation 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 (see also [A/76/498](#), para. 5) and recommends that the General Assembly request the Secretary-General to continue to share lessons learned and to ensure that the relevant lessons learned from the capital master plan are applied to other construction projects.

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. As reported previously, 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. The estimated final cost of the project remains unchanged, at \$2,150.4 million. As at 30 June 2022, the cumulative expenditure incurred, including commitments, amounted to \$2,150.4 million, indicating that 100 per cent of the estimated cost to completion has been expended and committed ([A/77/299](#), paras. 8–10). **The Advisory Committee trusts that an update on the cash available and the financial status 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 \$8,006,000. On the basis of the estimate from the Office of Legal Affairs, an additional amount of \$750,000 is required from July to December 2022, 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 2022 to \$8,756,000 ([A/77/299](#), para. 11). Upon enquiry, the Advisory Committee was informed that the amount to be spent by the Organization from July 2022 through December 2022, among other things, was with respect to: (a) the review by the United Nations legal team of the August 2022 submissions by Skanska and by its subcontractor, the United Nations legal team's preparation for the October hearing on the merits (including preparation of expert witnesses), its in-person participation in the week-long in-person hearing in October on the merits for phase two, the preparation of a post-hearing brief and its review of post-hearing written submittals by Skanska and by its subcontractor; and (b) the United Nations share of the hearing costs (e.g., facilities) and costs of the arbitral tribunal with respect to participating in the hearing and preparing its written decision. **The Advisory Committee notes with concern the increasing legal expenses and 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, and [A/76/498](#), para. 8).**

9. The financial close-out of the capital master plan project will depend on the outcome of the remaining arbitration case. 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/77/299](#), para. 12). **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. Implementation of the recommendations of the Board of Auditors

10. In his report, the Secretary-General indicates that there are two remaining recommendations of the Board of Auditors, which continue to be under implementation pending the outcome of the ongoing arbitration case and the completion of the project to bring the United Nations Headquarters facilities in line with the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design ([A/77/299](#), para. 7).

11. Regarding the Board's recommendation that the Administration report the full amount of any savings arising from contract closure and introduce appropriate governance mechanisms to determine the use that could be made of such savings, including specific consideration of returning savings to Member States ([A/70/5 \(Vol. V\)](#), para. 17 (d)), the Secretary-General states that as one of the arbitration cases is still ongoing, the final unused balance of the project can be determined only after the conclusion of the arbitration processes and the settlement of all liabilities ([A/77/299](#), table 1).

12. Regarding the Board's recommendation that the Administration examine the requirements of the 2010 ADA Standards for Accessible Design and take necessary steps on a progressive basis towards compliance with those standards to ensure accessibility to all individuals with disabilities ([A/73/5 \(Vol. V\)](#), para. 71), upon enquiry, the Advisory Committee was informed that, as at 30 June 2022, the improvements completed under the accessibility programme included gradient adjustments and paving for accessible routes, the installation of power-assisted doors at the Economic and Social Council, Trusteeship Chambers and Conference/General Assembly buildings and first basement level conference rooms, as well as a wheelchair accessible exit at 42nd Street. To reach compliance with the 2010 ADA Standards for Accessible Design, the installation of power-assisted doors at the Security Council Chamber was currently scheduled for implementation and would be completed by the end of 2022, at which time the United Nations Headquarters building would be fully compliant. The Committee was also informed, upon enquiry, that the accessibility programme aimed to achieve 2010 ADA compliance and additional measures to facilitate the inclusion of persons with disabilities were a post-capital master plan project funded under section 33 of the programme budget. Upon enquiry, the Committee was further informed that an additional accessibility improvement project, namely, a wheelchair lift at the General Assembly Hall speaker's rostrum, had been designed. That project was beyond 2010 ADA compliance. Installation of the lift would require construction in the General Assembly Hall, thereby necessitating its closure, and access to the Conference Room 4 ceiling for a significant period of time. As such, the logistics of installation were being coordinated with the Department for General Assembly and Conference Management, and the timing of installation would be subject to decisions on the availability of the conference rooms. **The Advisory Committee trusts that the Secretary-General will include updated information on the progress of the accessibility works in the next progress report.**

V. Conclusion

13. In paragraph 15 of his report, the Secretary-General requests that the General Assembly take note of the 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.**
