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Statement by
H.E. Ambassador Dr. Riyad Mansour
Permanent Observer of Palestine to the United Nations
before
the Resumed Tenth Emergency Special Session of the General Assembly
Agenda item 5:
Illegal Israeli Actions in Occupied East Jerusalem
and the rest of the Occupied Palestinian Territory
15 December 2006

Madam President,

At the outset, I would like to express our profound gratitude and deep appreciation to the Member States of the League of Arab States, the Organization of the Islamic Conference, and the Non-Aligned Movement, for their valuable support in calling for the reconvening of the tenth emergency special session, and for cosponsoring of draft resolution A/ES-10/L.20. I would like also to express our thanks and deep appreciation to you, Madam President, for the convening of this session.

More than two years ago, in July of 2004, the General Assembly met in a resumed tenth emergency special session following the rendering by the International Court of Justice (ICJ) of its Advisory Opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory". That Advisory Opinion constituted a comprehensive determination of the applicable rules and principles of international law, including international humanitarian law and human rights law, and of the legal obligations arising from the breach of that law by Israel, the occupying Power, as a result of its construction of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem. After considering the Advisory Opinion and in a serious effort to uphold international law, the Assembly adopted resolution ES-10/15 on 20 July 2004 by an overwhelming majority, in which it, *inter alia*, demanded that Israel, the occupying Power, comply with its legal obligations as mentioned in the Advisory Opinion.

Deplorably, however, Israel, the occupying Power, continues to act with the utmost impunity and in blatant disrespect of the Advisory Opinion and United Nations resolutions. Israel has not ceased its unlawful construction of the wall in the Occupied Palestinian Territory, including East Jerusalem. Instead, the occupying Power, continues to press on with its unlawful colonization of the Palestinian Territory through its construction of the wall and its associated

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regime as well as its settlement campaign, committing countless violations and grave breaches of international law every single day against the Palestinian people, as it feverishly attempts to *de facto* annex even more of the Palestinian land it has brutally occupied and colonized since 1967.

As it continues to construct this monstrous wall, Israel, the occupying Power, continues, *inter alia*, to confiscate more land and to destroy homes, properties and agricultural fields and crops in the Occupied Palestinian Territory. Thousands of Palestinians have been displaced from their homes, altering the demography of the Territory. The wall and its associated regime, including the apartheid permit system, continue to obstruct the freedom of movement of the Palestinian people and to obstruct their access and violate their rights to work, to healthcare, to education, to worship and to an adequate standard of living. The Palestinian economy is in tatters, development is nearly impossible and hundreds of thousands of livelihoods have been destroyed as a result of the wall, worsening socio-economic conditions and deepening the humanitarian crisis being faced by the Palestinian people.

The contiguity and integrity of the Palestinian Territory is being destroyed since the construction of the wall and the intricate network of checkpoints as well as colonial settlements correlated to it have sliced and carved the Territory into several enclaves, some completely walled-in, resembling Bantustans. Occupied East Jerusalem has been almost totally isolated from the rest of the Occupied Palestinian Territory. The beauty of the natural landscape and the environment and natural resources are being ravaged. The very fabric of Palestinian society is being ripped apart by Israel's unlawful construction of the wall with communities separated and isolated from each other and some being destroyed in their entirety. In sum, vast devastation has been caused, and continues to be caused, by the construction of the wall and its associated regime in the Occupied Palestinian Territory, including East Jerusalem, and the situation continues to deteriorate ever more with the passage of time.

Madam President,

Most regrettably, since the rendering of the ICJ Advisory Opinion and the adoption of resolution ES-10/15 by the General Assembly more than two years ago, no concerted action has been taken to compel Israel, the occupying Power, to cease its construction of the wall, to dismantle it and to comply with its legal obligations in this regard. No measures have been taken by Member States - in upholding their obligations under international law, as articulated in the Advisory Opinion, in compliance with resolution ES-10/15, or in compliance with their obligations under common article 1 of the Geneva Conventions - to bring an end to the grave breaches that are being committed by Israel, the occupying Power, against the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, by its construction of the wall.

As a result of this situation, the damages and hardships being suffered by the Palestinian people as a result of the construction of the wall and its associated regime continue to mount. We thus appeal today to the international community to take the necessary actions to address this situation and to bring an end to this ongoing injustice against the Palestinian people. The Security Council, which up until today has not even attempted to address the crisis of the wall, cannot continue to evade its responsibilities. The Council must take action to bring an end to this

crime that is being committed against the Palestinian people – a crime that is making the two-State solution to the Israeli-Palestinian conflict and the vision of a just and dignified peace nearly impossible to achieve.

