THE POLITICIZATION OF THE OSLO WATER AGREEMENT

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Abstract

The present paper will discuss the Israeli-Palestinian water conflict and in particular the negotiation process since the enactment of the Interim Agreement in 1995. The analysis asks the question whether the Oslo water agreement was a faulty initiative or if its implementation was flawed. It will be argued that the main principles of the agreement, cooperation and joint management of shared aquifers, laid a solid basis for a successful of the water sector and future water negotiations. However, the cooperation did not work longer than half a decade and the negotiations came to a standstill. Political events in the aftermath of the second Intifada led to a radicalization of the positions. This resulted in a politicization that is particularly driven by the Palestinian political leadership. In order to encounter the future challenges both sides need to resume the initiatives of the early 1990s and intensify the cooperation.

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List of Abbreviations

ARIJ – Applied Research Institute Jerusalem
C.A. – Israeli Civil Administration
DFLP – Democratic Front for the Liberation of Palestine
D.O.P. – Declaration of Principles
IDF – Israeli Defense Forces
IHL – International Humanitarian Law
IPCRI – Israel/Palestine Center for Research and Information
IWA – Israeli Water Authority
JWC – Joint Water Committee
M.O. – Israeli Military Order
PARC - Palestinian Agricultural Relief Committee
PEPA – Palestinian Environmental Protection Authority
PFLP – Popular Front for the Liberation of Palestine
PHG – Palestinian Hydrology Group
PLO – Palestinian Liberation Organisation
PNA – Palestinian National Authority
PWA – Palestinian Water Authority
UNC – United National Command
UNSCR – United Nations Security Council Resolution
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Introduction

a. Research Question

The Oslo peace process turned the Arab-Israeli conflict over water into a bilateral issue between the State of Israel and the Palestinian leadership. The Interim Agreement, signed in 1995 outlined principles for a joint management of the shared water resources. Despite the interim character of the agreement, its core provisions are still regulating the bilateral water relations today. However, the Palestinian water sector did not significantly improve if not degrade during the last two decades. This raises the question why this widely internationally supported initiative failed.

The present paper will discuss the question if the Oslo peace process and in particular the efforts to improve the water situation failed because the agreement was flawed or the implementation was faulty. Did the negotiation process slow down because the content of the agreement was inherently biased or unjust? Or because the political landscape after Oslo aggravated in a way that made an implementation impossible? The present paper will approach this general issue through two sub questions.

Firstly, one has to clarify the nature of the Oslo peace process. Was it a real peace initiative that was directed towards a two-state solution? Or was it a political arrangement between the decision makers that aspired an improved conflict management without the aim of conflict resolution? The present paper will argue that at least for the water issue, it was a real peace initiative that was based on confidence building measurements. The agreement gave room to both parties to improve the situation during the interim phase.

Secondly, the paper will engage in an analysis why the Oslo water initiative failed. It will be argued that the water negotiations survived throughout the conflictual situation of the second Intifada and therefore surpassed the overall Oslo peace initiative. The reasons why the Palestinian water sector experienced notwithstanding a slow development are twofold. A first issue are the organizationally weak and mismanaged Palestinian proto-state institutions that were unable to accomplish a nationalization and centralization of the Palestinian water sector. However, this is a typical characteristic of early statehood and can improve over time. The more important reason for the cooling-down of the cooperation in the field of water during the last five years is a deliberate politicisation of the water issue by the Palestinian leadership.

By answering these two questions, the perspective of the present paper becomes apparent. The Oslo water agreement was not inherently flawed but experienced a faulty implementation. This was mainly triggered by a process of explicit politicisation by the
Palestinian political leadership. By de-politicising the water issue, the path towards a peaceful agreement could be continued.

b. Contextualization

The Middle Eastern discourses about water evolve around several questions. The following paragraphs will outline the main elements of the different discursive fields and state the respective position of this paper.

A first discourse concerns the connection between water and armed conflict. The notion of water wars was promoted by a group of scientists before the 1990s. Since then, most scholars agree that water does not lead to war, since the water crisis concerns only the development of agriculture and not that of domestic consumption. Nevertheless, it remains unchallenged that control over good quality water is part of a national interest, which can still trigger unarmed conflicts. Haftendorn identifies four sources of conflict in international water disputes: conflict through use, conflict through pollution, relative distribution conflict and absolute distribution conflict. The Israeli-Palestinian water conflict is part of the latter one and a result of absolute water scarcity. She argues that the fact that the water dispute is embedded within the larger Arab-Israeli conflict would have prevented the parties to find a solution for the water resources. Meanwhile, she interprets the peace agreements between Israel, Jordan and the Palestinians as a sign that the coupling of different issues can have a positive effect. She concludes that the generally asymmetrical water conflicts need to be connected to other contentious points in order to replace the asymmetrical structure with a more co-operative symmetrical structure.

The present analysis is acknowledging the importance of water for the overall Israeli Palestinian conflict, but it refuses the hypothesis that Israel is occupying parts of the West Bank due to hydrostrategic reasons. Although water cannot be separated from the political sphere, it is argued that it can enhance the conditions for a peaceful solution. Through successful cooperation mutual trust can be gained. Furthermore, the living standards and

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1 Trottier, Hydropolitics, 176.
2 Conflict through use has often an environmental dimension and is mostly arising if one State constructs a dam or channels the river flow. Conflict through pollution arises if industrial production uses water bodies to dispose waste water and industrial rubbish. A relative distribution conflict is characterized by an extensive use of the water resource by the upper riparian, which reduces the resource availability of the lower riparian. Hence, the upper riparian is limiting the lower riparian’s abstraction capacity although there would be enough water available. An absolute distribution conflict arises if there is not enough water to meet all the legitimate needs. This is intensified in cases where the states have different levels of development and therefore maintain different levels of consumption; Haftendorn, Water and International Conflict, 51-62.
3 Haftendorn, Water and International Conflict, 63-64 & 68. She enlists four strategies to achieve that: 1. the improvement of information exchange and the promotion of confidence; 2. embedding the conflict in a positive interactive complex; 3. creation of package solutions by constructing linkage strategies; 4. the use of arbitration, mediation and intervention.
material conditions of both societies can be improved with a functioning water regime. This could improve the chances for a settlement of the overall dispute.

An often quoted and one of the most influential analysis on water politics in the Jordan River basin is Lowi’s book. She examines the behavior of riparians in the context of a broader political conflict. Lowi seeks the imperative preconditions for intra-riparian cooperation to be flourishing. She applies different schools of thought, in particular realism and liberalism. She argues that West Bank water has been a source of conflict between Arabs and Israelis since 1967, since Israel is heavily dependent on those water resources. Israel would need to control those resources and to minimize local consumption in order to assure the sustainability of Israel’s water supply. Palestinian over-exploitation could minimize the water that flows into Israel or result in salinization. Due to Israel’s dependency on this water, the dispute over water would lie at the heart of the territorial conflict:

“Because of the perceived links between the water resources of the West Bank and the survival of the State of Israel, accepting and independent Palestinian state on the West Bank and hence, relinquishing control of the territory’s resources, is interpreted by some as equivalent to an act of national suicide.”

Cooperation would start if the more powerful riparian would accept it. Furthermore, the hegemon would take the lead in establishing a regime of cooperation and enforce compliance if necessary. The conditions therefore would be that the dominant power feels the need to cooperate due to its downstream position. She concludes as follows:

“…when a riparian dispute in an arid region unfolds within the context of a more comprehensive political conflict, the former cannot be effectively isolated from the latter. Limited agreement on sharing water resources cannot be attained, largely because the least needy and/or most powerful state will derive little benefit from cooperating and relinquishing its most favorable position. When it is successful – and this happens only when the dominant power in the basin has been induced to cooperate for one reason or another – the arrangement is specific to the task and cannot be viewed as an avenue toward political settlement.”

The argumentation outlined in this paper is questioning some of Lowi’s notions. On the one hand, the hypothesis that the cooperation regime is defined by the more powerful riparian, Israel, became true in 1995. It is also accepted that the water solution had no implications on an eventual territorial arrangement. But in the present case it is Israel who wants to cooperate and the Palestinians who insist on a solution of the overall conflict as a precondition for cooperation in water matters.

Another important aspect of water politics is food security. This question is mostly approached from an economic angle. Allan argues that in the Middle East, politicians often

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4 Lowi, Water and Power.
5 Lowi, Water and Power, 1-11.
6 She shows that “40% of the groundwater upon which the State of Israel is dependent and one-quarter of its sustainable annual water yield originate in occupied territory.”; Lowi, Water and Power, 185.
7 Lowi, Water and Power, 191.
8 Lowi, Water and Power, 203.
9 Lowi, Water and Power, 203-204.
fail to implement policies that are economically sound, because they are constraint by dominant discourses of their respective society. This would lead to a gap between what is scientifically the best solution and what is implemented in policy formation. He argues that the economically and environmentally most sound order to approach the issue of water scarcity is: firstly strategic water security, secondly allocative efficiency and thirdly productive efficiency. The sanctioned discourses in the Middle East region would have a reversed prioritization: firstly productive efficiency, secondly allocative efficiency and thirdly strategic water security. Hence, Allan provides an economic argument how to solve the issue of water scarcity. If the States refrain from the goal of self-sufficiency in food production, the region will not face a water crisis.

The overall argument that the region needs to focus on water for domestic consumption and that the economies need to surpass the agricultural stage is supported here. Nevertheless, caution has to be exercised not to overestimate the practicability of economic formulas. The overall conflict between Israel and the Palestinians is restricting the applicability of these rather simplistic economic solutions for the water dispute.

A fourth discursive field is the interrelation between environment and conflict or cooperation. Homer-Dixon analyzes the nexus between environmental change and acute conflict. He argues that climate change will lead to reduced agricultural production, economic decline, population displacement, and a disruption of regular and legitimized social orders. This would lead to three types of conflict: simple scarcity conflicts, group identity conflicts and relative deprivation conflicts. Water falls within the first category since its scarcity is increasing in some regions, it is essential for human survival and it can be physically controlled. For the case of the Jordan Basin water he does not foresee a water war, but

10 Allan, The Middle East Water Question, 182. He bases his argument on Migdal’s concept of strong societies and weak states, which sees a limited capacity of the state to shape policies.

11 The concept of virtual water has the goal to substitute water intensive agriculture by food imports and international food trade. Hence, food security is the main strategic concern. It is seen by international experts as the crucial strategy for the region in the future; Allan, The Middle East Water Question, 185.

12 The concept of allocative efficiency is aiming at economic efficiency of water allocations. According to this concept, water should be allocated to that economic activity that yields the biggest return. It can be applied either in an intra-sectoral level by choosing the highest value crop for farming. But it can also be applied in an inter-sectoral level by arguing that services and industry have much higher economic returns on water than agriculture. This allocation would ideally be accomplished through market mechanisms; Allan, The Middle East Water Question, 185.

13 The concept of productive efficiency aims at water use efficiency. It promotes efficient technologies in agriculture, such as drip irrigation or efficient scheduling of water applications, as well as efficient water equipment for the domestic sphere; Allan, The Middle East Water Question, 185.

14 Allan, The Middle East Water Question, 185-188.


16 Simple scarcity conflicts arise when “state actors rationally calculate their interests in a zero-sum or negative-sum situation…” Group identity conflicts are arising with large scale movement of populations resulting from environmental change. Relative deprivation conflicts are a result of economic deterioration of developing societies, who feel deprivation; Homer-Dixon, On the Threshold: Environmental Cahnges as Causes of Acute Conflict, 106-111.

predicts that the water crisis could lead to civil disorder, contribute to the overthrow of regimes, political radicalization and general instability.\textsuperscript{18}

The study presented here will challenge this notion. It is argued that environmental change is enhancing cooperation instead of triggering conflict. In the short-term environmental changes previsions may harden the negotiation positions. But in the long-term, it will induce the parties to seek a solution. In particular Israel, in its position as a lower riparian for the Mountain aquifer, is interested in limiting environmental damage to the underground water resources. To achieve this, both sides need to cooperate.

c. Justification
The vast literature on the Oslo peace process and the Israeli-Palestinian water conflict may seem to render the present paper redundant. But most of the literature follows either a Palestinian or Israeli narrative, especially if it is produced by a protagonist of either side. International scholars writing on the topic have the tendency to adopt a pro-Palestinian angle. The most outstanding authors in the field of water are Jan Selby and Mark Zeitoun.\textsuperscript{19} There is a lack of international literature on the Israeli-Palestinian conflict that is critical with the Palestinian narrative. This is also reflected in the position of the international community.\textsuperscript{20}

In order to keep the international discussion on the Israeli-Palestinian conflict flexible and alive, it is important to challenge the sanctioned discourses within this arena. The present paper is trying to fill the void by taking a critical stance on the internationally accepted Palestinian position. The analysis will not blindly adopt the Israeli narrative, but discerns some biased elements of the Palestinian narrative.

d. Research Design and Methodology
Due to the limited scope of the research project, the analysis is limited on the West Bank.\textsuperscript{21} The Gaza-Strip is excluded due to its complex hydrological structure and its different political status. Furthermore, the discussion is focusing on the Mountain aquifers and not on the surface waters of the Jordan valley. The Mountain aquifer consists of three sub-basins: the Eastern, the North-Eastern and the Western. The first one lies fully within the West Bank and is therefore not part of the conflict. The share resources concern the North-Eastern and the Western aquifers. This is in line with the water provisions of the Interim Agreement, which

\textsuperscript{18} Quoted in: Trottier, *Hydropolitics*, 17.
\textsuperscript{19} See Selby, *Water, Power and Politics in the Middle East* und Zeitoun, *Power and Water in the Middle East*.
\textsuperscript{21} In line with international standards, the present paper will term that part of mandated Palestine as ‘West Bank’ that lies on the East of the 1949 Armistice Line (also called Green Line). This does not imply any political statements regarding the status of this territory. The overall Palestinian entity will therefore be called ‘Palestinian Territories’.
excluded the Jordan valley waters. Furthermore, it is also the most contentious issue of the conflict, since Israel is in a down-stream position regarding the aquifers, while the West Bank Palestinians are located in an up-stream position.

The analysis will follow a multidisciplinary approach by combining a historical query with fieldwork that includes many elements of present politics. The researcher has conducted 24 interviews over the past six months.\(^2^2\) Therefore, the argumentation is based on primary documents, interviews as well as secondary literature.

The paper is structured into four sections. The first three chapters in Section I on the historical context is mainly drawing conclusions from secondary literature. It is important to understand the developments that initiated the Oslo peace negotiations and to outline the main political events that ultimately caused the fall of the overall peace process.

A second section will discuss the features of the Oslo II water agreement\(^2^3\) and the context within which it was integrated. Chapter 4 will outline the major developments of the West Bank water sector since the British Mandate period. Chapter 5 will assess the legal situation concerning water of the West Bank since 1967. Chapter 6 is presenting the main elements of the agreement itself and chapter 7 will discuss the evolution of the West Bank water sector since the conclusion of the Oslo II water agreement.

The third section is the core part of the analysis, since it will present the different discourses on the water conflict. This section is mainly based on primary sources, in particular on the evaluation of all the conducted interviews. It will outline the Israeli, Palestinian and international discourses.

The last section will present the main elements of the previously stated hypothesis that the internationally accepted narrative is partially biased. The argumentation is based on several primary documents, including letters and meeting minutes. This assures objectivity and will mark a clear separation from the previous section where mainly opinions are expressed.

I. Historical Context

1. The first Intifada

In order to understand the context in which the Madrid conference and the Oslo negotiations emerged, one has to look at the regional geopolitical shifts during the 1980s. The Palestinian national movement went through significant internal changes, which impacted their relation to

\(^{22}\) See Bibliography. The interviews were held with protagonists from the Palestinian, Israeli and international framework. This assures a certain degree of objectivity.

\(^{23}\) The part of the Interim Agreement that contains the provision on water will henceforth be called ‘Oslo II water agreement’.
the State of Israel. The goal of this chapter is to emphasize the importance of this uprising for the peace process of the early 1990s.

During the 1980s the Palestinian political discourse shifted away from the liberationist strategy of the 1960s and early 1970s towards a territorial search for statehood. The Fatah leadership of the PLO slowly moved from the doctrine of armed struggle as a mean to liberate ‘all of Palestine’ to the idea of a two-state solution. This was proclaimed at the PNC meeting in Algiers in November 1988. The programmatic shift was the result of the increased influence of the traditional Palestinian elites within the Territories, insiders, as well as the rise of Islamist forces within the Palestinian society. The conflict between these different forces resulted in the first Palestinian Intifada.

The killing of four Palestinians by an Israeli truck near the Erez military checkpoint in Gaza on December 8, 1987 is seen as the initial spark for the uprising that is called the first Palestinian Intifada. It quickly grew and spread also to the West Bank. Hamas as well as the PLO claimed responsibility for its outbreak. However, the official leadership of the movement was loyal to the PLO from the outset. The uprising turned gradually more violent. While the number of contentious events decreased from the 1990s onwards, the use of fire arms on the Palestinian side increased steadily from 1988 onwards. The initial intensity of Israeli direct and indirect repressive measures decreased after the first two years of the uprising.

The explanations for the outbreak and success of the Intifada are manifold. Tamari distinguishes two modes of resistance against the Israeli military occupation since 1967. The

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24 Baumgarten, *Three phases of Palestinian nationalism*, 35-37. The PLO Charter of 1968 declares the importance of armed struggle. “He (the Palestinian) must be prepared for the armed struggle and ready to sacrifice his wealth and his life in order to win back his homeland and bring about its liberation.” (Article 7). The liberation referred to the whole of Mandatory Palestine: “The Arab Palestinian people, expressing themselves by the armed Palestinian revolution, reject all solutions which are substitutes for the total liberation of Palestine...” (Article 21). The Palestinian Declaration of Independence of 1988, on the other hand, declares to acceptance of a two-state solution by referring to the non-binding UN General Assembly Resolution 181 (1947). Nevertheless, it emphasises the importance of the Palestinian struggle and specifically the Intifada: “To the souls of our sainted martyrs, to the whole of our Palestinian Arab people, to all free and honourable people everywhere, we pledge that our struggle shall be continued until the occupation ends...”


26 Alimi points out that this was not the first Palestinian uprising against the Israeli military occupation, but the only one with a substantial effect; Alimi, *Israeli Politics and the First Palestinian Intifada*, 1-4.


29 The first joint leaflet issued in Gaza on December 16, 1987 stated the support for the PLO goals: “...The Palestinians’ strong belief in their legitimate rights embodied in the PLO provides them with the spiritual force behind their daily struggle”; quoted in: Khatib, *Palestinian Politics and the Middle East Peace Process*, 47, FN 77.

30 Alimi identifies five reasons for this pattern. Firstly, Israel changed from a tactic of openly encountering the threat to lowering the profile of the repression through more covert methods. Secondly, Israel was increasingly successful in destroying the coordination of the Palestinian insurgency. This also triggered internal Palestinian conflicts and gave rise to the more militant approach of Hamas. Thirdly, as soon as the media coverage for the non-violent Palestinian resistance ceased due to the transformed Israeli repression, the non-violent approach became less efficacious. Fourthly, the 1991 Gulf Crisis divested its initial momentum and diverted the media spotlight, which caused its radicalization.
one mode is steadfastness and tries to ‘passively’ accommodate with the Israeli presence. The other form is popular mobilization, which seeks a political escalation with Israel. The mobilized confrontation with Israel slowly gained prominence during the 1980s. Tamari explains the shift from the dominance of one form of resistance to the other with social transformations inside the West Bank and the Gaza Strip. During the first two decades after 1967, two classes were dominating the Palestinian political discourse. Both profited from the Territories’ integration within the Israeli economy. They consisted of urban entrepreneurs who were mediating Israeli control over the economy and the class of proletarianized peasants that were employed in the Israeli-Jewish sector. These groups were challenged in the late 1980s by unemployed university graduates and entrepreneurs who promoted a nationalist home market. They prepared the political and social basis for the revival of the Palestinian territorial nationalism and the success of the first Intifada. This development was paralleled by a political marginalization of the PLO leadership in Palestinian politics. An inside leadership in the Territories was gradually formed during the first two decades after the occupation. Its role in coordinating the struggle against the occupation grew constantly, but the inside leadership remained loyal to the PLO outside and supported its legitimacy as the representative of the Palestinian people. The process of political marginalization of the PLO started only after its expulsion from Lebanon in 1982. In order to maintain its political survival, the PLO approximated the US position with the political acceptance of UN Security Council Resolution 242. This resulted in a split with the inside leadership who did not support this strategy.

Besides this polarization within the Palestinian leadership, Islamist forces were rising. Hamas increased its financial strength and successfully mobilized popular support. Their particular target was the lower social strata of the Palestinian society. This tactic was a long-term process that was initiated by the Hamas predecessors, the Muslim Brotherhood. The main Islamist strategy during the first Intifada was to fight the occupation. Hence, the

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32 Khatib, *Palestinian Politics and the Middle East Peace Process*, 37-44. Khatib shows that tensions between the inside and the outside were mostly debates about roles, processes, priorities and procedures, but not about political substance. The leadership inside identified themselves with the national objectives defined by the PLO outside. The PLO Charter of 1968 declares in Article 26 that “The Palestine Liberation Organization, representative of the Palestinian revolutionary forces, is responsible for the Palestinian Arab people’s movement in its struggle – to retrieve its homeland, liberate and return to it and exercise the right to self-determination in it...”.
34 Behrendt, *The Secret Israeli-Palestinian Negotiations in Oslo*, 22. Hamas could profit from its Muslim Brotherhood origins and was sponsored by other Brotherhood organizations in Jordan, Saudia Arabia and other Gulf countries. After the Gulf Crisis much money formerly donated to the PLO by Saudia Arabia and Kuwait was now given to Hamas.
35 Pappo, *A History of Modern Palestine*, 261. They focused their activities on mosques whose number in the Territories doubled from 1967 to 1979. The mosque allowed for the integration of the lower strata of the society by providing economic aid, social contact and religious preaching.
PLO predominance was challenged by a strengthened internal leadership as well as by internationally supported Islamist forces.

In order to understand the connection between the Intifada and the subsequent peace process, one has to analyze the character of the uprising. Was it an attempt for an institution-building process or rather a struggle to achieve independence? Frisch argues that the Intifada should be seen in the light of two different aspects. On the one hand it was an effort of the Palestinian ‘insiders’ to overthrow and rebuild the social order of the Palestinian society. On the other hand, the Tunis based PLO leadership was trying to achieve (partial) national liberation through resistance as well as diplomacy. Hence, the goals were diverted along the lines of internal and external interests. The UNC was increasingly subordinated to the PLO leadership who tried to prevent the consolidation of a unified territorial leadership from the outset. Hence, the establishment of a national authority and the state-building project as a whole remained a marginal theme of the revolutionary movement. The popular committees who can be seen as the backbone of the uprising were instrumentalized by the different factions. While Fatah saw them as a mean for further mobilization, the Communists saw them as the core element in the state formation process. However, the Intifada restored the importance of the PLO and their role in international diplomacy. Frisch nevertheless argues that the institution building process promoted by the inside was accelerating during the Intifada through the growth of civil society organizations.

The reasons for the Intifada’s effectiveness in regard to the peace process lay also within the Israeli society. During the 1970s and 1980s the Israeli democracy was increasingly characterized by an ideological cleavage on the future status of the ‘Territories’. Alimi argues that the domestic crisis of Israeli politics gave the Palestinian an opportunity to contest the Israeli occupation. It goes beyond the scope of this chapter to fully engage in the development of Israeli politics in the pre-Intifada period.

The goal of the present chapter was to show that first Intifada was a critical moment for the Palestinian independence movement. It gave the goal of national independence a decisive

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36 Frisch, Countdown to Statehood, 93. Tamari identifies this resistance against the social order also outside the Territories: “Populism became the ideology of a new radical and grassroots alternative to the elitist outlook of the traditional leadership of the nationalist movement both inside and outside the territories.” Nevertheless, he emphasizes the factionalized character of the new mass movement; Tamari, Palestinian Movement in Transition, 64.
37 The first UNC communiqués on January 7, 1988 declares that: “We shall burn the land under the conqueror’s feet. Let the whole world know that the volcano of resistance that the Palestinian people ignited will not stop until the Palestinian state with Jerusalem its capital – is achieved.”; quoted in: Frisch, Countdown to Statehood, 93. It has to be remarked that this partial liberation was attempting a two-state solution and not the ‘total liberation’ of mandatory Palestine.
38 The UNC saw its role rather in helping the PLO in the process of state creation or the attainment of independence. Frisch, Countdown to Statehood, 93-95.
39 Frisch, Countdown to Statehood, 101-104.
40 Frisch, Countdown to Statehood, 105-108.
41 Alimi, Israeli Politics and the First Palestinian Intifada, 3-4.
impetus by mobilizing large parts of the Palestinian society. Nevertheless, the uprising further factionalized the Palestinian society, which not only harmed the state-building process but also resulted in internal Palestinian tensions during the 1990s when the formal state-building process should have taken place. On the other hand, the Intifada turned the status quo into an unbearable situation for Israel. The ideological support for a settlement with the Palestinians grew within the Israeli society and its leadership ranks. Hence, the Intifada is a crucial reason why both sides turned to the negotiation table.

2. The Oslo negotiations

The Madrid Conference that started in October 1991 was an US-led attempt to solve the Arab-Israeli conflict in the aftermath of the Iraqi expulsion from Kuwait. The negotiations were based on UN Security Council Resolution 242 (1967) and the principle of ‘land for peace’. The PLO was excluded from the talks with the argument that they supported Iraq after its invasion of Kuwait on August 2, 1990. The Palestinian delegation, which was a joint group together with the Jordanian delegation, was constituted of territorial insiders. Nevertheless, they stayed in close touch with the PLO leadership in Tunis. Evidence suggests that the Palestinian position was coordinated by Arafat. The Israeli delegation was headed by Likud Prime Minister Itzhak Shamir. The Madrid Peace Process consisted of two different types of negotiation tracks. There were political bilateral talks between Israel and each of its Arab neighbors including the Palestinians. Besides, there were more technical multilateral talks, which comprised other Arab states as well as the US and the EU. The idea was to separate the difficult political questions from issues of technical cooperation and to establish regional cooperation as a confidence-building measurement.

The bilateral negotiations in Madrid did not advance very well. On the Israeli side it was the right-wing nationalist government and on the Palestinian side Hamas’ influence on internal politics that blocked any progress. In order to advance the peace process the Bush Administration supported the Labour opposition in Israel by conditioning financial loans on the halt of Shamir’s settlement activities. These efforts resulted in Labours election victory in

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42 The UN Security Council Resolution 242 (1967) is attempting to establish peace in the region by acknowledging the existence of all the States (Article 1, (ii)). This would be achieved through territorial concessions on Israel’s side: “Withdrawal of Israel armed forces from territories occupied in the recent conflict.”; Article 1 (i). The Resolution does not specify the territories from which Israel should withdraw. Hence, it does not oblige Israel to concede all of the West Bank and Gaza Strip or Jerusalem.

43 Hereby Israel would concede territory to its Arab neighbours and thereby accomplish a peace treaty. The same principle was applied in the Camp David summit when the peace treaty with Egypt was concluded.

44 Seliktar, Doomed to Failure?, 38.


46 Rouyer, Turning Water into Politics, 195-196. The multilateral negotiations were divided into five working groups: water resources, the environment, refugees, arms control, and economic development.

