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Israeli Palestinian Water relationships : Paternalistic neocolonialism

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First, I would like to thank the Palestinian Academy for Science and Technology for inviting me to deliver a keynote speech to the 2nd International Conference on Water Values and Water Rights. Second, I want to admit that I have been muddling in the water issue for the past twenty years through my work at the Applied Research Institute-Jerusalem and the technical committees that were established by the Palestinian team for the Peace Conference which was headed by the late Faisal Husseini and hosted at the Orient House. In the coming minutes, I would like to put forward my personal reflections on the water issue highlighting the lessons learned and the way forward.

Introduction

Water is recognized as a nascent source of conflict between Israel and its neighbors, especially Palestinians. The roots for the water conflict go back to the end of the past century when the Zionist movement started its plans for creating a Jewish homeland, securing a large portion of the region's water in order to absorb 15 million Jews. Consequently, hydrology rather than ideology played a significant role in shaping the geopolitical boundaries of Israel. The current water allocations in the area came about as a result of fete compli arrangements reflecting the balance of power rather than internationally formulated agreements.

The Jordan River is an international river basin whose resources are shared among its riparians, namely Israel, Lebanon, Syria, Jordan and Palestine. However, Israel, the power holder in the region, has managed to violate the water rights of the riparian countries of the Jordan River, particularly the Palestinian water rights, that were identified in the Johnston Plan that called for the construction of a West Ghor Canal to provide the Palestinians with their water share, estimated at 250 MCM per year. The Johnston Plan was accepted by the technical committees of the riparian countries but has never been ratified. The most significant project carried out in the Jordan River Basin is the establishment of the Israeli National Water Carrier through which Israel diverts water from Lake Tiberias to the Negev desert. The Arab reaction to the Israeli project was the implementation of an alternative water management project that would enable Arab states to acquire their rights in the Jordan River waters by building dams on the tributaries of the Jordan and Yarmouk Rivers. In 1965, Syria began building dams to divert water from the Baniyas and Dan Rivers in the Golan Heights. Israel considered these headwater diversions as an aggressive action that would threaten its plans for absorbing the Jewish



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immigrants as well as its strategic reliance on the waters of the Jordan River Basin to irrigate the Negev desert. Accordingly, Israel sent fighter planes to the working sites and destroyed the Arab water project.

Following the 1967 war, which is believed to have been driven by Israel's water strategies, Israel strengthened its control over the water resources in the region through its occupation of the Golan Heights, Gaza Strip and the West Bank. Immediately after the end of the war, Israel destroyed 140 Palestinian water pumps in the Jordan Valley which farmers were using to utilize the Jordan river waters. Israel imposed restrictions on water use by Palestinians and declared the lands located alongside the Jordan River as closed military areas and deprived the Palestinians of their right in utilizing the river's waters.

Water and Peace

Until 1987, Israeli and Palestinian professional cooperation in the field of water was limited to Palestinian employees of the Civil Administration in Gaza and the West Bank and their employers. Following the first Intifadah in 1987, a number of Israeli and Palestinian professionals started roundtable discussions on economic cooperation, water, environment and other issues in preparation for a peaceful resolution for the historic conflict. When the Middle East peace conference was inaugurated in Madrid in 1991, technical committees were formed to support the negotiating team with position papers, policies and plans covering the various sectors, including water.

The peace process in the Middle East was divided into two tracks: the bilateral and the multilateral negotiations. The bilateral talks were intended to lead to peace treaties between Israel on one hand and each of the regional parties, namely Jordan, Lebanon, Palestine and Syria on the other. The multilateral track was intended to complement and support the bilateral track by promoting regional cooperation and comprised five working groups namely:

- Working Group on Water Resources.
- Working Group on the Environment.
- Working Group on Regional Economic Development.
- Working Group on Refugees.
- Working Group on Arms Control and Regional Security.

Syria and Lebanon boycotted the multilateral negotiations arguing that real progress in the bilateral track is a prerequisite for progress on the multilateral track. The first round of the working group on water resources was held between January 28 and 29, 1992 in Moscow and was an exploratory meeting. In the second round, which was held between May 14 and 15, 1992 in Vienna, the Palestinian team raised the issue of water rights but Israel insisted that water rights is a bilateral issue and multilateral negotiations should



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focus on joint management and development of new resources. In the third round, which was held between September 16 and 17, 1992, consensus was reached on a general emphasis for future talks, which are:

- 1-Enhancement of water data
- 2-Water management practices
- 3- Enhancement of water supply
- 4- Concepts for regional cooperation.

