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and the rest of the occupied Palestinian territory

Report of the Secretary-General pursuant to
General Assembly resolution ES-10/15

Summary

In paragraph 4 of the resolution ES-10/15 of 2 August 2004 adopted at the tenth emergency special session of the General Assembly, I have been requested to establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the advisory opinion of the International Court of Justice of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem. The present report describes the institutional framework required for the implementation of the decisions contained in paragraph 4 of the above-mentioned resolution.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution [ES-10/15](#) of 2 August 2004, adopted at the resumed tenth emergency special session of the General Assembly. In paragraph 1 of the resolution, the General Assembly acknowledged the advisory opinion of the International Court of Justice of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (see [A/ES-10/273](#) and [Corr.1](#)), including in and around East Jerusalem. In paragraph 4, the General Assembly requested me to “establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the advisory opinion”.

2. In its advisory opinion, the International Court of Justice had concluded that by the construction of the wall¹ in the Occupied

Palestinian Territory, Israel had violated various international law obligations incumbent upon it (para. 143) and that since the construction of the wall entailed the requisition and destruction of homes, businesses and agricultural holdings (para. 152), “Israel has the obligation to make reparation for the damage caused to all the natural and legal persons concerned”. In paragraph 153 of its opinion, the Court said:

“Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall’s construction.”

3. In my letter to the President of the General Assembly of 11 January 2005 ([A/ES-10/294](#)), I presented a general framework for the establishment of the register. Since the submission of that, the Secretariat has made every effort to fulfil the obligation to establish a register of damage. The present report describes the institutional framework required for the implementation of the decisions contained in paragraph 4 of the resolution. In making the following recommendations, I have borne in mind the need for maximum transparency, efficiency, flexibility, impartiality and economy in the institutional framework that would be required for the establishment of the register of damage.

II. Purpose and legal nature of the Register of Damage

4. The register of damage would be known as the United Nations Register of Damage caused by the Construction of the Wall in the Occupied Palestinian Territory (hereinafter referred to as the “Register of Damage”). The Register of Damage would be a list or record in documentary form. An office would thus have to be set up that would be responsible for establishing and maintaining the Register of Damage. As noted in my letter to the President of the General Assembly, the registration of damage would be a technical, fact-finding process of listing or recording the fact and type of the damage caused as a result of the construction of the wall. It would thus entail a detailed submission process that would include a statement setting out the alleged damage, eligibility for registration and the causality between the construction of the wall and the damage sustained. It would be important to understand that the office of the Register of Damage would not be a compensation commission or a claims-resolution facility, nor would it be a judicial or quasi-judicial body. The act of registration of damage, as such, would not entail an evaluation or an assessment of the loss or damage claimed.

III. Structure and functions of the office of the Register of Damage

5. The office of the Register of Damage would consist of a Board, whose members would be appointed by the Secretary-General in their personal capacity, and a small secretariat composed of an Executive Director as well as substantive, administrative and technical support staff.

A. Headquarters of the office of the Register of Damage

6. Bearing in mind the sensitivity of its function as well as for reasons of practicality and economy, I propose to establish the office of the Register of Damage in the site of the United Nations Office at Vienna.

B. Board

7. As a policymaking organ, the Board would have the overall responsibility for the establishment and maintenance of the Register of Damage. The Board would establish the rules and regulations governing the work of the office of the Register of Damage and determine eligibility criteria, categories of damage and the procedure of registration of claims. On the recommendation of the Executive Director, the Board would have the ultimate authority in determining the inclusion of damage claims in the Register of Damage.

8. The Board would be composed of three independent members, assisted by the Executive Director of the secretariat of the Register of Damage as an ex-officio member. It is of the utmost importance that members of the Board be selected in a way that ensures their independence, objectivity and impartiality of the office of the Register of Damage. Members of the Board would be chosen for their integrity, experience and expertise in such areas as law, accounting, loss adjustment, assessment of environmental damage and engineering. The geographical diversity of the members’ nationalities would be an important factor in their selection. Members of the Board would be appointed by the Secretary-General and remunerated only when actually employed.

9. Once the office of the Register of Damage was fully operational, the Board would meet at least four times each year at the office of the Register of Damage to determine which claims should be included in the Register of Damage based on established objective criteria defined in the rules and regulations. In so doing, the Executive Director of the secretariat would forward damage claims to the Board for its approval. The Executive Director would serve in an advisory capacity.

