WATER
FOR ONE PEOPLE ONLY
Discriminatory Access and ‘Water-Apartheid’ in the OPT
AL-HAQ
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Acknowledgements

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I. Glossary

**Appropriation:** Defined as the exercise of control over property; a taking of possession.

**Aquifer and Basin:** The terms ‘aquifer’ and ‘basin’ are often used interchangeably for groundwater. Technically, while groundwater is a domain of flow, basin and aquifer refer to the layers in which flow takes place (and a basin may therefore have several aquifers or sub-aquifers). For instance, the Mountain Aquifer is a groundwater basin, flowing underneath much of the West Bank and central Israel, with several sub-aquifers.

**Area A (17 per cent):** The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) divided the West Bank into three Areas. Area A includes those parts of the West Bank that are under full Palestinian civil and security control. In Area A, which includes (parts of) six major West Bank cities, the Palestinian authorities assumed “the powers and responsibilities for internal security and public order,” and the administration of civil spheres, such as health, education, policing, and other municipal services. However, since 2002, Israel has retained responsibility for overall security in all areas of the West Bank, and does not abdicate full authority over Area A.

**Area B (24 per cent):** Includes those parts of the West Bank that are under full Palestinian civil control and joint Israeli-Palestinian security control. Within Area B, which encompasses many Palestinian villages and towns, the Palestinian authorities was vested with the same functional authorities as in Area A, including public order for Palestinians. However, Israel retained overriding responsibility for security.

**Area C (59 per cent):** Includes those parts of the West Bank that are under full Israeli civil and military control, including land registration, planning, building and designation of land use. It contains the bulk of Palestinian agricultural and grazing land, water sources and underground reservoirs.

**Brackish water:** A mixture of fresh and salty water that contains more salt than fresh water, but not as much as seawater.

**Dunums:** A dunum (or dönüm, dunam) is a unit of land equal to 1,000 square metres. Land area in the West Bank, Gaza Strip and Israel has been measured in dunums since the era of the British Mandate of Palestine.

**EWASH:** The Emergency Water, Sanitation and Hygiene group (EWASH) is a coalition of 28 agencies, including national and international NGOs, UN agencies, academic and research institutions, and Palestinian institutions, working in the water and sanitation sector in the OPT.
**Fresh water:** For the purpose of this study understood as water naturally occurring on ground surface in rivers, springs, streams, and water naturally occurring underground as groundwater in aquifers, basins and underground streams. It is generally characterised by having low concentrations of dissolved salts and other totally dissolved solids.

**Green Line:** The 1949 Armistice Line, which is internationally accepted as the boundary between Israel and the OPT. Its name derives from the green ink used to draw the line on the map during the peace talks.

**Groundwater:** Water that is located beneath the ground surface and moves along soil pore spaces or in joints, fractures and karstic conduits within or across the rock formations. Groundwater is usually recharged from rain and eventually flows to the surface naturally, often at springs and seeps.

**International watercourse:** Defined under Article 2(b) of the 1997 UN Watercourses Convention as “a watercourse, parts of which are situated in different States” (see [Watercourse]).

**Israeli Civil Administration:** The body responsible for the implementation of Israel's government policy in the West Bank. It is part of the Coordinator of Government Activities in the Territories, which is a unit in the Israeli Ministry of Defence.

**Israeli settlement enterprise:** For the purpose of this study, the Israeli settlement enterprise must be understood as to encompass all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the 1949 Green Line in the OPT.

**Lateral inflows and outflows:** The volume of water that flows from one basin or aquifer to another or to the adjacent water body.

**Occupied Palestinian Territory (OPT):** The OPT refers to the territory occupied by Israel since the 1967 Six Day War. It is now composed of two discontinuous regions, the West Bank, including East Jerusalem, and the Gaza Strip.

**Operation "Cast Lead:"** The 2008-2009 Israeli wide-ranging military offensive against the Gaza Strip, launched on the morning of 27 December 2008 and lasting for 22 days.

**Return flows:** Water that could come from leaking supply networks, agricultural irrigation flows, and domestic or industrial sewage and feed natural water resources, such as surface or groundwater bodies.

**Shared water resources** (*also named: Transboundary water resources*): Aquifers and basins resources that are shared by two or more politically, economically or culturally distinct communities. Mainly: the Jordan River, the Coastal Aquifer and the Mountain Aquifer. The Oslo Accords contain provisions applicable to the Mountain Aquifer only. Smaller shared watercourses or resources also include for example Wadi Gaza (emerging from Hebron or other, minor aquifers).

**Total recharge:** The recharge from rain infiltration plus return flows and lateral basin inflows minus lateral outflows.

**Watercourse:** Defined under Article 2(a) of the 1997 UN Watercourses Convention “a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus.”

**Watercourse State:** Defined under Article 2(c) of the 1997 UN Watercourses Convention as “a State Party to the [UN Watercourses] Convention in whose territory part of an international watercourse is situated” (see [Watercourse]; [International watercourse]).
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<td>ARIJ</td>
<td>Applied Research Institute – Jerusalem</td>
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<tr>
<td>CMWU</td>
<td>Coastal Municipalities Water Utility</td>
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<td>EAB</td>
<td>Eastern Aquifer Basin</td>
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<td>EWASH</td>
<td>Emergency Water, Sanitation and Hygiene group</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>HIS</td>
<td>Hydrological Service of Israel</td>
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<td>ICBS</td>
<td>Israeli Central Bureau of Statistics</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>IHRL</td>
<td>International Human Rights Law</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>IWL</td>
<td>International Water Law</td>
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<td>JD</td>
<td>Jordanian Dinar</td>
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<td>JWC</td>
<td>Joint Water Committee</td>
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<tr>
<td>JWU</td>
<td>Jerusalem Water Undertaking</td>
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<tr>
<td>lpcd</td>
<td>litres per capita daily</td>
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<tr>
<td>mcm</td>
<td>million cubic metres</td>
</tr>
<tr>
<td>mcm/yr</td>
<td>million cubic metres per year</td>
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<tr>
<td>mm/yr</td>
<td>millimetres per year</td>
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<tr>
<td>NEAB</td>
<td>North-Eastern Aquifer Basin</td>
</tr>
<tr>
<td>NRO to the PA</td>
<td>the Netherlands Representative Office to the Palestinian Authority</td>
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<td>NWC</td>
<td>National Water Carrier</td>
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<td>OPT</td>
<td>Occupied Palestinian Territory</td>
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<td>PA</td>
<td>Palestinian Authority</td>
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<tr>
<td>PARC</td>
<td>Palestinian Agricultural Relief Committee</td>
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<tr>
<td>PCBS</td>
<td>Palestinian Central Bureau of Statistics</td>
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<tr>
<td>PHG</td>
<td>Palestinian Hydrology Group</td>
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<tr>
<td>PLO</td>
<td>Palestine Liberation Organisation</td>
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<td>PWA</td>
<td>Palestinian Water Authority</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UN CESCR</td>
<td>UN Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Council</td>
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<tr>
<td>UNRWA</td>
<td>United Nations Relief and Works Agency</td>
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<tr>
<td>UN OCHA</td>
<td>United Nations Office for the Coordination of Humanitarian Affairs</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<tr>
<td>WAB</td>
<td>Western Aquifer Basin</td>
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<tr>
<td>WASH</td>
<td>water, sanitation and hygiene</td>
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<tr>
<td>WBWD</td>
<td>West Bank Water Department</td>
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<tr>
<td>WHO</td>
<td>World Health Organisation</td>
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V. Executive Summary:
Water For One People Only: Discriminatory Access and ‘Water-Apartheid’ in the OPT

Israeli per capita consumption of water for domestic use is four to five times higher than that of the Palestinian population of the Occupied Palestinian Territory (OPT). In the West Bank, the Israeli settler population, numbering more than 500,000, consumes approximately six times the amount of water used by the Palestinian population of almost 2.6 million; this discrepancy is even greater when water used for agricultural purposes is taken into account.

Contrary to popular belief, water is not, and has not been, scarce in the region, which contains three main sources of natural fresh water. As water does not follow territorial boundaries, the Jordan River, the Mountain Aquifer and the Coastal Aquifer are shared between Israel and Palestine.

The level of unrestricted access to water enjoyed by those residing in Israel and Israeli settlers demonstrates that resources are plentiful and that the lack of sufficient water for Palestinians is a direct result of Israel’s discriminatory policies in water management.

Israel’s Illegal Exercise of Sovereign Rights over Water Resources
At present, the water sector in the OPT and Israel is characterised by highly asymmetrical overexploitation of damageable shared water resources, exhaustion of long-term storage, deterioration of water quality and increasing levels of demand driven by high population growth, accompanied by decreasing per capita supplies. However, the burden is disproportionately borne by the Palestinian population, who are impeded from exercising effective control over the development and management of the available water resources in the region.

Since 1967, Israel has exerted considerable military and political efforts, including the establishment of settlements, to illegally exercise sovereign rights over Palestinian water resources. A series of military orders – still in force and applicable only to Palestinians – integrated the water system of the OPT into the Israeli system, while at the same time denying Palestinian control over this vital resource.

This integration was significantly advanced in 1982 by the transfer of ownership of Palestinian water infrastructure in the West Bank to Israel’s national water company ‘Mekorot’, which has forced Palestinians to rely on the company to meet their annual water needs. The company supplies almost half the domestic water consumed by Palestinian communities in the West Bank, making it the largest single supplier in the West Bank. In addition to Israel’s exclusive control over water resources, ‘Mekorot’ routinely extracts water from the Palestinian share of the water resources in order to supply copious amounts to Israeli settlements.

The conclusion of the Oslo Accords, contrary to Palestinians’ expectations, did not result in greater access to the water resources in the OPT, but merely formalised a discriminatory management regime that was largely already in place. In reality, the Oslo II water regime is a continuation and preservation of Israel’s exclusive control over the Mountain Aquifer and facilitates its illegal exercise of sovereign rights over the water resources in the OPT. In contrast, ‘Mekorot’ routinely reduces Palestinian supply – sometimes by as much as 50 per cent – during the summer months in order to meet consumption needs in the settlements.

Current Israeli Methods to Maintain Hegemony
In parallel, Israel actively prevents the construction and maintenance of water infrastructure in 59 per cent of the West Bank, earmarked Area C. This has primarily been achieved through the systematic denial of permits for any construction or rehabilitation of water infrastructure. Any water structure built without a permit from the Israeli authorities – permits that are virtually impossible to obtain – risks demolition. In contrast, Israeli settlers are not required to obtain a permit from the Israeli Civil Administration and, unlike Palestinian communities, all settlements in the OPT are connected to a water network.