Indeed, the passage of time is only further compounding and complicating the illegal and grave situation that is being created by the wall in the Occupied Palestinian Territory, including in particular in and around Occupied East Jerusalem. Each day that passes without action exacerbates the situation. Yet the passage of time and the continued creation of such unlawful facts on the ground in no way diminish Israel's responsibility for the illegal actions it is committing and in no way diminish the applicability of international law. The Hague Convention, the Fourth Geneva Convention, the International Human Rights Covenants, the United Nations Charter and the rules and principles enshrined therein, U.N. resolutions and the Advisory Opinion all remain relevant and are all applicable to the situation in the Occupied Palestinian Territory. Moreover, the passage of time does not absolve Member States of their responsibilities to uphold international law and to ensure its respect under all circumstances. It is high time then that the international community come together to make the bold decisions needed for bold action to uphold their legal obligations to rectify this unlawful and unjust situation.

Israel, the occupying Power, must comply - or be compelled to comply - with its legal obligations under international law, as determined by the ICJ in its Advisory Opinion and as demanded by this very Assembly in resolution ES-10/15 and numerous other resolutions adopted thereafter. Accordingly, Israel must cease all of its violations and grave breaches of international law, and it must thus, *inter alia*, cease immediately its construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle the structure already built therein, repeal or render ineffective all legislative and regulatory acts relating thereto and make reparation for of the damage caused by the construction of the wall.

Madam President,

Bearing all of that in mind, we meet today in this resumed tenth emergency special session to address one aspect of the situation arising from Israel's unlawful construction of the wall, namely the matter of reparations to be made by Israel, the occupying Power, in conformity with international law, for all of the damages it is causing by its construction of the wall in the Occupied Palestinian Territory, including East Jerusalem. In this regard, we recall in specific the request made by this Assembly in resolution ES-10/15 for the Secretary-General 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.

Pursuant to that request, the Secretary-General submitted a report, on 17 October 2006, to the Assembly for its consideration. We express our appreciation to the Secretary-General for the report, which formed the basis of current discussions and the basis of the draft resolution before the Assembly for action on the long-awaited establishment of the "*United Nations Register of Damage caused by the Construction of the Wall in the Occupied Palestinian Territory*". As stated earlier, the damage that is being caused by Israel, the occupying Power, by its construction

of the wall in the Occupied Palestinian Territory, including East Jerusalem, is severe, vast and continuous, and the establishment of a Register of Damage is therefore vital for the fulfillment of the legal obligation to make reparations, including restitution and compensation, for all of the damage that is being caused by the construction of the wall and its associated regime.

In this connection, we must recall the relevant determinations made by the ICJ in its Advisory Opinion in particular in paragraphs 152, 153 and 163 (c). The Court's words are precise, clear and indisputable. In paragraph 163 (c) of the *dispositif*, the Court firmly concluded that *"Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem"*.

The Court based this determination on the fact that the construction of the wall had unquestionably entailed, *inter alia*, the requisition and destruction of homes, businesses and agricultural holdings as well as various other kinds of damage and loss for the Palestinian people. Therefore, in accordance with the rules and principles of international law, Israel is obligated to make reparation for the damage caused and, as explained in paragraph 152 and established in customary law, it must be emphasized *"that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which restitution in kind would bear..."*

Thus the Court determined that *"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 the purposes of the 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."* (para.153)

The ultimate purpose of the Register of Damage is, therefore, the comprehensive documentation - in the form of registration, verification and assessment - of all of the damage that has been and continues to be caused by the construction of the wall for utilization when the time arrives that Israel, the occupying Power, is to carry out the process of reparation that it must make in compliance with its legal obligations. The accurate and thorough documentation of the damage caused is a central prerequisite for the genuine granting of reparations, including both restitution and compensation, to the Palestinian people who have suffered so much and whose rights have been so gravely breached by Israel's construction of the wall in the Occupied Palestinian Territory, including East Jerusalem.

Madam President,

The draft resolution before the Assembly mandates the establishment of the United Nations Register of Damage and defines the institutional framework required for its establishment and maintenance and the responsibilities to be undertaken by the secretariat,

namely the office of the Register of Damage, in this regard. The office of the Register of Damage shall be a subsidiary organ of the General Assembly, functioning under the authority of the Secretary-General, and will be composed of a three-member Board, an Executive Director and a secretariat staff, which will be based in the site of the United Nations Office at Vienna. The draft resolution before the Assembly details the important functions to be assumed by the secretariat, which I wish to refer to here in brief.

In terms of the Board of the office of the Register of Damage, we look forward to an announcement by the Secretary-General regarding the names of the candidates to be appointed to the three-member independent Board in the very near future following the adoption of the resolution. The candidates must be independent, objective, knowledgeable, experienced and of the highest integrity for the Board is to assume overall responsibility for the establishment and maintenance of the Register of Damage and will also be functioning in a judicial capacity as it is the Board who will have the ultimate authority to determine the inclusion of damage claims in the Register.

Moreover, the Board will have the important task of determining the eligibility criteria for damage claims as well as the criteria of damage and the procedure for the registration of claims, which should include, *inter alia*, documentation of the damage or loss caused verification and assessment of value at a later stage. We stress that it is imperative that, in developing these criteria, the Board be guided by the relevant findings of the Advisory Opinion, general principles of international law and the principles of due process of law. Additionally, the Board should, as necessary, engage the expertise of specialists, including, for example, in land law, agriculture, topography, verification, assessment and compensation, in order to ensure the effectiveness of the overall registration process and of the Register itself.