In this meeting it became clear that the multilateral track would not deal with any political agreements and the role of talks was limited to nonpolitical issues. In the fourth round, which was held in Geneva between April 27 and 29, 1993, a series of activities surrounding the four subjects was proposed. Nevertheless, the issue of water rights was raised again by the Palestinian team who threatened to boycott the activities. In the fifth round, held in Beijing between October 26 and 28, 1993, reports were presented on increasing data availability, enhancing water supply, water management and conservation as well as regional cooperation and management. The sixth round, which was held between April 17 and 19, 1994 was the first round to be held in an Arab country (Muscat). The Palestinians announced the appointment of a Palestinian National Water Authority. In this meeting the working group endorsed:

- 1-An Omani proposal to establish in Muscat the Middle East desalination research center
- 2-An Israeli proposal to rehabilitate and improve water system in small communities in the region (the first Israeli proposal to be accepted)
- 3-A German proposal to study the water supply and demand development among interested core parties
- 4-A U.S proposal to develop wastewater treatment
- 5-Implementation of the U.S/EU regional training program.

The seventh round was held as a joint round with the environmental working group in Jordan between June 18 and 22, 1995. A new agenda item was proposed for financing mega-projects but was rejected by the Palestinian delegation.



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The multilateral track has been frozen since 1998 due to lack of progress in the bilateral track.

On the bilateral track, water was one of the major sticking points in the negotiations, leading to the signing of the interim Agreement (Oslo II) in Washington on September 28, 1995.

Water is referred to under article 40 of Annex 3 “Protocol concerning Civil Affairs”. Here, I would like to say the Palestinian water experts involved in the negotiations were adamant in the rejection of the Israeli attempts to impose their position on the agreement and a number of them withdrew when pressure was exerted on them. In the end, the agreement was made without referring to the Palestinian water experts.

Still, in the following paragraphs, I would like to quote what was signed and elaborate on what actually was implemented.

Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip

Washington, D.C., September 28, 1995

CHAPTER I - THE COUNCIL

ARTICLE I

Transfer of Authority

5. After the inauguration of the Council, the Civil Administration in the West Bank will be dissolved, and the Israeli military government shall be withdrawn.

14 years later, the so called Civil Administration is still operational.

CHAPTER 2 - REDEPLOYMENT AND SECURITY ARRANGEMENTS

ARTICLE XI

Land

1. The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.

Israel has segregated the West Bank from Gaza



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2. The two sides agree that West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations, will come under the jurisdiction of the Palestinian Council in a phased manner, to be completed within 18 months from the date of the inauguration of the Council.

Jerusalem and settlements cover less than 5 % of the oPT and thus, 95 % of the oPT should have been transferred, After 14 years, Palestinians have received only 40 % of the oPT.

ARTICLE XXXI

Final Clauses

5. Permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the Parties. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.

Permanent status negotiations started in July 2000 at Camp David.

7. Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.

Since signing the agreement, the settler population has doubled and since 2002, the segregation plan was implemented unilaterally by Israel.

Annex III

Protocol Concerning Civil Affairs

ARTICLE III

Modalities of Transfer

5. In accordance with the stages of transfer of powers and responsibilities, Israel will transfer from the possession of the Israeli military government and its Civil Administration to the Council, offices located in areas under Palestinian territorial jurisdiction, equipment, registers, files, computer programs, reports, archives, records, maps, scientific data, relevant licenses, installations, registrations (including registrations regarding land situated in the areas under the territorial jurisdiction of the Council) and other movable and immovable property necessary for its functioning.

After 14 years, these data have not been transferred.



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ARTICLE 40

Water and Sewage

On the basis of good-will both sides have reached the following agreement in the sphere of Water and Sewage:

Principles

1. Israel recognizes Palestinian water rights in the West Bank. These will be negotiated in the permanent status negotiations and settled in the Permanent Status Agreement relating to the various water resources.
2. Both sides recognize the necessity to develop additional water for various uses.
3. While respecting each side's powers and responsibilities in the sphere of water and sewage in their respective areas, both sides agree to coordinate the management of water and sewage resources and systems in the West Bank during the interim period, in accordance with the following principles:
 - a. Maintaining existing quantities of utilization from the resources, taking into consideration the quantities of additional water for the Palestinians from the Eastern Aquifer and other agreed sources in the West Bank as detailed in this Article.