The Israeli military authorities regularly target water collection systems for confiscation and destruction, including those provided by humanitarian organisations. They do so on the pretext that such systems were constructed without an Israeli permit. In the Gaza Strip, destruction of water infrastructure frequently occurs during Israeli military operations, such as air strikes and ground incursions.

Furthermore, due to the absence of any policy coordination between Israel and the Gaza Strip with regard to the Coastal Aquifer, both authorities are currently over-extracting. The over-extraction and pollution of the Coastal Aquifer have resulted in a progressive deterioration of the water quality in the Gaza Strip. The groundwater levels in the aquifer have fallen...
below sea level and saline water and sewage have infiltrated the aquifer, rendering 90 to 95 per cent of the water it supplies unfit for human consumption.

**Legal Analysis**

As the Occupying Power sharing a considerable portion of the region’s water resources with the Palestinians, Israel’s governance and use of transboundary water resources must be conducted not only in compliance with general principles of international law and customary international law, but also in accordance with the rules provided by international humanitarian law (IHL), international human rights law (IHRIL) and international water law (IWL).

Under IHL, the Occupying Power does not acquire sovereign rights over the occupied territory and the natural resources therein. As such, Israel acts merely as the de facto administrator of the occupied territory. The administration of the territory must preserve the sovereign rights of the occupied population – thus protecting the occupied population and their property from exploitation and depletion by the Occupying Power. In particular, IHL imposes strict limitations on the Occupying Power’s use of property and natural resources available in the occupied territory, thereby preventing the Occupied Power from exploiting the wealth of the occupied territory to benefit its own economy.

Israel has extensively and unlawfully appropriated Palestinian water resources in the OPT for the sole benefit of those residing in Israel and Israeli colonies, while maintaining a practice of extensive destruction of Palestinian water infrastructure. These policies and practices are aimed at forcibly transferring Palestinian communities from their homes, thereby emptying the most fertile and water-rich areas of the West Bank of its Palestinian inhabitants, which is instrumental to Israel’s unlawful transfer of its own civilian population into occupied territory.

As such, Israel is in violation of Articles 43, 46, 53 and 55 of the Fourth Geneva Convention. As a High Contracting Party to the Geneva Conventions, Israel has an obligation to put an end to all violations of IHL and investigate and prosecute those responsible for violations of the Conventions.

Through its policies, Israel illegally exercises sovereign rights over Palestinian natural sources. This demonstrates the existence of a governmental policy aimed at dispossessing the Palestinian population of their natural wealth. This orchestrated dispossession constitutes an infringement on the right of the Palestinian people to self-determination and to permanent sovereignty over their natural resources.

In addition, Israel consistently fails to meet its obligations under IHRL by refusing to respect, protect and fulfil the right of the Palestinian people to water, which is derived from existing human rights treaties, to which Israel is a State party. Israel excessively and relentlessly extracts far beyond its equitable and reasonable share of the transboundary waters, thereby causing significant harm through increased pollution and salination of the watercourses. Israel also refuses to cooperate in the maintenance, protection and preservation of transboundary watercourses and water installations. Thus, Israel is in violation of its obligations vis-à-vis Palestine as a watercourse State under the customary principles of international water law.

In order to meet its obligations under these international legal frameworks, the Israeli authorities must immediately cease all internationally wrongful acts, offer appropriate guarantees of non-repetition and make full reparations for the injury caused, including material or moral damages.

**Colonialism and ‘Water-Apartheid’**

Israel’s policies and practices in the OPT have created a situation of occupation in which natural resources are unlawfully exploited and appropriated. Israel’s water policies represent only one element of an irreversible structural process that can only be described as colonial. Israel’s intention to permanently change the status of the occupied territory, de facto exercising sovereignty, reveals itself through the establishment and expansion of settlements in the West Bank (currently over 200) and by the creation of a network of roads and flourishing agricultural enterprises for their benefit. The presence of settlements aims to permanently deny the Palestinian population the exercise of their right to self-determination by fragmenting the OPT and preventing the Palestinian people from exercising sovereignty over natural resources, in particular land and water.

A troika of key legislative measures and institutionalised policies and practices have enabled Israel to illegally exercise sovereign rights over Palestinian water resources, with the ultimate goal of satisfying its own interests. As such, these policies and practices have laid the foundations and underpin the three principal pillars of Israel’s ‘water-apartheid.’

The first pillar requires the identification of two distinct racial groups; the Palestinians and ‘Jewish-Israelis,’ meaning ‘Israelis with Jewish identity.’ The second pillar is comprised of policies and practices that facilitate the demarcation along racial lines of the two groups. This has allowed Israel to maintain a system intended to segregate the population into different geographical areas. Jewish-Israelis are privileged, as they have an uninterrupted and abundant supply of water, while Palestinians are denied their basic right to water and full development as a group. The third pillar upon which Israel’s ‘water-apartheid’ rests is its use of the pretext of ‘security’ to justify the commission of inhuman acts against the Palestinians as a group. Israel’s policies and practices in relation to water do not occur in a vacuum, but are integrated in an institutionalised system of Jewish-Israeli domination and oppression of the Palestinians as a group – thus amounting to a system of ‘water-apartheid.’

These violations amount to breaches of peremptory norms of international law, including the right to self-determination, the prohibition of extensive destruction and appropriation of property, as well as the international legal prohibitions of colonialism and apartheid.
Legal Consequences for Third-Party States

By virtue of Israel’s breaches of peremptory norms of international law, certain obligations arise for third-party States. Article 41 of the International Law Commission Draft Articles on State Responsibility, which reflects customary international law, affirms that in the case of breaches of peremptory norms of international law, all States are under an obligation not to recognise the situation as lawful, not to render aid or assistance in maintaining the illegal situation, and to actively cooperate in order to bring it to an end.

Conclusion and Recommendations

While the violations of international law set out in this study entail responsibilities for Israel and for third-party States to bring the illegal situation to an end, the current state of the water sector in the OPT and Israel will not improve unless structural changes are made to the use and management of the shared water resources. These changes, in the intermediate term, should include removing physical and administrative restrictions on Palestinian access to and use of the shared water resources, as well as halting the extraction of water from the Palestinian share of the transboundary water resources by corporations and agents acting under Israel’s authority. However, ultimately, lasting structural changes will require bringing Israel’s occupation of the OPT to an end and substantially reforming the relationship to one of equal partnership in the administration of water resources based on reasonable and equitable standards. To ensure that Palestinians can exercise their full rights in the OPT, the access to, use and allocation of shared water resources must not be determined on the basis of one side’s dominant negotiating power over the other, but must strictly abide by international legal norms.

1. Introduction

For many years, the Palestinian population of the West Bank, including East Jerusalem, and the Gaza Strip, has suffered from a shortage of clean, safe water. However, despite alarming predictions of insufficient drinking water supplies by 2040, based on the expected population growth in the Occupied Palestinian Territory (OPT), Jordan and Israel, water is not and has not been scarce in the region.1

At present, the water sector in the OPT and Israel is characterised by highly asymmetrical overexploitation of damageable shared water resources, exhaustion of long-term storage, deterioration of water quality and increasing levels of demand driven by high population growth and accompanied by decreasing *per capita* supplies. However, the burden is disproportionately borne by the Palestinian population, who are impeded from exercising effective control over the development and management of the available water resources in the region.2

Measures taken by the Israeli authorities, including the relentless expansion of settlements,3 continue to deprive Palestinians of vital water resources necessary for a dignified standard of living. Palestinian communities are left fragmented and confined to shrinking areas. These areas resemble a land-locked archipelago of territory in which essential human rights, and more specifically the right to water, are continuously denied.

Israel’s illegal exercise of sovereign rights over the water resources in the West Bank and the Gaza Strip attests to its ‘self-interested administration’ of the region’s shared water resources.4 Israel’s water supply system, allocation of available water resources and denial of Palestinian access to and control over shared water resources have become a clear testament to its colonial and apartheid motives. The “creeping annexation” of Palestinian lands facilitates the territorial integration of the West Bank into Israel.5 Meanwhile, Israeli interests are simultaneously served through Israel’s disproportionate share of water supplies, which are allocated to those residing in Israel proper and in Israeli colonies in the OPT at the expense of Palestinians entitled to access to the same water resources.6


3 Settlements and colonies are used interchangeably throughout this study.


5 International Fact-Finding Mission on Settlements, ‘Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem: Advanced Unedited Version (January 2013) UNHRC 22nd* session, paragraph 101.

The region has three main sources of natural fresh water: the Jordan River, the most important shared surface water resource for the five riparian States; the Mountain Aquifer, one of the principal groundwater resources shared between Israel and Palestine; and the Coastal Aquifer, a major productive groundwater resource shared between Israel and Palestine.

The Jordan River, originating from three main springs (the Banias in the occupied Golan Heights, the Dan in northern Israel and the Hasbani in southern Lebanon), flows south into Lake Tiberias, which provides the largest freshwater storage capacity along the Jordan River. Lake Tiberias drains into the Lower Jordan River, which winds further south through the Jordan Valley to its terminus in the Dead Sea.

Originating from three main springs, the Jordan River is around 360 kilometres in length, with a surface catchment area of about 18,500 square kilometres, of which 37 per cent is located in upstream riparian Israel; 10 per cent in upstream riparian Syria; 4 per cent in upstream riparian Lebanon; 40 per cent in downstream riparian Jordan; and 9 per cent in downstream riparian West Bank (see Figure 3). The total natural pre-utilisation flow available from the Jordan River surface water stream is estimated to be between 1,213 and 1,399 mcm annually.

The Upper Jordan River flows south into Lake Tiberias, which provides the largest freshwater storage capacity along the Jordan River. Lake Tiberias drains into the Lower Jordan River, which winds further south through the Jordan Valley to its terminus in the Dead Sea.
The Jordan River is recognised as the eastern border of Palestine, but since Israel occupied the West Bank in 1967, it has denied its Palestinian inhabitants physical access to the riverbanks and to their ‘equitable and reasonable share’ of the Jordan River’s water resources.14 While only 37 per cent of the surface catchment area of the Jordan River Basin is located in Israel, it exploits around 50 per cent of this shared water resource.15

Israel diverts the Jordan River’s flow upstream through Israel’s National Water Carrier (NWC), a project crucial to Israel’s planned growth and development of the coastal and desert regions.16 The Jordan River supplies up to 700 mcm every year of water to Israel,17 which, according to some commentators satisfies, one third of Israel’s total water use.22

The diversion of the flow upstream has not only deprived Palestinians of this crucial source of water, but has also contributed to a rapid and unprecedented drop in the Dead Sea’s water levels,23 thereby scarring the landscape, polluting the environment and has irrevocably damaged dependent ecosystems.24

2.2. Mountain Aquifer

The Mountain Aquifer extends across both sides of the 1949 Green Line and is therefore shared between Israel, the downstream riparian, and Palestine, the upstream riparian. It is the largest water resource in the region and provides the highest quality of natural groundwater, from an estimated potential yield officially set and agreed upon politically under the Oslo Accords at 679 mcm annually.25 Approximately 80 per cent of the water that annually recharges the aquifer comes from the West Bank. The Mountain Aquifer is divided into three basins: the Western Aquifer Basin (WAB), North-Eastern Aquifer Basin (NEAB) (also known as Northern) and Eastern Aquifer Basin (EAB).