47 Seliktar, Doomed to Failure?, 40.
June 1992.\textsuperscript{48} Whereas Israel’s position changed in the Israeli-Arab bilateral talks after Itzhak Rabin overtook the Labour government, the Israeli-Palestinian bilateral talks remained in a stalemate.\textsuperscript{49} In this context, Israel started to engage in direct talks with the PLO. These ‘secret talks’ were initiated by the dovish Israeli deputy Foreign Minister Yossi Beilin in late January 1993 in Oslo. The key players of the fourteen sessions were two Israeli academics, Dr. Yair Hirschfeld and Dr. Ron Pundik, as well as PLO treasurer Ahmad Qurei.\textsuperscript{50} In May 1993 Shimon Peres who was gradually included in the process started to regularly inform Prime Minister Rabin on the development of the talks. Meanwhile, Ahmad Qurei reported to Arafat in Tunis. This indirect negotiations between the top leaders were intensified after both sides agreed upon the ‘Gaza and Jericho first’ plan.\textsuperscript{51} It was Foreign Minister Peres and not Prime Minister Rabin who supported the deal on the Israeli side. He believed that the PLO was in financial and political difficulties, which made it a good time for Israel to close a deal with the organization. In his consultations with Rabin in May 1993 he stressed that the ‘Gaza first’ option was in Israel’s interest, since a majority of Israelis would want to leave the Gaza Strip anyway due to constant armed attacks by Palestinians.\textsuperscript{52} The Palestinian position was dominated by the strategy of the PLO outsiders.\textsuperscript{53} The negotiations ultimately led to the signature of the Declaration of Principles (D.O.P.) on September 13, 1993 in Washington. It was an agenda for negotiations, which should start within two years and end after five years with a final status agreement.\textsuperscript{54} The idea to separate the interim solution from the final settlement was promoted by Israel and accepted by the PLO. There were no clear commitments on the nature of a permanent agreement on both sides.\textsuperscript{55} Peres argues in his

\textsuperscript{48} Seliktar, Doomed to Failure?, 39.
\textsuperscript{50} The first meeting was held on January 20-22, 1993 in Sarpsborg near Oslo. It had only five participants: on the Israelis side Yair Hirschfeld and Ron Pandak and on the Palestinian side Ahmad Qurei (or Abu Ala’a), Maher el-Kurd and Hassan Asfour.
\textsuperscript{51} Shlaim, The Rise and Fall of the Oslo Peace Process, 244-245. The plan was that Israel would hand over to the Palestinians in a first step only the Gaza Strip and Jericho. The final version was a negotiated deal, since the Allenby Bridge would remain in Israeli hands.
\textsuperscript{52} Rabin demanded that the Palestinians should stop terrorism, declare the end of the Intifada and to amend Palestinian National Charter with the Oslo reality; Peres, Battling for Peace, 291.
\textsuperscript{53} Khatib argues that during the Madrid Process, the Palestinian position was balanced by the different priorities of the PLO insiders and the outsiders. In the Oslo ‘secret talks’ on the other hand, the PLO leadership bypassed the inside.Khatib, Palestinian Politics and the Middle East Peace Process, 169-171.
\textsuperscript{54} Article I of the D.O.P. describes the aim of the negotiations: “The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian interim Self-Government Authority, the elected Council, for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338.” The Oslo I Accord consisted not only of the D.O.P, but also of two letters exchanged between Arafat and Rabin on September 9 and 10. They affirmed mutual recognition between Israel and the PLO. While the PLO accepted “the right of Israel to exist in peace and security”, Israel did only recognize the PLO as “the representative of the Palestinian people”.
\textsuperscript{55} Shlaim, The Rise and Fall of the Oslo Peace Process, 247. Rynhold makes the following observation: “In the 1993 Oslo Accords, Israeli formally recognized the PLO as the sole legitimate representative of the Palestinian people and the Palestinians formally recognized the State of Israel. However, the Palestinians did not recognize Zionism as a legitimate national movement, while Israel did not formally commit to the principle that the Palestinians had a right to statehood.”; Rynhold, The Failure of the Oslo Process, 10.
memoires that Israel has always been against the creation of an independent Palestinian state. The D.O.P. was termed in a way that it did not prejudice the terms of the permanent status agreement.\textsuperscript{56} Peres justified the ‘return’ of the PLO the following way:

“My strategic goal was to obtain, in return for the “return”, an undertaking from the PLO to recognize Israel, to forswear terrorism finally and irrevocably, and to abrogate those provisions of its charter … that committed the organization to fight for the destruction of the Jewish state.”\textsuperscript{57}

The main goal of the PLO was their return to the Palestinian Territories at the expense of independence.\textsuperscript{58}

In October 1993, two committees were set up to implement the D.O.P. On the one hand there was a ministerial level committee, headed by Shimon Peres and Mahmoud Abbas, which was supposed to meet in Cairo every two or three weeks. Additionally, an expert committee was supposed to meet twice or three times a week in Taba. The Israeli delegation was headed by Amnon Libpkin-Shahak who took a tough line in the negotiations.\textsuperscript{59} The Israeli position in the negotiations after Oslo was dominated by the ‘hawkish’ position of Rabin and no longer by Peres ‘dovish’ thinking.\textsuperscript{60} This increased the differences in the way the two sides wanted to implement the agreement. While the Palestinian side wanted an early and extensive transfer of power, the Israeli discussions of an IDF withdrawal were characterized by security considerations and the fear of armed attacks. Although this divide delayed the original timetable, it led to the Cairo Agreements of February 9 and May 4 in 1994. This finalized the Gaza-Jericho negotiations and set the ground for the expansion of Palestinian self-governance. But the IDF maintained its military presence in and around the geographical area where the Palestinian self-government should come into being. It was furthermore decided that Israeli occupation laws and military orders were to remain in power.\textsuperscript{61}

On September 1995 the Israeli-Palestinian Interim Agreement (Oslo II) was signed in Washington by Yitzhak Rabin and Yasser Arafat. This comprehensive agreement resulted in some significant changes on the ground. It established elections for the Palestinian Council, transferred legislative authority to this Council, divided the territories into three areas (A, B and C) and resulted in the Israeli withdrawal from the Palestinian population centers (mostly area A).\textsuperscript{62} The specific provisions on Water will be discussed in Section II.

\textsuperscript{56} Peres, Battling for Peace, 281-290.
\textsuperscript{57} Peres, Battling for Peace, 291.
\textsuperscript{58} Khatib, Palestinian Politics and the Middle East Peace Process, 169-171.
\textsuperscript{59} Libpkin-Shahak was the number two of the IDF at that time.
\textsuperscript{60} Seliktar, Doomed to Failure?, 46.
\textsuperscript{61} Shlaim, The Rise and Fall of the Oslo Peace Process, 250-252. The specific Military Orders regarding water will be discussed in Chapter 4.
In order to understand the Oslo Agreements one needs to look at the long-term incentives on both sides. One structural reason for Israel to engage in talks about a two-state solution was and remains demography. The fact that demographical trends are slowly undermining the Jewish character of the Israeli state are an important reason for Israel to negotiate a settlement with the Palestinians. The differences in birth rates between the Arab and Jewish population are slowly eradicating the Jewish majority within the territory of mandatory Palestine. Additionally, the liberalization of the Israeli economy from the 1980s onwards made the Arab markets more attractive for Israel. The exploitation of this potential is only possible through an Israeli-Palestinian peace agreement. A third reason for engaging in negotiations with the Palestinians was the changing geo-strategic position of Israel. The American-Israeli patron-client relationship that was a stable factor of the Middle Eastern politics during the Cold War, started to erode with the fall of the Soviet Union. The fact that the US was no longer completely dependent on Israel for its Middle Eastern strategy, became evident in the 1991 Gulf Crisis. The US-led coalition against Iraq was joined by Syria, Egypt and Saudi Arabia. After this became evident, the US was no longer providing unconditional political or economic support for Israel. This constituted a problem for Israel who was still dependent on the political and economic US assistance, especially because radical states on the periphery, like Iran were progressively threatening the Israeli security. The last factor, the Intifada, has already been discussed. By the early 1990s the uprising has turned the Gaza Strip and the West Bank ungovernable, which marked a security problem for Israel and threatened the Jewish communities. The Israeli public changed its perception of the status quo and a growing majority of Israelis started to favor a compromise with the Palestinians. Therefore, the search for compromise became a necessary strategy also for the Israeli government.

With the signature of the D.O.P. Arafat and the PLO conceded their goal to establish a Palestinian state in the entire mandatory Palestine. The Accords were based on UNSC Resolution 242 and it did not recognize Palestinian national rights. A first reason why Arafat
agreed to these terms was the fact that the PLO was financially weak after the Gulf crisis.\textsuperscript{69} The dependence on financial sources to maintain his clientelistic system as well as the leadership over the Palestinian people had severe consequences once the monetary support started to dry out.\textsuperscript{70} The Gulf crisis further split the Arab consensus on the Palestine question, which weakened the Arab support for the Palestinians.\textsuperscript{71} With the end of the Cold War also the Soviet Union ceased to be an alternative source of support.\textsuperscript{72} Ultimately, the PLO dominance in Palestinian politics was challenged by political movements within the Territories.\textsuperscript{73} Hence, the Oslo ‘secret talks’ were the only way to reestablish Arafat’s position as the leader of the Palestinian national movement and to maintain the PLO’s international legitimacy as the representative of the Palestinian people.\textsuperscript{74}

\textbf{3. From Oslo to the Second Intifada}

The following chapter will look at the political developments since the signature of the Oslo agreement and analyze the main elements that contributed to the failure of the Oslo peace process.\textsuperscript{75} It will be argued that the political factionalization of the Palestinian society, which accelerated during the first Intifada and which gave rise to Islamist forces, was harmful for the institution-building process that should have taken place from the mid 1990s onwards. Meanwhile, the radical Palestinian forces turned the Israeli public against the peace process. Internal pressure was exerted not only on the Likud government of Netanyahu but also on the Labour government of Barak. This made it difficult for the political leaders to fully engage in negotiations where concessions are necessary. It culminated in the loss of mutual trust and understanding and ultimately suffocated the peaceful spirit of the early 1990s.

One important aspect for the rising tensions during the 1990s were the intensified armed attacks emanating from Islamist forces within the Palestinian society. The Movement of Islamic Resistance, \textit{Harakat al Mawqaqama al Islamiyya} (Hamas) emerged in a phase when the PLO leadership started to accept a two-state solution. It was established as an activist arm of the Muslim Brotherhood in the late 1980s.\textsuperscript{76} They reiterated the core demands of Fatah’s early doctrine, which postulates armed struggle for the ‘total liberation of Palestine’. Thereby

\textsuperscript{69} After supporting Sadam Hussein in the Gulf War, the important financial contribution from Saudi Arabia and the Gulf States ceased. Furthermore, Palestinians working in Kuwait and sending private donations to the PLO in Tunis, could no longer work in the Gulf region. The financial crisis amounted to 100 million $ a year.; Selby, \textit{Water, Power & Politics}, 138.

\textsuperscript{70} Behrendt, \textit{The Secret Israeli-Palestinian Negotiations in Oslo}, 20-21.

\textsuperscript{71} Abed, \textit{The Palestinians and the Gulf Crisis}, 33-34.

\textsuperscript{72} Rynhold, \textit{The Failure of the Oslo Process}, 7.

\textsuperscript{73} The rising conflict between PLO ‘outsiders’ and Palestinian ‘insiders’ has been discussed in more detail in the previous chapter.

\textsuperscript{74} Selby, \textit{Water, Power & Politics in the Middle East}, 139.

\textsuperscript{75} This is not an attempt to fully engage with the vast literature on the failure of the peace process, but rather a historical overview that helps to understand the water negotiation process.

\textsuperscript{76} Kristianasen, \textit{Hama’s Response to Oslo}, 20. The name Hamas appeared the first time on December 14, 1987 on a leaflet.
they filled a void in Palestinian politics. The martial rhetoric quickly materialized in armed resistance. As early as December 1992 its armed wing, Izzeddin al-Qassam Brigades, undertook three separate attacks against the Israeli army. Israel’s reaction, the expulsion of 400 Islamists, turned the movement symbolically into collective martyrs and triggered a wave of attacks against Israeli soldiers and civilians throughout 1993. In January 1993 they announced publicly that they were opposing Oslo. They demanded an end of formal peace talks with Israel and a revocation of the PLO acceptance of UNSC Resolution 242. Kristianasen argues that Hamas’ success was based on Arafat’s failure to gain profit from the agreements with Israel. They could establish themselves as the main opposition to Oslo by forming a coalition with PFLP and DFLP.

The creation of the PA in 1994 shifted temporarily popular support towards Fatah, which softened the radical garment of Hamas. But moderate tones within the movement were dismantled by brutal violence in the year 1994. After the Goldstein massacre in February, Hamas initiated a wave of five suicide bombings within Israel and kidnapped an Israeli soldier in Gaza. The attacks against Israel were accompanied by tensions between the Islamist parties and Fatah, which turned into bloody internal clashes in 1994. A large explosion of a building inside Gaza City in April 1995 for which nobody wanted to take responsibility, further intensified the situation. It was again followed by suicide bombings of Hamas and the Islamic Jihad against Israeli settlers inside the Gaza Strip. This, in turn, was penalized by the PA through repression and the arrest of 200 Islamists. The Hamas leadership always insisted on continued armed resistance against Israel at least until a withdrawal from the whole of Gaza and the West Bank including East Jerusalem.

Political resistance against the Oslo peace negotiations existed also within Israeli politics. On November 4, 1995, Prime Minister Yitzhak Rabin was shot in a rally in Tel Aviv by Yigal Amir, a right-wing opponent to the peace process. This event increased the internal Israeli tensions between right and left and between religious and non-religious. This was intensified by external events. Between February and March 1996 Palestinian Islamists launched another

77 Baumgarten, *Three phases of Palestinian nationalism*, 35-37. In Article IV of the 1988 Hamas Charter they declare that the movement “strives to raise the banner of Allah over every inch of Palestine”.
78 Seliktar, *Doomed to Failure?*, 40. The movement has set up an Iran sponsored information program in its Amman office in order fight the peace initiative.
79 Kristianasen, *Hama’s Response to Oslo*, 20-22. In Article XIII of the 1988 Hamas Charter they already declared that “initiatives, and so-called peaceful solutions and international conferences, are in contradiction to the principles of the Islamic Resistance Movement.” The only solution would be armed conquer of Mandatory Palestine: “There is no solution for the Palestinian question except though Jihad. Initiatives, proposals and international conferences are all a waste of time and vain endeavors.”
82 Kristianasen, *Hama’s Response to Oslo*, 25-26. The moderation was supported by a new generation of well educated Hamas politicians, which promoted a secular nationalist discourse. They declared to support the state building process by overtaking a role in health care, education and security.
four suicide bombings in Tel Aviv and Jerusalem, which killed 58 Israelis. Israel reacted by stepping up the closure of the Territories. This triggered a spiral of violence.\footnote{Kristianasen, \textit{Hama's Response to Oslo}, 28-30.} The spring of 1996 saw furthermore a massive confrontation between the IDF and the Lebanese Hezbollah, who escalated the situation by opening a fire on Jewish communities. Peres’ inability to position himself as a strong and firm leader in these confrontations seriously damaged his image.\footnote{Bregman, \textit{A History of Israel}, 253-254. Peres was the ad-interim Prime Minister after Rabin’s death.} The May 1996 elections were influenced by these threats on the Israeli security. The situation made it impossible for Peres to profit from Rabin’s assassination. Benyamin Netanyahu’s Likud consequently won the elections, which signaled a rightwards shift in Israeli politics.\footnote{Bregman, \textit{A History of Israel}, 252. Peres succeeded Rabin \textit{ad interim} as Prime Minister after the assassination.} However, Pappe argues that programmatically, Likud was not so different from Labour. No party could allow itself to make substantial territorial concessions to the PA. In the election campaign, both parties were against any form of dismantlement of the 144 Jewish communities in the framework of a final status agreement.\footnote{Pappe, \textit{A History of Modern Palestine}, 255.}

Meanwhile, the state-building efforts in the Territories continued. In the 1996 Palestinian elections Fatah won most of the important seats in the Council and Cabinet.\footnote{Pappe, \textit{A History of Modern Palestine}, 256.} The withdrawal of the IDF from the major cities of the West Bank and the Gaza Strip in late 1995 created a sense of optimism among the Palestinian population and gave Arafat enormous public support.\footnote{Pappe, \textit{A History of Modern Palestine}, 256.} Hamas officially boycotted the elections as an act of opposition against the Oslo agreements.\footnote{Khatib, \textit{Palestinian Politics and the Middle East Peace Process}, 147-148.}

In February 1997, the Likud government signed the Hebron Agreement, which transferred land to the PA in the city of Hebron. Netanyahu faced enormous internal pressures from the Likud as well as the coalition parties to close such a deal. He conceded to these pressures by reducing the land given to the PA and by continuing with the Har Homa construction project in East Jerusalem. Netanyahu used the consequent Palestinian violence in the West Bank and Tel Aviv as an argument to further slow down the peace process.\footnote{Lochery, \textit{The Netanyahu Era}, 229-232.} Pappe argues that, at that point, most of the Jewish community in Israel was not interested in the continuation of the peace process as long as the suicide bombings in Israeli cities were lasting.\footnote{Pappe, \textit{A History of Modern Palestine}, 257.}

The Wye memorandum, signed on October 23, 1998, was a deal between Israel and the PA that made further Israeli redeployment conditional upon PA repression against Palestinian
armed groups. This time, Netanyahu conceded to the growing US pressures for further Israeli withdrawal from the West Bank. The agreement faced heavy political opposition from the ultra-right and finally led to the fall of the Likud government in 1999. On the Palestinian side it provoked further violence and resulted in a definite cleavage between the PA and the Islamist forces.

The new Labour government with the new Prime Minister Ehud Barak was formed after the elections in May 1999. Barak’s official position was to attain peace between Israel and the Palestinians. This public portrayal was underlined by meetings with Mubarak, Arafat, King Abdullah as well as Clinton directly after the formation of his coalition. Meanwhile, he made soon clear that he wanted to revise the Wye Memorandum in order to maintain Israel’s bargaining power for the final status negotiations. On September 5, 1999 Arafat and Barak signed the Sharm el-Sheikh Memorandum, which rescheduled the agenda for peace. But the progress in the talks slowed down due to issues on settlements and the transfer of land to the PA. Another reason for the diversion of focus from the Israeli-Palestinian talks were the negotiations with Syria.

On July 11, 2000, the Camp David II summit opened in the presence of Clinton, Barak and Arafat. The talks failed because of two main reasons, the right of return for Palestinian refugees and the question of Jerusalem and in particular the fate of the Temple Mount. Arafat rejected the proposal offered by Clinton and Barak. It is beyond the scope of this analysis to discuss the reasons for the failure of these talks, since they are highly controversial. Pressman shows the stark differences between the Israeli and the Palestinian narrative. The Camp David summit was definitely a turning point in the public opinion on both sides. The Israeli public thinks that Barak gave the Palestinian ‘almost everything’ at Camp David, but the Palestinians in return initiated a wave of terrorism with the Second Intifada. The Palestinians on the other hand think that Barak alone was responsible for the failure of the 2000-2001 negotiations due to his unreasonable offers.

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94 Bregman, *A History of Israel*, 261-264. The memorandum defined February 13, 2000 as the deadline for a general framework for peace and September 13, 2001 as the deadline for final status negotiations.
95 The prospect for peace with Syria improved as the negotiations culminated in the Clinton-Assad summit in March 2000 in Geneva. But this initiative ultimately failed because Assad rejected Barak’s proposal. The main issue was Israel’s withdrawal from the Golan Heights; Bregman, *A History of Israel*, 264-267.
97 Pressman, *Visions in Collision*, 5-8. According to the Israeli narrative, Israel offered a Palestinian state in the Gaza Strip and 90 of the West Bank, East Jerusalem as the Palestinian capital, shared control of the Temple Mount and an Israeli commitment for settlement withdrawals. After they refused the Israeli offer, the PA would have launched the Second Intifada. The PA argues that Israel did not concede on any major issues of its occupation and that the Second Intifada was a result of the suffering caused by the Israeli occupation.
After the collapse of the Camp David II summit, the public opinion on both sides drifted towards violent confrontation. The mutual trust was broken and the belief in peace was marginalized. On September 28, 2000 Ariel Sharon visited the Temple Mount/ al-Haram al-Sharif, which provoked Palestinian riots that soon developed into the second Palestinian Intifada. Unlike during the first Intifada, the violence was not supported by a large part of the civil society, but rather promoted by a marginal fraction in the form of armed militant movements. Their repertoire of actions included armed attacks against Israeli military outposts or suicide bombings. The suicide bombings, developed by Hezbollah in Lebanon, became the main method of ‘resisting the occupation’. This turned the movement into a much more violent and intense struggle with more casualties on both sides. The living conditions within the Territories facilitated the recruitment of young men for martyrdom by Hamas’ military wing, the Izz al-Din al-Qassam. The violence spread also into Israeli territory, which affected the Israeli society and augmented the internal political pressure to stop the violence. In 2001, Ariel Sharon’s Likud won the Knesset elections with a landslide victory. Unlike his predecessor, he did not seek a peace agreement, but a containment of Palestinian violence. As a reaction to severe suicide attacks in all major Israeli cities, the IDF launched Operation Defensive Shield (Homat Magen) on March 28, 2002.

A last initiative to save the peace process was a meeting between the two sides in Taba on January 21, 2001. But the positions in Taba were even further apart than at Camp David II and it became soon clear that they will not end in a peace agreement. After that, it was clear that the Oslo peace process came to an end. The ‘Road Map’, which was drafted at the height of violence during the second Intifada in June 2002, was not able to rebuild the momentum of the early 1990s. Also the Geneva Initiative, launched in December 2003 by Yossi Beilin, had no impact on the ground. The withdrawal of the IDF from the Gaza Strip in 2005 and the subsequent victory of Hamas in 2006 did further contribute to the radicalization of Palestinian politics. This made all further peace efforts effectless.

The Oslo peace process, based on mutual recognition expressed in the D.O.P., was the most effective and promising peace initiative to solve the Israeli-Palestinian conflict. The historical circumstances at the beginning of the 1990s allowed for such agreements, while the

100 Bucaille, Les itineraries de réconversion des jeunes de l’Intifada, 368-373 and Larzillière, Être jeune en Palestine, 34-36.
102 Bregman, A History of Israel, 281-284.
103 Seliktar, Doomed to Failure?, 174.
104 Seliktar, Doomed to Failure?, 171-173.
105 Pappe, A History of Modern Palestine, 266. This initiative by the quartet of the US, the EU, the UN and Russia had the goal to set up an independent Palestinian state by 2005. In return for the establishment of a Palestinian State, the Palestinian leadership had to promise to end the terrorist attacks against Israel.
106 Seliktar, Doomed to Failure?, 174-175.
subsequent developments rendered their implementation impossible. The reasons why the process failed are complex and cannot be discussed at full length in this context. The remainder of the chapter will briefly outline two paradigmatic international relations theories that discuss the failure of Oslo, the Liberal and the Realist paradigm. While the Liberal position claims that the collapse of the process was mainly a result of a flawed implementation, the Realist approach argues that there was never a real understanding between the two parties.\textsuperscript{107} While the Liberal school promotes conflict resolution theories, the Realist school advocates conflict management concepts.\textsuperscript{108}

Liberal internationalists argued after the collapse of the Soviet Union and Iraq’s defeat in the Gulf War that the conflict-prone Middle East could be transformed into an economically integrated and peaceful entity with a Western-style democracy and a market economy. They promoted the idea of a New Middle East in which the resolution of the Israeli-Palestinian conflict played a central role.\textsuperscript{109} From a Liberal perspective, the mutual recognition between Israel and the PLO was a sign that the conflict is ‘ripe’ for resolution. This process was accompanied by trust building measures that would generate domestic support on both ends. In this light, the 1994 Paris Accords formalized the economic integrationist approach to prepare the material conditions for peace. The conflict resolution should further be advanced through Track II diplomacy and ‘creative ambiguity. Therefore, core issues such as Jerusalem, boarders or refugees were excluded from the negotiations. This step-by-step negotiations should gradually build trust.\textsuperscript{110} In this view, Oslo failed because of leadership mistakes on both sides. This broke the ‘Oslo spirit’ and eradicated the public support.\textsuperscript{111} The blame for the failure of Oslo is generally matched symmetrically to both sides. Israel is accused of creating unbearable and discriminatory living conditions in the Territories and to conduct a destructive settlement policy. The Palestinian side is charged with the fact that they allowed Islamist forces to gain power and the problematic balance of power within the PA.\textsuperscript{112}

The Realist paradigm on the other hand argues that a the combination of the Palestinian Intifada, the 1991 Gulf Crisis and the end of the Cold War were the decisive shifts in the balance of power that enabled a bilateral Israeli-Palestinian peace treaty. Rynhold argues that the mutual recognition was masking ‘destructive ambiguity’. Both sides had completely different positions on the core questions. Therefore they were delayed to the permanent status

\begin{footnotes}
\footnote{Rynhold, \textit{The Failure of the Oslo Process}, 1-2.}
\footnote{Seliktar, \textit{Doomed to Failure?}, 183.}
\footnote{Seliktar, \textit{Doomed to Failure?}, 28.}
\footnote{Seliktar, \textit{Doomed to Failure?}, 184.}
\footnote{Rynhold, \textit{The Failure of the Oslo Process}, 1-6. On the Israeli side this would be mainly the continued settlement expansion and on the Palestinian side the failure to prevent or stop terrorism.}
\footnote{Seliktar, \textit{Doomed to Failure?}, 184-187.}
\end{footnotes}
negotiations. This would have ultimately led to mutual suspicion instead of mutual trust. The interim period would have generated mistrust as each side would have tried to get in a better position for the permanent status talks. According to Rynhold a Liberal peace was from the outset impossible in a Realist environment like the Middle East. This critique of the Liberal notion of the New Middle East was proven correct when the Palestinian proto-state turned out to be undemocratic, corrupt and characterized by patrimonial networks surrounding an autocratic leader Yasser Arafat. The complete demise of the New Middle East paradigm occurred after Hamas won the February 2006 elections. This strengthened the Realist forces in Israel, which argue that there is no Palestinian partner for peace and emphasize the importance of conflict management. Hence, while the pre-second Intifada period was characterized by attempts of conflict resolution, the post-second Intifada era saw the re-emergence of the concept of conflict management.

The present paper will provide an analysis for the Israeli-Palestinian water conflict that supports the notion of a Liberal peace. The above presented overview over the political developments since the mid 1990s has shown that mutual trust gradually diminished. Political opposition and societal fragmentation made a consensus for peace difficult on both sides. Radical forces were stronger than moderate groups. The circle of violence that grew during the 1990s culminated in the second Intifada, which brutally ended the peace negotiations. Nevertheless, as the following chapters will present, the water negotiations continued throughout the clashes of the early 2000s. The current framework for negotiations in the field of water is still based on the Oslo agreements. This demonstrates that Oslo built a solid base for water negotiations. The analysis will not conclude that Oslo could have led to an overall peace. The question of a two-state solution is not within the scope of this paper. It will neither deal with the question if the Palestinian society was ready for establishing a functioning state nor if the Israeli society was willing to substantially concede territory to the Palestinian people. The following analysis is rather looking at the Oslo water agreement as an attempt to establish peaceful cooperation mechanisms between the State of Israel and the PNA in order to overcome the issue of water scarcity from which the region is suffering. On this basis it will seek the reasons for the failure and shortcomings of this initiative.

115 Valbjorn/ Bank, Examining the ‘Post’ in Post-democratization.
116 Seliktar, Doomed to Failure?, 178-179 & 183.
117 Seliktar, Doomed to Failure?, 186. This Realist discourse argues that Israeli is only partially responsible for solving the Palestinian problems and that Israel should focus its efforts on preventing a humanitarian crisis.
II. The Oslo water regime

4. The water sector in the pre-Oslo period

The present chapter will briefly present the evolution of the water sector in the region of mandatory Palestine since the establishment of the British Mandate. During the British Mandate period (1917-1947) water resources in Palestine were for the first time monitored, regulated and controlled by central institutions. Nevertheless, the British failed to establish a single and global water law. This resulted in a multiplicity of local water bills across the entire territory of mandated Palestine. That situation persists until today and exacerbates the nationalization of the water infrastructure and unification of its legislation.  

The modernization of the water infrastructure was further accelerated by the Zionist movement, which established its own institutions of water management. The Zionist movement recognized already during the Yishuv period the importance of global water control in the state building process and therefore developed a hydraulic network linking Jewish communities across mandatory Palestine.

The State of Israel continued, after its establishment in 1948, with a centralized water management and intensified its water networks in order to accommodate the immigrating population. Already during that time, Israel made use of the underground water streaming from the Mountain aquifer into Israel. In 1959 Israel proclaimed the first modern water law in the world and declared all water resources as public property. Through this nationalization and with the construction of the National Water Carrier Israel managed to develop a cohesive water management structure. While the water infrastructure and legislation constantly improved and modernized within the Israeli territory, the West Bank and Gaza Strip did not experience a significant development of their water sector during the respective Jordanian and Egyptian rule. Jordan was undertaking, with massive international funding, gigantic hydraulic infrastructure projects in order to develop its agriculture on the east side of the Jordan river. Meanwhile, the municipalities of the West Bank were unaffected by these changes and control over water continued to fragmentize along rural geographies.

Regional efforts to solve the growing issue of water scarcity were rare. The biggest effort to establish a regional cooperation mechanism in the Jordan Basin during this period were the Johnston negotiations between October 1953 and October 1955. It was an American initiative

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118 This process, if successful, would positively impact the Palestinian water sector. Trottier, Hydropolitics, 43-45.
119 Trottier, Hydropolitics, 43 & 46.
120 Trottier, Hydropolitics, 52. As we will see later, this laid the base for Israel’s reference to ‘historical use’ of the West Bank Mountain Aquifer before 1967.
121 Trottier, Hydropolitics, 48 & 54-56. In 1953 Israel built the National Water Carrier, which was an artificial river that feeds the Negev with water from Lake Tiberias. This way Israel made an early use of the lake’s storage capacity.
122 Giglioli, Rights, citizenship and territory, 142-144.
123 Trottier, Hydropolitics, 57.
to solve the issue of water scarcity through economic cooperation among the riparian states of the Jordan river basin and Egypt. The negotiations ultimately broke down due to political reasons. Nevertheless, the States accepted the agreement *de facto* and respected its provisions until 1967.

