Factors Relating to the Equitable Distribution of Water in Israel and Palestine


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Abstract

Access to sufficient volumes of water of appropriate quality is a vital human need, as demonstrated by proposals of the World Health Organization (and others). Indeed, the United Nations Committee on Economic, Social and Cultural Rights has recently recognized the human right to water. Many authors have documented the inequitable distribution of water resources in Israel and Palestine, and this issue is included as an element of the Permanent Status negotiations between both Parties. Surprisingly, the Road Map produced by the Quartet does not specifically mention the need for attention to water resources except in the context of multilateral efforts (addressing regional sources of water, and the Jordan River basin in particular). However, it is clear that the current inequitable division of the water resources as a whole in the region must be addressed if Palestine is to become an independent viable State in the future, which is a pre-condition at the end of the second phase of the Road Map.

In this and other facets of the negotiations between the Parties, Palestine should rely upon the principles of customary international law, if a robust and lasting agreement is to be attained. Israel’s reliance to date on the single criterion relating to the prior use of water should be considered against the background of the multiple factors determining the equitable and reasonable allocation of international watercourses, as set out in customary international water law. The relevance of such international law to the permanent status negotiations is discussed, and the implications for resource allocations from shared freshwater sources are addressed. It is noted that both parties will benefit significantly from the joint management of shared watercourses in the future, and a framework for this is proposed.

Keywords: Water, Israel, Palestine, International Law, Jordan River
25.1 Introduction

On 28 September 1995, representatives of Palestine and Israel signed *The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip*. Article XXXI of that Agreement requires Palestine and Israel (generally referred to as “the Parties”, hereafter) to reach final agreement on a number of issues, through the completion of permanent status negotiations. These negotiations are intended to cover several aspects of relevance to the Parties, including water-related issues.

Topics relating to water and wastewater were addressed by Annex III of the Interim Agreement (the *Protocol Concerning Civil Affairs*), and principally in Appendix 1, Article 40 (entitled *Water and Sewage*). This included the recognition by Israel of Palestinian water rights in the West Bank; laid down agreements on the coordination of the management of water supplies and of wastewater treatment and disposal for the interim period; and specified additional water resources which should be made available to Palestine during the same period. General agreements were also included on mutual cooperation, and on the protection of water resources and infrastructure. Article XXXI of the Interim Agreement also stated the following, in Clause 6:

Nothing in this Agreement shall prejudice or pre-empt the outcome of the negotiations on the permanent status to be conducted pursuant to the DOP [the Declaration of Principles]. Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions.

A similar provision is repeated in Article 40 [8] of Annex III, Appendix 1, in relation specifically to water resources. Negotiations between Palestine and Israel on permanent status have not been concluded, as yet. This chapter addresses factors relating to the key elements of negotiations on water between the Parties, this being the need for an equitable and reasonable distribution of the existing regional water resources, as recognized previously by Israel and as required under the principles of customary international water law.

25.2 Water Stress and the Human Right to Water

The three downstream co-riparians to the Jordan River (Israel, Palestine and Jordan) suffer from water deficiency, as determined by either the ‘water stress index’ or the ‘water poverty index’ proposed more recently (Falkenmark/Widstrand 1992; Lawrence/Meigh/Sullivan 2002). The threshold for ‘absolute scarcity’ in relation to water resource availability is generally considered to be 500 m³/year on a per capita basis. Israel currently has a per capita utilization of fresh water of approximately 330 m³/year, while the equivalent figure for Jordan is 160 m³/year, and that for Palestine is presently about 70 m³/year. It is clear from these figures that the per capita use of water in Israel is almost five-fold greater than that in Palestine, on average.

International authorities on water utilization, such as the World Health Organization and the Food and Agriculture Organization, make no distinctions between the magnitude of the demand for water by different communities within countries, noting only that the degree of attainment of adequate water supplies may differ markedly according to the level of socioeconomic development and other factors (Howard/Bartram 2003; WHO 2003). The *International Covenant on Economic, Social and Cultural Rights* of 1966 (ratified by Israel in January 1992 and by the other riparian States to the Jordan River basin in 1976) has been interpreted to include the human right to water (United Nations 2002; see also Guissé 2004). These authorities suggest that all persons should have access to water, and that no distinctions should be made on the basis of color, creed or other matters. It is argued here that this should extend to Israelis and Palestinians.

The concept of equal per capita shares of water for Palestinians and Israelis in the region is not new, having been proposed in the early 1990s and repeated more recently. Thus, Shuval (1992, 2000) suggested that 125 cubic metres/person/year (equivalent to 342 litres/person/day) would be an appropriate volume for “domestic, urban and industrial use” for both the populations, with supplies for agriculture being additional to this currently, but deriving mainly from recycled wastewaters in the future. In addition, strong arguments have been made that there is no basis for discrimination between the Israeli and Palestinian populations in this respect, and that many stakeholders on both sides have accepted this principle (Shuval 2000). Consistent with this analysis, it is argued here that the permanent status negotiations should seek to allocate water on an equal per capita basis in Israel and Palestine as a prima facie reflection of their equitable entitlements.