The Western Aquifer Basin is the largest and most productive aquifer. With the politically identified figure for its estimated potential set at 362 mcm annually, it yields more water than the North-Eastern and Eastern Aquifer Basins put together.26 The majority of the Western Aquifer’s water originates from the West Bank, which holds 80 per cent of its recharge area. However, 80 per cent of the Western Aquifer Basin’s storage area is located inside Israel.27

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17 FAO (n 10) 82.
18 See Section 5.4. of this study.
20 The National Water Carrier (NWC) is a pipeline of three meters in diameter, carrying some 1 mcm of water per day from Lake Tiberias in the north Israel to the coastal cities of Haifa and Tel Aviv and to the Negev Desert in the south. The NWC continues to severely affect the water supply for Israel’s neighbouring countries, especially Jordan as the tower reaches of the Jordan River were reduced to “a saline trickle, leaving Jordanian farms along its east bank desperately short of water.” McCaffrey, The Law of International Watercourses (n 12) 21, fl. 145. See also, FAO (n 10) 85, 219.
21 D Phillips, S Attili, S McCaffrey and J Murray, ‘The Jordan River Basin: 2. Potential Future Allocations to the Co-Riparians’ (n 15) 49. Of the total average annual inflow of water from the Jordan River into Lake Tiberias, some 250 mcm/yr serve consumers in the region, while about 450 mcm/yr are withdrawn to serve consumers throughout Israel by means of the NWC. See FAO (n 10) 219.
22 D Phillips, S Attili, S McCaffrey and J Murray, ‘The Jordan River Basin: 2. Potential Future Allocations to the Co-Riparians’ (n 15) 55. Other commentators have estimated that the Jordan River supplies at least 800 mcm per year of water to Israel, and arguing that Israel utilizes Jordan River water to satisfy much more than one third of its total water use.
23 According to Human Rights Watch, “the level of the Dead Sea is dropping by one meter per year.” Human Rights Watch (HRW), Separtate and Unequal: Israel’s Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories (December 2010) 17.
24 In some areas, the shores have retreated nearly half a kilometre. Al-Haq, ‘Pillage of the Dead Sea: Israel’s Unlawful Appropriation of the Natural Resources of the Occupied Palestinian Territory’ (September 2012) 17 fn. 22.
25 The ‘estimated potential’ of 679 mcm/yr is the overall politically identified figure under the Oslo Accords from which a portion is to be allocated to the Palestinians. Based on the figure, the Oslo Accords identify specific figures for the ‘estimated potential’ of each basin. It has been alleged that Israel has used a lower figure during the negotiations of the Oslo Accords in order to prevent Palestinians from using the water resources of the North-Eastern and Western Aquifer, which it claims were fully utilized at the time of conclusion of the Oslo Accords. (See Amnesty International, ‘Troubled Waters: Palestinian Denied Fair Access to Water’ (October 2009) 18). Apart from such political considerations, the total natural discharge of the Mountain Aquifer is subject to scheme seasonal and annual variations. Therefore, when using the figure of 679 mcm, it must be borne in mind that this is a political figure and not necessarily a scientifically accurate representation of the recharge capacity of the resource. The World Bank estimates the Mountain Aquifers’ recharge capacity between 600-887 mcm/yr. World Bank, West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development, Sector Note (April 2009) 11.
The North-Eastern Aquifer Basin is the smallest of the three aquifers with a politically agreed upon estimated potential yield of 145 mcm annually. More than 80 per cent of the North-Eastern Aquifer Basin lies in the West Bank, and the remainder crosses into Israel. While the North-Eastern Aquifer Basin is entirely recharged inside the West Bank, Palestinians have access less than 20 per cent of the aquifer’s annual yield for both irrigation and domestic purposes.

The Eastern Aquifer Basin, with politically agreed upon estimated potential yield of 172 mcm annually, lies almost entirely within the West Bank territory, with no relevant in- or outflows from Israel. Despite this, Israel exerts exclusive control over more than 70 per cent of all water produced by the Eastern Aquifer Basin, thereby preventing Palestinians from accessing their rightful share of this resource.

Since 1967, Israel has expanded its control over the Mountain Aquifer, and has especially aimed to conserve its absolute control over the recharge areas of the Western, North-Eastern and Eastern Aquifer Basins, which are almost entirely located in the West Bank. Crucially, Israel does not only exercise full control, but also prevents any Palestinian use of these shared water resources by continuously diverting the flow of water into Israel. Figure 5 shows that the Mountain Aquifer’s water resources are “currently under near-exclusive privileged use by Israeli wells and Jordan Valley settler wells.”

While the water flows from the North-Eastern and the Eastern Aquifer Basin are located almost entirely in the West Bank, as is more than two-thirds of the Western Aquifer Basin’s recharge area, a simple mathematical equation demonstrates that Israel extracts 89 per cent of the water from the Mountain Aquifer system annually, leaving a mere 11 per cent to the Palestinians.

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31 It was long thought that the Eastern Aquifer was located entirely in the West Bank and as such not shared with Israel. However, more recent hydrological maps suggest that the Eastern Aquifer Basin stretches southwards from the West Bank, just crossing the Green line into Israel. S McCoyfey, The Law of International Watercourses (n 12) 219. See further, ARIJ, ‘Water resource allocations in the occupied Palestinian territory: Responding to Israeli claims’ (n 27) 6; and, G Abouali, ‘Natural Resources Under Occupation: The Status of Palestinian Water Under International Law’ (n 2) 420.
32 See Section 5.4. of this study for a further elaboration on the principle of ‘equitable and reasonable utilisation’ under international water law.
33 C Messerschmid, ‘Back to the Basics’ (n 9) 1.
2.3. Coastal Aquifer

The Coastal Aquifer is located under the coastal plain of Israel, the Gaza Strip, and the Sinai Peninsula. As a shared transboundary water resource, Israel and the Gaza Strip both rely on this aquifer for their water supply. The 1.6 million Palestinians living in the Gaza Strip are dependent on extraction from the southern end of the Coastal Aquifer, which is the only source of natural water available to the Gaza Strip. Israel, on the other hand, has several other water resources available.

The Coastal Aquifer is not only replenished by direct rainfall, but also by artificial recharge, agricultural return flows, lateral groundwater infiltrations and seawater intrusions. This brings its total average annual recharge capacity up to 426 mcm in Israel, and some 146 mcm per year in the Gaza Strip. While Israel extracted 39 mcm per year beyond its average recharge capacity in 2006-2007, total extractions in the Gaza Strip exceeded average recharge capacity by 31 mcm (more than 20 per cent) per year in 2008-2009.

Conclusions on the Gaza Strip’s use of the Coastal Aquifer:

1. One fifth of the Gaza Strip’s total extraction is not covered by the yield from the Coastal Aquifer.
2. The Gaza Strip enjoys only one quarter of total extractions from the Coastal Aquifer.

The Palestinians cannot limit Israel’s over-extraction upstream of the Gaza Strip and are effectively forced to be water-resource self-sufficient. Due to the lack of any policy coordination

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35 Information is courtesy to Clemens Messerschmid and collected from the Palestinian Water Authority (PWA) Data Base and the HIS (2008). All West Bank figures are cross-calculations from PWA- and HIS-data. C Messerschmid, ‘Back to the Basics’ (n 9) 19.
36 Relevant for this study is its 120 kilometer extension along the Mediterranean coastline from the Gaza Strip in the south to Mount Carmel in the north.
38 For instance, Israel’s use of the Jordan River as discussed in Section 2.1. of this study and its use of the water resources of Lake Tiberias in northern Israel (see fn. 20 above). According to ‘Mekorot’, Israel’s national water company, Lake Tiberias supplies “approximately 30 per cent of Israel’s drinking water supply, [some] 242 million cubic meters in 2006.” See official ‘Mekorot’ website <http://www.mekorot.co.il/Eng/MekorotPages/Israel/WaterSupply/System.aspx> accessed 22 March 2013.
39 Artificial recharge from wells, reservoirs and wastewater effluents.
41 Approximately 9 per cent above the average recharge capacity. Ibid., 175.
42 Ibid.
43 Ibid., 141, 175.
between Israel and the Gaza Strip with regards to the Coastal Aquifer, both authorities are currently over-extracting. The over-extraction of the Coastal Aquifer and pollution have resulted in a progressive deterioration of the water quality in the Gaza Strip. The groundwater levels in the aquifer have fallen below sea level and saline water and sewage have infiltrated the aquifer, rendering 90 to 95 per cent of the water it supplies unfit for human consumption. It is important to note that this deterioration is also partly due to Israel's policy of denying construction materials for wastewater treatment plants and other water-related infrastructure into the Gaza Strip.

According to the Department of Health of the UN Relief and Works Agency (UNRWA), waterborne diseases are increasingly common and diarrhoea is a major cause of death in the refugee population of the Gaza Strip.

Residents of Yhan Kounis, North Gaza governorate, rely on desalinated water supplied by the municipality as tap water is too polluted for human consumption – Al-Haq©.

Given that tap water is too polluted, the vast majority of residents of the Gaza Strip purchase water for personal consumption from external vendors. Others rely on desalinated water supplied by the Coastal Municipalities Water Utility (CMWU), which costs around 50 NIS (approximately 13 USD) per cubic metre. In an environment where high rates of poverty and unemployment are already prevalent, some families spend one third of their income on water.

As a result of the over-five-year-long Israeli illegal regime of closures imposed on the Gaza Strip, the population therein does not have access to the majority of the materials necessary to maintain the water and sanitation infrastructure, nor to the amount of fuel necessary to keep the wastewater treatment and desalination plants operating. Until Israel allows access to the necessary building materials, it is estimated that the quality of water in the Coastal Aquifer will continue to deteriorate and may become unusable by 2016, when, in the absence of any alternatives, the Gaza Strip could become unfit for human habitation.

With access to a mere 11 per cent of the Mountain Aquifer’s resources, a quarter of total extractions from the shared Coastal Aquifer, and no access to surface water, Palestinians in the OPT only have access to 10 per cent of all available water in the region. The remaining 90 per cent is retained by Israel.