After the West Bank and the Gaza Strip came under Israeli control in 1967, Israel started to centralize its authority over the West Bank water resources. Several Military Orders enabled the Israeli civil administration to control the water resources and limit Palestinian use of the aquifers. In 1982 the Israeli National Water Carrier, Mekorot, became the owner of the whole Israeli water infrastructure in the West Bank. Israel developed the water infrastructure in the West Bank and connected the newly established Jewish communities as well as the Palestinian villages to an extensive pipeline system. The expansion and improvement of the Israeli water infrastructure in combination with the slow development of the Palestinian infrastructure, lead to a dependency of the Palestinian domestic and agricultural sector on water purchases from Mekorot. Meanwhile, Israel connected many Palestinian villages and households to water and significantly increased and improved their access to water.

Some scholars argue that this created a satellization of the Palestinian community on the occupying power and hindered initiatives for the development and modernisation of the water infrastructure serving the local population and its agriculture. Furthermore, it is claimed that the Mekorot company established a discriminatory pricing mechanism by selling subsidized water only to Jewish settlers and not to Palestinians. In addition, Mekorot would apply more advanced technology and therefore drill deeper wells, which would affect Palestinian

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124 Rouyer, *Turning Water into Politics*, 115-124. The Arab States did not want to conclude an agreement with Israel, since this could have been interpreted as an indirect recognition of the State of Israel.

125 Trottier, *Hydropolitics*, 56. The Johnston plan provided an allocation scheme between the four riparian states of the Jordan Basin; Jordan, Syria, Lebanon and Israel. Although the parties did not conclude a formal agreement, the quotas were respected until 1967.

126 Military Order 92 of August 22, 1967 transferred the Powers regarding water from the Jordanian government to Israeli control. Article 2: “On the publication of the Order appointing him, the Officer in Charge shall be entrusted with all the powers conferred by the Water Provisions on any person or the occupant of any post.” and Article 6: “Any of the above-mentioned appointments or powers that existed by virtue of the Water Provisions are hereby annulled unless revalidated by the Officer in Charge on the strength of the powers set out in this Order.” Military Order 158 of November 19, 1967 declared that any development of Palestinian water infrastructure require a specific permit from the Israeli civil administration. Military Order 241 of December 19, 1968 declared all water resources of the West Bank and Gaza Strip as Israeli state property.

127 Giglioli, *Rights, citizenship and territory*, 144-146. Israel granted only 23 licenses for well drilling to the Palestinians between 1967 and 1990. Nevertheless, Israel never imposed quotas on drinking water wells and most of the licenses were granted for drinking water wells; Trottier, *Hydropolitics*, 60-61. Hence, domestic use of water did not aggravate but improve during the Israeli occupation. The water for agricultural use was frozen at 100 mcm, the level of 1968; Lowi, *Water and Power*, 188.

128 Gvirtzman, *The Israeli Palestinian Water Conflict*, 3-4. In the period between 1967 and 1995, the total amount of water supplied to the Palestinians in the West Bank increased from 66 to 120 mcm/year. The number of municipalities connected to running water through modern supply systems increased from four to 309.

drillings for agriculture. This would have shifted the conflicts over water in the West Bank from a local source of tension between Palestinian villages to a political struggle between the Palestinian society and the State of Israel. It would have given the Palestinians an incentive to fight for their right of self-determination over their natural resources. Hence, the radical Palestinian demands stated in the water negotiations are allegedly a result of the Israeli occupation policy. It is questionable if such a view was initially supported by the entire Palestinian population, since the Israeli administration brought about a significant improvement of the supply networks and increased the percentage of the population connected to running water. Nevertheless, as we will see in section III, the Palestinian discourse does effectively blame Israel for all the deficiencies of the Palestinian water sector.

5. Legal Framework of the West Bank water situation

The Israeli-Palestinian water conflict should be contextualized within the framework of two separate international legal bodies. On the one hand the rules concerning ‘belligerent occupation’ and on the other hand the principles for the utilization of transboundary watercourses. The following examination will firstly provide an overview over the most relevant legal provisions. It will then discuss their applicability in the Palestinian Territories and ultimately contextualize the respective fields of law within the Israeli-Palestinian water conflict.

The rules of ‘belligerent occupation’ have two main conventional sources, the Hague Regulations and the IV 1949 Geneva Convention. The first important provision in the Hague Regulations is Article 43, which is defining and limiting the occupant’s authority over the occupied territory. Besides this general provision regulating a situation of ‘belligerent occupation’, there are more specific rules concerning natural resources and specifically water. The most important distinction is made between public and private

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130 Lowi argues that the deep Israeli wells would take the water away from the Palestinian agricultural wells, if they are located within the effective radius of each other; Lowi, Water and Power, 189.
131 This argumentation is supported by several scholars: Giglioli, Rights, citizenship and territory, 146. Zeitoun argues as follows: “As far back as 1982, for instance, the Israeli Minister of Agriculture (then Ariel Sharon) implemented a series of restrictive measures to ‘de-develop’ the institution. [the West Bank Water Department]. No Palestinian hydrologists were hired and the increasing competence of the Palestinian well-drilling department was cut short by the replacement of its crews by solely Israeli ones.”; Zeitoun, Power and Water in the Middle East, 102.
133 The Hague Regulations: Article 43: “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety.”
134 This general rule obliges the occupant to preserve ‘public order and safety’ and to respect the laws in force in the country. Furthermore, the occupant is not allowed to permanently alter the ‘fundamental institutions’ in the occupied territory; Scobie, H2O after Oslo II, 86-87.
property as well as between movable and immovable property.\textsuperscript{135} Article 46\textsuperscript{136} binds the occupant to respect private property and prohibits any kind of confiscation from the local population. However, in case there are any requisitions, they must follow strict rules under Article 52.\textsuperscript{137} According to Article 53\textsuperscript{138} state-owned movable property can be used more freely by the occupant if its confiscation suits military purposes.\textsuperscript{139} Public immovable property, according to Article 55\textsuperscript{140}, cannot be acquired by the occupant. The latter can only utilize it in a usufructuary manner. The \textit{doctrine of the usufruct} allows the occupant to enjoy the benefits of another’s property, but prohibits him to destroy or alter fundamentally its character. The occupant is not allowed to over-exploit the assets or to diminish their long-term value. The application of the concept is limited by the \textit{doctrine of permanent sovereignty}, which gives the right for the control of natural resources to the displaced sovereign instead of the occupant. It is part of customary international law and is derived from the right of people to self-determination.\textsuperscript{141} It is disputed which principles takes precedence, the \textit{doctrine of the usufruct}, part of the general law of belligerent occupation, or the \textit{doctrine of permanent sovereignty}.\textsuperscript{142} The Fourth Geneva Convention has fewer provisions that are relevant for the present case. In general it imposes stricter prohibitions on the occupant. Article 53\textsuperscript{143} prohibits the occupant from destroying state as well as private property except in case of military necessity.\textsuperscript{144}

\begin{itemize}
  \item \textsuperscript{135} Dichter, \textit{The Legal Status of Israel’s Water Policies}, 574-575.
  \item \textsuperscript{136} The Hague Regulations: Article 46: “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.”
  \item \textsuperscript{137} The Hague Regulations: Article 52: “Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. …” The requisition must support the military forces of the occupant that are engaged in the occupation and the confiscated objects cannot be used in the occupants home territory. Secondly, the requisition cannot exceed the capacity that the occupied country can bear. The occupant is not allowed to economically weaken the local population through requisitions. Ultimately, the occupant must pay compensation for the requisitions; Dichter, \textit{The Legal Status of Israel’s Water Policies}, 575-576.
  \item \textsuperscript{138} The Hague Regulations: Article 53: “An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations. …”
  \item \textsuperscript{139} Dichter, \textit{The Legal Status of Israel’s Water Policies}, 576.
  \item \textsuperscript{140} The Hague Regulations: Article 55: “The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”
  \item \textsuperscript{141} Scobbie, \textit{H2O after Oslo II}, 92-96 & Tignino, \textit{L’eau et la guerre}, 251-259. This concept is customary international law and forms part of the law of war as stated by the Marten’s Clause, which was inserted into the preamble of teh Hague Convention IV.
  \item \textsuperscript{142} A Report of UN Secretary General in 1983 stated that the situation is unclear: “The law of belligerent occupation gives some protection to the principle of permanent sovereignty while the principle of permanent sovereignty enhances and reinforces the law of belligerent occupation. The law of belligerent occupation should be interpreted and applied to protect to the greatest extent possible the principle of permanent sovereignty.”
  \item \textsuperscript{143} The Geneva Convention: Article 53: “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”
  \item \textsuperscript{144} Dichter, \textit{The Legal Status of Israel’s Water Policies}, 578. Dichter shows that the vague language of the legal text makes its interpretation difficult.
\end{itemize}
The applicability of these sources of international law is disputed among the parties. The only instrument of international humanitarian law that Israel considers as *de jure* applicable to the Palestinian Territories are the Hague Regulations. The Supreme Court of Israel has established this practice in several cases. It argues that the Hague Regulations form part of customary international law and therefore an integral part of the Israeli law corpus, which is binding for the military administration in the Palestinian Territories. On the other hand, Israel disputes the application of the Geneva Conventions based on the concept of the “missing reversioner”. The concept, developed by Yehuda Blum, states that neither Jordan nor Egypt ever possessed legitimate sovereignty over the Palestinian Territories. If Israel would accept the applicability of the Fourth Geneva Convention it would indirectly protect Jordan’s interests as an ousted sovereign. Nevertheless, since 1971 Israel has officially adopted the position that it has *de jure* no legal obligations stemming from the Fourth Geneva Convention, but that it would *de facto* assure the humanitarian provisions of the Convention. Some scholars argue that if Israel is adhering to the Hague Regulations because they are customary rules, then it is also bound by all other rules of customary international law, including the Geneva Conventions. Israel justifies the distinction by arguing that the Geneva Conventions are only contractual international law, whereas the Hague Regulations are customary international law. However, the Security Council has confirmed that the Fourth Geneva Convention forms part of customary international law. Furthermore, the Security Council has explicitly confirmed the application of the Geneva

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145 Cavanaugh summarizes the Israeli perspective as follows: “Israel is not a signatory to the Hague Regulations. However, Israel has considered the Hague Regulations to be customary international law and, therefore, has accepted their application. Israel’s position with regard to the Geneva Convention is that although Israel is party to the Geneva Convention, it is not binding on Israeli actions within the Occupied Territories”; Cavanaugh, *Selective Justice*, 944.

146 The status of military occupation by Jordan between 1948 and 1967 was created through a violation of Art. 2 (4) UNC. Following the concept *ex injuria jus non oritur*, Jordan would not have gained any title to territory during this period. They remained a ‘belligerent occupant’ and had no reversionary rights of sovereignty after their withdrawal in June 1967. Blum points out that the Jordanian attack on June 5 was a breach of the Israeli-Jordanian Armistice agreement and that the Israelis would have been no longer bound to the regulations of this agreement and therefore been able to invade territories east of the Armistice Line. Israel would have the most valid claim to the West Bank, because of the fundamental difference that its occupation in June 1967, contrary to the one of Jordan in 1948, was an act of self-defense, according to Art. 51 UNC and therefore lawful; Blum, *Juridical Status of Jerusalem*, 15-21 & Blum, *The missing Reversioner*.

147 Yehuda Blum argues that the Geneva Convention was drafted in order to protect the reversionary interest of a displaced sovereign. According to the ‘missing reversioner’ theory Jordan has never acquired title to the West Bank during its occupation between 1948 and 1967. Hence, there is no reason for Israel to accept the Convention, which protects the interests of ousted sovereigns. This position is criticized by international legal scholars who argue that the main intention of the Fourth Geneva Convention is to protect the inhabitants of a territory. The protection of sovereign rights of an ousted state would be only a secondary aspect; Rouyer, *Turning Water into Politics*, 180-181.

148 Rouyer, *Turning Water into Politics*, 180-181. Although the Israeli High Court acknowledges a theoretical obligation of the State of Israel to respect the laws of belligerent occupation, it argues that it cannot enforce the Geneva Convention domestically without an act of legislation. By enforcing the State’s international treaty obligation the Court would undermine the legislative supremacy of the Israeli Parliament; Cavanaugh, *Selective Justice*, 943-946.


Convention for the “Arab territories occupied by Israel since 1967”. The same is stated in the advisory opinion of the ICJ in 2004. Hence, the international community rejects the Israeli position.

One has to ask if the Oslo Accords impacted the applicability of international humanitarian law in the Palestinian Territories. Benvenisti argues that the question of occupation is one of fact. Hence, it is important to analyze if Israel is still holding effective control over the Palestinian Territories. He makes the distinction between the West Bank, which is still and in particular after the events during the Second Intifada under Israeli control and the Gaza Strip, which is no longer under Israeli control after the withdrawal in 2005. Israel has neither fully withdrawn its forces from the West Bank nor has the PA managed to establish authority over the territory. There seems to be an agreement among scholars as well as the international community that after the Operation Defensive Shield in March 2002, it is clear that Israel exercises the “effective control” over the territories in question. Hence, the status of Hague Regulations and the Geneva Convention remains principally unchanged. This view is supported by the relevant United Nation bodies. However, the following analysis of Israel’s water policy will focus on the rules provided by the Hague Regulations due to its clearer language and its undisputed acceptance by both parties.

There are generally two issues of contention regarding IHL and Israel’s water policy in the West Bank. Firstly, it is questionable if the changes of the legal situation through Israeli Military Orders are in breach of IHL. Secondly, one has to ask if the way in which Israeli is making use of the West Bank water resources is breaching IHL. These are important legal questions that will later be contextualized within the process of water negotiations and the discourse about ‘water rights’.

The first issue concerns the Israeli Military Orders mentioned in chapter 4. Do they constitute a breach of Article 43 of the Hague Regulations? Israel replaced the existing

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153 “Reaffirming the applicability of the Fourth Geneva Convention as well as Additional Protocol I to the Geneva Conventions to the Occupied Palestinian Territory, including East Jerusalem.”; ICJ Advisory Opinion 2004, 140.
154 Quoted from: Scobbie, H2O after Oslo II, 81-86.
155 Cavanaugh, Selective Justice, 953-954.
157 Although the Hague Regulations do not completely suit the modern realities, they are the most comprehensive source of international law that regulate the economic aspects of a ‘belligerent occupation’; Dichter, The Legal Status of Israel’s Water Policies, 578.
Jordanian water laws in the West Bank and therefore changed the legal situation.\textsuperscript{158} This alone does not constitute a breach of IHL. One has to ask if these changes were necessary to protect and promote the interests of the local population in the West Bank.\textsuperscript{159} Several legal scholars argue that this is not the case, since the changes resulted in a discriminatory treatment of the Palestinian population that benefits the Jewish population.\textsuperscript{160} Dichter argues that this is too simplistic, since it does not take into account the nature of Israel’s long-term occupation of a territory with which it shares its water supply.\textsuperscript{161} Hence, the issue is controversial and part of the various discourses on water rights.

The second discussion evolves around the Israeli use of West Bank water resources. As explained above, the interpretation of IHL depends on the classification of underground aquifers. If one argues that water is private property, then it is questionable if Israel is allowed to impose restrictions on the water use of the West Bank inhabitants in order to utilize the water for its own use. This could constitute a breach of Article 52.\textsuperscript{162} On the other hand one could classify the underground water resources as immovable public property.\textsuperscript{163} In this scenario Israel would be in the position of a usufructuary over the West Bank’s water resources. The extent to which the occupant can make use of its usufructuary rights is disputed, since it is restricted by the doctrine of permanent sovereignty. In any case it is clear that it cannot harm the substance and long-term value of the aquifers. On the one hand one could argue that Israel is preserving the substance of the aquifers by limiting the Palestinian use. On the other hand it can be argued that Israel is limiting the Palestinian water use and thereby violating their entitlement to natural resources.\textsuperscript{164} Furthermore, some scholars argue that Israel has even failed to maintain the long-term value of the aquifers through over extraction and therefore violated its duties as usufructuary.\textsuperscript{165} Hence, Israel’s water policy in the West Bank until 1995 could possibly have constituted a breach of Article 55 and of the the right of permanent sovereignty of peoples to their natural resources.

\textsuperscript{158} Dillman shows that under Jordanian water was considered a private resource and that the Military Orders turned it into public property; Dillman, Water Right in the Occupied Territories, 52-53.

\textsuperscript{159} Scobbie, H2O after Oslo II, 91.

\textsuperscript{160} Scobbie, H2O after Oslo II, 100-101 & Dillman, Water Right in the Occupied Territories, 59-60.

\textsuperscript{161} Dichter, The Legal Status of Israel’s Water Policies, 580-581.

\textsuperscript{162} Dichter, The Legal Status of Israel’s Water Policies, 580. Scholars supporting this theory argue that Israel is utilizing the confiscated water for its own use and that it is economically weakening the occupied country.

\textsuperscript{163} Dichter, The Legal Status of Israel’s Water Policies, 582-83. Dichter argues that the underground water systems, like agricultural estates and forests, which are listed in Article 55, supply an annual yield of water as long as the quality of the aquifer does not deteriorate. Additionally, underground water could be compared to oil in the ground, which has been classified as an immovable asset. Scobbie argues that this classification is based upon the doctrine of permanent sovereignty. He adds a second explanation: “An individual’s private rights are dependent on the continued existence and integrity of aquifers … In the West Bank, this was recognised under pre-occupation Jordanian law which imposed restrictions on an individual’s exercise of water rights. Given this interdependence and assumption of control, it at least indicates that an aquifer as an entity should be seen as immovable publicly-owned property.”; Scobbie, H2O after Oslo II, 96.

\textsuperscript{164} Scobbie, H2O after Oslo II, 96-98.

\textsuperscript{165} Scobbie, H2O after Oslo II, 102-103.
The other relevant field of international law comprises the rules governing the allocation of transboundary water resources. The first text that codified such rights are the 1966 Helsinki Rules on the uses of international rivers.166 The 1986 Seoul Rules complemented the Helsinki Rules by including groundwater resources and aquifers.167 Both are mere resolutions of the International Law Association and do not have any legally binding effects. These principles have been integrated in the UN General Assembly Convention on the utilization of any type of international watercourse in 1997.168

The main principle of the 1966 Helsinki Rules is defined in Article IV: “Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of waters of an international drainage basin.” These ‘shares’ are defined by factors that should be interpreted holistically.169 While the Helsinki Rules do not aim to establish water rights, they intend to provide guidelines for the establishment of cooperation mechanisms between riparian states.170

The 1997 UN Convention on International Watercourses has several provisions that are relevant for the Israeli-Palestinian water dispute. Article 7 urges States to avoid causing significant harm to an aquifer, which transverses its territory.171 Furthermore, Article 5 binds the States to use international watercourses within their boundaries in an ‘equitable and reasonable manner’.172 It implies a use that is proportionally based on the optimal and sustainable utilization of the watercourse. The ILC gives primacy for the use that serves ‘the

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167 Aquifers are defined as international groundwater as defined in the Helsinki Rules: “The waters of an aquifer that is intersected by the boundary between two or more States are international groundwater if such an aquifer with its waters forms an international basin or part thereof. Those states are basin States within the meaning of the Helsinki Rules whether or not the aquifer and its waters form surface waters part of a hydraulic system flowing into a common terminus.”; 1986 Seoul Rules, Article I.
169 The relevant factors that define a reasonable and equitable share are enlisted in Article V (ii): “1. The geography of the basin, including in particular the extent of the drainage area in the territory of each basin State; 2. The hydrology of the basin, including in particular the contribution of water by each basin State; 3. The climate affecting the basin; 4. The past utilization of the waters of the basin, including in particular existing utilization; 5. The economic and social needs of each basin State; 6. The population dependent on the waters of the basin in each basin State; 7. The comparative costs of alternative means of satisfying the economic and social needs of each basin State; 8. The availability of other resources; 9. The avoidance of unnecessary waste in the utilization of waters of the basin; 10. The practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses; and 11. The degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State.”
170 Rouyer, Turning Water into Politics, 182.
171 UN Convention on International Water Courses: Article 7: “1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States. 2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.”
172 UN Convention on International Water Courses: Article 5: “1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attain optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse...”
requirements of vital human needs’. Ultimately, Article 8 obliges states to ‘cooperate on the basis of sovereign equality’. The main purpose is to obligate watercourse states to reduce harm to other riparians.

These texts should constitute an integral part of the water negotiations, since the Mountain aquifer constitutes a transboundary watercourse, as defined in the 1986 Seoul Rules. Nevertheless, one has to take into consideration that the 1997 Convention on International Watercourses has been adopted after the conclusion of the Oslo II water agreement and as such, it is not applicable in the relations between Israel and the Palestinians. The Oslo II water agreement contains several of the Helsinki Rules, on the other hand.

Hence, the only legally binding restrictions that existed before the Oslo II water agreement were the provisions of the Hague Regulations, the IV 1949 Geneva Convention and customary international law, including the right of people to self-determination and its corollary, the right of permanent sovereignty over natural resources. The following chapter will analyze to which extent the Oslo II water agreement altered the legal status as well as the institutional situation.

6. Water and the Oslo peace process

Water was a central issue throughout the peace negotiations in the first half of the 1990s. It was one of the topics selected for the multilateral Working Groups established in Madrid. The Working Group on Water Resources met on a regular basis between 1992 and 1996. These multilateral negotiations advanced a common understanding for future water management in the region. The forum issued a ‘Water Declaration’, which stated the intention to cooperate on water matters and to develop new water resources for the region. It was within this context that Palestinian water rights were discussed for the first time.

173 Rouyer, Turning Water into Politics, 183.
174 UN Convention on International Water Courses: Article 8: “1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse. 2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.”
175 Rouyer, Turning Water into Politics, 184.
176 The Oslo II water agreement, as we will see below, followed the Israeli interpretation as outlined by Benvenisti and Gvirtzman in 1993. They argued that firstly, human conditions, actual needs of the communities that depend on the water, take precedence of the analysis of the properties of the basin. Secondly, among human conditions it is past and existing use that is given precedence at the expense of potential uses; Benvenisti(Givrtzman, Harnessing International Law to determine Israeli-Palestinian Water Rights, 547-550.
177 Rouyer, Turning Water into Politics, 197. They defined four topics for cooperation: enhancement of data availability, water management and conservation, enhancement of water supply and concepts of regional cooperation and management.
179 Rouyer, Turning Water into Politics, 198.
Besides these official negotiations, experts and academics with Arab and Israeli backgrounds convened in the framework of ‘second track diplomacy’. In the IPCRI roundtable discussions, academics and professionals from both sides came together and discussed the Israeli-Palestinian conflict. The meetings on water reviewed technical solutions for the shared aquifers. Additionally, the first ‘Israeli-Palestinian International Academic Conference on Water’ was held in Zurich Switzerland in 1992. The process initiated in Zurich was continued with a joint Israeli-Palestinian research program starting in 1993. The main goal was to identify and structure joint management systems for the shared aquifers in the West Bank. This was a rather undeveloped field of research at that time. The meetings improved the exchange of information and assisted the negotiators in the peace process on both sides. Feitelson argues that this academic process had an impact on the real negotiations by introducing the idea of joint management. As a follow up to these initiatives, a conference with the title ‘2nd Israeli-Palestinian International Conference on Water for Life in the Middle East’ was held in Antalya Turkey in 2004. The experts, around 200 water scientists from 25 countries including 120 Israelis and Palestinians, came to the conclusion that cooperation could improve the situation on the ground. IPCRI argued that the water conflict can be solved despite the tensed overall political situation at that time: “Technological, regulatory and political solutions exist and need not to wait until a comprehensive peace agreement is reached to be applied.”

The 1993 D.O.P., which were a result of second track diplomacy, had several paragraphs on water. The main intention was the preparation of future cooperation on water resources

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180 Letter No. 8: Letter from Baskin and al Qaq addressed to general public.
181 Jad Isaac: personal conversation, 25.01.2012. According to Isaac, these meetings were better than the Oslo II negotiations, since both sides were on equal footings. The power relations between the parties would not have impacted these apolitical discussions. While the Palestinian professionals would have been the same people as in the negotiations, the Israeli side would have changed the personnel for the Oslo II negotiations.
182 The following books contains the proceedings of the conference as well as articles on various topics Isaac, Jad/ Shuval, Hillel (ed.): Water and Peace in the Middle East. Proceedings of the First Israeli-Palestinian International Academic Conference on Water, Zurich, Switzerland, 10-13 December 1992, Amsterdam, Elsevier 1994.
183 In early 1993 the Palestine Consultancy Group and the Truman Institute for the Advancement of Peace of the Hebrew University of Jerusalem started a research program together with the International Development Research Center (IDRC) and the CRB Foundation. These independent research groups were joined by experts with current or past experience at the top level of water administration in Israel and the Palestinian Territories. The process and main structure of the research program is described in the following booklet: Feitelson, Eran/ Haddad, Marwan: Identification of Joint Management Structures for Shared Aquifers. A cooperative Palestinian-Israeli Effort.
184 The fact that former Israeli official Shaul Arlosoroff and official Palestinian Taher Nasseredin participated, would have increased the legitimacy of these meetings. Feitelson: personal conversation, 25.04.2012.
185 The Conference was concluded with the following Declaration: “We two hundred participants in this Israeli-Palestinian International Conference … complete our conference with a sense of optimism. It is clear that the Palestinian and Israeli participants, along with their international partners remain committed to solving the many challenges associated with water quantity and quality in our region. … We recommend that the governments of the region and the international community undertake a commitment to support the development and implementation of collaborative work … to ensure equitable utilization of the water resources among all the riparians … with priority given to meeting vital human needs.”; Shuval/Dweik, Water Resources in the Middle East, V.
between the Israelis and Palestinians. However, it was fiercely criticized by both sides. While the Palestinians argued that water rights were not discussed enough in the agreement, the Israelis stressed their security concerns. The Gaza-Jericho Agreement of May 4, 1994 transferred authority from the Israeli military government and its Civil Administration to the Palestinian Authority in matter of water and sewage for the Gaza Strip and the Jericho area.

The Interim Agreement of 1995 was the most important bilateral legal treaty on the water issue. It was a provisional agreement with guiding principles for the water management during the interim period. There are several provisions regarding water in Article 40 of Annex III under the title of ‘Water and Sewage’. The Oslo II water agreement is the basis for the current water negotiations as well as focal point of the various discourses on the water conflict. The most contentious point is the initial paragraph on the Palestinian water rights:

“This Israel recognises the 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.”

The main question is if it gave the Palestinian population a new entitlement to water resources in the West Bank. Cahill-Ripley argues that this provision is not drafted in terms of an individual right to water, but rather a collective right of the Palestinians as a people to the usage, control and ownership of the water resources within the West Bank. Scobbie puts forward that the Palestinian people were already entitled to collective water rights beforehand. The doctrine of permanent sovereignty would give the displaced sovereign, the Palestinian population, the entitlement over the control of natural resources. The agreement transfers responsibility for water resources to the PA for that part of the West Bank water and sewage infrastructure that is solely serving the Palestinians population. But the issue of ownership is not addressed and delayed to the permanent status negotiations. Also all the provisions

187 D.O.P.: Article VII (4) on the ‘Interim Agreement’ states that: “In order to enable the Council to promote economic growth, upon its inauguration, the Council will establish … a Palestinian Water Administration Authority…”. Furthermore, Annex III the ‘Protocol on Israeli-Palestinian cooperation in economic and development programs’ declares in paragraph 1 that “Cooperation in the field of water, including a Water Development Program prepared by experts from both sides, which will also specify the mode of cooperation in the management of water resources in the West Bank and Gaza Strip, and will include proposals for studies and plans on water rights of each party, as well as on the equitable utilization of joint water resources for implementation in and beyond the interim period.”.

188 Rouyer, Turning Water into Politics, 199-200.

189 Cairo Agreement: Annex II, Article II. B, Paragraph 31 (a): “All water and sewage (hereinafter referred to as "water") systems and resources in the Gaza Strip and the Jericho Area shall be operated, managed and developed (including drilling) by the Palestinian Authority, in a manner that shall prevent any harm to the water resources.” In: Agreement on the Gaza Strip and the Jericho Area, May 4, 1994.

190 This part of the Interim Agreement will henceforth be called ‘Oslo II water agreement’.

191 Interim Agreement: Article 40.1, Annex III, Interim Agreement.


193 Scobbie, H2O after Oslo II, 104. See also Chapter 5.

194 Oslo II water agreement: Art. 40.4, Annex III, Interim Agreement: “The Israeli side shall transfer to the Palestinian side powers and responsibilities in the sphere of water and sewage in the West Bank related solely to Palestinians, that are currently held by the military government and its Civil Administration…”

195 Oslo II water agreement: Art. 40.5, Annex III, Interim Agreement: “The issue of ownership of water and sewage related infrastructure in the West Bank will be addressed in the permanent status negotiations.”
on Palestinian future needs, as discussed below, have no prejudice on the water rights. They do not qualify nor quantify the water rights of the Palestinian population and should only be seen as provisional arrangements. Hence, the Oslo II water agreement did not establish any water rights. However, as long as the agreement is valid or no other agreement is signed, the Palestinians have no legal basis for their water demands. The Oslo II agreement prevails over other rules of international law, since it specifically regulates the bilateral Israeli-Palestinian relationship regarding water. Appendix III contains a schedule 10 where the allocations of the three sub-aquifers were defined.