While this recognition is a very important step forward, the second and third principles in the Agreement attempt to undermine the significance of this issue by talking about maintaining existing utilization and recognizing the necessity to develop new resources, tacitly accepting that more water is needed to satisfy the needs of both populations.

Additional Water

6. Both sides have agreed that the future needs of the Palestinians in the West Bank are estimated to be between 70 - 80 mcm/year.

Since the agreement is interim, the future means the end of the interim agreement i.e. 1999

7. In this framework, and in order to meet the immediate needs of the Palestinians for fresh water for domestic use, both sides recognize the necessity to make available to the Palestinians during the interim period a total quantity of 28.6 mcm/year, as detailed below:

Immediate means now and not 14 years later when Palestinians received only 12.5 MCM of additional water.



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(6) The remainder of the estimated quantity of the Palestinian needs mentioned in paragraph 6 above, over the quantities mentioned in this paragraph (41.4 - 51.4 mcm/year), shall be developed by the Palestinians from the Eastern Aquifer and other agreed sources in the West Bank. The Palestinians will have the right to utilize this amount for their needs (domestic and agricultural).

Israel sold Palestinian fish in the sea. There is no extractable water in the Eastern aquifer. The water tables in the Herodian wells are dropping at a very alarming rate..

9. Israel shall assist the Council in the implementation of the provisions of paragraph 7 above, including the following:

a. Making available all relevant data.

Palestinians are still waiting for the data.

The Joint Water Committee

11. In order to implement their undertakings under this Article, the two sides will establish, upon the signing of this Agreement, a permanent Joint Water Committee (JWC) for the interim period, under the auspices of the CAC.

12. The function of the JWC shall be to deal with all water and sewage related issues in the West Bank including, inter alia:

The JWC has met more than 70 times. A yet unpublished report by the World Bank states that :

- ❖ *“Of the 417 projects overall presented to the JWC 1996-2008, only 57% were eventually approved .*
- ❖ *Of the 202 well drilling projects submitted, only 65 (32%) were approved by the JWC; and of those, only 38 (19%) implemented, having received the additional approval by the Civil Administration).*
- ❖ *82 well drilling projects -for the development of Palestinian water resources, specified and agreed upon by both parties- under Article 40 have not been approved by JWC.*
- ❖ *Of the sixteen waste water projects presented to the JWC, only one has been implemented (two more were approved recently)*
- ❖ *Of the 97 projects submitted since January 2005, 28 have been approved (29%), with delays from the time from submission to approval varying between 2 months (one case) to 18 months. Seventeen projects took a year or more to get approval. During this same period, all Israeli project submissions were approved.*
- ❖ *Current project approval rules require a second approval by all 13 Departments of the Civil Administration if projects touch on Area C, which is the case for almost all wells, water conveyance and wastewater treatment and reuse infrastructure. A number of projects have been approved by the JWC, for which detailed planning permission has then not been granted by the Civil Administration. For example, of 14 new well drilling projects approved by the JWC under Article 40, 12 are still awaiting approval from the Civil Administration, which can take between 2 months to 18 months”*



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Israel should have transferred the West Bank water department to PWA but, until now, it is under the so-called civil administration. It is ironic to mention that PWA pays Mekorot the salaries of the employees of this department.

Israel is conditioning approval for waste treatment plants with linking of settlements. By that Israel wants the Palestinians to legitimize the settlements, which is not acceptable. Israel claims that there is an MOU that sets the standards for waste water treatment to be 10:10 BOD : COD. Such a high standard is not reasonable. Legally, this MOU cannot be binding to Palestinians. Setting the standards for treated waste water has to go through the official channels from PWA to PLC to the Council of Ministers and then the President. Israel used this tactic to justify its control over waste water treatments plants in Palestine and to divert Palestinian waste water to be treated and used inside Israel. Not only that, but Israel charges Palestinians 25 cents for every cubic meter of waste water diverted.

It is clear that Israel has not implemented its commitments stipulated in the interim agreements. In the field of water, the peace process did not translate into continuous supply or additional waters in the taps of Palestinians. On the contrary, water shortages especially during the summer months are exacerbating.