44 The Oslo Accords only deal with those parts of the Mountain Aquifer that are located in the West Bank. See Section 3.3. of this study.
46 Other forms of pollution include lateral groundwater inflows (38.4 mcm/yr inflow of brackish water), surface pollution in the form of untreated wastewater and agricultural returns. C Messerschmid, ‘Water in Gaza’ (n 40) 175.
50 As of July 2011, there were 17 water and sanitation projects placed on indefinite hold due to Israel's refusal to admit the required building materials. See UN Office for the Coordination of Humanitarian Affairs (UN OCHA), ‘The Monthly Humanitarian Monitor’ (July 2011). See also on the need for water infrastructure in Gaza, World Bank, ‘Stagnation or Revival? Palestinian Economic Prospects’ (Economic Monitoring Report to the Ad Hoc Liaison Committee) (21 March 2012) 23-26.
51 Damage to the Coastal Aquifer may become irreversible by 2020. See UN Country Team in the occupied Palestinian territory (n 47) 3, 11. See also on the economic effect of the illegal regime of closures on the Gaza Strip, UN General Assembly (UNGA), ‘Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories’ (14 September 2012) UN Doc. A/67/372, paragraph 5: “[...] Israel continued barring the entry of several items that are vital for the process of reconstruction and economic recovery (e.g., construction materials, spare parts for water and sanitation projects).”
3. Control and Integration of the Water Resources in the OPT


While water is certainly not the only reason for the conflict between Israel and Palestine, control over water resources has been identified as one of the major causes of the Six Day War of June 1967. After its establishment in 1948, Israel began implementing plans to exploit the water of the Jordan River through the NWC. The neighbouring Arab States saw the NWC as a threat, because it diverted large amounts of water from the Jordan River, and soon after the completion of the NWC in 1964, tensions continued to escalate until the outbreak of the Six Day War in June 1967.52

During the Six Day War, Israeli forces captured and occupied lands strategic for their natural water resources,53 thereby securing access to and control over the major surface and groundwater resources of the region. Israel’s direct control over water resources increased by nearly 50 per cent as an immediate result of its occupation of the West Bank, including East Jerusalem and the Gaza Strip.54 Since 1967, Israel has exerted considerable military and political efforts, including the establishment of colonies, in order to unlawfully exercise sovereign rights over the water resources and, as a result, Palestinian access to and use of their water has been severely restricted.

"Is it possible today to concede control of the [Mountain] Aquifer [in the West Bank], which supplies a third of our water? Is it possible to cede the buffer zone in the Jordan Rift Valley? You know, it’s not by accident that the settlements are located where they are."55

Former Prime Minister of Israel, Ariel Sharon, in response to the question of whether withdrawal of Israeli settlers from the West Bank would ever be possible.

3.2. Integrating the Water System of the OPT into the Israeli System

3.2.1. Military Orders in the OPT

The consolidation of all water resources began immediately after the 1967 war. In this regard, one commentator has noted: “[t]he importance of the shared aquifers to Israel is such that one of Israel’s first acts after the 1967 war was to declare the water resources of the West Bank and Gaza to be under military control.”56 To this end, Israel issued a series of military orders – still in force today and applicable to Palestinians only – that integrated the water system of the OPT into the Israeli system, while at the same time denying Palestinian control over this vital resource.57

On 7 June 1967, Israel issued Military Proclamation No. 2, declaring all water resources in the region to be State property.58 The three military orders that followed in the first 18 months of the Israeli occupation of the OPT amended Jordanian and British Mandate laws in place prior to 1967.

53 Israel occupied the West Bank, including East Jerusalem, the Gaza Strip, the Sinai Peninsula, and the Golan Heights.
57 The military orders discussed in this section are applicable to the West Bank water system only. However, Israel introduced similar legislative measures in relation to water in the Gaza Strip, such as Military Order No. 498 of 4 November 1974 (Gaza) amending the laws in place prior to the occupation of the Gaza Strip.
58 Military Proclamation No. 2 endowed the Area Military Commander in the West Bank with full legislative, executive and judicial authorities over the West Bank, and declared that the law in force prior to the occupation remained in force as long as it did not contradict Proclamation No. 2 or any new military orders. Furthermore, all moveable and unmoveable property that belonged to the State was subjected to the administration of the Area Military Commander in the West Bank. See Proclamation No. 2: ‘Proclamation Regarding Regulation of Administration and Law’ (7 June 1967) in Jerusalem Media and Communications Centre (JMCC, Jerusalem, 1995) viii.
While the Israeli military authorities (later the Israeli Civil Administration) retained overall governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT.

Subsequent military orders allowed Israel to establish new regulations for particular districts, which consistently curbed Palestinian access to water. Furthermore, Israel declared the banks of the lower Jordan River to be a closed military zone, thereby denying Palestinian access, whilst also destroying existing Palestinian pumps and irrigation ditches tapping the Jordan River. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. Subsequent military orders allowed Israel to establish new regulations for particular districts, which consistently curbed Palestinian access to water. Furthermore, Israel declared the banks of the lower Jordan River to be a closed military zone, thereby denying Palestinian access, whilst also destroying existing Palestinian pumps and irrigation ditches tapping the Jordan River. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. Subsequent military orders allowed Israel to establish new regulations for particular districts, which consistently curbed Palestinian access to water. Furthermore, Israel declared the banks of the lower Jordan River to be a closed military zone, thereby denying Palestinian access, whilst also destroying existing Palestinian pumps and irrigation ditches tapping the Jordan River. By making use of its military power, Israel laid the foundations for a system of water governance that remains in place today and is characterised by Israel’s unlawful exercise of sovereign rights over all the water resources of the OPT. Subsequent military orders allowed Israel to establish new regulations for particular districts, which consistently curbed Palestinian access to water. Furthermore, Israel declared the banks of the lower Jordan River to be a closed military zone, thereby denying Palestinian access, whilst also destroying existing Palestinian pumps and irrigation ditches tapping the Jordan River.

**3.2. Management of the West Bank Water System pre-Oslo Accords**

Prior to the Oslo Accords, Israel’s integrated water network supplied water across the West Bank, which connected Israeli colonies and Palestinian towns and villages within a single integrated supply network, sharply discriminated between the two populations. Palestinian storage reservoirs were much smaller and the West Bank’s supply lines were often of narrower diameter if placed to feed Palestinian communities. Israel established an institutionalised regime for managing the water sector. While the Israeli military authorities (later the Israeli Civil Administration) retained overall regulatory control over the water resources in the West Bank, various Palestinian institutions, such as the West Bank Water Department (WBWD), were responsible for maintaining distribution lines, opening and closing supply valves to Palestinian communities, and for billing Palestinian communities. None of the institutions had any power over or responsibility for the Israeli settlers. Rather, they operated as an interface between the occupied Palestinian civilian population and the water sector of Israel’s military regime. According to Jan Selby, this has enabled “Israel to pursue its colonial and apartheid water policies without having any direct contact with the Palestinian users.”

**3.2.3. ‘Mekorot’ – Israel’s National Water Company**

From 1967 to 1982 the West Bank water system was under the management of the Israeli military authorities. In 1982, then Minister of Defence Ariel Sharon transferred ownership over all West Bank water supply systems to ‘Mekorot,’ of which the State of Israel owns 50 per cent. In exchange for ownership over all Palestinian-owned water infrastructure with an estimated value of 5 million USD, ‘Mekorot’ made a symbolic payment of one NIS (approximately 0.25 USD), whereby the integration of the OPT’s water system into the metropolitan Israeli network was completed.

**3.3. The Impact of the Oslo Accords on Water Allocation and Control**

Following the signing of the Declaration of Principles on Interim Self-Government Arrangements (Oslo I) between Israel and the Palestine Liberation Organisation (PLO) in 1993, Israeli and Palestinian delegations met in 1995 to further develop plans for the management of the water resources of the West Bank and the Gaza Strip. This resulted in the inclusion of Article 40: “Water and Sewage” in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II).

The Oslo II water regime is geographically limited to only those parts of the Mountain Aquifer that underlie the West Bank and focuses solely on groundwater resources. The remainder of the West Bank was transferred to Palestinian administration, and the WBWD was established as the West Bank Water Department (WBWD). The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources. The WBWD was responsible for the management of the groundwater in the West Bank, while the Israel Water Authority (Mekorot) was responsible for the management of the surface water resources.

According to Jan Selby, this has enabled “Israel to pursue its colonial and apartheid water policies without having any direct contact with the Palestinian users.”

Note that approximately 80 per cent of the recharge area is located in the West Bank.

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59 Military Order 92: ‘Order Concerning Jurisdiction over Water Regulations’, issued on 15 August 1967, is an amendment to Jordanian law concerning water.

60 Military Order 158: ‘Order Concerning the Amendment to the Supervision Over Water Law’, issued on 19 November 1967, is an amendment to Water Law 31, 1953.


62 Other military orders vested the Military Commander with the power to appoint local water authority members or change the composition of the local water authority. For instance, Military Order 484: ‘Concerning Water Works Authority (Bethlehem, Beit Jala and Beit Sahour)’, issued on 15 September 1972, which established a water authority and specified its functions and jurisdiction. Military Order 484 was subsequently amended by Military Orders 494 and 715, before being superseded by Military Order 1376: ‘Order Concerning the Water and Sewage Authority (Bethlehem, Beit Jala and Beit Sahour)’, issued on 24 July 1992, which also made projects and functions of this authority subject to the Israeli Military Commander in charge, granting the Military Commander full authority over the local water authority.

63 UN Economic and Social Council, Report of the Secretary-General prepared in pursuance of General Assembly decision 30/442 (17 June 1985) UN Doc. A/40/381-E/1385/105, paragraph 202. ‘In the early days of the occupation, Israeli authorities under the claim of security blew up 140 Arab pumps installed on the West Bank of the River Jordan. As a result of that action, the Arab farmers were prevented from pumping water from the river for agricultural irrigation whereas the Israeli settlers in the area were allowed to continue to do so.’

64 J Selby, ‘Joint Mismanagement’ (n 6).

65 To this, collection of water fees from ‘door to door’ in towns and villages fell upon the ‘Palestinian’ WBWD on behalf of and under direct order and supervision of the Israeli Civil Administration.

66 J Selby, ‘Joint Mismanagement’ (n 6).

67 Levi Eshkol founded the Water Authority, ‘Mekorot’ in 1937 as a joint venture between the Jewish Agency, the Jewish National Fund and a Histadrut (trade union association) subsidiary company to provide water for Jewish settlements in support of the Zionist movement. Following the establishment of Israel in 1948, ‘Mekorot’ became the official Israeli Water Authority and fell under the joint ownership of the Government of Israel and its original founders. COHRE and Badil, Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine (May 2005) 46.

68 J Selby, ‘Joint Mismanagement’ (n 6). See also I Stobbe, ‘Natural Resources and Belligerent Occupation: Mutation through Permanent Sovereignty’ (In 1) 204-205.