The main goal of the agreement was to initiate cooperation and to accelerate the development of additional water resources. Article 40.2 states that “both sides recognize the necessity to develop additional water for various uses.” Article 40.6 estimates that the future Palestinian water needs should be between 70 and 80 mcm/y and Article 40.7 contains the provision to make available to the Palestinians an additional quantity of 28.6 mcm/y during the interim period. The development of these additional water resources should be achieved through joint management and mutual cooperation. Article 40.3 defines the goal that “both sides agree to coordinate the management of water and sewage resources and systems in the West Bank during the interim period”. This paragraph legalizes the existing situation and therefore refers to the principle of ‘historic use’. Article 40.11 foresees the establishment of the Joint Water Committee and Article 40.20 defines the aspects of cooperation in the field of water and sewage.

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196 Oslo II water agreement: Article 40.8: "The provisions of paragraphs 6-7 above shall not prejudice the provisions of paragraph 1 to this Article."
198 The Palestinian existing and future allocations were defined in the following way: Eastern Aquifer- 54 mcm existing use and 78 mcm additional quantities to develop; North-Eastern Aquifer- 42 mcm existing use; Western Aquifer- 22 mcm existing use. The main emphasis lies on the additional quantities to develop in the Eastern Aquifer. The agreement did not agree upon additional quantities for the Palestinians from the North-Eastern or Western Aquifer.
199 Oslo II water agreement: Article 40.2, Annex III, Interim Agreement.
200 Oslo II water agreement: Article 40.7 lists in detail the obligations to develop additional resources for both sides.
201 This goal is specified with the following principles. Oslo II water agreement: Article 40.3: “…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, b. Preventing the deterioration of water quality in water resources, c. Using the water resources in a manner which will ensure sustainable use in the future, in quantity and quality, d. Adjusting the utilization of the resources according to variable climatological and hydrological conditions, e. Taking all necessary measures to prevent any harm to water resources, including those utilized by the other side, f. Treating, reusing or properly disposing of all domestic, urban, industrial an agricultural sewage, g. Existing water and sewage systems shall be operated, maintained and developed in a coordinated manner, as set out in this Article, h. Each side shall take all necessary measures to prevent any harm to the water and sewage systems in their respective areas, i. Each side shall ensure that the provisions of this Article are applied to all resources and system, including those privately owned or operated, in their respective areas.”
202 Stephan, Legal Framework of Groundwater Management in the Middle East, 298. This principle is expressed in the Helsinki Rules: Article V (II): “Relevant factors which are to be considered include, but are not limited to: … 4. The past utilization of the waters of the basin, including in particular existing utilization …”
203 Appendix III of the Oslo II water agreement contains Schedule 8, which regulates the working of the JWC. It is stated that the agreed upon quantities in Schedule 10 constitute the basis and guidelines for the operation and decisions of the JWC.
The terms and conditions of the agreement were rather drafted in the theoretical framework of water needs and not in the legal language of water rights. Overall, one can argue that the negotiators left a deliberate amount of ambiguity in order to conclude the agreement. Many provisions are unclear. Besides many advantages of such ambiguity, it can also turn destructive during the process of the agreement implementation. This has been the case during the Intifada and since the recent change in the PWA leadership.

This chapter has demonstrated that the Oslo II water agreement constitutes the most important legal provision. The agreed upon water allocation quantities of the Mountain aquifer render all Palestinian water rights claims invalid. Israel has no obligation to concede more water as long as no other treaty is signe. Furthermore, the treaty is in line with most of the principles stated in the Helsinki Rules/Seoul Rules. Both parties generally agreed to establish a joint management mechanism and to cooperatively develop additional water resources in the West Bank. This was accompanied by various second track initiatives, which supported the general spirit that was based on mutual understanding and aimed at technical cooperation in order to improve the situation on the ground.

7. Developments since Oslo

Some scholars question the extent to which the Oslo water accords materially changed things on the ground. The goal of this chapter is to show the institutional changes emanating from Oslo while the last chapter outlined the legal alterations and the following chapters will analyze the discursive shifts.

After the PNA was established it started to build an institutional framework for the governance of the water sector. The Palestinian Water Authority (PWA) was established in 1994 by Presidential Decree No. 90. It was accompanied by a Water Law No. 2 in 1996, which defined its institutional structure as well as its mandate. Meanwhile, Israel started to separate the water networks in the West Bank. The responsibility for all purely Palestinian

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204 Fischhendler, *When Ambiguity in Treaty Design Becomes Destructive*, 111-116. He shows a caste study of the Israeli-Jordanian agreement, where the ambiguity turned negative at several points.

205 The influence of political shifts on the negotiation process will be discussed in Chapter 12.

206 Jan Selby argues that the Oslo Accords were not the ‘major breakthrough’ as it was depicted by the international community at that time. He argues that the negotiations did not lead to any significant transfer of power. It was rather a transfer of power from Palestinian ‘insiders’ to PLO ‘outsiders’, a transfer of some burdens of the occupation from Israel to the PA and the international donor community and the construction of extra layers of bureaucracy. He calls this process “dressing up domination as ‘cooperation’”; Selby, *Dressing up Domination as ‘Cooperation’: The Case of the Israeli-Palestinian Water Relations*, 2003 & Selby, *Water, Power and Politics in the Middle East. The Other Israeli-Palestinian Conflict*, 2003.


208 The institutional structure of the PWA has four levels: policy-making, organizational, operational and regional. The functions of the authority include issuing of licences, utilizing water resources, studying water and sewage projects, rehabilitating and developing water departments in order to provide water to all districts. It is furthermore responsible for overseeing well drilling. However, it does not drilling new wells or building infrastructure; AMAN Report, 2008, 2-3.
installations was handed over to the PA and the newly established PWA.\textsuperscript{209} The purely Israeli infrastructure and the mixed installations remained within Israel’s responsibility. Furthermore, started to disconnect the Jewish communities from the predominantly Palestinian water networks and handed those over to the PA.\textsuperscript{210} This gave the PA the chance to develop and improve its own water infrastructure within the scope of the JWC framework.

In 2002, the Palestinians issued a Palestinian water law.\textsuperscript{211} This law entrusted the PWA with the role of the supervisor and regulator, but did not grant them operational tools. Infrastructural development was concomitantly undertaken by the PWA, local authorities and civil society organizations.\textsuperscript{212} The vagueness of the legal situation gave room for corruption and mismanagement. The financially and institutionally strong communities profited from the situation and advanced their water sector. The peripheral communities were further weakened, which aggravated their water infrastructure.\textsuperscript{213}

The Israeli decision making process became equally complex. The water system was managed by the Water Commissioner until 2007. Since then, water management was conducted by the Israeli Water Authority (IWA). The head deputy of the IWA is also the current Israeli negotiator in the JWC.\textsuperscript{214} He is subject to the authority of the Minister of Agriculture or Minister of Infrastructure, depending on the political coalition in power. On this level official policy formation is designed. Mekorot is maintaining and supplying most of the water and Tahal is determining the planning policy. Water consumers, ultimately, are represented by the Water Council.\textsuperscript{215}

In the bi-lateral context the cooperation envisaged by the Oslo water agreements did not flourish as expected. The main instrument to implement the water agreement was the Joint Water Commission (JWC), which had the task to supervise and implement projects within the West Bank and the Gaza Strip. It had four sub-committees, which were responsible for specific issues.\textsuperscript{216} After a promising start with relatively frequent JWC meetings, the

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\textsuperscript{209} The PWA has been formally established in April 1994; http://www.pwa.ps/DesktopDefault.aspx?tabID=1\&lang=en [June 1, 2012].

\textsuperscript{210} Gvirtzman, The Israeli-Palestinian Water Conflict, 7.

\textsuperscript{211} Its principle goal is to develop and manage the water resources, increase their capacity, improve their quality and preserve and protect them from pollution and depletion. Furthermore, it declares the water resources in Palestine as public property and subordinated all water and wastewater projects to an approval of the PWA; Stephan, Legal Framework of Groundwater Management in the Middle East, 298-299.

\textsuperscript{212} Document No. 16: Water Sector Reform Program.

\textsuperscript{213} The dynamics between the internal Palestinian pressure groups will be discussed in the last part of this paper.

\textsuperscript{214} Yossi Dreizin: personal conversation, 01.02.2012 & 22.04.2012.

\textsuperscript{215} Soffer, Mapping Special Interest groups in Israel’s Water Policy, 1-2.

\textsuperscript{216} The Hydrological Committee, the Engineering Committee, the Sewage Committee and the Pricing Committee. Schedule 8 of Appendix III states that the JWC will work with the agreed upon quantities: “It is understood that the above-mentioned Schedule 10 contains average annual quantities, which shall constitute the basis and guidelines for the operation and decisions of the JWC.”
cooperation slowed down with the advent of the Second Intifada in September 2000. Nevertheless, it met constantly throughout the periods of intense clashes and in 2001 both sides signed an agreement to keep water out of the vicious cycle of the conflict. Even in situations of combat during the Operation Defensive Shield the cooperation in water matters continued. Nevertheless, Palestinian scholars and officials argue that the JWC is a discriminatory institution that prevents the Palestinians from developing their water sector.

The Oslo II water agreement estimated the Palestinian future needs with 70-80 mcm/y in addition to the existing use of 118 mcm/y, which amounts to around 200 mcm/year. The Palestinian water consumption amounted to 178 mcm/year in 2006. Thereof 132 mcm/y was self-supplied and 46 mcm/y was purchased from Israel. Hence, the current situation by far exceeds the additional water supply that was agreed upon for the interim period, 28.6 mcm/year, and reaches almost the estimated future needs. The goals of Oslo have been reached regarding the quantities supplied to the Palestinian population.

However, the internal institutional failures on the Palestinian side as well as the unsuccessful cooperation created water shortages in the West Bank. In particular the marginalized population is suffering from this situation, which constitutes a human rights violation. The remainder of this chapter will briefly summarize the conclusions of several reports from both sides on the water situation. It will then compare the situation to the normative content of the right to water as defined in the CESCR General Comment No. 15.

The analysis will focus on the domestic use of water, since this is given priority in GC 15.

The first measurement is the availability of water. The different reports show a domestic consumption rate between 50 L/c/d and 107 L/c/d.

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217 World Bank Report, 2009, 48-49. Since the first meeting in November 1995 the Committee has met around 60 times. Whereas the meeting took place up to ten times a year in the beginning it is only meeting around three times a year since 2002.
218 Document No. 1: Joint Declaration: The heads of both sides of the JWC, Noah Kinany and Nabil El-Sherif, signed the ‘Joint Declaration for Keeping the Water Infrastructure out of the Cycle of Violence’. It says that “the Israeli and Palestinian sides view the water and wastewater sphere as a most important matter and strongly oppose any damage to water and wastewater infrastructure.” Additionally, it states that “both sides wish to take this opportunity to reiterate their commitment to continued cooperation in the water and wastewater spheres.”
219 When IDF tanks were attacking Arafat’s siege (Mukata) they broke a major water pipeline inside Ramallah. This caused a major loss of water flowing out into the streets. The IDF facilitated the water department of the municipality of Ramallah to fix the water pipe while the fighting was going on; Baskin, personal interview.
220 Section III discusses the existing discourses on the JWC negotiations framework.
221 Gvirtzman, The Israeli-Palestinian Water Conflict, 30.
222 The CESCR defined the ‘right to water’ with three main elements that should apply in all circumstances; availability, quality and accessibility. (paragraph 12). According to GC 15, States have an obligation to respect the right to water, to protect this right and to give it effect. The obligation to respect includes not only a prohibition of interference in the exercise of the right, but also an obligation to prevent third parties from doing so. Furthermore, States are obliged to combat discrimination in access to water. Finally, they also must respect the right to water in other countries; Golay, The Right to Water, 9-10.
223 General Comment No. 15 (2002), Paragraph 6: “… priority in the allocation of water must be given to the right to water for personal and domestic uses”; see also: Paragraphs 7-9.
224 General Comment No. 15 (2002), Paragraph 12.a: “The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food...
for the Palestinian domestic per capita consumption is explicable with the differing estimations of the Palestinians living in the West Bank. All the reports demonstrate that the consumption rates reveal regional differences between rural and urban areas as well as between the different regions of the West Bank. The WHO guidelines consider a consumption rate above 100 L/c/d as “optimal access”. The figures suggested from the Palestinian NGO would still fall under the category of “intermediate access” according to WHO standards. The minimum quantity to sustain life is defined at 50 L/c/d. One has to mention that the reliance on purchased water from Mekorot has increased in the last decade. The overall purchase from Mekorot in the West Bank increased from 22 mcm in 2000 to 38 mcm in 2007. However, the factor of availability is overall met if one includes the water purchases from Mekorot. Nevertheless, the peripheral population in the rural areas as well as in the Southern and Northern West Bank and in particular the small part of the Palestinian population residing in area C do live on the margin according to WHO guidelines.

The overall water quality in the West Bank is very bad due to the low rate of wastewater treatment, which is aggravating the groundwater quality. Furthermore, as the World Bank Report has shown spring and tank water show evidence of contamination.
The factor of accessibility has four dimensions, which need to be analyzed separately. The first aspect of physical accessibility is overall met, since at least around 90% of the population is connected to running water. However, also here the most marginalized groups are excluded and do not have an adequate access to water. The second aspect of economic accessibility is more disputed. The most debated point is the water that Mekorot sells to the Palestinian population. While the Palestinian population argues that the prices for purchased water are too high, Israel claims that it is sold at the real cost of production. As the World Bank Report has demonstrated, the overall costs for water are reasonable, but the low income households spend an extraordinary amount for water. The third point on non-discrimination is more clear, since there is a stark difference in access to water between the different parts of the Palestinian population.

Therefore the normative content of the ‘human right to water’ concerning the domestic use of water is overall and generally met. However, it is not guaranteed for the marginalized strata of the Palestinian society. These people are mainly living in rural areas, predominantly in the Northern or Southern region of the West Bank and particularly in area C. It is these groups, which are suffering the most from the consequences of the ongoing Israeli-Palestinian water conflict.

### III. Discourses on the water conflict

#### 8. Discourse and Water

The present section will discuss the creation, evolution and dissemination of various perspectives on the Israeli-Palestinian water conflict. The interrelation between the different discourses is affecting the negotiation process.

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233 General Comment No. 15 (2002), Paragraph 12.c I-IV. Here only the first three will be analyzed due to the information available.

234 The PHG Report states that the water network is covering 65 to 90 % of the Palestinian Territories. The World Bank Report estimates the proportion of the population with no access to a network at around 10%. Nevertheless, the system lacks an equitable distribution among the different communities and there is a distinct split among rural and urban communities. The municipalities in area A, such as Jericho, Ramallah and East Jerusalem have a coverage rate around 83%, whereas the northern and southern areas, Jenin, Tubas, Tulkarem, Nablus, Qalqilya and Salfit have a coverage rate around 53%; PHG Report, 2007/2008, 42-43. The most recent Israeli studies indicate that by March 2010 more than 96% of the Palestinian population was connected to a running water network; Gvirtzman, The Israeli-Palestinian Water Conflict, 9.

235 The PHG Report has analyzed the cost of accessing a water supply in the Palestinian Territories. The West Bank and Gaza Strip residents have respectively spent an average of 6.1 and 11.6% of their monthly household budget, PHG Report, 2007/2008, 54-58. The World Bank Report qualifies the domestic tariffs for network supply as reasonable. Nevertheless, the low income level households have an expenditure of about 8% of their household income, which is double the standard of 3.5% recommended by UNICEF/WHO; World Bank Report, 2009, 21: “Generally, water supplied through the domestic network costs consumers around NIS 4/m³, and people find this fair.”. Furthermore, one needs to take into consideration that average cost recovery rate for network supply in the West Bank and Gaza is around 50%. Hence, many people do not pay their water bills. These are directly paid by the PA to Mekorot; World Bank Report, 2009, 21. This constitutes a problem for the financial household of the PA as a political entity, but not for the individual ‘right to water’ of the Palestinian population.

The dichotomy between cooperation and conflict is at the core of the Israeli-Palestinian water negotiations, discussed in the language of technological advancement and territorial sovereignty. It is impossible to find a solution for the water scarcity in the region without technological progress, but no technological agreement can be implemented without political consent. Thus, technological proposals have a political dimension. As Cronon writes, scientific knowledge is produced through narratives:

“When we describe human activities within an ecosystem, we seem always to tell stories about them. … We do so because narrative is the chief literary from that tries to find meaning in an overwhelmingly crowded and disordered chronological reality. When we choose a plot to order our environmental histories, we give them a unity that neither nature nor the past possesses so clearly. In so doing, we move well beyond nature into the intensely human realm of value.”237

He further argues that a narrative is always excluding some parts of reality in order to hide discontinuities or contradictions. A scientific narrative sanctions some voices and silences others.238 Knowledge production does not only present a limited part of reality, but it also tries to change this reality. In a contentious situation, opposing groups with vested interests try to change the reality by packaging a certain narrative as political consent.239 This is accomplished through the promotion of a discourse. Discourses are not a mere representation of the real world, but a projection of an imaginary world. They are instruments by which people relate to each other.240 The role of discourses in social relations is best described by Foucault. He stated the following in his inaugural lecture at the Collège de France:

“… in every society the production of discourse is at once controlled, selected, organized and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality.”241

Foucault defines three rules of exclusion that limit the dissemination of thoughts and discourses. Prohibition, the distinction between reason and folly and the distinction between true and false. He argues that the latter is the most important, since “the will to knowledge … tends to exercise a sort of pressure, a power of constraint upon other forms of discourse.”242 Authors who produce knowledge are holding a function in a specific system and do not necessarily express their free will. In other words, discourse is a form of non-coercive power that limits the room for maneuver for an individual. In the present world an author needs to claim to present the truth.243

237 Cronon, A Place for Stories, 1349.
238 Cronon, A Place for Stories, 1349-1350.
239 Zeitoun, Power and Water in the Middle East, 40-41.
240 Fairclough, Analysing Discourse, 124.
241 Foucault, Orders of discourse, 8
242 Foucault, Orders of discourse, 11.
243 The main rules for the subjection of discourse are verbal rituals, reproduction of discourse, doctrinal groups and social appropriation; Foucault, Orders of discourse, 14-19.
Both sides claim to present the truth based on scientific knowledge. The crucial question is whose discourse is more powerful. The power by which some discourses dominate others can be called discursive power. Charles Tripp names it a sanctioned discourse.\textsuperscript{244} The dominance of one discourse leads to an exclusion of other discourses and viewpoints that stand outside the realm of the dominant or sanctioned discourse. Zeitoun argues that it is always the most powerful party who sanctions the discourse and ultimately defines the policy making. In this case it would be Israel who promotes the dominant discourse.\textsuperscript{245} The goal of this present paper is to challenge this notion. While it was Israel who sanctioned the content of the Oslo II water agreement, it is the Palestinian side who sanctions the current international discourse on the Israeli-Palestinian water conflict.

9. Israeli Discourses

Early Israeli discourses on water had always an ideological element. In the direct aftermath of Israeli independence, the Zionist ideology of the Yishuv period continued to coin the internal Israeli water discourse. Policy makers at that time gave priority to rural settlement and agricultural development.\textsuperscript{246} This led to large infrastructural investments in the water sector, including the above mentioned National Water Carrier.\textsuperscript{247} The prominence of water issues in national politics was further intensified by the conflicts with Syria in the 1950s and 1960s, which were presented as confrontations over water and security.\textsuperscript{248} Therefore, the public discourse evolved around nation-building and depicted water as an essential component of national security.\textsuperscript{249}

With the general shift from the early Zionist ideology to the ideal of individual welfare the standard of living rose and domestic water consumption increased.\textsuperscript{250} The growing water needs could no longer be met by the existing water resources within the political boundaries of the State of Israel.\textsuperscript{251} Due to economic considerations water was diverted from agriculture to the domestic sector. Therefore, the agricultural sector needed to increase the efficiency of

\textsuperscript{244} Quoted from Allan, \textit{The Middle East Water Question}, 183.
\textsuperscript{245} Zeitoun, \textit{Power and Water in the Middle East}, 42-44.
\textsuperscript{246} Already Herzel envisioned the development of water resources as one of the pillars of the new Jewish state. Feitelson names four reasons why rural settlement and agricultural development were important at that time. Firstly, it was an effective way to establish control over land. Secondly, it helped to absorb the mass immigration. Thirdly, it was a way to supply the burgeoning population with food and finally it was part of the Labor-Zionist ideology; Feitelson, \textit{Implications of shifts in the Israeli water discourse}, 299-300.
\textsuperscript{247} Feitelson, \textit{Implications of shifts in the Israeli water discourse}, 300. For the discussion of the National Water Carrier, see Chapter 4.
\textsuperscript{248} There were clashes with Syria in 1951 over the Huleh drainage project, in 1953 over the beginning of the diversion work for the National Water Carrier and in 1965-66 over the Syrin diversion plan; Feitelson, \textit{Implications of shifts in the Israeli water discourse}, 301.
\textsuperscript{249} Feitelson, \textit{Implications of shifts in the Israeli water discourse}, 301.
\textsuperscript{250} Soffer, \textit{Mapping Special Interest Groups in Israel’s Water Policy}, 1.
\textsuperscript{251} At that time, policy makers rejected seawater desalination as a solution due to its high cost; Feitelson, \textit{Implications of shifts in the Israeli water discourse}, 301-302.
its water usage in order to continue its development.\(^{252}\) The policy shift from the expansion of water resources to a re-allocation of existing resources became evident by the mid 1960s.\(^{253}\) However, Israel experienced concomitantly an increase of available freshwater resources after the 1967 war.\(^{254}\)

In the early 1990s, when water was a central topic in the bilateral as well as multilateral peace negotiations, water security was again part of the public discourse. An exceptional drought in 1990/1991 intensified the fear of water scarcity and insufficient future water supply.\(^{255}\) Since then, the Israeli water discourses experienced a fragmentation along different interest groups.

The circles that oppose the principles outlined in Oslo see the water issue as a *zero-sum* game. This perspective is called *hydro-nationalism*, which basically demands the continued occupation of the West Bank due to the geo-strategic importance of water.\(^{256}\) Proponents of such theories argue that if Israel would withdraw from the Golan Heights and the West Bank, it would lose control over the headwater area (concerning the Jordan River Basin) and recharge area (concerning the Mountain Aquifer), which are two out of the three main water sources. Hence, water could become again a source of conflict.\(^{257}\) Frisch emphasises the nexus between land and water:

“The basic problem facing Israel is that the continuation of the peace process will almost inevitably lead to deterioration in Israel’s control over present water resources, and most probably to considerable reductions in the amounts of water it will be able to draw. The water issue is therefore comparable to the more central issues of control of land and space. … the peace process inevitably means major concessions over the amounts of water Israel will be able to use as well as decreased assurance that they will, in fact, be forthcoming.”\(^{258}\)

Hence, cooperation would not be a substitute for real negotiations about the control over water resources.\(^{259}\) This discourse demands a re-allocation of the freshwater resources to the benefit of Israel.

However, it is declining and continuously marginalized by the official sanctioned Israeli discourse that supports cooperation on the basis of Oslo. Cooperation is seen as a panacea for all the current issues. Baruch Nagar\(^ {260}\) emphasizes the validity of the Oslo II water agreement

\(^{252}\) Feitelson, Implications of shifts in the Israeli water discourse, 301-302.
\(^{253}\) Feitelson, Implications of shifts in the Israeli water discourse, 356.
\(^{254}\) Feitelson, Implications of shifts in the Israeli water discourse, 302. With the conquests, Israel gained control over most of the contested water sources.

\(^{255}\) Feitelson, Implications of shifts in the Israeli water discourse, 305-306.
\(^{256}\) Trottier, Hydropolitics, 11.
\(^{257}\) The arguments are summarized by Feitelson; Feitelson, The ebb and flow of Arab-Israeli conflicts, 352.

\(^{258}\) Frisch, Water and Israel’s National Security, 7. A similar view is presented by Soffer: “… Israel at this stage has agreed to recognize only ‘rights to quantities’ but not Palestinian control of it. Territorial compromise in respect of the aquifers will be of great importance in determining the border between Israel and the Palestinian Authority. It is not by chance that the location of most Jewish settlements on the West Bank is on land over the western aquifer.”; Soffer, The Israeli-Palestinian Conflict over Water Resources, 5.

\(^{259}\) Frisch, Water and Israel’s National Security, 11-12.
\(^{260}\) Baruch Nagar is the current head of the IWA.
and the aptitude of the JWC to advance the Palestinian water sector: “Since 1995, hundreds of projects were approved by the JWC, some of which were not yet implemented. The very few which were not approved were in clear contradiction to the water agreement.”  

In Israel’s view, the JWC is working according to the agreement. In the Israeli response to the World Bank Report it is argued that all of the Palestinian requests for drilling in the Eastern Aquifer have been approved and that the quantity of approved projects in the Northern and Western basin would already exceed the quantity agreed upon in the Interim Agreement. The problem would be that the Palestinians do not implement their projects. While Israel would try to keep the JWC meetings as apolitical as possible, the PWA would increasingly politicize it: “In the last two years, the Palestinian side involves political aspects in JWC decisions, which is against the agreement, and has never happened in the preceding 13 years.” He argues that the issue of water scarcity can be resolved with the existing allocation if water usage efficiency is increased and additional water resources developed. This would only be if political aspects are reduced to a minimum.

Yossi Dreizin furthermore argues that Israel would be willing to conclude a technical and unpolitical final status water agreement. The Palestinian political leadership, on the other hand, would oppose an agreement that is limited to the scope of water issues. They would intentionally aggregate the water issue to other, ‘more significant’, issues. The parties were closest to an agreement in the mid 2000s. In 2004, Dreizin drafted comprehensive plan for the region. The model suggested the transfer of desalinated seawater to the Northern West Bank area and the creation of sewage collection and treatment systems all over the West Bank. The plan received sufficient donor funding and was accepted by the then deputy head of PWA, Fadel Qawash. The endeavour failed ultimately due to Arafat’s opposition. Dreizin also identifies a politicization of the conflict: “… the Palestinians are not really ready to finish the conflict … keeping their people miserable is a way to cope with public opinion to blame Israel for the ‘occupation’.”  

The change from Qawash/Sharif to Attili would have increased the politicization on the Palestinian side.

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261 Baruch Nagar: personal communication, 07.05.2012. The World Bank Report would have considered 82 projects as delayed. Out of these, 39 would be located in area C and 43 in areas A and B. Out of the area C projects, 27 would have received a C.A. permit, 3 would be in the process of issuing a permit, 6 would not have been submitted to the C.A. and 3 would have been refused, since they connected illegal buildings to the water system.

262 Letter No. 9: IWA Letter to World Bank, 2009, section D.

263 Out of 82 approved projects, only 30 were implemented by the PWA. Furthermore, more than 20 well which were approved, have not been drilled or operated by the PWA; Baruch Nagar: personal communication, 07.05.2012.

264 Baruch Nagar: personal communication, 07.05.2012.

265 The whole paragraph: Baruch Nagar: personal communication, 07.05.2012.

266 Yossi Dreizin was a former decision maker inside the IWA.


According to the official position of the Israeli Civil Administration as well as the Israeli Water Authority, Israel is respecting the terms of the Oslo Interim Agreement. The water transfers to the Palestinian exceed the obligations of the Oslo Interim Agreement. On the contrary, it is claimed that the Palestinians are breaching their part of the agreement by allowing the drilling of unauthorized wells and by failing to treat wastewater. The Israeli Civil Administration argues that both sides should develop desalination of seawater and improve water recycling technologies in order to increase the available water resources. The Palestinians would not recognize the benefits of technological solutions:

“... the Palestinians have not yet internalized the idea that a win-win solution to the water scarcity in the region will necessitate an increase in the overall availability of water, conservation, increased efficiency, and substantial upgrading of the entire supply system.”

It is argued that Israel has already implemented these principles and thereby improved its water situation. Israel would be willing to transfer information, technology as well as experience and donor countries would be willing to guarantee the funding.

This general position is supported by Israeli academic circles. Haim Gvirtzman and Arnon Sofer argue that the Palestinian political leadership would be unwilling to cooperate due to political reasons. The Palestinians would refuse to advance the peace process, since they want to reverse the Palestinian acceptance of a Jewish State. They would politicize the water issue by linking it to other issues such as borders and refugees. The rejection to build seawater desalination plants in Gaza and the refusal to connect the Northern West Bank with a pipeline from Hadera would be purely politically motivated. Both projects would be feasible.

