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Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Letter dated 9 September 2014 from the Secretary-General addressed to the President of the General Assembly

In accordance with the provision of paragraph 6 (h) of General Assembly resolution ES-10/17, adopted on 15 December 2006, I have the honour to transmit herewith a progress report, dated 20 June 2014, from the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (see annex).

I should be grateful if you would bring the present letter and its annex to the attention of the members of the General Assembly.

(Signed) **BAN** Ki-moon



Annex

Letter dated 20 June 2014 from the members of the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory addressed to the Secretary-General

We have the honour to provide the progress report of the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory for transmission to the General Assembly in accordance with paragraph 6 (h) of Assembly resolution ES-10/17 (see enclosure).

We request that the progress report be issued as a document of the General Assembly. Our 2009, 2010, 2011, 2012 and 2013 progress reports were issued as documents [A/ES-10/455](#), [A/ES-10/498](#), [A/ES-10/522](#), [A/ES-10/598](#) and [A/ES-10/599](#), respectively.

(Signed) Ronald **Bettauer**
Member of the Board

(Signed) Harumi **Hori**
Member of the Board

(Signed) Matti **Pellonpää**
Member of the Board

Enclosure

Progress report from the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory

1. The Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (the Register of Damage) provides this progress report, in accordance with paragraph 6 (h) of General Assembly resolution ES-10/17, covering the period from 15 June 2013 to 20 June 2014. Our 2009, 2010, 2011, 2012 and 2013 progress reports were contained in documents [A/ES-10/455](#) (2009), [A/ES-10/498](#) (2010), [A/ES-10/522](#) (2011), [A/ES-10/598](#) (2012) and [A/ES-10/599](#) (2013), respectively. Board progress reports, as well as other basic documents pertinent to the work of the Register of Damage, are posted on the Register's website, www.unrod.org.
2. During the reporting period, the Register of Damage continued to collect, process and consider claim forms for inclusion in the Register in accordance with its Rules and Regulations Governing Registration of Claims.
3. Since its launch in 2008, the community outreach campaign has covered 198 communities with a population of approximately 630,000 in the governorates of Jenin, Tubas, Tulkarem, Qalqiliya, Salfit, Ramallah, Hebron and Bethlehem, as well as in some communities around East Jerusalem. Thousands of printed posters and leaflets were distributed to inform potential claimants of the requirements for completing a claim for registration of damage. In addition, over a hundred meetings were held during the reporting period by the Register of Damage claim intakers with governors, mayors, local councils and potential claimants in the areas covered by the outreach campaign. The Register of Damage has organized specialized training for 25 mayors from the Hebron and Bethlehem governorates on legal and organizational aspects of claim intake in their communities.
4. By 20 June 2014, 42,555 claim forms for registration of damage and over 600,000 of supporting documents had been collected and delivered to the Office of the Register of Damage in Vienna. Claim intake activities have been completed in six out of nine affected governorates — Tubas, Jenin, Tulkarem, Qalqiliya, Salfit, Hebron — are nearly completed in Ramallah and ongoing in Bethlehem.
5. As of 20 June 2014, the Board decided to include most or all of the losses set out in 12,515 claim forms and excluded 659 claim forms where none of the losses met the eligibility criteria, bringing the total number of decided claims to 13,174.
6. Despite the diligent and dedicated work of the secretariat, there is a considerable gap between the number of claim forms collected and processed by the Vienna Office of the Register of Damage. This gap is likely to grow, given the size of the staff of the Vienna Office and the complexity of the Board's task of reviewing claims.
7. Since its previous report, the Board has held three meetings in Vienna to review claim forms that had been translated, processed and individually reviewed by the Office staff. The Board met from 16 to 20 September 2013, from 9 to 13 December 2013 and from 16 to 20 June 2014. At the three meetings, respectively, the Board reviewed and decided to include in the Register most or all of the losses

set out in 998 claim forms, 1,825 claim forms and 1,294 claim forms. At its September, December and June meetings, respectively, the Board decided not to include in the Register 41 claim forms, 22 claim forms and 20 claim forms, since none of the losses in the forms met the eligibility criteria in the Register of Damage's Rules and Regulations. At its September 2013 meeting, the Board also decided to remove from the Register losses contained in 7 claim forms because new information showed that the land that was claimed had been sold. The Board also decided to defer action on 14 claim forms at its September 2013 meeting and on 4 claim forms at its June 2014 meeting.