70 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (hereafter Oslo II) (28 September 1995). The legality of the Oslo Accords is subject to dispute as they conflicts with norms that clearly violate International humanitarian law. As such, the Oslo Accords as a whole cannot be considered as a fully legal instrument.

71 Note that approximately 80 per cent of the recharge area is located in the West Bank.
of the Mountain Aquifer, as well as the shared Jordan River and the Coastal Aquifer where Israel is upstream and the OPT downstream, are subject to unilateral Israeli management without any Palestinian input or agreed upon limits of extraction. Article 40 of Oslo II lays out the principles of the water-sharing agreement based on the “existing quantities of utilization” plus additional quantities that the Palestinian side could develop from the Eastern Aquifer Basin.

Under Article 40, Israel recognised undefined Palestinian water rights and passed the responsibility of supplying the Palestinian population on to the Palestinian Authority (PA), which charged the Palestinian Water Authority (PWA) with the responsibility of “ensuring equitable use, sustainable management and development of Palestinian water resources.”

Oslo II further limited the PA ability to supply water to the Palestinian population to only Areas A and B. Indeed, while 95 per cent of the Palestinians reside in Areas A and B, the infrastructure upon which they depend lies inside or crosses into Area C. Furthermore, Area A and B are not contiguous, but fragmented into enclaves surrounded by Israeli colonies. Israel’s jurisdiction over Area C therefore cements its 46 years of exclusive control over water resources in the area and makes integrated planning and management of these vital resources virtually impossible for the PA.

While Israel has in principle recognised Palestinian water rights, its conduct suggests otherwise, and, contrary to Palestinians’ expectations, the Oslo Accords did not result in greater access to the water resources of the OPT. In fact, Palestinian water supplies have dropped from 118 mcm per year pre-Oslo to 98 mcm in 2010. Up to the present day, Israel continues to illegally exercise sovereign rights over the water resources in the OPT, thereby denying the PWA the possibility of developing the water and sanitation sector or the possibility to put in place more efficient extraction systems and distribution networks to supply the Palestinian population.

In reality, the Oslo II water regime is a continuation and preservation of Israel’s exclusive control over the Mountain Aquifer and facilitates its illegal exercise of sovereign rights over the water resources in the OPT.

### 3.3.1. Unchanged Shares

Several measures contributed to the consolidation of Israeli control over water in the OPT, which violate Palestinian water rights. Oslo II ensured that there would be no reduction in the quantity of water that Israel extracts from the Mountain Aquifer (see Figure 7a). The unstated rationale was that the North-Eastern and Western Aquifer Basins were already fully utilised by Israel, thereby freezing their redistribution, and allowing Israel to continue consuming 87 per cent of the two groundwater resources, while Palestinians only consume 13 per cent (see Figure 7b).

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72 There is no mechanism to facilitate policy coordination between Israel and the Palestinians over the Jordan River. Equally, the Palestinian Authority (PA) holds unilateral responsibility for water resource management in the Gaza Strip, while Israel unilaterally manages the rest of the Coastal Aquifer. J Selby, ‘Cooperation, Domination and Colonialism’ in M Zeitoun, C Messerschmid, S Abbii, ‘Asymmetric Abstraction and Allocation: The Israeli-Palestinian Water Pumping Record’ (2009) 47 Ground Water.
73 Ibid., 152.
74 Oslo II, Annex III, Appendix 1, Article 40: “Israel recognizes 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 various water resources.”
75 Oslo II, Annex III, Appendix 1, Article 40: “The Israeli side shall transfer to the Palestinians side, and the Palestinian side shall receive, possess and responsibilities in the sphere of water and sewage in the West Bank related solely to the Palestinians, that are currently held by the military government and its Civil Administration.”
76 The PWA was formally established as a result of Presidential Decree no. 90 for 1995 (issued 26 April 1995). Its form and functions were codified in Palestinian Law no. 2 for 1996: Concerning the Establishment of the PWA (issued by President Arafat, 18 January 1996).
77 Oslo II stipulated three jurisdictional zones in the West Bank (excluding East Jerusalem) known as ‘Area A,’ ‘Area B,’ and ‘Area C.’ See glossary.
82 Basic figures found in Table 1 in M Zeitoun, C Messerschmid, S Abbii, ‘Asymmetric Abstraction and Allocation’ (n 72) 147. Additional calculations are based on the information in the analysis of this source.
In violation of its obligations under Oslo II and in clear contradiction of its recognition of Palestinian water rights, Israel illegally exercises sovereign rights over the water resources in the OPT to the extent that Palestinians are prevented from extracting even up to pre-Oslo II levels, leaving them with only 98 mcm in 2010.  

Palestinians are prevented from extracting even up to pre-Oslo II levels.

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83 Ibid.
85 Information courtesy to Clemens Messerschmid. Official Palestinian sources suggest total Palestinian abstractions from all wells and springs in the West Bank, and from all basins and aquifers – including the minor non-mountain aquifers – as merely 98.3 mcm in 2010. See PWA, ‘Water Supply Report 2010’ (n 79) 15, 23. The figure of 132 is made up of the 54 mcm/yr pre-Oslo extraction levels plus 78 mcm/yr allocated for ‘future needs’ under Oslo II. See Figure 7a and Section 3.3.2. of this study.
86 Information courtesy to Clemens Messerschmid, based on HSI yearbooks.
3.3.2. Allocation of Water Supplies for “Future Needs”

Oslo II promised Palestinians an additional amount of 28.6 mcm per year “during the interim period” (until 1999) in order “to meet the immediate needs of the Palestinians in fresh water for domestic use,” and another 70 – 80 mcm per year for “future needs,” which was to be extracted from the Eastern Aquifer Basin (see Figure 7a). The quantity of the estimated “future needs” was based on evolution of the population over five years, in line with the general expectation that this Interim Agreement would have been revised within a five-year period. However, this estimation of “future needs” still governs the water sector today, 18 years after Oslo II and 13 years after its expected end. Since 1995, the Palestinian population has doubled. The plans for development of the Eastern Aquifer Basin have neither been realised, nor do they seem achievable as long as Israel continues to prevent the Palestinians from accessing the most productive areas of this basin.

3.3.3. Joint Water Committee

One of the primary ways through which the Israeli authorities maintain control of Palestinian water resources is by virtue of their effective veto power in the Joint Water Committee (JWC) established under Oslo II as part of a five year interim arrangement, but still meeting 18 years later. The JWC holds complete decision-making power over the coordinated joint management and development of all West Bank water resources and wastewater systems. The JWC’s mandate includes granting permits for drilling and rehabilitation of wells, all increases of extraction from wells, protection of water resources and water and sewage systems, setting extraction quotas, resolution of water and sewage disputes, and cooperation in the field of water, including exchanging information. Comprised of equal numbers of Israelis and Palestinians, decisions should be made by consensus, granting either side the right to veto any proposal.

The establishment of the JWC should have been a positive reform for Palestinians. However, the consensus system still allows for Israel to veto any proposal, including the maintenance of existing water infrastructure that has fallen in disrepair, or any alterations to the status quo ante in the extraction levels. Given that the JWC’s mandate is limited to the West Bank water resources only and does not deal with the downstream Israeli portion of the shared transboundary groundwater resource and flow systems, the Palestinians do not enjoy similar veto powers in relation to Israeli actions concerning water on its side of the Green Line, even where those actions affect joint water resources.

A recent study done by Dr. Jan Selby into JWC records between 1995 and 2008 demonstrates that approval rates for Palestinian projects are significantly lower than Israeli projects. As Figure 9 shows, the PWA approved all Israeli proposals for wells (three) and supply network (108) and only rejected one of the 24 proposed wastewater projects. Concurrently, Israel only approved half of all Palestinian proposals for wells.

87 The total quantity specified in these projects is 28.6 mcm/yr of which 5 mcm/yr is dedicated to the Gaza Strip from the Israeli water system (Oslo II, Annex III, Appendix 1, Article 40.7.a.1.b.3), 11 mcm/yr (7.4 to the Hebron, Bethlehem, and Ramallah areas from the Eastern Aquifer or other agreed sources in the West Bank) (Oslo II, Annex III, Appendix 1, Article 40.7.b.2), and the remainder (16.6 mcm/yr) from a number of specified sources and systems.

88 In 2010, Palestinians extracted only 44 mcm/yr from the Eastern Aquifer Basin as a result of Israeli restrictions. PWA, ‘Water Supply Report 2010’ (n 79).

89 Occupation, Colonialism, Apartheid? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law (hereafter Occupation, Colonialism and Apartheid Study) (Human Sciences Research Council, Cape Town, 2009) 162.

90 Oslo II, Annex III, Appendix 1, Article 40.6.

91 Oslo II, Annex III, Appendix 1, Article 40 (13, 14) as cited in ibid., 143.

92 According to the PWA, some 140 Palestinian, mostly agricultural, wells are currently in disrepair or standing still for lack of permits for maintenance work.

93 Oslo II, Annex III, Appendix 1, Schedule II (1.b), as cited in Occupation, Colonialism and Apartheid Study (n 90) 143.

94 Oslo II, Annex III, Appendix 1, Article 40. See further Section 3.3.3. of this study.

95 J Selby, ‘Cooperation, Domination and Colonialism’ (n 45) 7; G Abouali, ‘Natural Resources Under Occupation: The Status of Palestinian Water Under International Law’ (n 2) 61.

96 This chart combines information on JWC and Israeli Civil Administration approval, as projects proposed for Area C require Israeli Civil Administration approval as well. See Section 4.3.1. of this study.

97 For more statistics on the applications by type and project, J Selby, ‘Cooperation, Domination and Colonialism’ (n 45) 12.

98 Ibid. The 49 per cent approval rate for Palestinian well applications includes approvals on projects that were submitted up to end of 2009 and the 58 per cent approval rate for Palestinian wastewater infrastructure applications includes approvals on projects that were submitted up to end of 2011.
Upon closer inspection, 19 out of 20 proposals for monitoring wells, which are constructed to assess groundwater conditions in particular locations and at particular times, were accepted; while most, if not all, applications for well rehabilitation were rejected.  

Up to the present day, Israel has chosen to veto all applications for Palestinian production wells in the major Western Aquifer Basin, while agreeing to 85 per cent of applications that draw from the small Eastern Aquifer Basin.

The pattern of Palestinian JWC applications clearly demonstrates the narrow parameters in which the PWA operates. For instance, given that financial support from donors for the Palestinian water sector is conditional upon JWC approval, the PWA has opted for pipelines with a small diameter for distribution within and between Palestinian communities, rather than larger transmission networks that may incur a JWC veto. At the same time, Israeli colonies continue to receive lavish amounts of water. These settlements are interconnected through internal networks, for which Israel does not obtain JWC approval, and are increasingly integrated into Israel’s national water network.

