
GLOBALIZATION AND WATER RESOURCES MANAGEMENT: THE CHANGING VALUE OF WATER

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ONE RESOURCE, TWO VISIONS: THE PROSPECTS FOR ISRAELI-PALESTINIAN WATER COOPERATION

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ABSTRACT: With the signing of the Oslo Accords in 1993, the Israelis and Palestinians have embarked upon a difficult path to share their joint water resources. Despite international efforts to encourage joint technical projects and institution building, obstacles remain for obtaining a comprehensive water agreement. This paper explicates the main problems hindering water cooperation. It examines the different bargaining positions of the Israelis and the Palestinians in the water negotiations. Both the Palestinian and Israeli publics have different perceptions regarding the way the water issue should be resolved. For example, the Palestinians tend to focus on the issue of water rights and compensation for water used by the Israelis during the occupation, and the Israelis instead tend to ignore issues related to international water law and focus on the technical aspects of water sharing. Hence, the difference in perceptions and interpretations of international law influences the nature of any future water agreement.

KEY TERMS: Israel; Palestinian Authority; water conflict; cooperation; international law; negotiations

INTRODUCTION

With the signing of the Oslo Accords in 1993, the Israelis and Palestinians embarked upon a difficult path to share their joint water resources. Despite international efforts to encourage joint technical projects and institutional building, the Palestinians and Israelis have failed to reach a comprehensive water agreement although both sides recognize that regional water cooperation is essential for the economic livelihood of the region. In particular, the increasing water shortages and draught conditions may aggravate an already tense and volatile political situation. Whereas the Al Aqsa Intifadah has frozen the peace process, any future resumption of the Middle East peace process will undoubtedly need to address the water sharing issue between the Israelis and the Palestinians.

Many of the obstacles to a comprehensive water agreement are a result of the historical and cultural context concerning previous patterns and perceptions of water use in Israel and the Palestinian territories. In order to understand the contemporary bargaining positions of the Israelis and the Palestinians, this paper focuses on the historical roots of the two negotiating positions. To begin, both the Palestinian and Israeli publics have different perceptions regarding the way in which the water issue should be resolved (e.g. Elmusa, 1997). This paper seeks to explicate these different bargaining positions put forth by the Israelis and Palestinians concerning water use and distribution. In short, we find that the Palestinians and Israelis have different views concerning how the water issue should be resolved. While the Palestinians tend to focus on international law and water rights, the Israelis tend to ignore issues related to international water law and focus mainly on the technical aspects of water management. We, thus, argue that the difference in perceptions, which are embedded within a historical context, will most likely influence the shape and scope of future water sharing negotiations; they will subsequently undergird any agreement between the two parties and its implementation. Moreover, we suggest that other issues need to be taken into account during the negotiations such as compensation and environmental liability and the recognition of historical and cultural factors. Many of these issues have little precedence in international law (e.g. Wetterstein, ed., 1997 and Francioni and Scovazzi, eds., 1991).

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BACKGROUND: SHARING THE WATER RESOURCES

Israel and the Palestinian Authority share three groundwater basins, which include the Coastal Aquifer (in Gaza Strip), the Western Mountain Basin and the Northeastern Mountain Basin. Whereas the Eastern Mountain Basin is located completely within the West Bank, Israel, however, abstracts roughly fifty-five percent of the deep aquifer system of the Eastern Basin (Palestinian Water Authority, Data Base). The most contentious aquifer, nevertheless, is the Western Mountain aquifer where the natural replenishment by rainwater takes place within the West Bank; yet the pumping takes place in Israeli territory as the natural flow of the groundwater is from the West Bank towards Israel. Specifically, 80% of the recharge areas of the Western and Northeastern Basins are located in the West Bank, but in the early 1990s Israel used 80% of the annual 680 MCM of the renewable fresh water (e.g. see Shuval, 1993).

Whereas the Palestinian-Israeli conflict dates back to the partition of Palestine in 1948, the water issue became particularly salient in 1967. Prior to 1967, the West Bank aquifers were under Jordanian jurisdiction and Gaza's water resources were under Egyptian jurisdiction (Elmusa, pp. 270-71). When Israel occupied the West Bank and Gaza in 1967, Israel declared all the water resources in the occupied territories to be state controlled and under the jurisdiction of the Israeli military. Military Order No. 92 (15 August 1967) concentrated water management in the hands of the Israeli military administration in the West Bank. By centralizing water management decision and declaring water resources public property, the Israeli administration consolidated control over water allocation and exploitation decisions (for further details, see Dillman, 1989; Dichter, 1994; Elmusa, 1997; Lonergan and Brooks, 1994; and Rouyer, 2000). Israel has restricted Palestinian water use and exploitation by limiting the number of wells that the Palestinians could drill. Between 1967-1994, the Israeli authorities issued approximately 38 permits for new drilling new wells and/or replacing existing wells (Rouyer, 2000, p. 48). In the West Bank, a total of 359 wells exist, which abstract 60MCM/year; most of the wells were drilled before 1967. Overall, the Palestinian total consumption in 1980s was not allowed to exceed 125 MCM (Lowi, 1995, p. 185). Instead of developing new wells, Israel chose to distribute water to the Palestinian population through its national water company, Mekorot. The water that Mekorot supplies to the Palestinian population is derived from external sources to the West Bank.