8. The Board cancelled the meeting that had been scheduled for 10-14 March 2014 because the secretariat failed to make travel arrangements for this meeting. The secretariat asserted that the "contracts" of the members of the Board had not by that time been extended by United Nations Headquarters. On 29 May 2014, an electronic copy of a letter dated 23 May 2014 from Mr. Sergey Agadzhanov of the Vienna Office of the United Nations was forwarded to each Board member with a request that we each agree to an appointment under a contract term from 9 April 2014 for a maximum of 35 workdays, lasting until 31 December 2014 and subject to termination without notice. The Board was told by the Register's secretariat that our travel to the June 2014 meeting would be cancelled if we did not sign the appointment letter acceptance form before commencing travel. We each signed. Two of the Board members clarified that their appointment by the United Nations Secretary-General had been announced by United Nations Headquarters in 2007 and 2008, respectively, and indicated their acceptance of the appointments was subject to the provisions of General Assembly resolution ES-10/17 (2007) and, to the extent consistent therewith, to the terms in the letter and the Staff Regulations of the United Nations and Staff Rules. The Register's secretariat described a legal opinion it had obtained concerning the status of members of the Board, but the members of the Board had not been consulted about the opinion and the secretariat did not share the opinion with the Board. It is the Board's view the issue of contract extension does not appropriately arise under General Assembly resolution ES-10/17 (2007). Paragraph 5 of resolution ES-10/17 requests the Secretary-General to appoint members of the Board in accordance with the criteria contained in his 17 October 2006 report (A/ES-10/361). Those criteria are in paragraph 8. They provide that the Board is composed of three independent members and stipulate "that members of the Board be selected in a way that ensures the independence, objectivity and impartiality" of the Register. Fundamental features of independence are that members can perform their functions without interference and may not be removed without cause. Neither the resolution nor the report contains a term limit for persons who have been appointed to the Board. The analogous precedent and practice of claims commissions and arbitral tribunals, where the constituent instruments of the body do not contain a term limit for members, is that members cannot be removed without cause. To allow otherwise would undermine the independence, impartiality and objectivity of the institution and would not be consistent with public international law. While upon initially joining the Board each member signed United Nations letters of appointment, for many following years the issue of having to sign such documents did not arise. Even if new letters of appointment serve an administrative purpose, they cannot override the provisions of resolution ES-10/17 and cannot be used as a justification for removal of Board members without specific cause.

9. The claim forms reviewed during the reporting period included 3,570 claims for category A (agriculture) losses, 498 claims for category B (commercial) losses, 36 claim forms for category C (residential) losses and 217 claims for category E (access to services) losses.

10. The Board, in its review of claims, continued to apply the eligibility criteria in accordance with article 11 of the Rules and Regulations Governing Registration of Claims. In view of the limited time available and the large number of claims for losses included in claim forms submitted to the Board for review by the Office staff, the Board continued to employ sampling techniques as provided for in article 12 (3) of the Rules and Regulations. During the three meetings covered by this report, Board members reviewed in detail approximately 8.5 per cent of representative claims for losses included on the claim forms submitted for review. As indicated in the 2012 Board report, the Executive Director of the Register consulted informally a statistician concerning the sampling methodology; he advised that this level of sampling is reliable. Claims that did not meet the eligibility criteria were either excluded from the Register or returned to the claimants in order for them to provide clarification.

