

THE USE OF PALESTINIAN WATERS AND INTERNATIONAL LAW

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Introduction :

The problems concerning the use of the Palestinian territories occupied by Israel deserve more attention than they have received in the Western media. They are linked with the dichotomy created by the claim of a people to "return" to a land, exercised at the expense of another's to live and develop in theirs. Some observers declare that the desert now "blooms" only because large tracts of once fertile Palestinian territory has turned into barren wasteland. This paper asserts that under international law the occupying power in Palestine cannot have a free hand to affect such a change.

Expansion and Dependence :

The use of the Palestinian waters by Israel is linked with the escalated designs of the occupying power for complete annexation of the occupied territories and turning them into satellites of the Israeli economy in ways more than one. The Israeli policies in the West Bank and the Gaza Strip are geared towards reducing these areas to the status of "colonies". When these two areas were occupied in 1967, their economies were already under-developed and labour power greatly undermined by continuous emigration. The economy of the occupied territories became dependent on the dominant Israeli economy, and a dependent specialization was imposed on them.¹ This specialization was based on products and labour most needed for Israel. A so-called "division of labour" similar to the one between the developed capitalist societies and the under-developed countries is created between Israel and the occupied territories.

¹ Jamil Hilal, *The Palestinians of the West Bank and Gaza Strip: Social and Economic Conditions Under Israeli Occupation*, (Beirut,) P.L.O., 1976.

This kind of relationship is true in trade, agriculture and industry. Trade between the two has produced an increasing surplus for Israel. The volume of Israeli exports to the occupied territories increased very rapidly. While Israel exported industrial consumer goods to them, it imported from them mostly products which depend on intensive cheap labour.

With regard to agriculture, the Israeli authorities imposed various restrictions on the export of a number of products to Israel while they pressured Palestinians to grow products needed by them. In addition to this unequal transfer of value in agriculture, Palestinian labour is directly exploited inside Israel, where the number of Arab workers is rising steadily. This channelling of Arab labour force to unskilled manual work is accompanied by discrimination in wages, health and other benefits. The rapid decrease in the number of productive workers employed in the occupied territories serves to illustrate the destructive effect of Israeli policy on the economy of the West Bank and Gaza. If there is an increase in the purchasing power of the population, this is not the result of the development of the productive forces in the occupied territories; it is on account of increased employment. But the income earned from employment in Israel is spent on purchasing Israeli goods. Most of the native people are without electricity and water.

Settlements and Palestinian Bantustans :

The occupation of the Palestinian territories and the transformation of their economic structure go hand in hand with colonial settlement. The Israeli authorities planned a full-scale settlement project, beginning with agricultural-military enclaves and followed by urban industrialized centers. In later stages, the Israelis concentrated on changing the demographic composition of the areas by establishing Jewish centers that insulate the Arab population of the occupied territories into smaller pockets surrounded by these new settlements. The Israeli authorities began a campaign of confiscating Arab land as well as cutting their water supplies. These policies, designed to alter the Arab outlook of the occupied territories, are diminutive of the character of Zionism. The destruction of Arab villages, forced deportations, collective punishments, systematic undermining of native culture, denial of basic human rights and confiscation of natural resources are all manifestations of the same character.

The Israeli Government promotes new settlements as a step toward annexation of the occupied territories. Following the first anni-

versary of the Camp David accords, an Israeli Cabinet spokesman had announced that occupied Arab lands would be made available for purchase by Jewish settlers. The plan for the sale of such territory is a slap in the face to all international conventions regarding the conduct of an occupation force. The promotion of settlements itself constitutes a violation of Article 49 (6) of the Fourth Geneva Convention. Israel's policy seems to be designed to "create facts" to render impossible any solution other than incorporation of the West Bank and Gaza with Israel. The native Arabs, on the other hand, recognize the settlements as most threatening because, regardless of their location, size and stated purpose, they seem to be a euphemism for the theft of their land. Among others, Dr. Israel Shahaq, the former Chairman of the Israeli League for Human and Civil Rights and Professor at the Hebrew University of Jerusalem, exposed several times the sort of "Palestinian Bantustans", which Israel intends to create in the occupied territories.