The water resources in the Gaza Strip are limited to the coastal aquifer system, which is a fragile and shallow aquifer. Due to high population growth rates, an agriculturally intensive economy, weak infrastructure (e.g. the wastewater sanitation system), and exploitation rates exceeding natural replenishment, Gaza is facing a severe water crisis (Kelly and Homer-Dixon, 1995). Since 1967, the Israelis have drilled roughly 40 wells to supply the Israeli settlements within Gaza with about 5 MCM/year (Camp Dress &McKee, 2000). At the same time, the rate of population growth (roughly 4%) in Gaza is one of the highest in the region with fertility rates of seven children per woman (Sontag, 2000). The numerous stresses on the aquifer have resulted in severe water pollution and salinization (both from human and natural sources) whereby the water quality does not meet any international drinking water standards.

In short, Israeli water policy in the occupied territories has limited the development of self-supply of water to the Palestinians while demand has increased. By the year 2014, the combined population in Gaza and the West Bank is expected to reach 5.5 million (Sontag, 2000). At the same time, the current abstraction rates are accelerating the destruction of the aquifer systems, particularly in the Gaza Strip. Given that the West aquifers and the Coastal aquifer are shared resources, the future management of these resources will, nevertheless, depend upon close cooperation between the Israeli and Palestinian authorities.

THE FIRST STEPS TOWARD WATER SHARING: OSLO I AND OSLO II

The Madrid Peace conference in October 1991 set the stage for Israel and the Palestinians to begin to deal with the water issue as part of a broader regional peace effort (e.g. see Peters, 1996). The discussions that ensued at both the bilateral and multilateral levels since 1991 have taken a technical rather than a political focus, operating under the assumption that technical cooperation (low level politics) can facilitate high-level political cooperation and strengthen the peace process. Subsequently, both the Declaration of Principles on Interim Self-Government Arrangements (Oslo Agreement) of September 1993 and the Israeli-Palestinian Agreement on the West Bank and the Gaza Strip (Oslo II) of September 1995 contained provisions concerning the utilization of shared water resources between the Palestinians and the Israelis. The Declaration of Principles provides one of the first attempts to include water within the broader Israeli-Palestinian peace process. Article VII (4) enabled the Palestinian Authority to establish a Palestinian Water Authority in order to promote economic growth; yet at the same time, Article VII did not specify what actual authority and functions would be endowed to the Palestinian Water Authority. Article 40

(Water and Sewage) in Oslo II subsequently specified how water would be addressed in the peace negotiations. In particular, Article 40 recognized “Palestinian water rights in the West Bank” and the necessity to develop additional water for various uses” as part of the Permanent Status Agreement. The Oslo II agreement granted the Palestinian population in the occupied territories an additional 28.6 MCM/year during the interim period although both sides recognized that the Palestinians required 70-80 MCM/year for future needs. Israel at the time committed itself to supply the Palestinians with 9.5 MCM/year. The Palestinians were supposed to receive the largest supply from developing the Eastern Basin. Nevertheless, the Palestinians have only been able to abstract about 15 mcm/year from the 70 mcm mentioned in Article 40 (6) (Palestinian Water Authority, Data Base). Until the outbreak of the Al Aqsa Intifadah, this agreement provided the basis for water sector planning and project implementation in the West Bank and Gaza Strip (e.g. see El-Sharif, 2000).

Simply put, cooperation is necessary to avoid future water conflict and to prevent overpumping and further degradation in the water quality. Article 40 has set the initial parameters for future cooperation, and as part of these cooperative efforts, Israel would make “available all relevant data” available (40, 9). Furthermore, water cooperation was intended to take place under the auspices of the Joint Water Committee during the interim period whose functions included: 1) coordinated management of water resources; 2) coordinated management of water and sewage systems; 3) protection of water resources and water and sewage systems. Yet, at the same time, methods for dispute resolution were not mentioned in the agreement.