11. The Board continued its exploration of difficult issues of local rules, practice and documentation relating to the ownership and inheritance of land in the Occupied Palestinian Territory, in order to determine whether the claimant had a prima facie legal interest in the claimant's share. Complex fractional calculations continued to be necessary in cases where there were multiple owners in order to record a claimant's specific share of the losses to be included in the Register. Difficulties caused by the use of different names (e.g., tribal name, family name, great-grandfather's name) for members of the same family and other such apparent inconsistencies often necessitate special vigilance in the verification of the legal interest.

12. Previous Board progress reports identified some of the issues addressed and decisions reached during the previous reporting period. The following are among the issues addressed and decisions reached by the Board during the present reporting period:

(a) Duplicate agricultural claims: Where a claimant files for the same losses in multiple claim forms, and none of these claims have previously been decided by the Board, the claim with the lower quantities should be reviewed and recorded if the eligibility criteria are met;

(b) Green line: In Shuweika in the Tulkarem governorate, several claimants asserted that the green line runs west of where the Office for the Coordination of Humanitarian Affairs (OCHA) marked the green line. The OCHA marking of the green line is usually used by the Register of Damage. However, the claimants attached relevant requisition orders from the Israeli military authorities for the properties in question that appeared to treat the properties as being in the Occupied Palestinian Territory, i.e., on the Palestinian side of the green line. Further, the satellite images of the area showed different patterns of farming on each side of the claimants' asserted green line, suggesting that the area to the west of the claimants' green line is used by Israelis and that the area to the east has been used by Palestinians. The Board thus decided to register these claims on the basis of the claimants' version of the green line. The Board has noted in its decisions to register these claims that the decisions are made based on information provided by claimants

and others, and that the Register should be deemed to include only loss or damage caused by the construction of the Wall within the Occupied Palestinian Territory and should be deemed to include claims only to the extent of loss or damage within the Occupied Palestinian Territory;

(c) Newly planted crops: In cases where claimants regained access to their land and resumed agricultural activity, the Board decided that the duration of the losses recorded should take into account both the time it takes for the newly planted crops to start being productive and the time it takes for the production to reach output levels prior to the construction of the Wall;

(d) Continuing losses by tenants of land: The Board decided that when a tenant claims for continuing agricultural losses and has shown that he was renting the land at the time of the construction of the Wall and has met all the other eligibility criteria, the loss will be recorded as “continuing”;

(e) Greenhouse crops: The Board decided that greenhouse crops are to be deemed movable items and are, in the absence of contrary information, therefore attributable to tenants rather than landowners. Trees, on the other hand, are immovable, attached to the land, and therefore losses involving trees are usually attributed to landowners;

(f) Increased prices of fodder: The Board decided to include losses relating to the increased price of fodder since it is reasonably foreseeable that the loss of access to grazing lands caused by the construction of the Wall would result in higher demand by farmers for fodder to feed their livestock and thereby higher prices;

(g) Dates of sale contracts in the land registry: It appears that often the dates listed for contracts for the sale of property in land records are not accurate; the registration office in some areas is slow in dealing with registration requests (it may take many years) and then records the date of registration rather than the date of sale (or inheritance). In some cases, more persuasive documents (e.g., the contract itself or a certificate of legacy) give a more accurate date and can overcome an incorrect date in a land record document. However, there are cases in which the claimant asserts ownership of the land in question before the Wall was constructed (i.e., allowing the claim to be eligible for consideration for registration), but the land record is the only supporting document that was filed and it states that the date of acquisition of title is after construction of the Wall (which, except in transactions among close family groups, would defeat eligibility). The Board decided to investigate whether delays in recording land transfers were endemic in the Occupied Palestinian Territory or just occurred in particular localities;

(h) Loss of access to health services: The Board decided that in claims involving lack of access to health services, the documents provided, such as prescriptions or laboratory tests, to show a claimant’s need for access to health services should relate to the health problem asserted by the claimant. The Board also decided that even where a claimant has not specifically claimed for additional transportation, the loss may be included where the claimant has shown a health problem, requiring access to a health facility that is on the other side of the Wall. The Board decided that, for claims for additional transportation to be recorded, claimants are required to show some prior travel out of the seam zone to a health facility on the other side of the Wall;