Furthermore, Israel only approves major Palestinian projects, especially wells, if the Palestinians agree to Israeli demands to construct new and enlarged water supply systems benefiting colonies in the West Bank. According to the PWA, “[m]ore recently, Israel has begun conditioning JWC approval for urgently needed Palestinian water projects on prior Palestinian approval of water projects benefiting illegal Israeli settlements. This has since become consistent Israeli policy, in effect undermining the JWC by reducing it to a forum for blackmail.”

Even when the Palestinian side exercises its right of veto through the JWC, Israel proceeds with water projects that serve the colonies. For instance, Israel unilaterally decided to connect ‘Kochav Ya’akov’ and ‘Psagot’ settlements located in Ramallah governorate to the Palestinian wastewater treatment plant in Al-Bireh, Ramallah governorate, despite objections raised by the PWA and its German government donors.

In many ways, the current system in which Israel can and has used its veto powers to prevent the Palestinians from undertaking any substantial water projects in the West Bank mirrors the system of military orders in place prior to the conclusion of the Oslo Accords, except for the ‘theoretical’ Palestinian veto of settlement infrastructural projects. As such, the establishment of the JWC has allowed for the formalisation of a discriminatory management regime that was, for the most part, already in place as a result of Israel’s considerable military and political efforts to exercise total control over water resources in the OPT. Jan Selby thus concludes: “[a] joint management system in which one party has no option but to assent to the colonisation of their own land is little more than a ‘dressing up’ of cooperation as domination.”

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99 If all applications for monitoring wells were excluded, the figure would stand at 30 per cent. If well rehabilitation applications were excluded from the calculation, the rate for approval of wells would stand at 66 per cent. Ibid., 13-14.
101 J Selby, ‘Cooperation, Domination and Colonialism’ (n 45) 14, 7.
102 Though not formally adopted in JWC procedures, practice has shown that all pipelines of greater than 2” diameter or 200 metres in length require JWC approval. Ibid. 7.
104 The PWA has relatively little actual control over water produced in the West Bank and is essentially caught in an asymmetrical relationship that is very sensitive to Israeli threats of reducing cooperation with the JWC. See M Zeitoun, ‘The Conflict vs. Cooperation Paradox: Fighting over or Sharing of Palestinian-Israeli Groundwater?’ (2007) 32 Water International, 105-120. See for case studies on the explicit linkage of PA approval for Israeli settlement projects. J Selby, ‘Cooperation, Domination and Colonialism’ (n 45) 17.
106 M Zeitoun, ‘The Conflict vs. Cooperation Paradox’ (n 104) 105-120.
108 See Section 3.2 of this study. See further J Selby, ‘Dressing up domination as ‘cooperation’” (n 81) 124.
3.4. The Impact of the Annexation Wall on Water Resources in the West Bank

Since June 2002, Israel has been constructing the Annexation Wall on occupied territory, an exercise that has faced international condemnation on the basis of its illegality under international law. The construction of the Wall has created Seam Zones, areas of land that are caught between the Wall and the Green Line. Palestinian residents on the eastern side of the Wall have been cut off from 28 agricultural groundwater wells, with an annual yield of some 4 mcm, which constitutes more than 30 per cent of the Palestinian share in the Western Aquifer Basin as per Oslo II. Upon completion of the Wall, Israel will have annexed a total of 70 per cent of the West Bank’s share of the Western Aquifer Basin’s recharge area, which is the only area that has any significant potential for well development and increasing water extractions in the future. The construction of the Wall does not only render Israel control over the 28 agricultural wells, but also establishes Israeli supremacy over future groundwater development in this area. As such, the construction of the Wall in the northern West Bank reveals Israel’s intent to permanently annex Palestinian water resources. Indeed, the International Court of Justice (ICJ) has expressed concern at the annexation of the Western Aquifer Basin in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion on the Wall).

4. Supply, Sale and Destruction: Current Israeli Methods to Maintain Hegemony

4.1. Forced Water-Dependence

As a result of the transfer of control and ownership of Palestinian water infrastructure in the West Bank to Mekorot, Palestinians have been forced to rely on Israel’s national water company to meet their annual water needs, and must purchase water against a price set by Mekorot. According to the PWA, it had to purchase an additional 55.5 mcm from Mekorot in 2010 “to cover the minimal and very basic needs.” This means that the...
Palestinians had to rely on Israel for more than a third of their water needs in 2010. In its January 2013 report, the International Fact-Finding Mission on the Impact of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights in the Occupied Palestinian Territory (International Fact-Finding Mission on Settlements), appointed by the UN Human Rights Council, estimated that “Mekorot supplies almost half the water consumed by Palestinian communities.”

While under Oslo II the Israeli commitment to supply water directly to the PWA in the West Bank stands at 31 mcm per year, this amount continues to grow and is likely to double in the coming years. In practice, the PWA is purchasing water from an Israeli company, when legally, this water should have been allocated to the Palestinians by virtue of their riparian share in the West Bank’s aquifer system.

Since 1967, Israel has developed wells (mainly located in the Jordan Valley and run by ‘Mekorot’ to supply the colonies), as well as a water network that is linked with the Israeli national network. According to the PWA, there are 38 Israeli wells located in the West Bank, 29 of which are in the Jordan Valley.
In 2005, ‘Mekorot’ extracted 44.1 mcm – making up 77 per cent of all Israeli West Bank extractions – in order to supply copious amounts of water to sparsely populated, yet flourishing agricultural colonies in the Jordan Valley.122 The water is intended for irrigation of high-intensive and specialised agricultural products, which are mainly designated for export.123

In addition, ‘Mekorot’ routinely reduces Palestinian supply – sometimes by as much as 50 per cent – during the summer months in order to meet consumption needs in Israel and the colonies.124

Case Study 1: Kufr al-Deek: dry and contaminated

The residents of Kufr al-Deek village, Salfit governorate have a water supply of merely 23 litres per capita daily (lpcd), which is almost entirely supplied by ‘Mekorot’.125 Kufr al-Deek is located 300 metres from ‘Ariel’, one of the largest Israeli colonies in the West Bank.126 When supplies of water are low in the summer months, ‘Mekorot’ closes the valves that supply Kufr al-Deek so as not to affect ‘Ariel’s’ supplies. ‘Ariel’ is strategically built over the Western Aquifer Basin and sits on top of the hill above the ‘Ein al-Matwi spring and the Palestinian towns of Salfit, Brurin, Kufr al-Deek and Farkha. As is the case in numerous Palestinian communities within the West Bank, local springs make up a vital source of water for these towns. Recently however, the ‘Ein al-Matwi spring has become contaminated. The settlement of ‘Ariel’ threatens the very source of water that these communities rely on for drinking purposes, as it routinely discharges wastewater in an inappropriate manner. In doing so, ‘Ariel’ is adversely affecting not only the health of the Palestinian communities directly, but also the local agriculture and the environment in the immediate vicinity.127

Due to the severe water cuts and the limited coverage by the water network in the OPT, many communities have had to resort to purchasing expensive water delivered by water tankers. This form of supply increases the price of water to an average of eight times or more what Israeli settlers pay.128

Case Study 2: Khirbet al-Haddidiyya residents pay five times more for tankered water

“In Khirbet al-Haddidiyya, we do not have a water network. The Israeli occupying authorities refuse to approve the installation of a water network, ostensibly because the village lacks a master plan. The Israeli occupying authorities do not recognise our presence in the area. Therefore, we are forced to purchase water and transport it to our houses by water tank trucks. For example, I have to purchase 400-500 cubic metres of water per month. A cubic metre costs 25 NIS [approximately 6.5 USD]. If a water network was available in Khirbet al-Haddidiyya, the price of a cubic metre of water would not exceed 5 NIS [approximately 1.25 USD]. The village residents and I purchase water from the area of Tammoun, 35 kilometres west of Khirbet al-Haddidiyya village. Water is transported by private tank trucks, increasing the price of water. In the village, we do not have any water wells or collector wells. We store water in metal tanks and use it very cautiously for drinking and watering livestock.”

- Excerpt from Al-Haq Affidavit No. 7163/2012. Given by ‘Abd-al-Rahim Husein ‘Bsharat, a livestock breeder and resident of al-Haddidiyya village, Tubsan governorate, West Bank, on 23 February 2012.


124 UNGA, ‘Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs in the Occupied Territories’ (8 June 2007) UN Doc. A/61/500/Add.1, paragraph 29. Also recognised by the International Fact-Finding Mission on Settlements (n 5) paragraph 84. See also PHG, ‘Water for Life: “The Inequitable Abstraction, Allocation and Consumption of Water Resources’ Arabs in the Occupied Territories’

125 Founded in 1978, Ariel is located almost exactly halfway between the Green Line and the Jordan River, at a distance of 16.5 kilometres from the Green Line. See B’Tselem, ‘Ariel Settlement Fact Sheet’ (last updated July 2012).

126 When supplies of water are low in the summer months, ‘Mekorot’ closes the valves that supply Kufr al-Deek so as not to affect ‘Ariel’s’ supplies. ‘Ariel’ is strategically built over the Western Aquifer Basin and sits on top of the hill above the ‘Ein al-Matwi spring and the Palestinian towns of Salfit, Brurin, Kufr al-Deek and Farkha. As is the case in numerous Palestinian communities within the West Bank, local springs make up a vital source of water for these towns. Recently however, the ‘Ein al-Matwi spring has become contaminated. The settlement of ‘Ariel’ threatens the very source of water that these communities rely on for drinking purposes, as it routinely discharges wastewater in an inappropriate manner. In doing so, ‘Ariel’ is adversely affecting not only the health of the Palestinian communities directly, but also the local agriculture and the environment in the immediate vicinity.


129 Founded in 1978, Ariel is located almost exactly halfway between the Green Line and the Jordan River, at a distance of 16.5 kilometres from the Green Line. See B’Tselem, ‘Ariel Settlement Fact Sheet’ (last updated July 2012).