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269 According to the “Factsheet: Water in the West Bank”, issued by the Israeli Civil Administration, Israel is supplying the Palestinians with 21 mcm/year beyond its obligation. Document No. 7: C.A. Factsheet, 3.

270 They claim that the Palestinians would have drilled more than 250 wells, principally in the northern West Bank, without an approval of the JWC. And by not treating the wastewater they would contaminate the environment and groundwater, which would also affect Israeli water resources; IWA Report, 2009, 21-23.


272 They outline six principles for a responsible and sustainable management that are in line with the mutually signed Water Agreement: “a. Reduction of water losses and conservation, b. Full exploitation by the Palestinians of the eastern basin in the Mountain Aquifer, c. Treatment of wastewater and reuse of the effluent as well as stormwater for irrigation, d. Desalination of brackish water and seawater for domestic use, e. Cooperation for optimal utilization of all the water sources, adoption of advanced technologies and management techniques, f. Concerted regional efforts to increase the total quantity of available water.” They argue that the implementation of the first three activities (a.-c.) would double the total quantity of water available for Palestinian domestic use; IWA Report, 2009, 28-29.


274 Professor Haim Gvirtzman is an Israeli scholar of Hydrology at the Institute of Earth Sciences at the Hebrew University in Jerusalem where he has a teaching position since 1991.

275 Professor Arnon Sofer is an Israeli scholar of Geography at the Department of Geography at the University of Haifa. He was a member of the Military Delegation to the peace process between 1993 and 1995.

276 Gvirtzman: personal communication, 22.03.2012: “They [the Palestinians] refuse to accept the donation of seawater desalination plant from the USA, and insisted to get water to Gaza from the Mountain Aquifer. Also, they refuse to get donations for building sewage treatment plants for many cities, even though they could get from these plants a lot of water for irrigation. Both refusals stems from political reasons.”

277 Gvirtzman argued that the Palestinian political leadership refuses to cooperate, “because they want the Jewish State to disappear from the Middle East”; Gvirtzman: personal communication, 22.03.2012. The same position is advanced by Arnon Sofer. He states that “the Arab-muslim world will never ever will accept a jewish or christian state in this region.”; Soffer: personal communication, 24.04.2012.
and covered with sufficient donor funding. Gvirtzman further argues that the Palestinian development would still be faster than in the rest of the Arab countries. The so-called ‘apartheid system’ would have existed during the Jordanian rule and not now. Since 1967 Israel developed a very dense network of water infrastructure that serves also the Palestinian population.

Eran Feitelson explains why the Israeli officials are downplaying the water transfers to the Israeli public. Israel is currently raising its internal water prices in order to increase the efficiency of the internal water use and in particular to reduce agricultural water consumption. The Palestinian side would play the water transfers down, since they would perceive it as charity that could harm their legal claims for more freshwater from the Mountain Aquifer. He suggests a commodization of water as a mean to depoliticize it. A water needs approach would be the best way to ensure the ‘human right to water’. A combination of supplying the basic human needs and market mechanisms that ensure food security would solve the conflict. Also he confirms the hypothesis that the negotiations became more politicized since Attili became head of the PWA. The politicization would be the core issue of the conflict. The dispute could only be resolved if both sides agree on apolitical negotiations and cooperation.

There are three pressure groups in Israel that support the Oslo cooperation system. The first group wants to increase the availability of water. Agriculture, often executed by kibbutzim and moshavim, is the economic sector that is most dependent on availability of water. The influential agricultural lobby as well as the monopolistic Mekorot are arguing that the population growth will generate an incremental rise of regional demand for water in agricultural as well as domestic spheres. The Ministry of Agriculture tries to supply the agriculture with the largest amount of water possible at the lowest price possible. This lobby is supported by the National Religious Party, which is strengthening the position of

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279 The notion of an ‘apartheid system’ was introduced by French politician Jean Galvany in his report on the issue of water scarcity. This report will be discussed in chapter 11 below.
280 Gvirtzman: personal communication, 22.03.2012
281 Professor Eran Feitelson is an Israeli scholar at the Department of Geography at the Hebrew University of Jerusalem where he has a teaching position since 1990. Together with Professor Haddad he organized the Truman Institute Initiative on Joint Water Management as a second track initiative to the peace process.
282 This approach would have been discussed in academic circles during the last 6 years without any political implementation.
284 Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 10-11.
285 They both had significant influence on Israeli politics, in particular in the past. Soffer shows the tremendous influence of the Minister of Agriculture on water politics in Israel. They were responsible for the implementation of several water laws throughout the 1950s and 1960s. These laws gave the Ministry of Agriculture extensive competencies, including the definitions for the usage of water, its quantity, quality, price and terms of supply; Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 3.
286 Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 3.
religious kibbutz and the Jewish communities. Nevertheless, the influence of the lobbies decreased in the past three decades as the importance of agriculture for the Israeli economy and labour market declined. Mekorot has become more business oriented since the mid 1990s. Legislative changes led to a monopolization and possible over-centralization of its power in determining the future water policy. Their interest is to sell as much water as possible. Therefore, their solution for the water scarcity in the region is simply to produce more water. Meanwhile they support technical solutions such as desalination or waste water technology on both sides.

A second group emphasises the economic aspects of water policy. It is mainly represented by the Ministry of Finance, which is even willing to discuss re-allocation figures with the Palestinians. It is argued that it would be economically beneficial for Israel to concede freshwater resources in the West Bank:

“... Israeli concessions can be measured in economic terms, as they would essentially amount to the difference between the cost of supplying the water forgone and the cost of water produced to substitute for them. This cost differential is relatively small, when compared to the cost of conflicts or the Israeli GDP.”

Hence, the water conflict could be demystified through commodization. Since Israel has transformed into a post-industrialist economy, it can afford to desalinate seawater for domestic consumption and allow itself to concede freshwater to the Palestinians as part of a peace arrangement. In these circles, it is accepted that water should be distributed on an equitable and per-capita basis in order to meet the needs of domestic consumption.

A third group is favouring cooperation due to environmental considerations. Interest groups for domestic consumption as well as industrial production do not necessarily support the development of additional water resources. Their main concern is the future water

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287 Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 8.
288 Feitelson argues that this is in line with the general shift away from the planning ideology that favored agriculture towards the new urban centred planning doctrine. Feitelson, The ebb and flow of Arab-Israeli water conflicts, 357-358.
289 Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 7-8.
291 The Ministry of Finance, who traditionally opposed desalination, supported instead a policy of rising water prices for the agricultural use in order to gain efficiency, Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 4. Feitelson and Rosenthal show that the Treasury changed his position vis-à-vis desalination and is now in favour of it. The main reason is that they want to break the monopoly power of Mekorot by introducing a market liberalization through seawater desalination.; Feitelson/Rosenthal, Desalinations,space and power. The economic logic is firstly stressing that water should be priced at its real cost, including externalities. Secondly, some groups recommend that water trading could improve the efficiency of water allocation. Thirdly, it is argued that the lack of competition in the water supply and wastewater treatment sector is creating inefficiencies; Feitelson, Implications of shifts in the Israeli water discourse, 308.
292 Feitelson, The ebb and flow of Arab-Israeli water conflicts, 358.
293 Baskin argues that the conflictual water of the Mountain Aquifer, the shared Western and North-Eastern Basin, amounts to 371 mcm/y of freshwater and 110 mcm/y of brackish water. If Israel would relinquish all its claims over the West Bank water and substitute it by desalinated seawater, it would cost 413 million $ or 0.67% of Israel’s GNP in 1993. Baskin, The Clash over water. This macro-economic perspective is too simplistic, as we will see in chapter 12, since he does not calculate the loss of storage capacity on the Israeli side in case of a total concession. Furthermore, it simply assumes that with a solution of the water conflict, the costs of the overall conflict would cease to exist.
294 Feitelson, The ebb and flow of Arab-Israeli water conflicts, 361.
295 The technocratic water elite in Israel predicts that within a generation or two, Israeli and Palestinian per capita consumption will converge.; Feitelson, The ebb and flow of Arab-Israeli water conflicts, 359.
quality. It is stressed that the rapid urbanization, over-pumping, widespread irrigation and pollution deteriorate the water quality. Environmental groups argue that water bodies need to be preserved for natural eco-systems. The storage capacity of the shared aquifers can only be maintained if wastewater is treated, pumpage is limited and land use is controlled. These circles support joint management of shared aquifers and cooperation in environmental issues in order to guarantee a good water quality.

This chapter has demonstrated that there is no unified discourse on how to deal with the issue of water scarcity within Israel. The opinions and viewpoints are split along the lines of specific vested interests. Nevertheless, one can observe the tendency that traditional concerns, ideological agriculture and strategic security thinking, are no longer producing the sanctioned discourse. The current predominant Israeli discourse favours cooperation and joint management of the shared aquifers.

Israel was definitely more powerful in the Oslo negotiations and the Oslo II water agreement was drafted to accommodate the Israeli sanctioned discourse. Many Palestinians as well as pro-Palestinian international scholars argue that this bargaining power is a sign of Israeli domination and a continuation of its occupation policy. This paper contests this view by putting forward the argument that the predominant Israeli discourse of cooperation ultimately serves both societies. The issue of water scarcity does not have to be a zero-sum game. A coordinated and sophisticated system of joint water management is economically the most efficient and politically the most feasible way to tackle the water challenges in the region. In the context of the overall Israeli-Palestinian conflict it is difficult to discuss water rights, since they are intrinsically linked to sovereignty over territory. The development of the peace process since the mid 1990s has shown that it is unlikely that the parties will find an agreement on territorial question in the near future. Meanwhile, the situation on the ground is aggravating and especially the marginalized Palestinian population is increasingly suffering from water shortages. Hence, from a human rights perspective it is best to guarantee the accommodation of water needs. This insight is not shared by the confrontational Palestinian discourse. That is the reason why the water negotiations came to a standstill in the last years.

10. Palestinian Discourses

A professional discussion of water issues in the Palestinian Territories was first undertaken by Palestinian NGOs during the 1980s. They filled the void of Palestinian governmental

296 Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 10.
297 Feitelson, Implications of shifts in the Israeli water discourse, 308-313.
298 See discourses of Marwan Haddad and Jan Selby below.
institutions and tried to develop a self-contained Palestinian water sector without interferences from the Israeli military government. These groups were initially supporting a comprehensive water solution:

“The Palestinian-Israeli water dispute could be resolved – but only if the issues of water allocation, water supply and water conservation are addressed as an interrelated whole. Each party’s rights, needs and interests must be met. … In terms of rights, the needs and interests of Palestine must be met …”

Although they mentioned water rights, they supported the idea that the norms of international water law can be achieved through a water needs approach. Hence, not all constituencies of the Palestinian civil society initially reject the cooperation discourse.

This attitude changed the latest since the Second Intifada. Most of the Palestinian civil society actors perceive the Oslo process as an institutionalization of Israeli control over ‘Palestinian’ water and a legalization of the discriminatory resource allocation system established since 1967. This discourse induces water rights by referring to the 1997 UN Convention and its principle of an ‘equitable and reasonable allocation of shared freshwater resources’:

“Palestinians insist to first determine – in accordance with international law – the water rights of both parties and then their respective shares of all shared transboundary water courses … regardless of the available amount of shared groundwater and surface water. On this basis, ways of maximizing existing water resources can be discussed for the benefit of both sides.”

They oppose the premise that freshwater has to be diverted to the domestic sector. Water resources are seen as part of the Palestinian strategic security thinking. With sovereignty over the West Bank water resources, the Palestinians could detach their socio-economic development from Israeli restrictions and develop their agricultural sector. This general view is shared by several Palestinian NGOs.

ARIJ demands as precondition for any negotiations that Israel freezes the ‘settlement’ constructions and removes all the checkpoints. They also demand that the Palestinian control over water resources must be strengthened and that the water diverted to the Palestinian agricultural sector should be increased. They claim not to oppose cooperation in general, but against its asymmetrical character. They suggest a regional, multilateral level of negotiations. Their head, Jad Isaac, criticizes the Palestinian negotiators for their weakness in the JWC negotiations. The Israeli promotion of wastewater technology would be an indirect

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300 Document No. 18: PASSIA booklet, 13.
302 The Applied Research Institute of Jerusalem (ARIJ) was founded in 1990. The declared goal of the organization is sustainable development and increased Palestinian self-reliance through greater control over their natural resources. Official webpage: http://www.arij.org/home.html [15.07.2012]
legitimization of Jewish communities, since all the wastewater projects would be linked to them.\textsuperscript{303}

The PHG\textsuperscript{304} and their head, Abd El-Rahman Tamimi, are completely opposed to the Oslo II water agreement.\textsuperscript{305} It would be a flawed agreement, since it did not settle the issue of control over water and did not talk about the sovereignty over the Jordan River basin. Furthermore, the JWC would not be a good mechanism for joint decision making. That was the reason for the slow development of the Palestinian water sector. The per capita consumption decreased from more than 100 l/c to around 60 L/c since Oslo. He calls for a Palestinian declaration of Oslo’s end, since the interim period would have decayed without a further agreement. The continuation of Oslo would negatively affect the Palestinian future. Control of national and shared water resources would be a necessary precondition for any Palestinian state-building attempts and therefore an imperative element of an eventual future agreement.\textsuperscript{306}

The most radical stance among the Palestinian water NGOs is taken by PARC.\textsuperscript{307} Mohammed, its Deputy General Director, argues that the PWA is obedient to Israel, while PARC would defend the real Palestinian interests. They conduct an active policy against the Oslo agreement. PARC would be one of the few organizations that organize land reclamation projects in area C in order to protect the land from Israeli confiscation. While the Oslo agreement would try to divert all the water to the domestic area, their goal was to keep as much water as possible in the Palestinian agricultural sector. Their lobbying was very successful in the last years. Since the Second Intifada PARC has been increasingly engaged in the national decision making and policy formation process. Furthermore, they were able to convince donors to engage in water projects that challenge the water agreement.\textsuperscript{308}

\begin{footnotesize}
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\item[303] Isaac: personal communication, 25.01.2012. Isaac claims that 9000 settlers would irrigate 64’000 dunums while 2.5 million Palestinians would only irrigate 100’000 dunums of land.
\item[304] The Palestinian Hydrology Group (PHG) was established in 1987. It was founded with the intention to strengthen the Palestinian arguments during the negotiations with data, was sending two staff to the multilateral water negotiations. Their position on water issues is therefore crucial within the Palestinian discourse. It’s declared goal is to improve the access to water and sanitation services and to monitor pollution and climate change in the Palestinian Territories. Official webpage: http://www.phg.org/weare.asp [15.07.2012]
\item[305] Tamimi calls the Oslo agreement as a ‘second Balfour Declaration’, since it would have killed the opportunity to establish and independent Palestinian State. Tamimi: personal communication, 26.01.2012.
\item[306] Tamimi- personal interview
\item[307] The Palestinian Agricultural Relief Committee (PARC) was founded in 1983. The goal from the outset was to bridge the gap between the services that were not provided by civil administration. Water for agriculture was their focus from the outset. Agricultural sector was intentionally ignored by Israel. They have three declared strategic goals: to improve the Palestinian food security and make agriculture more profitable, to enhance the role of civil society organizations and to strengthen the their own role in the national struggle for independence and democracy. Official webpage: http://www.pal-arc.org/index.html [15.07.2012]
\item[308] Mohammed: personal communication, 25.01.2012.
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This radical position is also disseminated by Palestinian academic Marwan Haddad, who was the head of the Palestinian delegation in the negotiations for the Oslo II water agreement. During the negotiations he would have supported Article 40.1 on water rights, while the rest would have been engineered by the late head of the PWA, Nabil Sharif. He criticizes the agreement for that it only regulates water management and not water allocation or authority issues. The transfer of the core issues to the permanent status negotiations was a result of uncertainty on both sides. Neither party was ready for peace. The JWC would constitute a simple continuation of Israeli domination. Israel would implement projects by force, despite a Palestinian rejection thereof. The PWA on the other hand, would be reduced to the function of a service institution, since they needed the Israeli approval for every single project. Israel would ‘occupy’ the Palestinian water resources. They would leave enough water for the domestic sector in order to prevent a humanitarian crisis. Meanwhile, they would freeze the Palestinian agricultural sector and therefore hinder their economic development.

Pro-Palestinian scholar Zeitoun argues that this anti-cooperation discourse is only promoted by agents of the Palestinian civil society. He claims that the PWA is officially supporting cooperation with Israel and accepting their water needs approach:

“Evidence of the commitment of the official Palestinian side to cooperation is the continued PWA presence at the Joint Water Committee, as well as the endorsing of the 2001 ‘Joint Declaration of Protection’ for protecting water infrastructure from armed combat. … Further evidence of an official Palestinian discourse of cooperation is offered by the PWA’s tacit agreement not to go public with any of the coercive behaviour active at the JWC meetings.”

During the rule of Nabil el-Sharif, the sanctioned discourse of the PWA was twofold. Towards the internal Palestinian public all the blame was given to Israel and its occupation. The discourse promoted when dealing with international actors was centred around state building and cooperation in order to secure foreign funding. However, this discourse does no longer exist today. The official position of the PWA has changed since Shaddad Attili became Minister of Water and head of the PWA.

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309 Professor Marwan Haddad is the Director of the Water & Environmental Studies Institute at the An-Najah National University. He was part of the Palestinian negotiation team in the Oslo II negotiations.

310 Haddad: personal communication, 22.01.2012. This would become evident in the water consumption rate of Jewish settlers, which was 4-5 times higher than that of the Palestinians.


312 Zeitoun, *Power and Water in the Middle East*, 79.

313 Trottier, *Hydropolitics*, 164-166. She argues that this has the following consequences: “These two sanctioned discourses have brought about two parallel, legal constructions that remain largely theoretical. One is essentially directed to the exterior and the other to the interior. One is drafted in English, the other one in Arabic. Both largely cater to short-term imperatives: securing the support of international donors in one case and securing the support of local elites in order to ensure that they be loyal to the PA.”
The narrative promoted by Shaddad Attili\textsuperscript{314} is anti-Zionist in nature. He describes the establishment of the State of Israel as the initiation of the water problem in the region. The warfare with the Arab States up to the early 1980s is presented as an endeavour to establish an Israeli water hegemony. The Oslo II water agreement is considered as unjust and as an obstacle for the Palestinian state-building process. Attili stresses its interim character and argues that the agreed upon additional quantities, the future needs, would not be enough to establish a sustainable Palestinian State. He demands a water rights approach and refers to two main international law principles, the principle of permanent sovereignty over natural resources and the equitable and reasonable share of water resources between riparians. The latter would define the former and entitle the Palestinians to a greater share of the West Bank water resources.\textsuperscript{315} Besides the unlawful allocation, the PWA would not be equipped with control capacities. The attempted cooperation would not work, since the JWC does not meet international standards for monitoring bodies of transboundary water systems. He accuses the JWC of being asymmetrical and of delaying or rejecting almost all Palestinian projects. Additionally, most big infrastructure projects have to be done in area C, where they would not get the approval of the Civil Administration. Many projects with sufficient funding could not be implemented due to the discriminatory approval process. This claim was published in a Jerusalem Post Article in June 2011: “… Israel’s use of the JWC essentially to veto and delay Palestinian water projects leaves little to commend it. Israel is interested in domination, not cooperation.”\textsuperscript{316} The PWA claims to eliminate all internal elements of mismanagement with their reform program:

“…This reform will be achieved on the basis of transparency, sustainability and accountability. The PWA must succeed in restructuring our water sector as we have committed ourselves in front of the whole world, and also to our own people, to have capable institutions in place to coincide with our statehood aspirations …”\textsuperscript{317}

Overall, Shaddad Attili argues that the continued Israeli ‘occupation’ is the main reason for the failure to build a sustainable Palestinian water sector. The state institution building process would not be possible under these circumstances. Additionally, Israel would steal Palestinian water:

“Palestinians have far less water, not because of our lifestyles are different, not because we refuse to meet with Israeli officials, and not because climate change has drained our natural water resources. Rather, it is because successive Israeli governments have engineered artificial water shortages throughout the occupied Palestinian territory by stealing water that is rightfully ours, by preventing the PA from developing essential

\textsuperscript{314} Dr. Shaddad Attili is the Minister Head of the PWA since 2008. Beforehand he was a Senior Advisor at the PLO’s Negotiation Support Unit providing advice to the PLO and PA leadership.

\textsuperscript{315} Attili, \textit{Israel and Palestine}, 12-15.

\textsuperscript{316} Attili, Jerusalem Post, 15.06.2011.

\textsuperscript{317} Document No. 16: This reform program started in 2010 and was a reaction to the 2009 World Bank Report on the Palestinian Water Sector. The viewpoint disseminated by the report will be discussed in chapter 11 below.
water infrastructure, and by routinely destroying what little infrastructure we have … until these policies are reversed, solutions for water will remain elusive.”

Attili officially proclaims that he is against the existence of Jewish communities in the West Bank, the continuation of the area C and the construction of ‘the Wall’. He would not accept an ‘unfair’ peace agreement that would lead to an ‘Apartheid State’. Attili changed his own position after he became head of the PWA. In 2007 he co-authored an article that supported joint management:

“…the reallocation of the existing water resources and the development of additional water supplies should be considered in concert. These should be addressed as part of a strategic regional development plan, which should transcend the narrow confines of the interests of any one co-riparian. The most fundamental element of such an approach involves the avoidance of a ‘zero-sum game’… and the generation of a positive-sum outcome for all parties.”

Nowadays Attili is purporting that the water issue is a zero-sum game. The sanctioned Palestinian discourse focuses on political water rights and refuses cooperation without a territorial arrangement. The packing of their political demands in legal language is preventing them from conducting a policy that could enhance the human rights situation for the people living in the West Bank. Paradoxically, it is precisely the insistence of water rights that leads to human rights violations. The current Palestinian political elite is exploiting the water issue by linking it to the overall conflict. Water is used as a weapon to fight the Israeli ‘occupation’. This is done at the expensive of the marginalized Palestinian population who is increasingly suffering from the current situation. Meanwhile, the Palestinian leadership is successfully disseminating their anti-Israeli narrative to the international community.

11. International Discourses

One of the most important actor group that is shaping the discourse on the water conflict is the international donor community. Pro-Palestinian scholar Mark Zeitoun argues that the main donors, in particular the USAID, would reiterate the Israeli discourse and enforce it on the PWA. The analysis of the conducted interviews as well as the main reports on the water situation does show a different picture.

One of the main donors is the World Bank. The widely recognized Sector Note on the Palestinian Water Sector was issued in 2009. The main obstacle for the development of the Palestinian water sector would be besides internal Palestinian mismanagement the Oslo

318 Attili, Jerusalem Post, 15.06.2011.
319 Attili: personal communication, 26.01.2012. The ‘Apartheid system’ is a reference to the French Report on the Water issue, which is discussed in Chapter 11.
320 Phillips/ Attili/ McCaffrey/Murray, Potential future allocations to the co-riparians, 51.
321 Zeitoun, Power and Water in the Middle East, 80-83
regime and the Israeli occupation. This would be threefold. Israel would make unjustified and unilateral decisions in the JWC.\textsuperscript{323} The difficult approval process to receive a permit in area C would hinder Palestinian development and chase donors off. And finally, the physical access restrictions and closures imposed by Israel would be an obstacle for the development of the Palestinian water sector.\textsuperscript{324} According to Iyad Rammal\textsuperscript{325} the World Bank’s goal is to provide the Palestinians with additional water, since the water managed by the PWA would be less than the population needs. All the World Bank projects are in line with the PWA master plans and have received Israeli approval. According to him, Israel was not issuing many permits until 2006/2007 due to several reasons, such as environmental standards or area location. Israel would have changed its policy now by facilitating the establishment of sewage plants, which are mostly built in area C. Hence, the wastewater sector would have been pushed by Israel during the last years. The World Bank would also support the attempts to increase water efficiency in the West Bank. On the one hand, public awareness for water usage would be increased and on the other hand, the benefits of wastewater reuse for the agriculture as well as the national economy emphasized.\textsuperscript{326} Overall, the World Bank is very critical of Israel’s water policy, although it does not directly challenge it.

USAID promotes a discourse which is closest to the Israeli one. According to Charles Esterly\textsuperscript{327} it changed its strategy in the West Bank since 2006. Until then, the USAID mainly helped the PWA to increase the bulkwater supply, supported the drilling of deep wells and enhanced the transmission and storage systems. Since the 2006 elections, it would have additionally supported projects on a municipal scale in cases where no Hamas affiliation was discernable. Since 2010, the USAID would have also increased their engagement in the wastewater sector. The USAID would not yet be engaged in seawater desalination projects, since there would still be more potential for the Palestinians to extract the resources they are entitled to. Esterly is generally in favour of the JWC as a mean during the interim period.\textsuperscript{328} The main problem with the Oslo agreement though, would be its interim character and the

\textsuperscript{323} The World Bank Report is presenting an analysis of the projects discussed in the JWC. It concludes firstly, that the process is in general slow, secondly that the rejection-rate of PA projects is high, thirdly that the PWA has rarely rejected an Israeli project and well drilling and wastewater projects have very low rates of approval The World Bank argues that overall 57\% of the projects, but only 32\% of the well drilling projects are approved. It claims that there are 106 pending Palestinian water projects. As a result, only $ 60.4 million of the $ 121 million of the Palestinian projects by value have been approved by the JWC; World Bank Report, 2009, 47-50.
\textsuperscript{324} World Bank Report, 2009, 47-56.
\textsuperscript{325} Iyad Rammal is EMSP Operations Manager at the World Bank office in East Jerusalem.
\textsuperscript{326} Rammal: personal communication, 16.01.2012. The reason why the only wastewater treatment plant in al-Bireh would not have been utilized sufficiently, was the lack of awareness.
\textsuperscript{327} Charles Esterly is Senior Engineer and Projects Manager in the Water Resources and Infrastructure Department of the USAID in Tel Aviv. According to him, USAID is the biggest financial supporter of the PWA.
\textsuperscript{328} The biggest problem would be that all agenda points are tight together, which would make the approval process more difficult. The long approval process would hinder the efficiency of the USAID development activities. Esterly: personal communication, 31.01.2012.
fact that there is not as much water available as presumed in the agreement. Only with new and better cooperation it would be possible to solve the problem of water scarcity in the region.329

The European Union, according to Abdelkarim Yakobi,330 was first only involved in the multilateral working groups by enhancing the data available to both sides. In a second phase, which never materialized, the engagement should have led to an improvement of cross-border shared water management. But the cooperative climate would have changed after the outbreak of the Second Intifada. The Palestinian side was critical of the benefits of this forum and started to block it from 2010 onwards. While Israel wanted to keep the forum strictly technical, the Palestinians wanted to discuss also political issues. Since 2009 the European Union started to engage in a bilateral Israeli-Palestinian framework by taking over the role of donor coordination. Recently, the EU would have started to support projects in area C, which challenge the terms of the Oslo agreement. Yakobi argues that the slow development in the Palestinian water sector would be mostly caused by the Israeli ‘occupation’.331 Hence, the EU has a close proximity to the PWA.

International NGOs and international organizations have a more radical perspective than the major donor agencies. This can be explained by their mandate. Trottier argues that the international organizations’ and NGOs’ primary goal is not state-building: “… the presence of los and NGOs results more from a desire to settle an international problem and to bring about regional cooperation than to develop local water infrastructure.”332

The ICRC started to work with the PWA in 2005/2006 when the international support for the Palestinian Territories started to decrease. The main goal of the ICRC, according to their mandate, would be to support the marginal population living in area C. This is achieved by extending the water networks to the margins of area C without actually building anything within area C. This way they could avoid to challenge Israel. Ikhtiyar Aslanov333 sees the PWA as a well developed institution since they embarked on the reform process. He argues the potentials of water aquifers would have been overestimated in the Oslo II water agreement. Especially the level in the Eastern Aquifer, where the Palestinians were supposed to extract their additional resources, would have dropped drastically.334 Hence, the ICRC maintains a pro-Palestinian position.

330 Abdelkarim Yakobi is Project Manager in the Department of Water, Transport and Energy at the Office of the European Union Representative for the West Bank and Gaza.
332 Trottier, Hydropolitics, 159.
333 Ikhtiyar Aslanov is the Water and Habitat Coordinator for the ICRC in Jerusalem.
334 Aslanov: personal communication, 23.01.2012.
IPCRI\textsuperscript{335} points to the fact that the JWC survived as the only one out of 26 joint committees of Oslo. This would prove its success. Gershon Baskin\textsuperscript{336} states that it is a functioning institution that would help advancing the cooperation.\textsuperscript{337} He argues that the conflict could only be resolved if the issue is jointly managed on a demand basis through a joint Israeli-Palestinian non-profit organization.\textsuperscript{338} Hence, the most influential joint Israeli-Palestinian NGO in the field of water, who bases its legitimacy on Oslo, is supporting cooperation.