Palestinian Waters and the West Bank:

What concerns us here directly is that each new Jewish settlement has established a complete system of irrigation besides big water reservoirs in the event of shortage. The water resources of Palestine are being exploited (a) for the under-ground aquifer which feeds the Israeli coastal plain and also (b) to supply the settlements which Israel has established throughout the occupied territories.

Palestine is situated between a sub-tropical rainy region in the north and a desert zone in the south. All the major water resources are concentrated in the north, the most important being the Jordan River and its tributaries, which assemble the rainfall of the Hermon basin.

The physical geography of Palestine is surprisingly complex. In the extreme north, the hills of Lebanon range continue without break to form the uplands of Galilee. The Galilee hills fall away steeply on the east to Jordan Valley, on the west to a narrow coastal plain and to the south at the Vale of Esdaelon. At its western end, the vale opens into the Bay of Acre, but narrows inland to open out again where it joins the Jordan Valley. The lowland area here has very fertile soil. In the north, the plateau erodes into valleys, some of which are fertile. This portion of the land centers on Nablus and Jenin. Further south, rainfall is reduced, streams are fewer and the landscape arid. Jerusalem, Bethlehem and Hebron are the main

towns. In the north-east, one reaches an area of semi-desert. In the extreme south, one finds the Negev, consisting of steppe or semi-desert, bounded by the lower Jordan Valley on the Sinai Desert on the west. The low coastal plain stretches from Haifa to Gaza.

Most of the water in the West Bank flows into a huge natural ground reservoir underneath the western hills. Together with supplies from the Jordan River and smaller rivulets, the area has about 850 million cubic meters of water at its disposal annually. However, about 620 million cubic meters of this amount can be used. The rainfall on the western slopes of the West Bank highlands feeds the aquifer beneath the Israeli coastal plain, from where it is pumped to the surface. Approximately 30 percent of the total water Israelis use within the "Green Line", the old pre-1967 border, originates as rainfall in the West Bank. It is asserted that Israel would face economic catastrophe if it lost its access to this rainfall. Hence, a nightmare of Israeli water planners is an independent Palestinian state in the West Bank, which uses its water potential for its own development. It has also been argued that one important reason for the Six Days War had been the Israeli desire to control the water resources.

Since 1967, Israel has drilled deep wells near the border of the West Bank, tapping underground water reservoir. An increasing amount of the West Bank reserves are thus being diverted to the territories occupied in 1948. Exploited to the maximum any further pumping would put the water level below sea level and thus make it salty. The Palestinian peasants have to watch powerlessly as their wells and springs slowly become salty and finally dry up completely.

These resources are administered by the Israeli Water Commission, headed by the Water Commissioner under the authority of the Minister of Agriculture. The Commission is divided into a number of departments, of which Mekorot (Israel Water Company) is responsible for the construction of irrigation and water supply projects and Tahal (Water Planning for Israel Company) for the over-all planning of water development projects. Mekorot was established in 1936 by the Jewish Agency and the Histadrut. The Israeli Government currently has one-third share in the Mekorot. Tahal was established in 1952 as a company of the Israeli Government, which controls 52 percent of the shares. Where water supplies are not channelled through either of the two, authority rests with the Water Commission Department for Water Allocation and Certification. Since 1967, the Israeli Water Commission has directly controlled the water resources

of the territories occupied at the end of the Six Days War. The pre-1967 Israeli water economy was integrated into a central National Water Carrier system, consisting of open canals (the Jordan and the Netupha Canals), tunnels (Menashe A and B, Shimron and Eilabun), water reservoirs (Tzalman and Eshkol) and a pipeline. This system carries water from the north to the southern areas.

Israel wants to continue this control both because of the danger to water reserves inside the Green Line and because it will be impossible to establish new settlements without such supervision. The use of water is necessarily connected with Israeli positions on aspects of so-called "autonomy" in the occupied territories. After returning from the Camp David talks in the Fall of 1978, Menachem Begin had appointed a committee to formulate Israeli positions in this respect. The committee received a memorandum from the Israeli Water Commission, stating that not only did a free hand in establishing new settlements in the occupied areas depended on continuing Israeli control over the water resources in any "autonomy" scheme in the West Bank, but also that Israeli water needs within the Green Line necessitated the same control. The Israeli Cabinet was likewise advised that Israel ought to have the final say in the use of waters in any kind of arrangement.