According to data collected by the PWA, the average expenditure of tankered water was around 12 NIS (approximately 3 USD) per cubic metre in 2010.130 Palestinians connected to the water networks pay 2.64 NIS (approximately 0.7 USD) per cubic metre in the West Bank and 2.38 (approximately 0.6 USD) per cubic metre in the Gaza Strip.130

4.2. Discriminatory Allocation: “Sharing” Between Two Peoples

As a result of Israel’s water policies and practices in the OPT, the total amount of water available for domestic consumption by almost 2.6 million Palestinian inhabitants in the West Bank (excluding East Jerusalem)131 was 98 mcm in 2010.132 In comparison, it was reported that more than half a million settlers in the West Bank are consuming 150 mcm of water annually for domestic use.133 The total amount of water available for domestic, agricultural and industrial use by some 7.6 million Israelis (residing in Israel proper and in colonies)134 was 2,020 mcm in 2010,135 compared to 331.1 mcm for more than 4.1 million Palestinians in the OPT.136

4.2.1. West Bank: Minimum Amount for “Short-Term Survival”

While the World Health Organisation (WHO) recommends a minimum domestic consumption of 100 lpcd, water consumption by Palestinians in the West Bank is an average of 73 lpcd,137 compared to about 300 lpcd138 for Israelis in Israel proper and 369 lpcd for Israeli settlers residing in colonies in the OPT.139 Therefore, the per capita consumption of water for domestic use by those residing in Israel proper is four to five times higher than the Palestinian population’s per capita domestic consumption in the OPT.140 More than 500,000 Israeli settlers in the West Bank consume approximately six times the amount of water used by a Palestinian population of almost 2.6 million.141

132. The average of surface and groundwater under Palestinian control in the West Bank ranges from 98 mcm in 2010 (26.8 mcm from springs and 71.6 mcm from wells), 107 mcm in 2008, and 105.9 mcm in 2007. The PWA purchased an additional 55.5 mcm from ‘Mekorot’, bringing to total
135. Palestinians in the Gaza Strip had 177.3 mcm in 2010 and Palestinians in the West Bank (excluding East Jerusalem) had 153.8 mcm, made up of 153.8 mcm from the Mountain Aquifer and the remainder purchased from Mekorot. PCBS, ‘Annual Available Water Quantity in the Palestinian Territory by Region and Source’, 2010 (n 132). The total population of the OPT was at mid 2011 4.11 million, see PCBS, ‘On the Eve of the International Population Day 11/7/2011’ (n 37).
141. Ibid., paragraph 27.
This discrepancy in water use is even greater when water used for agricultural purposes is taken into account. Settlers in the Jordan Valley and Dead Sea colonies have up to 18 times more water available than Palestinians in the West Bank, with 1,312 lpcd allocated to these settlers in 2008, mostly for agricultural use. The settlers in the Dead Sea settlements of ‘Mitzpe Shalem’ and ‘Qalya,’ for instance, are allocated approximately 700 lpcd, while settlers residing in the Jordan Valley settlements of ‘Ro’i,’ ‘Argaman,’ and ‘Niran’ enjoy more than 400 lpcd for domestic use only. The nearby Palestinian village of al-Hadidiyya, a herding community with a population of around 200, struggles with only 22 lpcd for domestic purposes.

The average water use for domestic purposes ranges from 200–300 lpcd in most European countries, with Italy consuming 385 lpcd and the United Kingdom 150 lpcd. The United States average consumption is 575 lpcd and in Australia it is 495 lpcd. By contrast, average use in countries such as Mozambique (10 lpcd), Haiti, Rwanda and Uganda, Angola, Cambodia, and Ethiopia (20 lpcd) is well below the water poverty threshold of 50 lpcd. Below this level, people are constrained in their ability to maintain their physical well-being and dignity.\(^\text{145}\)

As of September 2011, in the West Bank, some 313,000 Palestinians across 113 communities were not connected to a water network, and were considered at high risk of water scarcity.\(^\text{146}\) Furthermore, some 50,000 Palestinians in 151 communities\(^\text{147}\) live on less than 20 lpcd, which is the minimum amount recommended by the WHO for “short-term survival” in emergency and disaster situations.\(^\text{148}\) In stark contrast, all Israeli colonies situated in the West Bank,\(^\text{149}\) 145 UN Development Programme (UNDP) ‘Human Development Report 2006 - Beyond scarcity: Power, poverty and the global water crisis’ (2006) 34.

\(^\text{146}\) UN OCHA, ‘How Dispossession Happens’ (n 137) 13; Diakonia, ‘Israel’s Administrative Destruction of Cisterns in Area C of the West Bank’ (September 2011) 4.

\(^\text{147}\) Al-Haq and EWASH (n 140) paragraph 24.

\(^\text{148}\) EWASH, ‘“Down the Drain”: Israeli restrictions on the WASH sector in the Occupied Palestinian Territory and their impact on vulnerable communities (March 2012) 8.

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**Figure 14**: Comparison between Palestinian village al-Zbeidat and Israeli settlement ‘Argaman’.

**Figure 15**: Comparison between Palestinian village al-‘Oja and Israeli settlement ‘Niran’.

**Figure 16**: Household comparison of per capita consumption between settlers and Palestinian communities in the Jordan Valley.\(^\text{144}\)
including East Jerusalem, are connected to a water network, and serviced by ‘Mekorot,’ which itself extracts water flowing from the groundwater resources lying beneath the West Bank.  

**Case Study 4: Farmers and shepherd forced to abandon their jobs**

“In al-Aqaba village, [located in the Northern Jordan Valley] all the residents [some 300] and institutions lack access to local water sources. There is no water network or even a water cistern in the village. The Israeli occupying authorities do not allow the village residents to construct a water network. At the same time, Israeli water pipelines, which supply water to Israeli settlements and military camps in the Northern Jordan Valley (known as the ‘Mekorot’ network), are installed in the vicinity of the village, at a distance of only seven kilometres from the village houses. The Israeli occupying authorities do not allow the village residents to construct any artesian wells. Therefore home owners, institutions and societies, are forced to purchase water from external sources at their own expense. Tank trucks transport water from adjacent areas, including al-Far’a and Tammoun, at a cost of 150 – 200 NIS [approximately 40 – 50 USD] per tank. Almost every week, each house and each society in al-Aqaba village needs a full tank of water, at a cost of 15 – 20 NIS [between some 4 – 5 USD] per cubic metre. Water supplied by ‘Mekorot’ costs less than 1 NIS per cubic metre. The Israeli occupying authorities, however, refuse to supply al-Aqaba with water through ‘Mekorot,’ forcing citizens to pay exorbitant amounts every month. A number of al-Aqaba residents work in the agriculture sector and breed livestock. Farmers and shepherds pay significant amounts to irrigate crops and provide water for their livestock. A large number of farmers and shepherds have had to abandon their jobs. Farmers were unable to irrigate their crops and shepherds were forced to sell their livestock, as they lacked the financial resources to provide water for their animals.”


“These are mere tactics that are intended to remove residents and seize control of the land. Israeli practices are not limited to demolitions, but affect all aspects of our life. Under the same pretext, the Israeli occupying authorities refuse to allow the installation of a water network in the village. Therefore, we are forced to purchase and transport water by water tank trucks to our houses. This overburdens people, especially given the harsh economic and financial conditions of al-Aqaba village.”

- Excerpt from Al-Haq Affidavit No. 7115/2012. Given by Ma’moun Mahmoud Dabak, a resident of al-Aqaba village, Toubas governorate, West Bank, on 11 February 2012.

The level of unrestricted access to water enjoyed by those residing in Israeli proper and in Israeli settlers demonstrates that resources are plentiful and that the lack of sufficient water for Palestinians is a direct result of Israel’s discriminatory policies in water management.

### 4.2.2. East Jerusalem: Severed and Disconnected

Palestinians living in occupied East Jerusalem, which has been illegally annexed by Israel in 1967 and is under its civil rather than its military administration, also suffer from Israel’s discriminatory policies in the allocation, availability of and access to water. This is primarily due to the Jerusalem Municipality’s strict housing and urban planning regime, which places stringent and unrealistic criteria on entitlement to water services. Over half of the Palestinians living in East Jerusalem, some 160,000 persons, do not have legal water connections as Israeli law does not allow them to connect to the water network, mainly because the required housing permits are not issued. Palestinian households in East Jerusalem are thus forced to resort to unlicensed connections. In theory, however, they are entitled under Israeli law to full and equal services provided by the municipality and other authorities in Israel by virtue of their residency within the Israeli unilaterally-established municipal boundaries of Jerusalem.

Furthermore, some Palestinian areas of East Jerusalem, especially those on the eastern side of the Wall, have been excluded from the boundaries of the city, leaving their residents without access to municipal services, including water and sanitation. This applies, for instance, to Beit Iksa, Kufr Aqab, and Shu’fat refugee camp. Consequently, the latter two and the Palestinian neighbourhood of Beit Hanina in northern Jerusalem rely on the Ramallah-based Jerusalem Water Undertaking (JWU) for their water. Meanwhile, the JWU faces a host of problems, including its forced dependence on water sourced from Israel. The JWU must also acquire permits from the Jerusalem municipality to carry out repair and maintenance of water infrastructure in East Jerusalem.

### 4.3. Water Infrastructure: Consistently at Risk

As an Occupying Power, Israel is responsible for the occupied population’s well-being. However, instead of administering the territory and fulfilling its international legal obligations, Israel’s policies in water management.

150 See Section 4.1. of this study. HRW, ‘Separate and Unequal’ (n 23) 17-18.
152 International Fact-Finding Mission on Settlements (n 5) paragraph 85; Al-Haq and EWASH (n 140) paragraph 54.
154 The Jerusalem Water Undertaking is a Ramallah-based company with authority to develop new water resources and control all water projects in the area and with the responsibility of providing the population with potable water.
155 Depending on repeated requests, the 85,000 cubic meters per month available to the JWU is not sufficient to serve approximately 4,500 East Jerusalem households, especially in the summer months. EWASH, ‘Factsheet 9’ (n 153) 3.
156 Obtaining permits for repair and maintenance work is time consuming and uncertain. Furthermore, due to the restrictions placed on movement within the West Bank, especially East Jerusalem and the rest of the West Bank, labour is often outsourced to costly Jerusalem-based contractors, instead of using its own employees. Unof.
157 ‘Occupied population’ and ‘local population’ are used interchangeably throughout this study and refer only to protected persons as understood by Article 4 of the Fourth Geneva Convention (1949).
Israel continues to further its own needs in pursuit of its ultimate goal: to drive the occupied population from their lands, thereby purging the most fertile and water resource rich areas of the West Bank of its Palestinian residents.

The International Fact-Finding Mission on Settlements concluded that “[t]he denial of water is used to trigger displacement, particularly in areas slated for settlement expansion, especially since these [Palestinian] communities are mostly farmers and herders who depend on water for their livelihoods.”

4.3.1. Denial of Permits to Construct and Rehabilitate Water Infrastructure

Although the PWA technically has authority over West Bank wells, the regulatory authority and ultimate control reside with Israel. Israel has actively prevented the construction and maintenance of water and sanitation infrastructure in the West Bank. This has primarily been achieved through Israel’s exercise of its effective veto at the JWC, as well as the Israeli Civil Administration’s systematic practice of denying permits for the construction or rehabilitation of water infrastructure in 59 per cent of the West Bank, earmarked Area C. Any water structure built without a permit from the Israeli authorities – permits that are virtually impossible to obtain – faces the risk of demolition.