Other NGOs have a much more critical perspective on Oslo and the JWC negotiations. A 2008 COHRE Report on the water situation reiterates the Palestinian claims:

“How Israeli policy and practice in the West Bank since the occupation in 1967 has been to expropriate and assert control over Palestinian water resources, maintain an unequal and discriminatory allocation of water resources to benefit both Israeli citizens living in Israel and those living in illegal West Bank settlements, and prevent Palestinians from developing their resources. This has been achieved primarily through the issuance of military orders subsequent to the occupation, which transferred the power over water resources and water resources management to the occupation authorities. The Oslo peace process only served to formally institutionalise this arrangement.”\textsuperscript{339}

Israel would make unjustified use of its veto power in the JCW and block the Palestinian water infrastructure development through the denial of licenses in area C. Ultimately, the IDF would arbitrarily destruct Palestinian infrastructure.\textsuperscript{340}

A 2009 Report by Amnesty International fully blames Israel for all the deficiencies of the Palestinian water sector:

“… the problem arises principally because of Israeli water policies and practices which discriminate against the Palestinian population of the OPT. This discrimination has resulted in widespread violations of the right to an adequate standard of living, which includes the human rights to water, to adequate food and housing, and the right to work and to health of the Palestinian population.”\textsuperscript{341}

Israel would control the Palestinian water resources and restrict their usage quantities. It would conduct a discriminatory water management strategy that favours Jewish ‘settlers’. Furthermore, Israel would breach international law by overexploiting the West Bank water resources since 1967 and by destroying or appropriating Palestinian water infrastructure. Ultimately, illegal drillings and network connections are justified as a result of the Israeli policy.\textsuperscript{342}

\textsuperscript{335} The Israel/Palestine Center for Research and Information (IPCRI) is supporting cooperation and enhancing conflict studies through applied research. Official webpage: http://www.ipcri.org/IPCRI/Home.html [15.07.2012]
\textsuperscript{336} The Israeli Gershon Baskin ist he co-founder of IPCRI and was engaged in the various second-track negotiations during the 1990s.
\textsuperscript{337} Baskin: personal communication, 18.01.2012.
\textsuperscript{338} The joint organization would produce all the water that is needed and sell it on the market to both societies with no discriminatory pricing mechanism; Baskin, My view on Dealing with the Israeli-Palestinian Water Dispute.
\textsuperscript{339} COHRE Report, 2008, I.
\textsuperscript{340} COHRE, Report, 2008, I.
\textsuperscript{341} Amnesty International Report, 2009, 3.
\textsuperscript{342} Amnesty International Report, 2009, 3-4.
A report issued by French politician Jean Galvany in December 2011 accuses Israel of establishing an ‘apartheid regime’. The report makes comparisons with the regime in South Africa. It claims not to establish a direct link: “Bien sûr, comparaison n’est pas forcément raison: la Palestine n’est pas l’Afrique du Sud, et les années 2010 ne sont pas celles d’avant 1990.” But finally, precisely this is stated: “Pourtant, il es des mots et des symbols qui par leur force peuvent avoir une vertu pédagogique. … C’est donc bien d’un ‘nouvel apartheid’ qu’il s’agit.” The main accusation is that Israel is appropriating territory through ‘colonies’ in order to gain control over water resources:

“Israel conduit une politique d’expansion territorial tendant à s’approprier les resources en eau. Cette politique se traduit d’abord par une implantation stratégique des colons. … S’il est vrai que le territoire est si petit que la superposition n’est pas totalement fiable, il reste qu’on peut aisément constater que les colonies sont toujours installées à proximité d’une source.”

This control would be reinforced with the construction of the ‘wall’. Israel would use the control over water resources to conduct a discriminatory distribution policy between its own population and the Palestinians. Additionally, it would overexploit the aquifers and thereby harm them on the long-term. These measures would violate the doctrine of the usufruct. The Israeli military orders of 1967 as well as the Oslo water regime, including water allocation and JWC negotiations, would only be to the detriment of the Palestinians. He concludes that the question of water was inextricably linked to control over territory. Only if the territorial question would be solved there would be a solution for the division of the water between Israel and the Palestinians. The report makes two suggestions to improve the situation between the Israelis and the Palestinians: Firstly, the quota ascribed to the Palestinians needs to be increased due to the population increase. Secondly, access and preservation of water would need to be less asymmetrical. The wastewater treatment could be improved simply by relaxing the procedures in the JWC. For Gaza it is suggested to build a desalination plant with the help of the Mediterranean Union. On the long term the report presents a panacea for the regional water crisis:

“A long terme, bien évidemment, l’idéal serait de pouvoir trouver une solution de partage des aquifers à une rééquilibrage et au niveau régional de créer une agence du bassin du Jourdain, avec une présidence tournante et sous la tutelle des Nations Unies.”

A similar narrative is presented by a number of international pro-Palestinian scholars. They generally argue that the whole Oslo process was not a peace process, but consider it as a

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345 French Report, 2011, 122
‘repackaging of the ongoing Israeli occupation of the West Bank and Gaza Strip.’ The Realist narrative argues that Israel, the US and the PLO leadership all profited from the classification of the Oslo negotiations as peace process.

The main supporter of this pro-Palestinian water narrative is Jan Selby. He argues that the Oslo process was not a major ‘breakthrough’ but a continuation of the Israeli occupation. The only effect of the Oslo II water agreement would have been that: “… the Palestinians became responsible for local water supply management, while Israel remained in control of the water resources.” Therefore, it would have rather brought discursive shifts than institutional or material discontinuities. The only two material changes would have been the massive influx of development aid after Oslo and a re-arrangement of the decision making process on the Palestinian side. Now, the Israeli Civil Administration would make unreasonable demands on the location of sewage treatment plants. They would have a policy that treatment plants should not only serve the Palestinian communities, but also the Jewish communities. Israel would be limiting the Palestinian development near Jewish communities and areas of strategic value. In either case, wastewater could never be an important source for the Palestinian agriculture as long as Palestinian domestic consumption would be so low. He acknowledges that the Palestinian refusal for desalination is linked to political issues. But he argues that the slow development of the Palestinian water sector is not the result of a lack of cooperation, but the consequence of the ongoing Israeli occupation.

Zeitoun terms the Israeli discourse as a needs, not rights discourse, since it accepts that there are legitimate Palestinian domestic water needs, but it does not engage in a discussion of Palestinian water rights. He perceives the Oslo II agreement as a trap for the Palestinians. It would not be a peace agreement, but a political solution for improved conflict management by Israel. Israel would have shifted the responsibilities without loosing its control. Israeli power in the negotiations would be revealed by the fact that they decided that the basis for allocation should be needs not rights. Hence, Oslo would have followed the Israeli priority. The Palestinian only accepted the water agreement, since the perceived it as subordinate to other issues in the peace negotiations. They were under pressure and did not want to stop the whole peace process. The internal pressure against the occupation would have been the reason

351 As he writes in his book on the water conflict, he became familiar with the topic by working for the Applied Research Institute of Jerusalem (ARIJ), a Palestinian NGO. Together with Jad Isaad, the head of ARIJ, they published several articles in the 1990s; Selby, *Water, Power and Politics in the Middle East*, 1X.
354 Selby: personal communication, 25.03.2012.
355 Zeitoun, *Power and Water in the Middle East*, 77-79.
for the rejection of Barak’s offers at Camp David II. He considers the PWA governance of Sharif/Qawash as weak and the one of Attili as stronger, since it would no longer accept the Israeli occupation. Furthermore, he claims that the needs assessment itself was wrong. In fact, Palestinian needs would lie between 600 and 700 mcm/y or more, since one has to include agricultural needs. Besides, even the 200 mcm/y would not be met. If one was implementing an ‘equitable and reasonable distribution’ one should make an allocation ratio for the Mountain Aquifer waters of 70/30 or 60/40 and not 90/10.356

The analysis of the discourse disseminated by international organizations as well as donors has shown that Israel, despite its military power, is not able to enforce its internal sanctioned discourse on the international community. Today, the international community generally blames Israel and its ‘occupation policy’ for the slow development of the Palestinian water sector. Hence, despite their inferior military position, the Palestinians managed to convince the international community of their claim. The last chapter will outline an analysis based on facts, which shows that the Palestinian narrative is wrong. Not the Israeli occupation policy, but Palestinian political resistance against joint management and cooperation is responsible for the relatively slow development of the Palestinian water sector and the aggravating human rights situation in the Palestinian Territories.

IV. The failure of the Oslo water regime

12. Causes for the slow development of the Palestinian water sector

This last chapter will analyze the reasons why the Oslo water regime did not lead to a significant improvement of the Palestinian water sector. This analysis is based on several premises. It acknowledges that Israel did not want to give up control over the shared water resources in the West Bank when concluding the Oslo II water agreement. The reasons for that are manifold, but the main consideration was that the Palestinians are not trustful enough partners for being in an upstream position in the Mountain Aquifer. But with the inclusion of an interim period, trust could have been gained and re-allocation discussed. The second premise is that the issue of water scarcity can be approached without a solution of the overall conflict. Territorial division is not a precondition of a settlement of the water dispute. Thirdly, the Oslo process has increased the scientific knowledge as well as the practical experience in the field of shared management of groundwater resources. This advancement could be used to solve the water scarcity in the region. It does not mean that negotiations over water have not a political nature. But it is argued that the human right to water can be guaranteed for both

societies if the political establishment on both sides is supporting technical cooperation. This argumentation is part of the Liberal paradigm that perceives the Oslo II water agreement as part of a peace treaty. The fourth premise is that the issue can only be resolved if the public discourse shifts from self-sufficiency in agriculture to food security considerations in both societies. This requires a combination of a needs based approach for the domestic sector and an economic efficiency analysis for the agricultural sector. Food supply has to be secured through ‘virtual water’ and market mechanisms. A joint Israeli-Palestinian research workshop has discussed the water needs. They agreed that water needs are mainly domestic needs and not agricultural demand. This requires a distinction between normative needs and economic demands. Freshwater should be secured for normative needs and not for economic demands. These can be regulated through market mechanisms. The fifth premise is that climate change will ultimately enhance the incidence of cooperation between both parties.

In the first years after Oslo the Palestinian water sector was coined by institutional deficiencies. The newly established PA and its state institutions were prone to mismanagement and weak to donor influence. Constituting a part of the peace process, massive new foreign aid was introduced in the West Bank and Gaza. This helped the PLO to establish PA institutions, but also created many new challenges. On the one hand, the neopatrimonial system established by Arafat inherited bureaucratic structures of the PLO leadership in Tunis and favored the interests of Fatah. This hindered an efficient allocation of

357 Brooks and Trottier demonstrate how joint management can effectively de-nationalize and de-securitize water issues and therefore enhance conflict resolution. They suggest an institutional infrastructure that replaces the JWC. This initiative integrates better non-state actors, such as NGOs, scientists or private companies; Brooks/Trottier, Confronting Water in an Israeli-Palestinian Peace Agreement. Feitelson shows that any kind of cooperative agreement has two potential benefits. Firstly they will impose external obligations on the party that leads to actions, which would not be done otherwise. Secondly, it would lead to a greater cost-effectiveness. A future solution would not be possible without cooperation; Feitelson, Is Joint Management of Israeli-Palestinian Aquifers Still Viable?.

358 See Chapter 3.

359 Trottier, Hydropolitics, 70-71 The agricultural lobby is still strong in Israel and exerts an enormous pressure on the political system to achieve a self-sustaining food supply. Water prices inside Israel are still highly subsidised, which is justified by the ideological combat against the country’s ‘desertification’. Rouyer, Turning Water into Politics, 163-173. Even pro-Israeli scholar Soffer argues that the water prices in Israel need to raise in order reduce agricultural activity; Soffer, Mapping Special Interest Groups in Israel’s Water Policy, 28-30.

360 The needs based approach takes the water needs of the populations in transboundary regions as the basis for allocation of the water resources and not historic use or physical layout; Jerusalem Institute for Israel Studies, Defining Water Needs for Fully Exploited Resources, 10.

361 Allan, The Middle East Water Question.

362 The workshop adopted Chenoweth’s approach and came to the conclusion that for the Middle East the basis human needs should be set at 164 L/c/d, including water losses of at least 10%; Report of Jerusalem Institute for Israel Studies, 2011, 14. Only the water needs of farmers in peripheral areas, who have no alternative source of livelihood without relocation, are considered as justified agricultural needs. All additional water demanded for irrigation are rather an economic demand and not a human need.

363 While water for domestic use is viewed as a normative need to fulfill the human right to water. Water for food production is seen as a factor of production, which constitutes a demand and is in the realm of markets. Hence, if water is demanded for agriculture it should be priced at a higher rate than water for domestic use; Feitelson, What is water?, 53-58.

364 Feitelson/ Tamimi/ Rosenthal, Climate change and security in the Israeli-Palestinian context.

In October 1998 the PA, Israel and many international donors and international organizations met in Paris in order to develop a renewed program of development assistance for the Palestinian Territories after the signature of the Oslo II agreements. They established a complex and intransparent structure to channel and allocate the massive influx of donor aid; Brynen, International Aid to the West Bank and Gaza, 46-52.
the abundant foreign investment. Before the donor pressure for accountability and transparency increased, evidence for mismanagement of donor money. On the other hand, donor infusion was uncoordinated and often motivated by national goals. This created often donor driven policy agendas.

There is well founded evidence of mismanagement within the PWA. Until 2008, the PWA was headed by Nabil Sharif, head of the PWA based in Gaza City, and Fadel Qawash, Deputy Chairman based in Ramallah. Both of them were ‘outsiders’ from Tunis and had close affiliations with Arafat. They were part of his patrimonial entourage. Several civil society actors characterize most of the PNA institutions, including the PWA, as autocratic and clientelistic. Theses institutions were intrinsically undemocratic due to the military background of its decision makers and because of its Fatah dominance. Jad Isaac, head of the PEPA before the establishment of the PWA, was offered to be heading the newly established PWA. He refused the post because of the patrimonial network Arafat wanted to establish. The pro-Palestinian NGO AMAN has concluded that the legal regulations in Palestine is not sufficient to prevent conflicts of interest of Palestinian public employees. The same NGO has identified several institutional as well as operational weaknesses within the PWA. There is no clear legal separation between the political and executive level within the Palestinian water institutions. Up to date, there is no real functioning water law. Furthermore, the National Water Council is not convening on a regular basis, which delays the policy formation process. Rahman Tamimi, member of the National Water Council, admitted that this panel is either not meeting or not functioning well. And ultimately, the distribution of functions between the PWA and other water institutions is unclear and leads to

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366 Bashkin reports of a case, where a USAID sponsored project highered a private contractor to construct a pipe system. After the works were done, the whole system exploded and water leaked. An investigation found out that the contractor used smaller pipes than necessary in order to save money. There was no regulatory mechanism to control that. According to Bashkin, this was no singular case during the 1990s. Bashkin: personal communication, 18.01.2012. Mohammed (PARC) argues that this changed since the mid 2000s when donors started to emphasize good governance in the sector. Mohammed: personal communication, 25.01.2012.


368 Selby, Water, Power and Politics in the Middle East, 116.

369 Jaad and Tamimi- personal interview. Mohammed argues Fatah dominated PWA resembled starkly the autocratic regimes in the Arab world, at least before the ‘Arab Spring’. Mohammed: personal communication, 25.01.2012. Also Prof. Haddad confirms this observation. Although he is reluctant to call it ‘corruption’, he clearly identifies a lot of mismanagement within this institution. Haddad: personal communication, 22.01.2012.

370 After being called to initiate the foundation of a national water institution, Isaac prepared a team of 24 distinguished water experts. When Arafat came into the Territories, he appointed 70 persons, which were not from the Territories and had nothing to do with the local water sector. On this premise, Isaac refused to accept the post as head of the PWA. Isaac: personal communication, 25.01.2012.


374 Tamimi: personal communication, 26.01.2012.
These internal deficiencies impact the development of the Palestinian water sector. Another problem is the resistance of the local power holders to the notion of nationalization and centralization of the decision-making structures. Trottier shows the importance of the centralization of PWA power over water in order to establish an efficient water sector. The newly established PWA embarked on a nationalization process in order to centralize national water management. This was a difficult process due to several internal constraints. The PWA faced resistance from municipalities, who did not want to give up their power. In 2000, the PA did not manage to gain control over water access also in those Palestinian villages where Israel has not acquired any control. These water sources would be managed by a multitude of informal social institutions and concerns mostly water networks for irrigation, which are almost all controlled by Palestinian. On the other hand, also the large Palestinian municipalities at that time were governed in an autocratic and undemocratic manner. The power holders did not want to loose control over the water systems, since the water supply was one of the main services provided by the municipalities. The PWA had no clear local water strategy from the outset.

The PA and in particular the PWA also failed to profit from the extensive knowledge and knowhow that was accumulated by the civil society throughout the 1980s and during the negotiation process in the early 1990s. Before the Oslo Accords, most of the Palestinian initiatives in the water sector were driven by NGOs and civil society actors. The PA perceived the NGOs from the outset as competitors and established an undemocratic regime vis-à-vis civil society organizations. The aspired balance between bottom up and top down approach was not achieved. The rivalry and discrepancy intensified as the governmental institutions received significantly more donor money than the NGOs throughout the 1990s. In 1997, the PA established a Ministry of NGOs. The NGOs perceive it as an attempt to further divert the funding towards the government. Ultimately, the NGO law of 2000 was limiting their room for maneuver. Meanwhile, the performance of the governmental institutions was

376 Trottier, Hydropolitics, 177.
377 Aslanov: personal communication, 23.01.2012.
378 Trottier, Water and the Challenge of Palestinian Institution Building, 36 & 43-44. In this paper she provides two case studies on the villages of Marmayya and Falamiah to prove this tendency.
379 Rammal: personal communication, 16.01.2012.
380 Trottier, Water and the Challenge of Palestinian Institution Building, 46.
381 Haddad: personal communication, 22.01.2012.
382 Haddad: personal communication, 22.01.2012.
383 Isaac: personal communication, 25.01.2012.
384 Many elements of it were tansferefd from the Egyptian NGO law, which is very old fashioned. Masson: personal communication, 17.01.2012.
weaker than that of NGOs, since they did not hire professional and well educated staff.\textsuperscript{385} Although this tendency can be observed throughout all the ministries, the PWA was particularly hostile towards cooperation with NGOs. The above described academic conference on water in Zurich was not supported by the PWA, despite its neutral character and the knowledge that could have been gained from it.\textsuperscript{386} In contrast to the PWA, the Palestinian Ministry of Agriculture was intensifying its cooperation with NGOs from 1997 onwards. They allowed major water and agricultural NGOs, such as PARC and ARIJ, to be part of the planning process.\textsuperscript{387}

As a reaction to international critics, in particular the 2009 World Bank Report and the 2009 Amnesty Report, the PWA embarked on an institutional reform process. This is divided into four phases: institutional water sector review, legislative review, capacity building program and organizational reform and change management program.\textsuperscript{388} The PWA is presenting this as a successful reform.\textsuperscript{389} The Palestinian civil society is criticizing it. Tamimi, head of PHG, called it a ‘fundraising mechanism’.\textsuperscript{390} The EU acknowledges it as an institutional, organizational and legal reform, but argues that it would not resolve the issue of mismanagement within the institution.\textsuperscript{391}

A last obstacle in the nationalization and centralization process of the Palestinian water sector is the resistance of the local population against central state control. The phenomenon of water thefts and incidences of illegal drillings are not rare.\textsuperscript{392} This can partly be explained by the general mentality that resources extracted from the ground belong to the person that owns the land.\textsuperscript{393} Trottier argues that the PWA is encouraging water thefts by disseminating their anti-Israeli propaganda.\textsuperscript{394} Ultimately, the fact that the PA pays for most of the water bills of the Palestinian population is giving no incentive for water saving and leads to an unreasonable use in the domestic sphere as well as in the agricultural sector.

\begin{itemize}
\item Isaac: personal communication, 25.01.2012.\textsuperscript{385}
\item Isaac: personal communication, 25.01.2012.\textsuperscript{386}
\item Isaac: personal communication, 25.01.2012.\textsuperscript{387}
\item Isaac: personal communication, 25.01.2012 \& Mohammed: personal communication, 25.01.2012.\textsuperscript{388}
\item Document No. 16, 19-21.\textsuperscript{389}
\item See the rhetoric of Attili in chapter 10.\textsuperscript{390}
\item Tamimi: personal communication, 26.01.2012. Critique is also voiced by Prof. Haddad; Haddad: personal communication, 22.01.2012.\textsuperscript{391}
\item Yakobi: personal communication, 20.01.2012.\textsuperscript{392}
\item By 2005 more than 250 unauthorized wells have been drilled by Palestinians. Most of them in the Western Aquifer near Qalqiliyah and Tulkarem and in the Northern Aquifer near Jenin. These extractions amount to significant 10 mcm/year; Gvirtzman, \textit{The Israeli-Palestinian Water Conflict}, 9-11.\textsuperscript{393}
\item USAID has experienced massive resistance against installing a metering systems on their wells. The same is discernable with local pharers. Untreated wastewater is diverted into open fields with the argumentation that a farmer can do with his own land what he wants. The consequences for the whole society caused by the environmental damage is not considered by an individual farmer. This also gives no incentive to save water. Esterly suggests a pre-payment solution, where the individual user would pay the costs for the water and wastewater treatment in advance; Esterly: personal communication, 31.01.2012.\textsuperscript{394}
\item By publicly arguing that Israel is stealing all the water from the Palestinians, they would foster the mentality that water thefts are equal to stealing from the Israeli occupier; Trottier, \textit{Hydropolitics}, 164-165.\textsuperscript{395}
\end{itemize}
Whereas these problems existed from the start, the situation aggravated after the outbreak of the Second Intifada and the 2006 Hamas elections. Despite the breakdown of the overall Oslo peace process, discussed in Chapter 3, the water negotiations continued throughout the Second Intifada, discussed in Chapter 7. However, cooperation decreased and JWC meetings became less frequent.\textsuperscript{395} This can be attributed to the situation of combat, where negotiations are generally more difficult. Nevertheless, the second Intifada changed the general attitude of the Palestinian political leadership.

The extremist strata of the Palestinian population has always been opposed to the Oslo peace process, since they refuse to accept the existence of a Jewish State. This opposition was already expressed in the suicide bombings throughout the 1990s. But the second Intifada was not only a resistance against the ‘occupation’, but a also a general disappointment of larger parts of the population with the governance performance of the PNA. This notion is shared by members of the Palestinian civil society. The expectations raised with Oslo were not met. The PNA institutions were characterized by mismanagement and a lack of transparency.\textsuperscript{396}

The second Intifada weakened the young proto-state institutions. One can even speak of a solution of law and order where either warlords took over or the municipalities gained strength.\textsuperscript{397} This further increased the malfunctioning of the Palestinian national government and its institutions. Ultimately, the disappointment of the local population was so strong that large parts of the society voted for Hamas in 2006 without having previous affiliation with the party. This in turn increased the pressure on Fatah to resist the Israeli ‘occupation’ and to end the cooperation. This was depicted by Hamas as a collaboration with the enemy.\textsuperscript{398}

The new head of the PWA, Dr. Shaddad Attili, was appointed in 2008. Before obtaining this position he was a Senior Advisor for the Negotiation Support Unit advising the PLO and PNA leadership.\textsuperscript{399} Hence, he was closely affiliated with the Fatah party. According to himself, his nomination should be seen in the light of the Hamas elections in 2006. These elections were an expression of a general disappointment of the Palestinian population. The internal pressure gave him an incentive to take a clearer stance on the Israeli occupation.\textsuperscript{400}

The official PWA webpage confirms this shift:

“Shortly after his [Attili’s] appointment as the head of the leading water institution in Palestine (PWA), he has managed to obtain a drastic shift in both public and official opinions vis-à-vis the existing management

\textsuperscript{395} The 2009 World Bank Report shows that the JWC meetings became more rare since 2002. While there was an average of 5 or more meetings during the 1990s, it decreased to around 2 meetings a year after 2002; World Bank Report Reort, 2009, 48.
\textsuperscript{396} Isaac: personal communication, 25.01.2012.
\textsuperscript{397} Bashkin: personal communication, 18.01.2012.
\textsuperscript{398} Feitelson: personal communication, 25.04.2012.
\textsuperscript{400} Attili: personal communication, 26.01.2012.
arrangements of the conflict affected water sector, as well as water allocations in the occupied Palestinian Territory.\textsuperscript{401}

He is strengthening his internal position and the position of Fatah by blaming Israel for the slow development of the Palestinian water sector. Meanwhile he is blocking the cooperation with Israel since this would diminish his water rights claims. This policy is conducted at the expense of the marginalized and peripheral population.\textsuperscript{402} Since these people are demographically and democratically dispensable, he can afford to do this. The majority of the population is living in the large population centers where the domestic water situation is more bearable. Furthermore, the abundance of donor money allows him to continue the non-cooperation strategy.

There is ample literature on the strategy to link different policy domains in international negotiations in order to leverage negotiating positions.\textsuperscript{403} The remainder of this chapter will show why the Palestinian water rights claims are a negotiation strategy to gain political leverage. Meanwhile it will be demonstrated how a cooperative strategy could improve the Palestinian water sector.

Katz and Fischhendler, who analyzed 61 JWC meetings between 1995 and 2008, show that the type of policy linkages in JWC negotiations changed after the start of the second Intifada. While linkages tended to be established between different aspects of water management beforehand, linkages between water and security or sovereignty increased afterwards. While Israel refused to give drilling or treatment facilities permits in security zones, the Palestinians refused to approve permits for facilities that would legitimize the Jewish communities in the West Bank or Israeli claims over East Jerusalem.\textsuperscript{404} Both sides have done such linkages in the past, but Israel is now trying to limit them:

“Given the negative effect of linkages on the negotiations, the Director of the Israeli Water Authority has set up a mechanism for fast-track approval of projects to the JWC, in hopes of minimizing possibilities for linkages.”\textsuperscript{405}

Assuming that water negotiations can be de-politicized, cooperation could improve the situation on the ground. A first area for cooperation is the treatment and reuse of wastewater. Out of the 52 mcm/y of wastewater generated by the Palestinian population, 17 mcm/y is flowing untreated into Israel and 33 mcm/y remains in the West Bank where it contaminates the shared groundwater resources.\textsuperscript{406} Hence, Israel has an environmental incentive to support

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\textsuperscript{402} See chapter 7 on the water situation in the West Bank.

\textsuperscript{403} Katz and Fischhendler provide a good overview of the existing theoretical literature. They highlight that the empirical work on such issues is scarce: Katz/ Fischhendler, \textit{Spatial and temporal dynamics of linkage strategies}, 13-15.

\textsuperscript{404} Katz/ Fischhendler, \textit{Spatial and temporal dynamics of linkage strategies}, 18.

\textsuperscript{405} Katz/ Fischhendler, \textit{Spatial and temporal dynamics of linkage strategies}, 20.