The gravity of the situation becomes more apparent when one remembers that the Israeli water consumption increases by 15-20 million cubic meters annually. The difference between the supply and demand is being met through over-pumping, one result of which is that the water resources of Palestine are now threatened by salinity. It is estimated that the future increase in urban population and in standards of living would necessitate the development of close to additional 400 million cubic meters of water toward 1990.

Israel's use of West Bank waters is a clear and gross violation of the Fourth Geneva Convention of 1949. On account of such calculated Israeli position, many Arab villages and towns have lost their water. For instance, the banana and citrus groves around the Palestinian village of Al-Auja² in the Jordan Valley have died. Al-Auja is situated near Ariha (Jericho), believed to be one of the oldest continually inhabited towns in the globe. Its inhabitants have been

² A leading Norwegian daily *Dagbladet* published in its June 6, 1980 issue a detailed account on the way the Israeli occupation authorities have been strangulating Al-Auja. "The Desert is Blossoming; the Fields are Drying Up," *Palestine*, Beirut, Vol. VI, No. 14 (1-15 August 1980) pp. 18-20.

tapping water in the highlands and growing bananas and citrus fruits. These products provided, in the past, a decent living for farmers, most of whom are small holders.

However, the irrigation canals are now cracked; the pipe, built in 1954, to bring the water to the valley and the village, has completely dried up; the fruit trees are sunburnt, and the brown colour of even the pine trees indicate that drought is near. Even the UNWRA, the United Nations aid organization for Palestinian refugees, which runs a camp in this locality, has to get its water by tank car every day.

This radical change was inevitable, because the Israeli occupation authorities have drilled three wells around the water source that gave life to the Jericho oasis. Alongside the canal and also beneath the ground, there are two new pipes which supply water to the Israeli settlements. These pipes are fed by two deep bore wells, with two pumping stations equipped with electric generators and diesel pumps, sucking water at about 250 cubic meters an hour. The third deep bore well was sunk behind a low hill. Consequently, the Al-Auja spring, which irrigated fruit trees to a bright green, even on the hottest days of summer, is now dry. The loss of irrigation first killed about 375 acres of bananas and some 100 acres of citrus groves. The Al-Auja farmers were also used to plant three crops a year of melons and vegetables on 500 acres. But crops thrived in the new Israeli settlements of Gilgal, Na'aran and Yitav, built on confiscated Arab land. The Palestinians carry water on donkey back from the two taps which the Israeli authorities opened to provide limited quantities of water for home consumption. The inhabitants of Al-Auja appealed to the Israeli authorities to stop the pumping away of the water or permit the villagers to drill a new well. The military authorities have declined the suggestions. In the meantime, the Israeli settlements are becoming greener. Gilgal is a small kibbutz, comprising about eighty families. But Israel has made up plans for a total of 8,000 settlers in the West Bank by 1995. This figure is still very small compared to the Palestinian population there. But the settlers control about half of the land around Ariha, and he who controls the water resources is sovereign over the West Bank.

Likewise, the villages of Bardala and Tal al-Baida³ have also lost their water. Bardala is a small hill village, five miles from the Jordan River and ten miles south of Beit Shean. Some of the inhabitants

³ "The Politics of Water on the West Bank," *Journal of Palestine Studies*, Beirut, Vol. VII No. 4 (Summer 1978), pp. 175-177.

have fled, and those who have stayed depend on a well in the valley below. The well that the Israelis built in 1968 is much deeper than the Arab one and very close to it. The Arab reservoir is now dry, and the Israeli water authority suggested to the village *mukhtar* that Bardala be connected to the Israeli supply. As farmers, the Arabs cannot survive without adequate water. But they are reluctant to take a step that will make them wholly dependent on Israel.