Here, I wish to refer to the importance that Palestine places on the matter of verification and assessment of damage as an integral part of the registration process. We believe that verification and assessment of damage are indispensable steps in the process and it is essential and preferable that they be undertaken as soon as possible since the end purpose of such a Register of Damage is for the making of reparations, including restitution and compensation, which clearly requires verification and assessment. Therefore, logically and for the sake of efficiency of labor and resources, the verification and assessment of damages caused by the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, should be carried out in tandem with the collection of damage claims and not postponed to a later date, which may complicate both procedures.

This brings me to the role of the secretariat of the office of the Register of Damage. As detailed in the draft resolution, the secretariat, which will be led by an Executive Director, who we hope will be speedily appointed, will provide substantive, administrative and technical support for the establishment and maintenance of the Register. This will include such functions as administering a public awareness program to inform the Palestinian public about the Register of Damage - about its purpose, the requirements for filing a damage claim and the procedures for filling out and submitting claim forms - as well as receiving and processing all of the damage claims for submission through the Executive Director to the Board for inclusion in the Register, and aggregating and maintaining the records registered in the Register of Damage in both hard

and electronic forms. In this regard, we stress our belief that the process of registration for which the secretariat will be responsible - beginning with the awareness program and outreach and throughout the process of receiving, verifying and assessing claims - requires a field presence in the Occupied Palestinian Territory, including East Jerusalem, in order to effectively be carried out.

In this connection, the cooperation of the United Nations agencies and offices functioning in the Occupied Palestinian Territory, including East Jerusalem is vital. Those agencies and offices, including, for example, OCHA, UNSCO, UNDP, and UNRWA have extensive experience on the ground and detailed knowledge about the wall, its route and its impact on the Palestinian people in various fields, including with regard to damages and financial and other losses inflicted by it. They should therefore lend their support and expertise to the office of the Register of Damage as needed. Not only would such cooperation facilitate the work of the office of the Register of Damage, but it would also clearly be cost effective for the United Nations to utilize its resources already present on the ground.

At the same time, we express our strong hope that Israel, the occupying Power, will, as called for in the draft resolution, cooperate with the office of the Register of Damage. Israel should respect the United Nations Charter and the U.N. Convention on Privileges and Immunities and it should not in any way impede or obstruct the work of the office of the Register of Damage or the movement and access of its staff. On our part, the Palestinian Authority stands ready to cooperate with the office of the Register of Damage to the fullest extent and will encourage the relevant Palestinian institutions to do so as well.

Madam President,

The Register of Damage should remain open for registration for the duration of the existence of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. Similarly, the office of the Register of Damage should remain active for the duration of the registration process and should carry out the functions and directives ascribed to it in the resolution and any such additional functions as may be deemed necessary and appropriate by the Board or by the General Assembly. Indeed, as long as the wall exists, it is unquestionable that the Palestinian people will continue to suffer from the damages and losses it is inflicting upon them. The Register must thus remain in existence until the construction of the wall is totally ceased, the wall is dismantled and reparations are properly made by Israel, the occupying Power, in conformity with the rules and principles of international law and due process of law, for all of the damage and loss it has caused by the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem.

Before concluding, I wish to emphasize the fact that the making of reparations – in the form of restitution and compensation – does not absolve Israel, the occupying Power, of its legal obligations to cease its construction of the wall and the associated regime, to dismantle the wall, and to repeal or render ineffective all legislative and regulatory acts related thereto. Israel must terminate its breaches of international law, including international humanitarian law – particularly the 4th Geneva Convention – and human rights law. Israel cannot continue to act

with impunity, in total and flagrant disrespect for international law, United Nations resolutions and the Advisory Opinion of the International Court of Justice. The international community must hold Israel accountable for its illegal actions in the Occupied Palestinian Territory, including East Jerusalem, and compel it to bring all such actions to an immediate end.

Madam President,

It is our deepest hope that the draft resolution before the General Assembly today will be adopted by an overwhelming majority. It deserves the strong support of Member States for the establishment of the "*United Nations Register of Damage caused by the Construction of the Wall in the Occupied Palestinian Territory*". It is an extremely important undertaking, necessary for the fulfillment of the legal obligation for reparations to be made to the Palestinian people, who are suffering greatly as a result of the construction of the wall and are pleading with the international community for help to bring an end to this grave injustice. Moreover, the establishment of this Register of Damage is in line with the permanent responsibility of the United Nations towards the question of Palestine until it is resolved in all its aspects in accordance with international law. The crisis of the wall in the Occupied Palestinian Territory, including East Jerusalem, has undoubtedly become one of the core issues of the question of Palestine that must be justly resolved in order for our long-held aspirations for a just and lasting peace to become a reality.

Thank you, Madam President.