\textsuperscript{406} Document No. 11: IWA- The facts about Wastewater generated by Palestinians, 1.
and foster the Palestinian wastewater infrastructure. Nevertheless, the Palestinians claim that Israel is blocking their wastewater infrastructure. These claims are invalidated by two memoranda of understanding that were drafted in the framework of the JWC. They were pushed by Israel after the Intifada broke down the cooperation in the field of wastewater.\footnote{Fischhendler/ Dinur/ Katz, The Politics of Unilateral Environmentalism, 46.}

The first claim is that Israel is demanding an unreasonable high level of treatment, BOD 10/10.\footnote{Marwan Haddad: personal communication, 22.01.2012.}

The JWC memorandum of understanding from 2003, which was signed by both parties, agreed on a gradual process to achieve this standard, but starting with the much lower level of BOD 20/30.\footnote{Document No 3: MOU, 2003, Paragraph 11. b : "All Wastewater treatment plants shall be designed and operated in a modular design, to allow for future adjustment and expansion. The first phase shall provide treatment to a minimum of a secondary level. In the second phase, wastewater treatment plants are to be upgraded to achieve tertiary level of treatment. Effluent quality should no exceed, in the first phase, the following values: BOD5= 20 mg/L; TSS= 30mg/L; TN= 25 mg/l." [emphasis in original]} This mutual understanding is reiterated in a second MOU, which has not been signed yet by the Palestinian side.\footnote{Document No 4: Unsigned MOU, Paragraph 4 : "A Memorandum of Understanding on Guidelines and Technical Criteria for Sewage Projects was agreed upon and signed by both sides on 31.12.2003. At the Palestinian side’s request, it was agreed by the JWC that the high standards specified in the MOU (BOD 10/10), can be implemented gradually upon mutual agreement by both sides, i.e. the first stage will have a relatively low standard (BOD 20/30)."}

Hence, the claim that Israel demands a level of treatment that is unattainable by Palestinian economic standards is false. The second accusation is that Israel is not allowing the Palestinians to build treatment plants in area C. If the Palestinians want to drill a well in area C, they must obtain a permit of the C.A. in addition to the JWC approval. In the unsigned MOU it is stated that WWTPs will also be built in area C.\footnote{Unsigned MOU, Paragraph 5: "Both sides acknowledge that Israel did not set any condition to treat Israeli wastewater in Palestinian WWTPs. It is also agreed that the location of WWTPs will be chosen according to professional considerations, in Area C as well."}

The Palestinians submitted a list of 35 Palestinian wastewater projects. Seven of these projects for the area C are in the approval process. Four of them have an approval of the Sewage JTC,\footnote{Document No. 5: Project List: No. 4: Jenin Yabed, Area C, Wastewater collection, treatment, and reuse, Donor: USAID, estimated cost: 20 Mio $, approved by the Sewage JTC on 26.07.2011; No. 12: Qalqilya Azzoun, Area A/B/C, Wastewater collection, treatment, and reuse, Donor: USAID, estimated cost: 20 Mio $, approved by the Sewage JTC on 26.07.2011; No. 21: Ramallah Al Bireh WW Reuse, Area C, Implementation of a wastewater reuse project, Donor: Ministry of Finance, estimated cost: 6 Mio Euro, approved by the Sewage JTC on 26.07.2011; No. 33: Hebron Dura, Area A/B/C, Wastewater collection and treatment, Donor: USAID, estimated cost: 20 Mio $, approved by the Sewage JTC on 26.07.2011.} and one was approved by the CA.\footnote{Document No. 5: Project List: No. 18: Ramallah Betuniya Ein Jariot, Area C, Implementation of a wastewater reuse project, which will serve Ramallah and Betuniya, Donor: KFW, estimated cost: 10 Mio Euro, The location of the WWTP was principally approved by the CA in October 2008. The Palestinian side has finished the feasibility study and submitted it to the CA.} Furthermore, one is already in the process of construction.\footnote{Document No. 5: Project List: No. 13: Nablus west WWTP, Area C, construction of a new WWTP and reuse system, Donor: KFW, estimated cost: 25 Mio Euro, approved by the JWC on 12.01.2008. The works commenced on 15.11.2010.} The will to support waste
water projects in area C is emphasized also by the Civil Administration.\textsuperscript{416} Thirdly, it is claimed that Israel demands the wastewater plants to be treating water from the Jewish communities. As the unsigned MOU as well as the aforementioned list demonstrate, no such demands are made by Israel.\textsuperscript{417} After the Palestinians refused to build joint treatment plants for Jewish communities and nearby Palestinian villages, Israel started to build a network of small collection systems serving only Jewish communities in the West Bank.\textsuperscript{418} The Palestinian political leadership limited the cooperation in the field of wastewater, although this technology was desired by local municipalities.\textsuperscript{419} The cooperation clearly stopped with the advent of the second Intifada when the JWC became more politicized. While Israel conditioned other projects on the Palestinian progress in the wastewater sector, the Palestinians presented sovereignty-based objections against the wastewater technology.\textsuperscript{420}

Israel started to use wastewater treatment technology on a large-scale in the early 1990s when the immigration wave from the former Soviet Union started to expand the demands for domestic water use.\textsuperscript{421} It has increased the percentage of treated sewage to 72\% or 380 mcm/year.\textsuperscript{422} The Palestinians could use the treated sewage for their agriculture and thereby re-allocate the substituted freshwater to the domestic sector. The Palestinian agricultural sector has still a significant share of the total water consumption. Out of the 181 mcm/y water utilized, 92 mcm/y is used for agriculture.\textsuperscript{423} If the Palestinians would apply wastewater technology, they could make significant gains for the domestic use. They could add an additional 25 mcm/y\textsuperscript{424} and reach an overall potential of 120-140 mcm/y.\textsuperscript{425} In comparison, currently the Palestinians are using only freshwater for agriculture, while Israel’s agricultural water consumption is fed by 60\% of non-potable water.\textsuperscript{426}

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\textsuperscript{416} Letter No. 3: Avi Shalev writes to Dr. Attilit: “… I would like to inform you that the State of Israel wishes to finance water and waste water infrastructural projects which will serve Palestinian communities in the West Bank. Therefore, I urge the PWA to present proposals which include a list of emergency humanitarian projects in the water and waste-water sectors approved by the JWC. … The Civil Administration is fully committed to project implementation in the water sector in the West Bank.”
\textsuperscript{417} See project descriptions for projects in Area C. None of them mentions that the wastewater plants should treat wastewater from the Jewish settlements. Furthermore, the above quoted paragraph 5 explicitly states that Israel is not setting any condition to treating Israeli wastewater in Palestinian WWTPs.
\textsuperscript{418} Fischhendler/ Dinar/ Katz, The Politics of Unilateral Environmentalism, 48.
\textsuperscript{419} Katz and Fischhendler show that Palestinian JWC officials had a national dictate to limit cooperation and therefore not to improve the wastewater sector, although this was desired by many Palestinian communities. Katz/ Fischhendler, Spatial and temporal dynamics of linkage strategies, 18.
\textsuperscript{421} Feitelson/Rosenthal, Desalination, space and power, 276.
\textsuperscript{422} Jerusalem Institute for Israel Studies, Defining Water Needs for Fully Exploited Resources, 29.
\textsuperscript{423} Document No. 10: IWA- Palestinian Water Consumption WB in 2008. This is an IWA report using data of the PWA.
\textsuperscript{425} Jerusalem Institute for Israel Studies, Defining Water Needs for Fully Exploited Resources, 29.
\textsuperscript{426} Document No. 12: IWA- Presentation of the Main Facts, slide 18.
\end{flushright}
Another pro-Palestinian claim, as voiced in the World Bank Report, goes that Israel prevents the Palestinians from drilling new wells. There is evidence that the Palestinians are not drilling many approved wells. In 2001 Noah Kinarty, former head of the Israeli side of the JWC, sent a letter to Nabi El-Sharif. He confirmed the importance Israel gives to the development of new wells in the Eastern Aquifer. He attached a list of 28 locations where well drilling permits have been issued, but no wells drilled yet. In June 2009 Shaddad Attili claimed that 12 of these wells would not have been approved by the C.A.. In Avi Shalev’s response it becomes clear that the PWA did not ask for permits yet. In the minutes of a July 2009 JWC meeting it is noted that the JWC approved a total of 23 wells, but none of them is supplying water to the Palestinians. The Palestinian side argued that 2 of them don’t have a C.A. permit. In February 2010 Shalev informed Attili that the C.A. permit for one of them has been issued. In April 2011 the well was still not drilled. PWA officials argued that a nearby quarry would impact the quality of the extracted water. Shalev shows that it is an ongoing praxis of the Mekorot to drill wells near quarries, in Israel and in the West Bank. Furthermore, the extraction level would be much lower than the depth of the quarry. The rate of JWC approved projects without implementation is high. An IWA list identifies 45 such projects. Most of them are located in area A and B and do not need an C.A. approval. Furthermore, the C.A. is constantly issuing permits. In 2010 it approved 56 trunk lines and network systems, 20 well drilling permits, 5 filling points and 6 cisterns used for water harvesting. Additionally, in 2010 the C.A. increased its staff to be more capable to efficiently issue permits for JWC approved projects.

The issue of illegal drillings and illegal connections has severe consequences for the water supply in the West Bank. These drillings violate the Oslo II water agreement. In November

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428 Letter No. 1. The location is based on a hydrological study: “In order to facilitate the development of the eastern aquifer, we have conducted a detailed hydrological survey of the area to identify suitable locations for drilling new wells in the eastern aquifer. This study was based on the hydrological concept that was discussed with and agreed by the hydrological team of USAID.”
429 Letter No. 2: “Following a discussion held between the Civil Administration and PWA officials, the Civil Administration has received (24 May 2009) a letter from yourself stating that the PWA will initiate a tender for 3 of the 12 wells (32, 41,45) and will shortly start drilling these wells. Your letter states that once the PWA assesses the expected yields from these wells, it will apply for the relevant permits for the construction of the facilities. Given this state of affairs, it is not clear to the Civil Administration the nature of the claims made to your most recent letter.”
430 JW meeting minutes No. 2. Paragraph 30 states: “The Israeli side notes that 13 Palestinian wells which were approved by the JWC are supposed to produce 14 mcm, are still not supplying water to the Palestinian system. Furthermore, there are approximately 20 Palestinian wells which were approved by the JWC but have not yet been drilled.” The Palestinian side remarks that they are still waiting for permits of two wells in area C. Israel promised to expedite the issuing process for these wells.
431 Letter No. 4. It concerns a PWA project for drilling a well in Hizme.
432 Letter No. 6. Shalev writes to Attili: “The natural water table at the Hizme site is expected to be at a depth of 300-350 meters. The plan for the Hizme Well intends for water to be drawn from an aquifer layer residing between 300-800 meters below the ground. Therefore, the activity at the quarry will take place several hundreds of metres above the water table and the level at which the water is actually extracted by the well.”
433 Document No. 9: C.A. List of 45 approved and undrilled wells.
2007 both sides of the JWC signed a document that identifies the problems resulting from illegal drillings and declares the mutual will to encounter the phenomenon. But the PWA did not stop them. The overall water losses in the Palestinian networks, including maintenance issues, amount to 33% or 10 mcm/year. Trottier shows that the PWA has enormous difficulties in imposing its state-like control over traditional and local forms of water management systems. However, there is also a lack of political will to do so.

The option of seawater desalination is the most recent solution for the regional water scarcity. Studies show that climate change and overpumping might deteriorate groundwater recharge and reduce the storage capacity of the aquifers. Desalination is the only method to counter this phenomenon on the long-run. Israel embarked on a large-scale desalination strategy with a master plan in 2004 and built the first large plant in Ashkelon in 2005. Hence, while Israel is able to address the implications of climate change with internal measures, the Palestinians are more vulnerable to it and therefore in need of cooperation. All water experts agree that seawater desalination will be part of a future solution in the bilateral relation. Israel acknowledges that the Palestinian needs will rise in the future and that additional water needs to be developed. From a long-term perspective, this can only be achieved through seawater desalination. There is disagreement in the question when such technology will be applied and who will need to pay for it. Since this paper has focused on the West Bank, it will not discuss the seawater desalination option for Gaza. For the West Bank, there are generally two options. One option would be that more freshwater resources, parts of the Western and North-Eastern Aquifer, are re-allocated to the Palestinians and that Israel will compensate this loss by desalination of seawater. The other option is that Israel will allow the Palestinians to build a seawater desalination plant in the Hadera region and pump the desalinated water to the Northern West Bank. In this case, the freshwater allocations would remain as defined in Oslo. Israel is in favour of the second options, since they need the Mountain Aquifer, in particular the Western basin, for its storage function in times of shortages and droughts.

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435 Document No. 2: JWC on illegal drillings and connections.
438 Feitelson/Tamimi/Rosenthal, *Climate change and security in the Israeli-Palestinian context*, 242-244. The phenomenon is not yet fully understood worldwide.
441 This is extensively described in: Feitelson/Tamimi/Rosenthal, *Climate change and security in the Israeli-Palestinian context* & Feitelson/Rosenthal, *Desalination, space and power*.
six to eight additional desalination plants with each a capacity of 100 mcm/y in order to compensate for the loss of storage and regulating capacity. This would entail massive economic and environmental costs. The Palestinians reject the first solution, since it would de-legitimize their water rights claims for the Mountain Aquifer waters. Furthermore, it would put Israel into an upstream position in regard to the West Bank. Water would flow from the Israeli seashore to the mountains of the West Bank. This would increase the power gap between the parties.

Both sides have political resistance against adopting a strategy to substitute freshwater with desalinated seawater, but the most contentious issue is who should pay for the additional water that is produced. This discussion raises the question if desalinated seawater can be seen as a direct substitute for freshwater. The Palestinian side wants Israel to substitute its freshwater share of the Mountain Aquifer with desalinated seawater. The Israeli side argues that desalinated seawater is an industrial product that can be commoditized and marketized. If it is an industrial product, Israel has no obligation to use it as a substitute for freshwater and can produce as much of it as it wants. In this logic, it is best if the Palestinians have their own plant in Hadera where they can produce, at their own expense, the amount needed to accommodate their needs and demands.

Israel is willing to transfer its knowledge on seawater desalination to the Palestinians. However, Attili is refusing to accept it. In July 2011 he withdrew a PWA water expert team from an Israeli desalination training program with the argumentation that Israel would have destroyed a number of illegal wells. The destruction of the wells was publicly announced by Attili with a press release addressed to the international community. As it turns out, this was pure propaganda, since the deconstruction of these wells was jointly decided by the

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445 Feitelson/Rosenthal, Desalination, space and power, 280. The Palestinian argumentation for their refusal is not very explicit: “In May 2004, an Israeli representative proposed the desalination of seawater at Hadera on the Mediterranean coast to supply the West Bank with potable water, but this has not been agreed to by Palestine and is considered by most authorities to be very unlikely to eventuate in the future, for a combination of legal, political and economic reasons.”; Philipps/ Attili/ McCaffrey/Murray, Potential Future allocations to the Co-Riparians, 53.
446 Feitelson, Implications of shifts in the Israeli water discourse, 313. Feitelson argues that the costs are from a macro-economic perspective not that high. Water markets could be an efficient re-allocation mechanism between the parties.
447 Philipps/ Attili/ McCaffrey/Murray, Potential Future allocations to the Co-Riparians.
448 Feiterls on, What is water?, 60-62.
449 See the proposal of Yossi Dreizin in 2004 in chapter 9.
450 W AFA, July 12, 2011. Attili argues that “In recent months, Israel has rapidly accelerated its destruction of essential Palestinian water infrastructure in flagrant violation of international law as well as previous agreements. ... The impact on affected Palestinian communities continues to be disastrous.” He goes on: „The water situation on the ground is unsustainable. Israel’s relentless targeting of Palestinian water infrastructure is part of a deliberate policy designed to forcibly displace vulnerable Palestinian communities from their land, as well as systematically destroy the very foundations of a future Palestinian state. Such unilateral acts by Israel threaten the very viability of the two-state solution, and at a time when the Quartet is debating how to revive negotiations, make a mockery of Israeli pretentions regarding peace or cooperation.”
In a letter in March 2011 the head of the Israeli SETs, Eli Doron, was asking his Palestinian counterpart for a timeline to implement the JWC decision. Furthermore, the IDF responded publicly to Attili’s claim that the shut down of these wells was commonly decided in the JWC and that the general commitment to combat the phenomenon of illegal drillings was stated on both sides. This is a clear incidence of politicization. Attili does not only refuse to cooperate in two levels, transfer of know-how for seawater desalination and combat illegal drillings, but also makes groundless accusations against Israel in front of the international public.

The analysis has shown that the Palestinian refusal to cooperate is responsible for the stalemate in the negotiations as well as the poor development of the West Bank water sector.

**Conclusion**

The argumentation outlined in this paper has presented evidence for the politicization of the Oslo peace process on water, in particular within the last five years. This has led to a slow down of the cooperative efforts for joint management of the shared aquifers. While the causes for the current situation are manifold, the implications for the future are significant.

The parties initially engaged in the Oslo secret talks because both sides considered the time ripe for an extensive deal. The first Intifada had weakened the internal position of the PLO and questioned the longlivety of the Israeli occupation strategy. The D.O.P. was a mutually beneficial deal for Arafat and Rabin. On the basis of this mutual recognition, the parties discussed the features of an interim regime that would gradually lead to Palestinian statehood. The most crucial and contentious points, including the water issue, were delayed to the permanent status negotiations.

However, the Oslo II water agreement was a well drafted treaty with the potential to improve the water situation. It’s solidity is already proven by the mere existence of the JWC until today. However, the content of the agreement was clearly drafted to accommodate an Israeli discourse. It focused on *water needs* and not on *water rights* for the allocation of the groundwater resources in the three Mountain sub-Aquifers. But it was also influenced by several joint academic initiatives and second track diplomacy where concepts for joint management of shared aquifers were discussed. These principles were incorporated into the agreement. Furthermore, Article 40.1 of Annex III included a principal Israeli recognition of

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451 Letter No. 5. According to this letter a JWC on 02.12.2007 decided on the shut down of three unauthorized wells in Aqrabania; paragraph 3.

452 Letter No. 5. In paragraph 5 he wrote: “Kindly inform us of the timeline in which the abovementioned JWC decision will be implemented.”

453 Letter No. 7: Round letter from Yakubovich. It states that the Palestinian response to the letter in April 2011 was the following: “… any decision to demolish a well is unacceptable to the PWA…”
Palestinian water rights and foresaw their negotiation in a final status agreement. Therefore, it is argued, the agreement was not dominated by the Israeli hydrostrategic or agricultural discourse. Conversely, it had the potential to lead to real cooperation, which comprises the development of additional water resources and an eventual re-allocation of the Mountain Aquifer waters.

The success of the overall Oslo peace process was based on the premise that the negotiations will show gradual progress, which should slowly increase mutual trust. Feitelson speaks of a window of opportunity when both sides were willing and able to make rather extensive concessions. The period from 1995 until the outbreak of the Second Intifada was characterized by a cooperative discourse based on the goodwill expressed in Oslo. The analysis has shown that the JWC meetings were frequent during the 1990s and political linkages between water and non-water issues were relatively rare. Furthermore, the peace process accelerated and increased the availability of donor money, which enabled the embarkation of large infrastructural projects inside the West Bank. However, due to internal weaknesses and mismanagement on the Palestinian side, the water sector did not experience a fast development during that period. One can argue that this is a normal development for a young proto-state. However, it contributed to a negative public sentiment against Oslo.

This perception was strengthened by the failure of the overall Oslo peace process. At the latest with the outbreak of the second Intifada, the mutual level of trust was at a low point. Both societies rejected the terms and conditions of the Interim agreement. This made the negotiations for a final status agreement impossible from the outset. The Israelis and Palestinians were not ready for peace. A political solution of all the core issues together was impossible at that moment. The failure of the Camp David II summit signaled the end of Oslo.

Although the water negotiations continued, they became increasingly politicized. Without mutual trust the continued cooperation was difficult. The incremental population growth and the bleak environmental previsions hardened the positions. Israel insisted more on technical solutions such as wastewater treatment and desalination and linked the approval for additional well drilling projects to the enforcement of these technologies inside the West Bank. The Palestinians, on the other hand, refused to cooperate in these fields without a prior discussion of a re-allocation of the Mountain Aquifer waters and the surface waters of the Jordan Valley. Since Israel is in a downstream position regarding the Mountain Aquifer, it is dependent on

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455 By 1997 a total of $365 million has been contributed or committed to water and sanitation projects in the West Bank and Gaza; Rouyer, Turning water into politics, 213.
456 See chapter 3 on the political developments.
the Palestinian cooperation. Massive intrusion of wastewater into the ground or extensive overextraction affect the Israeli extractions from the aquifer.

The new head of the PWA, Shaddad Attili, realized the Palestinian advantage and started to capitalize on their geographical location. His water policy is very political. He conceded to internal pressures that are directed against the Israeli occupation. Islamist groups do not accept the existence of the State of Israel and a wide majority of the population is disappointed by the Oslo peace process. As a reaction to these pressures, he refuses any further cooperation and blames Israel for the slow development of the water sector. He was able to convince the international community of his view by emphasizing the sometimes difficult approval process in the framework of the JWC or C.A. His goal is clearly to fight the Israeli presence in the West Bank and not to solve the issue of water scarcity.

This politicization resulted in a complete stagnation of the water negotiations during the last five years. The JWC is neither meeting often nor regularly and wastewater as well as desalination projects are not advancing. If this situation lasts, the region will suffer serious consequences as increased population growth will raise the demand. Meanwhile, water tables will lower due to overextraction and wastewater intrusion of groundwater. Therefore, a solution is absolutely necessary.

The paper has argued that a separate solution for water could be possible. The growing water scarcity can be countervailed without both parties agreeing on the terms of a two-state solution. The current water regime needs to adopt to the new environmental and demographic circumstances and Israel might need to concede parts of the freshwater resources from the North-Eastern and Western aquifer to the Palestinians. The Palestinians, on the other hand, need to start an extensive program of wastewater treatment in the West Bank. The issue of agricultural water consumption in both societies is in the long run a question of water production through seawater desalination. Israel can counter these economic demands with its seawater desalination plants along the coasts. If the Palestinians insist on a policy against virtual water, they will need to accept the transport of desalinated seawater from Hadera to the Northern West Bank.

The water question is political. But a politicization of the water negotiations does not advance the situation. I rather aggravates the human rights situation of the marginalized population, since the infrastructural development is blocked. A solution can be found without an overall political arrangement, but a comprehensive water agreement cannot be concluded without the application of technical solutions. Oslo was a promising start toward that direction and both parties should continue there where they stopped in the late 1990s.
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Appendix

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Letter No. 7 – July 2011 108
Joint Declaration for Keeping the Water Infrastructure out of the Cycle of Violence

The Israeli and Palestinian sides view the water and wastewater sphere as a most important matter and strongly oppose any damage to water and wastewater infrastructure.

The two sides are taking all possible measures to supply water and treat wastewater in the West Bank and Gaza Strip, even in the difficult circumstances of the recent months.

The two sides wish to bring to public attention that the Palestinian and Israeli water and wastewater infrastructure is mostly intertwined and serves both populations. Any damage to such systems will harm both Palestinians and Israelis.

A special effort is being made by the two sides to ensure the water supply to the Palestinian and Israeli cities, towns and villages in the West Bank and Gaza Strip. In order for this effort to succeed, we need the cooperation and support of all the population, both Israeli and Palestinian. We call on the General public not to damage in any way the water infrastructure, including pipelines, pumping stations, drilling equipment, electricity systems and any other related infrastructure.

The two sides also call on those involved in the current crisis not to harm in any way the professional teams that conduct regular maintenance or repair damaged and malfunctions to the water and wastewater infrastructure.

Both sides wish to take this opportunity to reiterate their commitment to continued cooperation in the water and wastewater spheres.

Done at the Erez Crossing, This 31 January, 2001
Israeli-Palestinian Joint Water Committee

13 November 2007

Illegal Drillings and Connections

A. Illegal Connections to Water Supply Systems in the West Bank

1. Illegal connections to main pipelines have reached an extent which creates severe difficulties in keeping regular water supply for many villages (such as: Bani Naim, Yatta, Idna, Tarqumiya, Qusra, Jalud etc.)

2. Both the Israeli and the Palestinian sides have to take actions against the water thieves.

3. The activity of both sides will include a public condemnation of this phenomenon (through the media) and instructing the supervision and enforcement teams (JSETs) to cut off the illegal connections and in addition to other activities.

B. Illegal Drilling

1. Illegal drillings diminish the amount of water produced by the legal wells and damage the management of the aquifer.

2. Both sides will take actions, which are similar to that taken against the illegal connections to main pipelines.

Prof Uri Shani
For the Israeli Side

Eng. Fadel Kawash
For the Palestinian Side
c) The wastewater collection systems shall be equipped to deal with failures and exceptional circumstances, including, inter alia; malfunctions and electricity shortages.

**Treatment**

**Wastewater treatment:**

11. Each Party shall plan and construct wastewater treatment plants in areas under its control in the West Bank, in accordance with the following principles:

a) The wastewater treatment plants shall be planned and constructed according to current western standards. The wastewater treatment plants shall be capable of treating the estimated wastewater quantities for the year 2020.

b) All Wastewater treatment plants shall be designed and operated in a modular design, to allow for future adjustment and expansion. The first phase shall provide treatment to a minimum of a secondary level. In the second phase, wastewater treatment plants are to be upgraded to achieve tertiary level of treatment. Effluent quality should not exceed, in the first phase, the following values: BOD5 = 20 mg/L; TSS = 30 mg/L; TN = 25 mg/L. In the second phase, effluent produced should not exceed the values listed in Schedule 2.

c) The quality of the effluent shall be in accordance with its end-use, as detailed in Schedules 1 and 2.

d) Alternatives for the location for each of the Wastewater treatment plants shall be presented to both parties and the selected locations shall be agreed upon by both parties in the Joint Water Committee.

**Sludge Treatment:**

12. All sludges shall be stabilized and de-watered in accordance with Schedule 3.

13. The wastewater collection and treatment systems, including pumping stations shall be capable of dealing with failures and exceptional circumstances, including, inter alia, malfunctions, electricity shortages and excess wastewater quantities.
1. According to the Water Agreement between Israel and the Palestinians, each side is responsible for treating the wastewater it produces.

2. Both sides, Israeli and Palestinian, agree that the flow of raw wastewater in the streams severely harms the environment and pollutes the shared ground water.

3. The manner of implementation of the agreement on wastewater had been previously discussed in technical committees, on many occasions.

4. A Memorandum of Understanding on Guidelines and Technical Criteria for Sewage Projects was agreed upon and signed by both sides on 31.12.2003. At the Palestinian side's request, it was agreed by the JWC that the high standards specified in the MOU (BOD 10/10), can be implemented gradually upon mutual agreement by both sides, i.e. the first stage will have a relatively low standard (BOD 20/30).

5. Both sides acknowledge that Israel did not set any condition to treat Israeli wastewater in Palestinian WWTPs. It is also agreed that the location of WWTPs will be chosen according to professional considerations, in Area C as well.

6. The attached table lists 27 Palestinian wastewater treatment projects. The project details specified in this table include: project location, purpose, estimated cost, status and decisions of joint committees.

7. Both sides encourage and gladly accept the donor countries' assistance in implementation of wastewater treatment projects and adequate and sustainable reuse projects.