The springs of a near-by village, Tel al-Baida, have been reduced to muddy ponds. Here, the village leaders have accepted connection to the Israeli system. The Israelis claim that they are helping the West Bankers by passing on their technical skills in irrigation. But this cannot compensate for the loss of water, which is their most precious resource. Prior to 1970, the central spring in the village of Tal al-Baida supplied 80 cubic meters of water per hour. By the Summer of 1976, the output of the spring had declined to 5 cubic meters.

The same phenomenon is true with the villages of Jenin, Beit Dibs, Toubas, Salfit, Jiflik and others. For example, on August 14, 1979, the citizens of Jenin in the West Bank asked for permission to dig wells in their area instead of depending on the well of the village in Arabeh. Their request has been refused. In the village of Beit Dibs, 80 percent of the cultivated land has become arid, while 90 percent of its inhabitants were dependent on agriculture for their livelihood. In a press conference held on January 23, 1980, Haskem Saleh, the Mayor of Toubas, warned of the grave dangers lying in the well-drilling activities of the Israeli authorities in the Toubas region.⁴ He said that over 140 water projects had been drawn up while Palestinian requests for permission to sink wells were almost invariably turned down. The Mayor elaborated that the Israeli authorities had sealed off 80,000 dunums of fertile land belonging to the Palestinian inhabitants of Toubas. Similarly, wells were being bored to supply a number of villages in the Salfit area, west of Nablus. In 1979, after refusing for twelve years (since 1967) permission for completion of the project, the Israeli authorities themselves finished it; but they have pumped it to the Jewish settlement of Elqana instead.

There are instances where official refusal to permit the improvement of Palestinian agricultural water supply can be explained only by determination to prevent the development of the native people. At Jiflik, in the Jordan Valley, the farmers are irrigating their crops by utilizing the traditional system of ditches. An American

⁴ Palestine, Beirut, Vol. VI, No. 2 (1-15 February 1980), p. 32.

voluntary organization provided the funds to replace the open canals with pipes in order to conserve the water lost on account of evaporation. Although this project did not involve drawing more water, the Israeli Government refused the permit.

Nor is it only the villages that are adversely affected. The town of Ramallah has lost its main source of water, the spring at Ain Samiya. The political consequences are clear: it makes it even harder than it already is to envisage a future, in which Jerusalem and Ramallah will be in different countries. The West Bank municipality of Ramallah has been pressured into agreeing to take some water from the Israeli Water Carrier system. Many Palestinians resisted against this partial integration into the national Israeli water network, since this move constituted one more step in Israeli plans to integrate the occupied areas.

Since 1967, the Israeli authorities thwarted a number of attempts by the Ramallah Water Board to create an autonomous water supply system sufficient to meet the area's needs. For instance, when Israel occupied the West Bank in 1967, the Jordanian Government was nearing completion of a project to increase the water supply to Ramallah by digging new wells twelve miles to the west at Shibteen. With occupation, the Israelis ordered the well diggings to stop. While the area became dry, many of the farmers turning to wage labour, the Israeli settlement of Kfar Shuba, within sight of the new deserts, has received permission to bore new wells for their own use.

The Gaza Strip, the Golan and Litani River:

In Gaza as well, new Israeli settlements are diverting the water supplies. Israeli colonization in Gaza and the Rafah Approaches is heavy. In the former, there are five (Netzer Hazani, Kativ, Ganei Tal, Morag and Kfar Daron) settlements, additional ones on their way of establishment. In the latter, there are fifteen settlements, in addition to the city of Yamit. The Gazans owe their livelihood to agriculture, citrus production accounting for one-quarter of the GNP. But they are refused the permit to plant new citrus trees, even to replace the damaged ones. Some trees are uprooted as punishment for "offenses".⁵

An important project that will affect the future of Gaza con-

⁵ For instance, Israeli forces uprooted on January 26, 1981, orange trees in a grove owned by Gaza municipal council member Dr. Akram Matar. They pretended that a bomb was hurled from the groves, situated on the Gaza-Khan Yonunes Road, on an Israeli car.