10. Under the authority of the Board, some technical experts might also be engaged periodically to assist the Board in establishing or maintaining the Register of Damage. These technical experts would comprise specialists in relevant fields including agriculture, land law,

topography and in such other fields as may be necessary.

11. The Board would report periodically to the Secretary-General.

C. Secretariat of the Register of Damage

12. The secretariat of the Register of Damage would be responsible for providing substantive, technical and administrative support for its set up and maintenance. It would also provide comprehensive backstopping services to members of the Board. The secretariat of the Register of Damage would be headed by an Executive Director to be appointed by the Secretary-General. The Executive Director would oversee the following functions to be performed by the secretariat of the Register of Damage:

(a) The administration of a public awareness programme to inform the Palestinian public about the possibility of and requirements for filing a damage claim for registration. An extensive community outreach programme to be launched in local Palestinian media by the secretariat would explain the purpose of the Register of Damage and provide guidance on how to fill in the claim form and submit it to the office of the Register of Damage. Such a programme would be especially important in the early stages of the operations of the office of the Register of Damage;

(b) The design of the format of the damage claims as well as the set up of the Register of Damage;

(c) The processing of all the damage claims with a view to submitting them through the Executive Director to the Board for inclusion. The secretariat of the Register of Damage would also be responsible for keeping the records of damage claims approved by the Board. The Register of Damage would include both hard copies of the claims and their electronic version, which would be kept at the office of the Register of Damage;

(d) The legal advice regarding various aspects of the operations of the office of the Register of Damage and the submitted claims;

(e) The administration of the office of the Register of Damage.

IV. Legal status of the office of the Register of Damage

13. The office of the Register of Damage would be a subsidiary organ of the General Assembly operating under the administrative authority of the Secretary-General. The 1946 Convention on the Privileges and Immunities of the United Nations and the 1995 Agreement between the Republic of Austria and the United Nations regarding the seat of the United Nations Office in Vienna would thus apply to the office of the Register of Damage, its premises, equipment, database and personnel. The secretariat staff would have the status of officials of the United Nations within the meaning of articles V and VII of the Convention, and the members of the Board and technical experts would have the status of experts on mission within the meaning of article VI and VII of the Convention.

V. Process of registration

14. As mentioned in my letter to the President of the General Assembly, in devising the process of registration, eligibility criteria and categories of damage, the Board would be guided by the relevant findings of the advisory opinion, general principles of law and principles of due process of law.

15. In accordance with the advisory opinion, both natural and legal persons who claim to have sustained any form of material damage as a result of the construction of the wall are eligible for compensation. They are thus eligible to request the inclusion of damage in the Register of Damage.

16. In accordance with the advisory opinion, the claimed damage must be material damage, and a causal link would have to be established between the construction of the wall and the damage sustained.

17. In paragraphs 133 and 153 of its advisory opinion, the International Court of Justice described the kinds of damage sustained as a result of the construction of the wall. They include: destruction and requisition of properties, seizure or confiscation of land, destruction of orchards, citrus groves, olive groves and wells and the seizure of other immovable property. Moreover, material damage sustained as a result of the construction of the wall is not limited to lands and crops, but also includes impeded access to means of subsistence, urban centres, work place, health services, educational establishments and primary sources of water in areas between the green line and the wall itself. The categories of such material damage and their eligibility for registration would be elaborated in greater detail by the Board.

18. The most efficient, independent and impartial procedure for the distribution of damage claims forms to the Palestinians and thereafter for its submission in sealed envelopes to the office of the Register of Damage would be defined in the rules and regulations to be prepared by the Board. In the same vein, a decision when and if it would be appropriate for the office of the Register of Damage to engage in a process of verifying the fact and extent of the damage would be taken at a subsequent stage.

VI. Lifespan of the Register of Damage

19. The Register of Damage would remain open for registration for the duration of the wall on Occupied Palestinian Territory. The office of the Register of Damage would remain active for the duration of the process of registration.

VII. Conclusion

20. In keeping with the request of the General Assembly in resolution ES-10/15, the present report sets out the framework for the establishment of the Register of Damage. In reviewing it, the General Assembly may wish to consider adopting a resolution requesting me to establish the Register of Damage along the lines set forth in the present report.

¹The term used in the present report, "the wall", is the one employed by the General Assembly.