___________________________  ______________________________
For the Israeli Side For the Palestinian Side
Prof. Uri Shani Dr. Shaddad Attili
Co-Chairman of the JWC Co-Chairman of the JWC

Signed on ____________
## Palestinian Wastewater Treatment and Reuse Projects

<table>
<thead>
<tr>
<th>No.</th>
<th>WWTP Project</th>
<th>Area</th>
<th>Description</th>
<th>Donor</th>
<th>Estimated Cost</th>
<th>Status/Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Jenin Regional</td>
<td>C</td>
<td>Construction of a new WWTP</td>
<td>Possibly KFW</td>
<td>70 Million Euro</td>
<td>This project has been cancelled since it was found that it is not feasible. It has been replaced by decentralized WWTPs in Jabatiya, Yamun and Yabad.</td>
</tr>
<tr>
<td>2</td>
<td>Jenin Yammun</td>
<td>A</td>
<td>Wastewater collection, treatment, and reuse.</td>
<td>USAID</td>
<td>20 Million USD</td>
<td>Approved by the Sewage JFC on 26.7.11</td>
</tr>
<tr>
<td>3</td>
<td>Jenin Qabatiya</td>
<td>A</td>
<td>Wastewater collection, treatment, and reuse.</td>
<td>USAID</td>
<td>20 Million USD</td>
<td>Approved by the Sewage JFC on 26.7.11</td>
</tr>
<tr>
<td>4</td>
<td>Jenin Yabed</td>
<td>C</td>
<td>Wastewater collection, treatment, and reuse.</td>
<td>USAID</td>
<td>20 Million USD</td>
<td>Approved by the Sewage JFC on 26.7.11</td>
</tr>
<tr>
<td>5</td>
<td>Jenin Industrial Estate</td>
<td>B</td>
<td>Establishment and construction of Jenin Industrial Estate WWTP to collect the wastewater generated from the Industrial area factories</td>
<td>KFW</td>
<td>2.7 Million USD</td>
<td>Approved by the JWC on 30.8.10</td>
</tr>
<tr>
<td>6</td>
<td>Jenin Misiya village</td>
<td>B</td>
<td>Construction of a collection system with decentralized WWTP to utilize the treated wastewater; the project also includes a pond to store the treated wastewater for months; a distribution system for irrigation is also included.</td>
<td>AFD</td>
<td>2.64 Million Euro</td>
<td>Principally approved by the JWC on 30.8.10, subject to the examination of the general design. The Palestinian side will submit the general design by 1.12.10. Final approval will be given in the next JWC meeting.</td>
</tr>
<tr>
<td>7</td>
<td>Tubas Anza</td>
<td>C</td>
<td>Wastewater collection and low-cost treatment and reuse.</td>
<td>Has EU</td>
<td>1.5 Million Euro</td>
<td>Has not been submitted to the JWC yet.</td>
</tr>
<tr>
<td>8</td>
<td>Tubas Tayaseer</td>
<td>B</td>
<td>An integrated wastewater system which would serve the following communities: Tubas, Yamun, Aqaba and Tayaseer.</td>
<td>EU</td>
<td>26 Million Euro</td>
<td>Principally approved by the JWC on 30.8.10, subject to the examination of the general design. Final approval will be given in the next JWC meeting.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>WWTP Project</th>
<th>Area</th>
<th>Description</th>
<th>Donor</th>
<th>Estimated Cost</th>
<th>Status/Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Tulkarem Regional Wadi Zaim</td>
<td>A-B</td>
<td>Establishment and construction of the system for a regional wastewater collection, treatment and disposal system in the lower part of Wadi Zaim.</td>
<td>KFW</td>
<td>25.6 / 13 Million Euro</td>
<td>The collection system was approved by JWC on 2.11.2010.</td>
</tr>
<tr>
<td>10</td>
<td>Tulkarem Habla, Bart'a &amp; Baqa Wastewater</td>
<td>B</td>
<td>Collection and conveyance of wastewater from the Palestinian communities of Bart'a Al Sharqiyah, Bart'a Al Sharqiyah and Habla to Israel for treatment. The project will be financed by the Japanese government and executed by UNDP</td>
<td>JICA</td>
<td>6.2 Million USD</td>
<td>A letter of agreement on this project was signed by both co-chairmen of the JWC on 26.10.08. Implementation has not started yet.</td>
</tr>
<tr>
<td>11</td>
<td>Qalqilya Hajja</td>
<td>B</td>
<td>Wastewater collection and low-cost treatment and reuse.</td>
<td>EU</td>
<td>1.5 Million Euro</td>
<td>Has not been submitted to the JWC yet.</td>
</tr>
<tr>
<td>12</td>
<td>Qalqilya Azzoun</td>
<td>A-B</td>
<td>Wastewater collection and low-cost treatment and reuse.</td>
<td>USAID</td>
<td>20 Million USD</td>
<td>Approved by the Sewage JFC on 26.7.11</td>
</tr>
<tr>
<td>13</td>
<td>Nablus west WWTP</td>
<td>C</td>
<td>Construction of a new WWTP and reuse systems</td>
<td>KFW</td>
<td>25 Million Euro</td>
<td>The works commenced on 15.11.10</td>
</tr>
<tr>
<td>14</td>
<td>Nablus East WWTP</td>
<td>B</td>
<td>Construction of a new WWTP and a sewerage collection network</td>
<td>None</td>
<td>30 Million Euro</td>
<td>Detailed design no. 511300 was approved on 3.4.99 by the CA. Now starting the feasibility study.</td>
</tr>
<tr>
<td>15</td>
<td>Nablus Beli Dagum</td>
<td>C</td>
<td>Wastewater collection and low-cost treatment and reuse.</td>
<td>EU</td>
<td>1.5 Million Euro</td>
<td>Has not been submitted to the JWC yet.</td>
</tr>
<tr>
<td>16</td>
<td>Nablus Sarra</td>
<td>C</td>
<td>Wastewater collection and low-cost treatment and reuse.</td>
<td>EU</td>
<td>1.5 Million Euro</td>
<td>Has not been submitted to the JWC yet.</td>
</tr>
<tr>
<td>17</td>
<td>Salfit WWTP</td>
<td>B</td>
<td>Construction of a new WWTP and reuse systems.</td>
<td>KFW</td>
<td>5 Million USD</td>
<td>This project received a final approval of the JWC over 4 years ago. In the JWC held on 15.9.09 it was agreed that the solution for Salfit sewage will be a local WWTP. The Palestinian side updated that the design was ready and the land was purchased, however, the funding was frozen by the donor pre-allocated.</td>
</tr>
<tr>
<td>SN</td>
<td>WWTP Project</td>
<td>Area</td>
<td>Description</td>
<td>Donor</td>
<td>Estimated Cost</td>
<td>Status/Decision</td>
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<tr>
<td>18</td>
<td>Ramallah Betunia - Ein Jarot</td>
<td>C</td>
<td>Construction of a WWTP which will serve Ramallah and Betunia.</td>
<td>KFW</td>
<td>10 Million Euro</td>
<td>The location of the WWTP was principally approved by the CA in October 2008. The Palestinian side has finished the feasibility study and submitted it to the CA.</td>
</tr>
<tr>
<td>19</td>
<td>Ramallah Ein Qunya</td>
<td>C</td>
<td>Establishment and connectivity of Ein Qunya WWTP to collect the wastewater of the Western drainage area of Ramallah including parts of Al Bireh and Birzeit.</td>
<td>KFW</td>
<td>10 Million USD</td>
<td>Principally approved by the JWC on 30.8.10 subject to the examination of the general design. Final approval will be given in the next JWC.</td>
</tr>
<tr>
<td>20</td>
<td>Ramallah Al Treh</td>
<td>A</td>
<td>Construction of a new WWTP and a sewage collection network</td>
<td>Ministry of Finance</td>
<td>2.1 Million Euro</td>
<td>The project has not yet been submitted to the JWC.</td>
</tr>
<tr>
<td>21</td>
<td>Ramallah Al Bireh WW Reuse</td>
<td>C</td>
<td>Implementation of a wastewater reuse project</td>
<td>Ministry of Finance</td>
<td>6 Million Euro</td>
<td>The Palestinian side will prepare and submit to the Israeli side a plan for the reservoir.</td>
</tr>
<tr>
<td>22</td>
<td>Ramallah Birzeit, Hjna, Jalazoun</td>
<td>C</td>
<td>Construction of a new WWTP and sewage collection system in addition to reuse for irrigation pipe system to collect the wastewater generated from Birzeit and surrounding neighborhoods.</td>
<td>None</td>
<td>25 Million USD</td>
<td>The project has not yet been submitted to the JWC.</td>
</tr>
<tr>
<td>23</td>
<td>Ramallah Rawabi</td>
<td>B+C</td>
<td>Construction of a WWTP and reuse system for the Rawabi wastewater - approx. 2.8 mcm/y.</td>
<td>city developed</td>
<td></td>
<td>Currently in the detailed design phase. Will be discussed at the JWC after the water source for the city is determined.</td>
</tr>
<tr>
<td>24</td>
<td>Ramallah Rawabi</td>
<td>B+C</td>
<td>Construction of a Temporary WWTP</td>
<td></td>
<td></td>
<td>Will be discussed at the JWC.</td>
</tr>
<tr>
<td>25</td>
<td>Ramallah Taybeh</td>
<td>B+C</td>
<td>Wastewater collection and low-cost treatment and reuse.</td>
<td>EU</td>
<td>1.5 Million Euro</td>
<td>Has not been submitted to the JWC yet.</td>
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<tr>
<td>26</td>
<td>Ramallah Rammun</td>
<td>B+C</td>
<td>Wastewater collection and low-cost treatment and reuse.</td>
<td>EU</td>
<td>1.5 Million Euro</td>
<td>Has not been submitted to the JWC yet.</td>
</tr>
<tr>
<td>27</td>
<td>Jericho</td>
<td>C</td>
<td>Establishment and construction of the Jericho WWTP and sewage collection system in addition to reuse for irrigation pipe system to collect the wastewater generated from Jericho and surrounding neighborhoods.</td>
<td>JICA</td>
<td>32 Million USD</td>
<td>Principally approved by the JWC on 30.8.10 subject to the examination of the feasibility study and general design. Final approval will be given in the next JWC.</td>
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<tr>
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<th>Estimated Cost</th>
<th>Status/Decision</th>
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<tr>
<td>28</td>
<td>Kidron / Wadi Nar Stream</td>
<td>B+C</td>
<td>The watershed submitted a plan for the treatment of more than 40,000 mcm of wastewater.</td>
<td>possibly JICA</td>
<td>70 Million USD</td>
<td>In July 2009, the Palestinian side informed that for political reasons they reject the project. The Palestinian side proposed an alternative project in Al Ardhiyya, however it is not mature enough for discussion. This issue needs to be discussed in a higher level (political).</td>
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<tr>
<td>29</td>
<td>Bethlehem West Sewage Project</td>
<td>C</td>
<td>Construction of a new wastewater collection system and 2 WWTPs in Nahalin, Beit Erat and Wadi Fagin</td>
<td>World Bank</td>
<td>15 Million USD</td>
<td>The project was not yet submitted to the JWC. A feasibility study will be prepared.</td>
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<tr>
<td>30</td>
<td>Bethlehem Industrial Park WWTP</td>
<td>B</td>
<td>Establishment and construction of a WWTP. This is an industrial wastewater system to serve the Bethlehem Industrial Zone</td>
<td>AFD</td>
<td>1.64 Million Euro</td>
<td>Principally approved by the JWC on 30.8.10 subject to the examination of the general design. Final approval will be given in the next JWC.</td>
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<tr>
<td>31</td>
<td>Hebron WWTP</td>
<td>B</td>
<td>Construction of a WWTP in the Hebron stream and a wastewater conveyance and reuse system.</td>
<td>AFD - World Bank</td>
<td>45 Million USD</td>
<td>The project received a final approval on 24.6.2004. The project funding was frozen by USAID in 2006. The AFD and World Bank are reconsidering funding this project. The feasibility study is being updated.</td>
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<tr>
<td>32</td>
<td>Hebron Tarqumiya - Hebron Dura</td>
<td>A+B+C</td>
<td>Wastewater collection and treatment.</td>
<td>USAID</td>
<td>20 Million USD</td>
<td>Approved by the Sewage JTC on 26.7.11</td>
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<tr>
<td>33</td>
<td>Hebron Dura</td>
<td>A+B+C</td>
<td>Wastewater collection and treatment.</td>
<td>USAID</td>
<td>20 Million USD</td>
<td>Approved by the Sewage JTC on 26.7.11</td>
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<td>34</td>
<td>North Gaza Beit Lahia</td>
<td>GAZA</td>
<td>The project was approved by the JWC. Stage A of the project is completed. Stage B just began.</td>
<td>World Bank</td>
<td>75 Million USD</td>
<td>Both sides recognize the importance of the project and will do their best to facilitate the feasibility study. It is important to ensure that wastewater does not flow to the stream and contaminate the Shikma water reservoir.</td>
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<tr>
<td>#</td>
<td>Project Description</td>
<td>District</td>
<td>JWC Number &amp; Date</td>
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<td>1</td>
<td>Construction of a sewage system for the village of Misiliya.</td>
<td>Jenin</td>
<td>292 30-08-10</td>
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<td>2</td>
<td>Construction of a WWTP and a water reservoir for the Jenin Industrial Zone</td>
<td>Jenin</td>
<td>270 30-08-10 235 12-10-08</td>
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<td>3</td>
<td>Construction of a WWTP for Jericho city.</td>
<td>Jericho</td>
<td>277 30-08-10</td>
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<td>Construction of a WWTP in Wadi Nar.</td>
<td>Jerusalem-Bethlehem</td>
<td>294 03-06-10</td>
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<td>5</td>
<td>Construction of a WWTP for the villages of Tubas, Tamun, Aqabe, and Tayasir.</td>
<td>Tubas</td>
<td>300 30-08-10</td>
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<td>6</td>
<td>Construction of a WWTP and a water trunk-line to the industrial zone</td>
<td>Bethlehem</td>
<td>301 30-08-10 315</td>
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<td>7</td>
<td>Rehabilitation of the internal water system and construction of water reservoir in Bilin.</td>
<td>Ramallah</td>
<td>47</td>
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<td>8</td>
<td>Rehabilitation of internal water networks in Jabal.</td>
<td>Jenin</td>
<td>55</td>
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<td>10</td>
<td>Construction of water distribution networks in Jayous.</td>
<td>Qalqilya</td>
<td>89</td>
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<td>Construction of a water reservoir and a water network in Att.</td>
<td>Tulkarem</td>
<td>116 07-07-10</td>
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<td>12</td>
<td>Rehabilitation to the Nueyma spring networks. Construction of a water reservoir and water networks in Nueyme.</td>
<td>Jericho</td>
<td>221 24-07-08 267 30-08-10 307 30-08-10</td>
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<td>13</td>
<td>Rehabilitation to water networks in the village of Bilin.</td>
<td>Ramallah</td>
<td>224 07-07-09</td>
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<td>14</td>
<td>Water reservoir and network in the village of Jabara.</td>
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<td>A water reservoir in Dir Kadis.</td>
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<td>Rehabilitation of networks and construction of a reservoir in Salfit.</td>
<td>Salfit</td>
<td>281</td>
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<td>Building a water reservoir and networks in Beit Jeia.</td>
<td>Bethlehem</td>
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<td>Construction of a water reservoir and rehabilitation of water networks in Tzurif.</td>
<td>Hebron</td>
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<td>Rehabilitation of water networks in Nashalin.</td>
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<td>Rehabilitation of the Kebatia main pipeline.</td>
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<td>Rehabilitation of water networks in Al-Obeida.</td>
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<td>30-06-10</td>
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<td>Construction of a water reservoir and main pipeline in Kufer Kur.</td>
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<td>Rehabilitation of water systems in Kufer Hindza.</td>
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<td>30-08-10</td>
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<td>Construction of a water reservoir and main pipeline in Uja.</td>
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<td>312</td>
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<td>Construction of water distribution networks in the Yata area spanning Halat to Maya, Al-Karme, Um to Safa, and Adadiye.</td>
<td>Hebron</td>
<td>122</td>
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<td>Construction of a water reservoir and rehabilitation of water networks in Azawiya.</td>
<td>Salfit</td>
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<td>Rehabilitation of internal water systems in Dir Abu Maahal.</td>
<td>Ramallah</td>
<td>100</td>
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<td>Construction of a water reservoir and rehabilitation of water networks in Dura El-Kara.</td>
<td>Ramallah</td>
<td>118</td>
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<td>The construction of new water networks in Dir Nizam.</td>
<td>Ramallah</td>
<td>106</td>
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<td>Construction of a water reservoir in Hablab,</td>
<td>Qalqilya</td>
<td>108</td>
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<td>31</td>
<td>Construction of a water reservoir and rehabilitation of water networks in Al -Jennya.</td>
<td>Ramallah</td>
<td>109</td>
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<td>Construction of a water reservoir and rehabilitation of water networks in Kfar Kaddum.</td>
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<td>Construction of a water reservoir and water networks in Rafaat.</td>
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<td>Construction of a water reservoir and water networks Za’atar.</td>
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<td>Construction of a water reservoir and water networks in Ras Karkar.</td>
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<td>36</td>
<td>Rehabilitation of internal water networks in Al Nabi Alias.</td>
<td>Qalqilya</td>
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<td>37</td>
<td>Construction of a water reservoir and rehabilitation of internal network in Krawat Bani Zeid.</td>
<td>Ramallah</td>
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<td>Rehabilitation of water networks in Ibadiya.</td>
<td>Bethlehem</td>
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<td>Construction of a water reservoir in Belta.</td>
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<td>Construction of a water reservoir and water networks in Maraj Gazal.</td>
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<td>128</td>
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<td>41</td>
<td>Three new water connection points in Wadi El-Malalik.</td>
<td>Jordan Valley</td>
<td>134</td>
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<td>42</td>
<td>New water network connection in Dir El-Suddan - Ajul.</td>
<td>Ramallah</td>
<td>138</td>
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<td>43</td>
<td>New water connection point in Duma.</td>
<td>Nablus</td>
<td>191</td>
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<td>44</td>
<td>Construction of a water reservoir to Jarain.</td>
<td>Nablus</td>
<td>123</td>
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</table>
Rehabilitation, and construction of 51 wells in Tulkarem, Yamun, Izbeit-Shafa, Zeidat, Hizme, Bani Na'im, Sanur, Araba, Kabatyia, Falame, Jenin, Herodium, Uja, Tubas, Jericho city, Beit-Kad, Western Jenin, East Herodium, Faraa camp.

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</table>
**Israeli – Palestinian Joint Water Committee**

**Joint Water Committee**

**Minutes of the Meeting of the JWC**

*Held on 07.07.09 in Neve Han*  
*(and on 14.07.09 in Tel Aviv)*

**Participants:**

**For the Israeli Side:** Prof. Uzi Shani, Mr. Baruch Ngar, Mr. Mo Provmer, Lt. Col. Amnon Canen, Mr. Carlos Perti, Dr. Avichay Hadad, Mr. Moshe Garazi, Eng. Yonni Kaplanovich, Adv. Daniel Geron, Mr. Gilad Hulain, Ms. LIBY Gerson Efi

**For the Palestinian Side:** Dr. Shaddad AttiBi, Eng. Mohammad Jaas, Mr. Ayman Jarrar, Mr. Ahmad Hindi, Mr. Andel Yassin, Mr. Khallaf Gabbarish, Mr. Rashad Sade, Mr. Michael Talahani

<table>
<thead>
<tr>
<th>No.</th>
<th>Subject</th>
<th>Description/Additional Information</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.</td>
<td>Palestinian Wells which were Approved by the JWC</td>
<td>The Israeli side notes that 13 Palestinian wells which were approved by the JWC and which are supposed to produce 14 MJM, are still not supplying water to the Palestinian system. Furthermore, there are approximately 20 Palestinian wells which were approved by the JWC but are not yet drilled. The Israeli side submitted to the Palestinian side a report of &quot;New Wells in the West Bank Approved by the JWC.&quot; The Palestinian side informs that in 2009 they intend to start drilling 4 of the mature reserve wells in the Judean Desert (&quot;Wye Agreement&quot;) with USAID funding. The Palestinian side further remarks that they are still waiting for area C permits for the Ulmen and Arzan wells which appear in the above-mentioned report submitted by the Israeli side. Decision of the JWC: The Israeli side will expedite the issuing of the area C permits.</td>
<td>A detailed report on this subject was submitted by the Palestinian side to the Israeli side.</td>
</tr>
<tr>
<td>31.</td>
<td>JSFETs Activities – Update</td>
<td>Several joint coordination meetings have been held in Hulston, which was chosen as a pilot for cooperation. The JSFETs activities in the field will start in a few days.</td>
<td>Both sides will continue to enable the joint activities of the JSFETs.</td>
</tr>
</tbody>
</table>
January 31, 2001

Mr. Nabil El-Sherif
Head of the Palestinian Side of the JWC

Dear Nabil,

Palestinian Wells in the Eastern Aquifer

As you are aware, the Interim Agreement provides that the Palestinian side shall develop 70 – 80 mcmy/year in the eastern aquifer. The Interim Agreement also provides that all development of water resources shall require the prior approval of the JWC.

In order to facilitate the development of the eastern aquifer, we have conducted a detailed hydrological survey of the area to identify suitable locations for drilling new wells in the eastern aquifer. This study was based on the hydrological concept that was discussed with and agreed by the hydrological team of USAID.

I am attaching a list of 28 coordinates for possible wells in the eastern aquifer. The drilling of wells in these locations has been approved by all the relevant Israeli authorities. This approval does not derogate in any way from the status of Green Areas and/or Nature Reserves in accordance with the Wye River Memorandum.

I wish to take this opportunity to reiterate the importance that we attach to the speedy development of the eastern aquifer by the Palestinian side in order to increase the quantity of water available for use by the Palestinian people.

Please do not hesitate to contact me should you require any further information concerning this matter.

Yours sincerely,

[Signature]

Noah Kinarty
Head of the Israeli Side of the JWC

[Signature]
Letter No. 2

Dr. Shaddad Attili  
Head of Palestinian Water Authority - PWA

8 June 2009

Dear Dr. Attili,

In your letter, dated 7 June, regarding the status of 12 new wells approved by the JWC in 2001 you claim that the Civil Administration has not responded to PWA request to drill these wells. This, you claim, is delaying the project adding to the already serious water shortage in the West Bank and the declining Palestinian level of well production. Furthermore, you claim that you did not receive the permit for the pipe-line connecting the village of Algib.

Here is the Civil Administration response to your claims:

- The JWC approval to drill 12 new wells (issued in 2001) is still valid. It is not clear to the Civil Administration why the PWA has not drilled these wells to this date.

- Following a discussions held between the Civil Administration and PWA officials, the Civil Administration has received (24 May 2009) a letter from yourself stating that the PWA will initiate a tender for 3 of the 12 wells (32,41,45) and will shortly start drilling these wells. Your letter states that once the PWA assesses the expected yields from these wells, it will apply for the relevant permits for the construction of the facilities. Given this state of affairs, it is not clear to the Civil Administration the nature of the claims made in your most recent letter.
Regarding the issues of the permit for the Algib project, the Civil Administration has handed this permit to PWA officials on several occasions (April 2009) and will re-send you this document again if necessary.

Regarding the reference you made in your letter to the diminishing levels of production in Palestinian wells, it has come to our attention that 5 of PWA wells in the West Bank are not operational due to technical-maintenance reasons. This state of affairs means that the PWA losses more than 7.5 million cubic meters of water a year (enough to supply 145,000 people with ample water). The Civil Administration kindly requests the PWA to advise it as to the reasons for this poor state of affairs and what is the PWA doing to improve the situation.

The Civil Administration is fully committed to project implementation in the water sector in the West Bank.

With kind regards,

Lt. Col. Avi Shalev

Civil Administration in Judea and Samaria
Letter No. 3

State of Israel
The Civil Administration – Judea and Samaria

Dr. Shaddad Attili
Head of Palestinian Water Authority - PWA

November 2009

Dear Dr. Attili,

Following the meeting held in my office on the 15 November 2009 with PWA officials, I would like to inform you that the State of Israel wishes to finance water and waste water infrastructural projects which will serve Palestinian communities in the West Bank.

Therefore, I urge the PWA to present proposals which include a list of emergency humanitarian projects in the water and waste-water sectors approved by the Joint Water Committee - JWC.

The Civil Administration will give priority to sustainable, low cost waste-water projects in area "C" (projects in area A&B can also be included) such as the Um-Reyhan "wet-land" recently implemented in the Jenin district with the support of the Government of Japan.

The proposed projects can be presented to the Civil Administration at the earliest possible opportunity and should include a general description of the project, estimated costs and the NGO or international body which will implement it.

The Civil Administration is fully committed to project implementation in the water sector in the West Bank.

With kind regards,

Lt. Col. Avi Shalev
Civil Administration in Judea and Samaria
Dear Dr. Attili,

I am glad to inform you that the Civil Administration has issued the permit to lay a pipe-line in Far‘un (an ICRC project) as well as to drill a well in Hizme (a PWA project).

With kind regards,

Lt. Col. Avi Shalev
Civil Administration in Judea and Samaria

February 2010
28 March 2011

Mr. Jehad Basheir
Co-Chairman of the JTC
PWA

Re: Illegal Drillings

1. As you know, there are over 250 unauthorized drillings in the northern aquifer, which were not approved by the JWC. On several occasions, you have noted that the owners of the legal wells in the area are complaining on the significant decrease of the water levels as a result of the unauthorized drilling.

2. Furthermore, you have informed us in the joint committees that it is your intention to shut down the unauthorized drillings.

3. In the special JWC meeting held on 02.12.07 it was agreed that three unauthorized wells in Aqрабания be shut down. The JWC MoM, pictures of the drillings and their coordinates are attached herewith, for your convenience.

4. The Demolition activities of the Aqрабания wells mentioned above were delayed, at the Palestinian side's request; however, so far the drillings have not been destroyed.
5. Kindly inform us of the timeline in which the abovementioned JWC decision will be implemented.

6. In addition, kindly update us on the steps which are taken by the Palestinian side against the unauthorized drillings.

Sincerely,

Eli Doron
Head of the Israeli SETs
Water Administration for the WB&GS

Cc: Mr. Oded Fixler, Head of IWA
Dr. Shaddad Attili, Head of PWA
Mr. Baruch Nagar, Head of the Water Administration for the WB&GS
Mr. Yuval Nahum, Civil Administration
Letter No. 6

Dr. Shaddad Attili
Head of Palestinian Water Authority - PWA

April 2011

Dear Dr. Attili,

It has recently come to our attention that PWA officials are reluctant to promote the drilling of a new well near the village of Hizme due to the site’s proximity to an active quarry. Their concerns are related to the possible effects of the quarry on the quality of water planned to be extracted at the site.

The Civil Administration has consulted with leading hydrologists working for Mekorot (Israel’s national water company) in order to receive their professional view on this subject. Mekorot experts have informed us that the drilling of wells in close proximity to quarries is an existing practice in Israel. In fact, Mekorot operates several water wells in close proximity to active quarries in Israel and the West Bank. For example:

1. The Ga’aton 2 Well in the Western Galilee is situated close to the active quarry named “Asheret.” The well has been active for 40 years without problems or negative implications on the quality of water drawn from the well.
2. The Eshta’ol 7 Well is situated at the entrance of the Har-Tov Quarry (located near Moshav Nacham). The quarry has been active for 30 years without problems or negative implications for the quality of water drawn from the well.
3. The Tirali Wells are located 500 meters south of the Shifa Quarry to the East of Zichron Yaakov. These three interlinked wells have functioned without problems or negative implications to the quality of water drawn from the wells.
4. The Gitit 1 Well is situated in the Jordan Valley and located one kilometer East of the Gitit Quarry. This well experienced occasional albeit rare instances
of carbonate fouling that has not been scientifically connected to the operation of the quarry.

The natural water table at the Hizme site is expected to be at a depth of 300-350 meters. The plan for the Hizme Well intends for water to be drawn from an aquifer layer residing between 500-800 meters below ground. Therefore, the activity at the quarry will take place several hundreds of meters above the water table and the level at which the water is actually extracted by the well.

Please note that the site for the well was submitted by the Palestinian Water Authority in 2009 and was approved by the Civil Administration in January 2010. The approved site near Hizme boasts several positive qualities. The site itself is designated as public land; hence there is no need to expropriate land from private land owners. The site is cost efficient in terms of drilling. The top layer of land has already been removed by the quarry activity, thus ameliorating the need for additional costly excavation. Moreover, utilizing land in an existing industrial site avoids wasteful use of agricultural or unexploited land. A well of the size of Hizme creates significant noise pollution. Its planned location in the quarry will also minimize the negative environmental impacts of the well.

It is the opinion of the Civil Administration that the site approved near Hizme is suitable for the drilling of a well and can serve the growing water needs of the population in the region. The Civil Administration urges the PWA to promote the drilling of the Hizme well given the fact a permit-order has been issued to the PWA nearly 18 months ago.

With kind regards,

Lt. Col. Avi Shalev
Civil Administration in Judea and Samaria
Letter No. 7

Dear All,

A few days ago Dr. Azzali sent out a letter denouncing the Israeli destruction of a number of illegal wells located in Beit Hassun, using this as an explanation for his choice to withdraw his team from the desalination training program.

It is unfortunate that Dr. Azzali has chosen to take such action, not least us above all, as it is the Palestinian people alone who will suffer as a result of his decision.

In response to his accusation, I think it is essential to inform you of a number of crucial points that Dr. Azzali has omitted, which highlight not only the difficulties that we face with regards to cooperation in the water sector, but also expose the customarily disingenuous Palestinian public relations tactics, which we are forced to deal with on a regular basis.

- The decision to shut down the 3 illegal wells in Beit Hassun was agreed upon by both sides, Israeli and Palestinian, at the Israeli-Palestinian Joint Water Committee (JWC) meeting held on 2.12.2007, (see attached signed MoM, paragraph 3).

- Several reminders of this decision were sent to the Palestinian Water Authority who reiterated their intention to execute the aforementioned JWC decision and also promised to submit a report on its implementation (see attached signed JWC MoM from 7.7.09, paragraph 28).

- On several occasions the Palestinian side emphasized its commitment to combat the phenomenon of illegal drillings, stating that it is in the best interest for both sides (see attached special decision of the JWC from 13.11.07).

- In March 2011, four years after the original joint decision to close down the wells, we requested once more that the JWC decision be implemented (see attached letter). We received a most perplexing response to this in April, stating that "...any decision to demolish a well is unacceptable to the PWA..." On July 5th 2011 we reiterated the urgent need for the JWC decision to be implemented, in order to protect our joint asset.

The decision to shut down the wells in Beit Hassun, which was approved by the JWC in 2007, is not a matter of politics - it is a matter of survival - as it works towards protecting our largest and most important collective vital natural resource. A troubling reminder of the risks attached to unmonitored drillings is the destruction of the Gaza Aquifer, which came about as a result of the large amount of unauthorized drillings.

This cannot and must not be repeated with the joint Mountain Aquifer, and it is a mystery to us why the Palestinian side does not value its own survival.

It is also important to emphasize that unauthorized drillings are in contradiction with article 40 of Annex III of the Interim Agreement, which Israel fully implements, even surpassing its obligations under the agreement, for instance by supplying the Palestinians with quantities of water far beyond its obligation.

The steps taken by Israel in this matter were, as I am sure you would agree, the only remaining option after many efforts to find a solution to this issue through dialogue and negotiation - a solution that had already been devised and acknowledged by both sides - but which for some reason the Palestinians turned back upon. It would have been far preferable for the PWA to resolve this issue itself, as originally agreed.

We usually strive to resolve our disagreements within the JWC, as instructed by the Interim Agreement, rather than by dragging in third parties. While we would not normally respond to such public relations tactics, we feel that it is important that the facts be made clear to all, in order to avoid any potential misinterpretation.

Israel gladly meets and will continue to meet with the Palestinian side in the framework of the JWC to discuss common issues, as set by article 40 of Annex III of the Interim Agreement as it has done before, for the benefit of both sides.

We hope that in time, the Palestinians will join us in thinking about, and acting upon, our collective vital interests rather than compromising them in the hope of raising public support.

Lt.Col Grisha Yakaevich
Head of Infrastructure Branch
COGAT, Ministry of Defense