cerns the construction of a Mediterranean-Dead Sea canal. This project is defended on grounds that it is the only effective way of salvaging the Dead Sea. But it also reveals the Israeli intention to annex Gaza. Although approved by the Israeli Cabinet in August 1980, it is not a new idea, Theodor Herzl having discussed the same in his diaries. Israel, however, has renewed investigations in respect to digging such a canal (a) either along the suggestion of Yogal Allon, the former Minister of Foreign Affairs, designed to go from Haifa, through the Jezreel Valley to Beit Shean, to a point south of Lake Kinneret, (b) or to follow the northern mountain route from Palmahim to Kalia, or (c) to start in the Deir al-Balah area (the Gaza Strip) to Massada. This costly project may save the Dead Sea, but it is irrelevant to Israel's fresh water consumption problem.

Besides, since half of the Dead Sea, together with its industrial minerals, belongs to Jordan, the canal project provokes political controversy with this neighbouring country, raising legal problems as well, because the massive inflow of water would change the level of the Dead Sea and require adjustments for continued Jordanian mining on the eastern shore of the sea.

Since 1967 the Golan Heights has also been subject to intensive Israeli colonization. The majority of the native Syrian population has been expelled and new Jewish settlements established. Not being abundant in local water supplies, only 20 percent of the Golan Heights water consumption was supplied by local resources, the rest being pumped from Lake Kinneret. The southern region, suffering from acute water shortage, is heavily settled by Israelis.

In the West Bank, the Gaza Strip and the Golan Heights, the Israeli authorities are tightening control over the Palestinian use of the water. No existing well, owned by the Palestinians, has been allowed to increase its pumping capacity. Water meters have been placed by the Israeli authorities on existing Arab wells to keep a daily check. The control extends even to the purchase of new parts for pumps. The Israelis constantly apply an increase to the cost of water. This added financial burden comes in the context of the worsening economic situation of the Palestinians, who are hit hardest by the chronic galloping inflation. On occasions, the Israeli authorities offer money to Palestinian farmers who would agree to pull down an orange tree on his farm, under the pretext of conserving water resources.⁶

⁶ Palestine, Beirut, Vol. VI, No. 1 (January 1980), p. 94.

Israel is also interested in the Litani River (Lebanon), which rises in the Bekaa, flows southwards, and then, at a short distance from the Israeli frontier, makes a sudden bend westwards and plunges through the Lebanon mountains by a deep gorge. It is necessary to remember here that the boundaries of the projected Jewish state, defined by the Zionist Advisory Committee on Palestine on November 6, 1918, had included the Litani River in the north.⁷ It is not surprising that lately Israeli air attacks and troop incursions into south Lebanon have been increasing in intensity and in regularity. The aerial bombardments are specifically aimed at civilian targets. Even as the Islamic Summit Conference was ending in Taef on January 28, 1981 Israeli planes launched one of the most concerted air attacks ever against towns and villages in south Lebanon. Israel renews attacks on grounds that they are spontaneous responses to P.L.O. raids. But international law does not allow the government of one state to invade another state as a reprisal for acts of resistance carried out by people whose territory had earlier been occupied by the first state.⁸

Sovereignty Over Natural Resources :

Several international instruments and decisions condemn Israel's actions in respect to the diversion of Palestinian water resources. Article 17 of the Declaration of Human Rights (1948) lays the basic principle that "no one shall be arbitrarily deprived of his property". Article 53 states that "any destruction by the Occupying Power of movable or immovable property...is prohibited."⁹ Aspects of the right of property have been considered by the U.N. General Assembly and given further clarification. The Declaration on Permanent Sovereignty over Natural Resources (1962)¹⁰ deals with aspects of the right to own property against the background of the right of peoples and nations to permanent sovereignty over their natural wealth and resources. The General Assembly resolution 1314 (XIII) of December 12, 1958 had already established the Commission on Permanent So-

⁷ H.P. Frischwasser-Raaman, *The Frontiers of a Nation*, London, Batchworth, 1955, p. 101.

⁸ Faris Glubb, "International Law and South Lebanon," *Palestine*, Beirut, Vol. IV, No. 9 (May 31, 1978), pp. 8-10.