A weak point of Article 40 is that it concentrates largely on the Eastern Mountain Basin. Yet, the Eastern Basin cannot provide an appropriate solution to the water demand of the cities in the Western side of the West Bank. The infrastructure of water transport from the Eastern Basin to the Western part does not exist. Furthermore, the agreement only focuses on the quantity of water (volume) and not quality. The Eastern Basin, in fact, has a severe salinization problem, and as a result many wells are not suitable for domestic and/or agricultural consumption. Any further development of brackish groundwater will thus require capital investment for desalinization, which the Palestinian economy at present cannot meet.

PALESTINIAN AND ISRAELI BARGAINING POSITIONS

Although the Palestinians and Israelis began to address the water issue in Oslo I and Oslo II, many of the main decisions were deferred to the final status talks (Rouyer, p. 178). Whereas the Palestinians sought Israeli recognition of their water rights and a greater share of the water resources, the Israelis wanted an agreement that only dealt with joint management of existing resources and joint development of new water supplies (Rouyer, pp. 177-178). Indeed, the two positions can be succinctly characterized as: 1) the Palestinian position is embedded within a historical context and international law and 2) the Israeli position is embedded within a technological approach that is disassociated from a historical context. Similarly, Rouyer (p. 185) has described the Palestinian approach to both the multilateral and bilateral talks as having a “legalistic-philosophical” orientation; whereas, the Israelis have sought to separate the technical and political aspects of the water issue into different venues of the negotiations. Although the Israelis and Palestinians have met numerous times since 1991, a huge gap separates their bargaining positions. This section attempts to understand what are the major points of disagreement between the two bargaining positions.

Israeli Position

From the outset, the Israeli bargaining position has emphasized joint management and technical solutions that promote conservation and augment the water supply from additional sources. The Israeli position is embedded within a technical discourse that is future oriented and concerned with planning and management. To begin, the Israeli negotiating position rejects the Palestinian demand for access to the Mountain aquifer. Given that Israel has relied on water as a core institution of state building, water (e.g., the National Water Carrier that transports water from the Sea of Galilee to the Negev desert in the south), the ability to harness and exploit its water resources has been a major part of Zionist ideology and Israeli nationalism (e.g. see Rouyer, pp. 80-107). Moreover, due to the general security fears of Israelis from its neighboring Arab states, many Israelis argue that the water resources of the Western Basin must remain under Israeli control (e.g. see Sherman, 1999). They contend that the Palestinians could use the water resources as a strategic weapon against Israel. At the same time, members of the Israeli negotiating team have stressed that water is not a source of conflict, but rather a means to promote cooperation. Thus, the Israelis argue that they do not need to give up their access to the West Bank aquifers, but instead it is in their best interest to ensure that the Palestinians have access to additional water. The Israeli solution is based upon technical

cooperation and very practical solutions. Rather than offering the Palestinians access to the Western Aquifer, the Israeli team favors the development of 80 MCM of water in the Eastern aquifer and building a desalinization plant for the West Bank and Gaza. This solution is premised upon an engineering perspective that technical solutions exist, but only require time and money. In addition, the Israelis do not perceive the need to deal with the issue of water rights and international law given that they believe water management is a more appropriate solution. Thus, international law is dismissed in favor of technical solutions. In fact, the Israeli bargaining position is that water (technical cooperation) should not be linked to the political realm. Finally, the Israelis believe that a sound solution can only be found and carried out if the international community pledges sufficient aid to carry out projects like building a Water Carrier in Gaza or desalinization plants. Much of the Israeli approach that is directed towards a technical solution is owing to underlying fear that the transfer of water rights and control over the Western Basin will hurt Israel strategic interests in the future, especially since much uncertainty shrouds the current political situation between the Israelis and the Palestinians. In sum, the Israeli position is embedded within a belief in technological progress and development. It is irrespective of history and forward looking.