(i) Claims for aggravation of health conditions because of delay at the Wall: Where there is documentary evidence of a medical condition and an assertion that the Wall caused a delay in treatment that caused or aggravated the medical condition, if research indicates that delay in treatment can in fact cause or aggravate the condition in question, the Board decided to record the loss;

(j) Interruption of education: Various claims by persons living in the seam zone (e.g., Barta) assert additional delay and costs in travelling to West Bank educational institutions because they have to go through Wall gates (which takes long, causes detours and adds costs). The Board decided that if a student demonstrates that he or she lives in a seam zone and was enrolled at a West Bank educational institution at the relevant time and at some point simply gives up travelling to it because of the additional burdens, the claim should be recorded as “interruption of education” in the Register;

(k) Destruction of items at the gates: The Board decided that, in general, unlawful action by Israeli soldiers, even if extensive, could not be regarded as caused by the Wall. However, where it appears the Israeli soldiers confiscated property because of a security concern (e.g., a concern that a medication bottle held an illicit substance), the Board decided that that property loss will be recorded. Even where property losses are not recorded, the claimant’s additional transportation time and costs may be recorded;

(l) Theft from property in the Occupied Palestinian Territory on the other side of the Wall: Some claimants assert that because they cannot get to their property behind the Wall it is plundered, e.g., with saplings stolen, houses looted, etc. While in a certain sense this is similar to fire damage (discussed in the Board’s prior report), here there are intervening illegal acts by individuals. Since these claims raise the question of Wall causation, the Board decided to defer the claims in which this issue arises pending further study.

13. As before, the Board would like to express its appreciation for the indispensable cooperation extended by the Palestinian Authority and the Palestinian National Committee for the Register of Damage, as well as for the support provided by local Governors, mayors and members of village councils on many practical aspects, without which outreach and claim-intake activities could not be undertaken successfully. As for the Government of Israel, it continues to consider that any claims in relation to damage caused by the construction of the Wall should be addressed through the existing Israeli mechanism. On the practical level, the Executive Director of the Register of Damage continues to maintain constructive contacts with relevant Israeli authorities and, during the reporting period, the Office of the Register of Damage did not experience any problem with access, freedom of movement, security, delivery of needed materials or issuance of required visas.

14. The Board of the Register of Damage notes with satisfaction the good cooperation with United Nations agencies and offices present on the ground in the Occupied Palestinian Territory, as called upon in paragraph 14 of General Assembly resolution ES-10/17. The Board particularly appreciates the efficient and tangible contribution provided by the United Nations Office for Project Services in the areas of logistics, procurement, human and financial resources, and management in support of the Register of Damage. During the reporting period, the Register of Damage also continued to benefit from cooperation with the United Nations Special Coordinator for the Middle East Peace Process and his Office.

15. The outreach and claim-intake activities in the Occupied Palestinian Territory, which are currently conducted by 8 Register of Damage claim intakers, have since their initiation been funded by voluntary contributions from the Governments of Algeria, Austria, Azerbaijan, Belgium, Brunei Darussalam, Finland, France, Jordan, Kazakhstan, Malaysia, Morocco, the Netherlands, Norway, the Philippines, Qatar, Saudi Arabia, Switzerland and Turkey and the OPEC Fund for International Development (OFID). Note may be taken that several Governments as well as OFID have provided donations twice.

16. The Board would like to express its appreciation to these donors for providing funding and political support enabling the implementation of the provision of the General Assembly resolution ES-10/17. Nevertheless, the resources that are currently available will be exhausted by the end of July 2014, thus putting into question the continuation of the claim-intake activity in the Occupied Palestinian Territory.

17. The Board commends the diligent and dedicated work of the staff of the Register.

18. The Board of the Register of Damage will continue to provide periodic reports.

Members of the Board of the Register of Damage
Vienna, 20 June 2014