In the preparatory talks about the final status negotiations, Israel refused to discuss Palestinian water rights and insisted on dealing with some additional water quantities that may be granted to Palestinians from other non-conventional sources such as desalination or imports from the region i.e. needs and not rights. Lately, it was reported that Israel is building a desalination plant near Khadera for the benefit of the Palestinians. The PWA wholeheartedly denied this.

The Israeli negotiators are adamant in rejecting Palestinian demands of their water rights in the Jordan River. In the initial permanent status negotiations, Israel argues that current utilization of water must be considered, invoking prior use. This argument is, to say the least, rather spurious. The claim is invalidated by the illegality of the occupation. And it is simply false to say that "Israel has honored prior use rights of Palestinians": the military authorities have expropriated wells belonging to absentee owners, as well as those within the boundaries of confiscated Palestinian land.

Security is perhaps the central concept in Israeli political dialogue - the slogan "national security" is frequently reformulated in terms of "environmental security", "food security", "water security". It is this obsession with security that informs many of Israel's approaches towards solving the water crisis. Above all, Israel has felt a need to have military or political control over its water supplies, and has therefore resisted perceiving the problem in terms of water rights, or in the economic terms of supply and demand, surplus and deficit.



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Israel's proposed solutions to the riparian dispute have been twofold. Firstly, they have favored large-scale projects which would increase available water in Israel, Palestine and Jordan. Secondly, they have argued that West Bank waters should be under the joint management of Israelis and Palestinians.

The development of large-scale water projects has frequently been advocated by those who hold that there is an insufficient supply of water in the Jordan basin and western aquifers of Palestine and Israel. Many schemes have been proposed for the enhancement of water supply, most notably the following:

- * Large-scale desalinization projects, often linked with hydro-electric power generation:
 - Red Sea-Dead Sea conduit
 - Mediterranean-Dead Sea conduit
- * Water diversion projects:
 - from Lebanon's Litani River to the Jordan headwaters.
 - from the Nile to Israel or Gaza, with a pipeline going underneath the Suez Canal
- * Water conveyance projects:
 - oil tanker conveyance of Turkish or Yugoslavian waters
 - Conveyance of Turkish or Norwegian waters in enormous balloon-like "medusa bags"

Unfortunately, faith in such idealistic solutions is often ill-founded. They flounder in the face of astronomical capital expenditure. To cite one example: the proposed Red Sea-Dead Sea desalinization, pipeline and hydroelectric project has reached an estimated initial cost of \$ 5 billion. All mega-projects currently under consideration are economically, environmentally and politically unsound.

Israel's second approach has been to argue for joint management of West Bank aquifers. This preference is grounded in the claim that Palestinian mismanagement may well lead to the degradation of groundwaters. "Self-rule control over Israeli water resources constitutes a threat to the infrastructure and social fabric of Israel", declares The Movement for Preservation of Israel's Water (1994). Israel fears overdrilling which, it is claimed, could result in salination; and they are also concerned that Palestinians might "voluntarily or involuntarily pollute the groundwater.

These comments are quite unreasonable, and are clear evidence of the Israeli obsession with security. The idea that Palestinians might voluntarily pollute aquifers is farcical. Palestinians are not going to indulge in quasi-kamikaze activities that ruin their own waters supplies as well as those of Israel. As for the suggestion that Palestinians will be



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incapable of controlling drilling levels and managing sewage, this largely depends on whether the Palestinian Authority will be given extensive administrative, executive and legislative jurisdiction. Stable management of the Palestinian groundwater will be achieved only if the Palestinian Authority controls these water resources.

Palestinian entitlements for water include the underground water of the West Bank and Gaza aquifers, in addition to their rightful shares in the waters of the Jordan River as riparians. Since Israel is holding all the water cards in its hands, it is adopting a negotiation strategy aimed at ensuring that it will have the overall control and responsibility for managing the water resources and providing its neighbors with certain quantities of water that are agreed upon. Such a strategy can best be described as **paternalistic neocolonialism** where colonialists justify their political hegemony and exploitation of resources.