Palestinian Position

In contrast, the Palestinian position is more complex because the Palestinians continue to view water use with in a historical context through the prism of the Israeli military occupation. In contrast to the Israeli position that is forward looking, the Palestinian position focuses on what they consider to be an unfair and unjust distribution of the water resources since 1967. According to the Palestinian position, Israel created an artificial status quo regarding the allocation of water resources, which does not recognize the Palestinians basic water needs or past historical practices. For instance, prior to 1967, the West Bank as part of the Hashemite Kingdom of Jordan recognized different forms of ownership ranging from public to private. Moreover, the Palestinians argue that Israel has neglected and did not develop the infrastructure during more than thirty years of occupation. In addition, the Palestinian positions draws extensively upon international law (e.g. Elmusa, 1997) including the Helsinki Rules and the Convention on the Law of the Non-navigational Uses of International Watercourses, 1997. According to international law, the parties that share an international water basin should be entitled to a “reasonable and equitable” share of the water and neither party should cause “significant harm” to another user. Tied to international law, the Palestinian positions stresses that Israel must recognize their water rights and enable them to return to the pre-occupation laws (Jordanian or Egyptian) or to devise their own body of water law in the West Bank and Gaza Strip. The Palestinians submit that before they can make any knowledgeable decisions in the water negotiations, they need full information (i.e. access to the Israeli data) concerning the water resources in the West Bank and Gaza Strip. Finally, although both sides “recognize the necessity to develop additional water for various uses (Article 40, 2), the Palestinians submit that other issues should also be placed on the bargaining agenda such as access to the Jordan River (also see Schiff, 2000). The Palestinians argue that before 1967 as part of Hashemite Kingdom of Jordan they enjoyed access to the waters of the Jordan River for irrigation, and thus according to international water law that acknowledges historical rights, the Palestinians should again have access to the Jordan River.

THE PROSPECTS FOR ISRAELI-PALESTINIAN WATER COOPERATION

Beside the political disputes concerning settlements, Jerusalem, and the right of return for the Palestinians, the water negotiations have faltered largely because of two different visions concerning water use. The Palestinians have sought to renegotiate water use and redistribution over the West Bank aquifers and the Coastal Aquifer whereby Israel would recognize their historical water rights. In contrast, Israel has pushed forward its position that the Palestinians find new sources of water such as desalinization or the Eastern Aquifer (e.g. see Libiszewski, 1995). Instead, water has become a symbol of Israeli injustice for the Palestinians (Elmusa, p. 287). At the same time, water has become one of the necessary institutions for building the Palestinian state like water was for the creation of the State of Israel. Although the water negotiations have led to some joint technical projects between the Israelis and the Palestinians, the larger political battles have hampered the water negotiations. Like the water issue, the refugee issue, for example, touches upon the sensitive issue of Israeli recognition of Palestinian historical claims. Such issues that force a people to reinterpret their histories tend to be the most contentious because they require that the parties to the negotiations make difficult compromises or apologies. One way to address over three decades of occupation is thus to broaden the negotiating table and to add new topics to the negotiations (e.g. on negotiation arithmetic, see Sebenius, 1983). Issues that have been mentioned in the water negotiations, but not formally addressed, concern the question of environmental compensation and environmental liability. Compensation could

play a critical role in bringing the two sides closer together. Despite the recognition of the principle of “do no harm” and the “polluter pay principle,” international law still does not provide clear guidelines at the interstate level on how to compensate in cases of environmental liabilities and damage. While the Palestinians have focused on issues related to justice, compensation, and use of the water under the occupation, the Israelis have been reluctant to acknowledge these concerns. Instead, they have emphasized their own concerns regarding the risk to their security if water resources in the West Bank were under Palestinian control.

CONCLUSION

Water disputes like other political conflicts can only be resolved through political negotiations. Although international law offers many guidelines for resolving water disputes, it remains “abstract and precatory” (Barton and Greenberg, 2000, p. 358). Besides being an expression of good faith, international law can only set the parameters for the negotiations. Given the limitations of international law, international donors might nevertheless be able to put international law into practice and influence the nature of the water negotiations in the Middle East. In particular, international donors can decide whether or not to fund water development practices according to principles of international water law. Indeed, the operating principles of organizations such as the World Bank prohibit the Bank from funding projects that could cause harm to another party that shares the same resource. Barton and Greenberg (p. 358) point out that the international donors could use their authority to define equitable and more detailed standards for sharing water resources in projects that they finance, and in turn, these standards would become *de facto* law. Specifically, the donors should maintain a commitment to facilitating the water negotiations between Israel and the Palestinian Authority rather than reducing their involvement in response to the escalation of violence. An important role for the donors is to reduce the uncertainty and to restore the trust between the two parties. Concerning the water situation, the donors could bridge the informational gap by ensuring that all the water data is available. At present, the donors have focused on creating data banks instead of a regional data bank, which has reduced the interaction between the Palestinians and the Israelis rather than increasing the interaction. The donors can encourage scientific cooperation, which would increase transparency and reduce informational uncertainty while building trust among the water specialists. More important, it would dissolve myths on both sides concerning water use. Finally, the donors could use their financial resources at their disposal to place the issue of environmental compensation and liability on the table. Through their financing for new projects in the water sector, third parties could thus provide the necessary compensation to the Palestinians for past practices under the Israeli occupation and to the Israelis for relinquishing their claim to the West Bank aquifers.

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