⁹ On the flagrant Israeli contraventions of several international instruments on human rights: Ghazi Khurshid, *Human Rights in the Occupied Territories: 1971*, Beirut, Palestine Research Center, 1973, *passim*.

¹⁰ United Nations, *Human Rights: A Compilation of International Instruments*, New York, 1978, pp. 21-22.

vereignty over Natural Resources. This commission was instructed to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination. Resolution 1515 (XV) of December 15, 1960 recommended that the sovereign right of every state to dispose of its wealth and its natural resources should be respected. It was on this basis that the General Assembly resolution 1803 (XVII) of December 14, 1962 declared that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned" and that violation of this right "is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace".

The General Assembly took further decisions on the matter. On December 15, 1975, it condemned the illegal exploitation of the natural wealth, resources and population of the occupied territories.¹¹ In 1977, the General Assembly considered a report by the Secretary General on "the adverse economic effects on the Arab states and peoples resulting from repeated Israeli aggression and continued occupation of their territories."¹² After taking note of the report, the General Assembly, in resolution 32/161 of December 19, 1977¹³, emphasized "the right of the Arab States and peoples whose territories are under Israeli occupation to full and effective permanent sovereignty and control over their natural and all other resources, wealth and economic activities", reaffirmed that "all measures undertaken by Israel to exploit the human, natural and all other resources, wealth and economic activities in the occupied Arab territories are illegal" and called upon Israel "immediately to desist forthwith from all such measures". It further reaffirmed "the right of the Arab States and peoples subjected to Israeli aggression and occupation to the restitution of, and full compensation for the exploitation, depletion and loss of and damage to, their natural, human all other resources, wealth and economic activities." The G.A. called upon all states "to support and assist the Arab States and peoples in the exercise of their above-mentioned rights...and not to recognize or cooperate with or assist in any

¹¹ Abdeen Jabara, *Israel's Violation of Human Rights in Arab Territories Occupied in June 1967*, (New York,) National Lawyer's Guild, n. d., pp. 3-4.

¹² A/32/204.

¹³ United Nations, *United Nations Action in the Field of Human Rights*, New York, 1980, pp. 40-41.

manner in any measures undertaken by Israel to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character or institutional structure of those territories."

Conclusion :

Since the water shortage in Israel is increasing and Israel's settlement policy is expanding, the expropriation of Palestine water is also increasing proportionately.¹⁴ Israel's attitude towards the future of the occupied territories and its rejection of the establishment of a Palestinian state on them can be partially attributed to the water factor on these Palestinian lands. As W.T. Mallison, Jr., in his "Foreword" to Henry Cattán's brilliant factual and juridical analysis¹⁵ brings out convincingly, universal international law is a constructive alternative for Palestine.

The international community is coming to realize that the present situation in Palestine is the result of an accumulation of illegalities. The question of Palestine, since its inception, has been one of avoidance of law. This injustice must be rectified. Israel's terms, however, do not contemplate the redress of the injustice done. Moreover, that country continues to act in a way that the expulsion of the Palestinians from their own land becomes a permanent fact.

The usurpation of the water resources of the native Arab people of Palestine is a recent manifestation of the same illegitimate policies. The only way to restore right through means other than a struggle of national liberation is for the United Nations to secure the implementation of its decisions and formulas for lasting peace. As stated in the General Assembly resolution of November 3, 1950, lasting peace also depends on the observance of the resolutions of the U.N. organs. About two-hundred such resolutions have been adopted in respect to Palestine. The ones quoted in this paper pertain to sovereignty over resources and the rights of the native peoples on their own natural wealth. Actual U.N. intervention is necessary to put these resolutions into effect. There can be no peace and no justice in Palestine without the legitimate coercion of this international body. The problem of the diversion of the water resources is part of the greater problem of Palestine. Such coercion is politically necessary, and it is also an international obligation.

¹⁴ Israel's Policy on the West Bank Water Resources, New York, 1980, p. 15.

¹⁵ Henry Cattán, Palestine and International Law, London, Longman, 1973.