Israel intends to hold large areas of the West Bank in order to create “security zones” and to make sure that Israel’s water resources are not exposed to danger. Ariel Sharon was quoted saying: “My view of Judea and Samaria is well known, the absolute necessity of protecting our water in this region is central to our security. It is a non-negotiable item.”(Boston Sunday Globe, Sunday, October 18, 1998). In one of his meetings with the Palestinian negotiators, the Israeli water commissioner Ben-Meir said : “I recognize needs , not rights.” We are prepared to connect Arab villages to Israel as well, but I want to retain sovereignty on hand”. Such statements confirm Palestinian fears of a dry peace and question Israel’s genuine aspirations for peace. At the recent ‘World Water Forum 2009’ in Istanbul , Israel reiterated its commitments to supplying Palestine with its *water needs* but made no mention of giving Palestine its *water rights*. Palestinians have indicated their approval for the feasibility study of the Red Dead conduit. Israel is denying Palestinians access to the Dead Sea. This unfortunately has cast a severe doubt over the potential benefits to the Palestinians from this project where they were expecting to build a touristic site comparable to that of Israel and Jordan. Certainly, Palestinians need to reassess their initial approval if Israel denies them the right to develop this area. .

International law and Israeli water policy in the oPT

The oPT has been under IDF occupation since 1967 and is subject to belligerent occupation laws and to the rules that follow such a regime, namely the Hague Convention on laws of war from 1907 and associated regulations, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and the customary instructions established in the Additional Protocols to the Geneva Conventions from 1977, and general principles of international law. According to international laws, the occupying forces hold an occupied territory *temporarily and in trust* until a final, permanent agreement is attained. Thus, Israel as an occupier is not a sovereign, but only a trustee who was accorded merely *temporary* management and administrative powers.



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The occupying power is prohibited from exploiting the territories under its domain for its own needs, except for its security needs. While the law of occupation allows the occupying power to assume all management and administrative authorities, and thus has the power, and even the duty, to manage the public property of the occupied territory, it is prohibited from destroying these properties, assigning ownership to others, or exhausting them. Consequently, the exploitation of Palestinian natural resources by Israel amounts to grave violations of international law. Settlers are consuming 200 MCM of water annually, 50 MCM for agriculture and the rest for domestic and industrial use.

International human rights law acknowledges the exclusive right of nations to use their natural resources and obligates foreign rulers to respect that right, which follows from the principle of "permanent sovereignty over natural resources," which is a rooted communal right. Israel is violating this law by granting Mevorot the right to exploit water resources in the oPT.

Based on the above, Palestinians need to adopt a new negotiation strategy. So far, Israel has focused on keeping the peace process alive without an authentic will to arrive at a sustainable peace with the Palestinians.

The Water Wrongs in Palestine

Water rights are not the solution only to our water problems. Palestinians have to prove that they are capable of managing their waters in a sound manner. This means that the theft of water and illegal drilling of wells should be immediately halted. There are \$ 150 millions debt that PWA owes to Mevorot. This is unacceptable. Leakage and unaccounted for in Palestinian water networks is about 50 %. This has to be reduced by half immediately. Only one of the waste water treatment plants in the oPT is functioning properly. PWA should within six months bring their operations to an acceptable level. Small scale waste water treatment has been tested and found to be ideal for rural areas. Let us put a target that in five years, no cesspits should exist in the oPT .

Climate change is going to have strong impact on the oPT with expected decrease in precipitation by 15 % and increase in ground temp by 1.5 to 2 degrees as well as extreme weather variations. In the Eastern slopes, there are about 2000 ancient cisterns that were dug by our ancestors. Most of them suffer from neglect and need rehabilitation. This should be a top priority on the agenda of the PWA and other stakeholders since the rehabilitation of these cisterns will assist the Palestinians to cope with water scarcity and climatic change. Palestinians are harvesting 10 million CM of rain water annually. \$2500 is the average cost of a cistern that has a 80 CM capacity. This means that Palestinians invested \$200 million to build these cisterns, of course with donor support. In Gaza, why don't we introduce dual water systems. In Gaza, we need to build a large desalination facility there that will provide the Gazans with fresh water. Only when these problems are tackled by the PWA will we able to speak boldly about our water rights.



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.In conclusion, it is an obvious statement to suggest that both sides are equally affected by the negative implications the water rights issue has. Israel's reluctance to change any of the policies that have been implemented, or carry out any of the agreed upon policies of the Oslo accords is the bugbear of a future water settlement. What is needed is for Israel to realise the *benefits* of co-management, that to work with the PWA is in some way aiding, and not hindering Israel's development. Israel needs to realise that its selfish and negative actions can have catastrophic consequences for Palestinians. Water rights between Israel and Palestine are in dire need of reassessment. Since bilateral negotiations have so far lead to nowhere, it is up to the international community to take action to help the parties come to an acceptable agreement.