Case Study 5: Destruction of a well affecting 18 people

“Because the water supplied by the Hebron Municipality’s public network is frequently cut off, I decided to drill a collector well on our land to the east of the house. I completed drilling of the well in 2009. [...] In early 2010, I found a notice for cessation of construction of the well signed by the Israeli Zoning Council, despite the fact that construction had been completed the previous year. Later in April, I found another notice for demolition of the well, allegedly because it had been drilled without the required licence. [...] In the summer of 2010, Israeli military forces [...] destroyed the well, collected rubble from the surrounding area, and dropped it into the well. Construction of the well cost me 17,000 Jordanian Dinars ([JD]) [some 24,000 USD]. Considering the water crisis, especially during summertime, I had to reconstruct the well. Water is supplied to the house by the Municipality’s public network only once a month. [...] On 10 October 2012, I started to reconstruct the well. [...] On Sunday, 22 October 2012, [...] a large loader and hydraulic excavator arrived to the area. I realised that they had come to destroy the water well. [...] An officer asked why I had reconstructed the well. “Because I need water.” I replied. I asked the officer why they had come without giving prior notice. He said that the notices for cessation of construction and demolition, which had been dispatched back in 2009, would be effective indefinitely. [...] The loader and hydraulic excavator demolished the well and filled it with rubble. [...] Reconstruction of the well had cost me almost 25,000 NIS [approximately 6,500 USD].”


Under Oslo II, the Israeli Civil Administration in the West Bank holds complete decision-making power regarding land use and planning in Area C to the extent that all new water facilities in this area require not just JWC, but also Israeli Civil Administration approval. In practice, this system is one that grants Israel double veto powers for most of the West Bank – first through the JWC, then the Israeli Civil Administration – over Palestinian development of water resources and supplies. The permission for and construction of several water development projects, particularly those in areas outside urban centres, is thus dependent on Israeli interests.

4.3.2. Confiscation and Destruction of Water Infrastructure

The Israeli military authorities regularly target water collection systems for confiscation and destruction, including those provided by humanitarian organisations. They do so on the pretext that such systems, whether or not they are permanent, were constructed without an Israeli permit.

Some structures pre-date the 1967 Israeli occupation of the OPT, but are equally at risk of demolition when rehabilitation projects are initiated. The International Fact-Finding Mission on Settlements has found that “[d]estruction of water infrastructure, including rainwater cisterns, by Israeli authorities has increased since the beginning of 2010; double in 2012 compared to 2011.”

158 International Fact-Finding Mission on Settlements (n 5) paragraph 88.

159 See also, International Fact-Finding Mission on Settlements (n 5) paragraph 81.


161 M Zeitoun, ‘The Conflict vs. Cooperation Paradox’ (n 104) 105-120.

162 International Fact-Finding Mission on Settlements (n 5) paragraph 88.
In 2011, according to data collected by EWASH, Israel demolished 89 water, sanitation and hygiene (WASH) structures, and 45 WASH-related confiscations were recorded in the West Bank (excluding East Jerusalem), affecting 977 Palestinians. The destructions largely consisted of cisterns privately constructed for civilian use or part of humanitarian aid projects. These are indispensable to the survival of rural and herder Palestinian communities in the West Bank who rely on such infrastructure to provide water for livestock and crops and sometimes for domestic usage in the absence of an adequate water network.

**Case Study 6: Destruction of wells due to lack of permit**

“I have a piece of agricultural land, measuring about 150 dunums, on Marj Ben ‘Amer plain, which is immediately opposite the village of Kufr Dan, [west of Jenin city]. [...] In early 2000, I constructed an artesian well to supply water for the land. At around 6:00 am on Wednesday, 24 October 2012, when I was at my home in Kufr Dan village, I received a telephone call from a farmer who had been on my land. He told me that an Israeli military force had arrived to my land and that a bulldozer, which accompanied it, had demolished my artesian well. I immediately rushed to my land. [...] When I arrived, the wheel loader had already finished destroying the well. Meanwhile, a number of soldiers were taking up positions in the area to provide protection to the wheel loader. “Why have you done this?” I asked a soldier. Another soldier hit me with a black baton on my right shoulder and hand, causing me severe pain. He uttered blasphemous expressions and shouted that I cannot get any closer. [...] I had not received any notice before my artesian well was destroyed. Destruction of my well will consequently cause damage to the crops I have cultivated. [...] After the Israeli occupying authorities destroyed my artesian well, all these crops are now threatened because an alternative water source is not available for irrigation.”


“I have an artesian well on my land, which I constructed eight years ago. I use it to irrigate crops, as well as for drinking water purposes. I also supply poultry farms of the Palestinian Poultry Company (AZIZA) northeast of my land. AZIZA purchases water from me for cooling and watering approximately 35,000 chickens. At around 9:00 am on Thursday, 7 June 2012, I was surprised by an Israeli military force that came to the area surrounding my land. [...] The Israeli force surrounded the land and soldiers were deployed around it. The wheel loaders immediately started to destroy the water well mentioned above. I quarrelled with an Israeli army officer. “The well is being destroyed because water is stolen.” He told me in Arabic. The officer said he had instructions from the higher command to destroy the well, allegedly because it had been constructed without the required licence. [...] It should be noted that I had not received any notice to destroy the well, which is located in Area B according to the Oslo Agreement signed between the Palestinians and the Israelis. This area is under the administrative control of the Palestinian Authority. [...] The construction cost of the well totalled about 50,000 JD [approximately 70,500 USD], including excavation, installation of the pump, pipelines, electrical wirings, and iron coating. Finally, I would like to note that the Israeli force destroyed five other wells in the vicinity of the villages of Deir Abu-D’eif and Beit Qad, east of Jenin city. These were destroyed under the same pretext – construction without the required licence.”


While demolitions and confiscations in 2011 largely targeted WASH structures used for personal and domestic functions such as tanks and cisterns, in 2012 Israeli occupying forces increasingly targeted livelihood WASH structures, such as agricultural wells, irrigation pipes and wells used by shepherds. Al-Haq’s documentation indicates that at least 32 demolitions were carried out under the pretext of “non-compliance with permits.”

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164 This includes the destruction of 7 sanitation structures.

165 Demolitions include 21 wells, which farmers depend on for their livelihoods, and 34 rainwater-harvesting cisterns located in communities of Area C connected to the water network, EWASH, “Down the Drain” (n 148) 16. During the last three years, WASH-related demolitions have been sharply on the rise, with 89 water-related demolitions recorded in 2011, compared to 57 in 2010 and 10 in 2009. WASH (n 163) 1.

166 The other wells destroyed in the area belong to Mahmoud Sherif ‘Abu-Razayx, also a resident of Deir Abu-D’eif village, Jenin governorate (Al-Haq Affidavit No. 7485/2012), Abdul-Majid Emad Daraghma, a resident with two wells from Beit Qad village, Jenin governorate, Ahmad Muhammad al-Qadi, and Mahmoud Saleh Hithnawi, a resident of Jenin city whose well was located on his agricultural land in Deir Abu-D’eif village, Jenin governorate. Without a permit, “I have an artesian well on my land, which I constructed eight years ago. I use it to irrigate crops, as well as for drinking water purposes. I also supply poultry farms of the Palestinian Poultry Company (AZIZA) northeast of my land. AZIZA purchases water from me for cooling and watering approximately 35,000 chickens. At around 9:00 am on Thursday, 7 June 2012, I was surprised by an Israeli military force that came to the area surrounding my land. [...] The Israeli force surrounded the land and soldiers were deployed around it. The wheel loaders immediately started to destroy the water well mentioned above. I quarrelled with an Israeli army officer. “The well is being destroyed because water is stolen.” He told me in Arabic. The officer said he had instructions from the higher command to destroy the well, allegedly because it had been constructed without the required licence. [...] It should be noted that I had not received any notice to destroy the well, which is located in Area B according to the Oslo Agreement signed between the Palestinians and the Israelis. This area is under the administrative control of the Palestinian Authority. [...] The construction cost of the well totalled about 50,000 JD [approximately 70,500 USD], including excavation, installation of the pump, pipelines, electrical wirings, and iron coating. Finally, I would like to note that the Israeli force destroyed five other wells in the vicinity of the villages of Deir Abu-D’eif and Beit Qad, east of Jenin city. These were destroyed under the same pretext – construction without the required licence.”

167 On the same day, the Israeli military force demolished four more wells, all located in the Kufr Dan village area that are relied upon for the irrigation of more than 150 dunums of agricultural land. Al-Haq, “Five Water Wells Demolished in Jenin” (Weekly Focus) (7 November 2012) <http://www.alhaq.org/documentation/weekly-focuses/W7Five-water-wells-demolished-in-area-B accessed 22 March 2013>.

168 Diakonia (n 146) 2.
of water structures took place between January and October 2012.165

Case Study 7: Confiscation of irrigation pipes in Wadi al-Baq’a area, Hebron city

“At around 9:00 am Monday, 21 May 2012, I was in my house near the land. An Israeli force, including 15 Border Police officers, came to our land. Staff members of the Israeli Water Authority (IWA) and ten workers from a private company, which is contracted by the Israeli army, also arrived with the Israeli force. While the Border Police officers dispersed around the land, workers removed irrigation pipelines. As they moved around, they trud on crops and on grape seedlings. My mother, brothers and I tried to talk to the Israeli soldiers and IWA employees, but it was to no avail. Within one hour, workers removed all the irrigation pipelines. [...] The irrigation pipelines confiscated from our land cost approximately 3,000 NIS (790 USD), which exceed our profits. To keep the crops, I had to buy new irrigation pipelines and install them on the agricultural land. [...] To make a living, residents of our area rely on agriculture. The area is located east of the settlements of ‘Kiryat Arba’ and ‘Givaat Kharsina.’ The Israeli occupying authorities try to dry the area [where Palestinians live] in order to transfer residents and expand the settlements.”
- Excerpt from Al-Haq Affidavit No. 7451/2012. Given by Nimer Fahmi Jaber, a resident of Wadi al-Baq’a area, Hebron city, West Bank, on 31 May 2012.

Case Study 8: Confiscation of two tractors in ‘Ein al-Mayta area, Toubas governorate

“The soldiers and officers surrounded two tractors belonging to me and to Ibrahim Abu-Sabha. I own a tractor with a water tank. I use it for agricultural purposes and to transport water to the area where I live. Because the area lacks a water network, we transport water by tanks drawn by tractors. [...] The Civil Administration officers tied the tractor to a military jeep with a rope. After it had started, a Civil Administration officer drove the tractor away. I begged Hayim [a Civil Administration officer] to change his decision to seize my tractor. “The tractor and water tank help us survive in this area. There is no water source or any means of transportation in this area.” I explained, but it was in vain. I saw another Civil Administration officer driving the tractor of Ibrahim Abu-Sabha to a nearby Israeli military camp, called al-Maleh Camp. It is located less than two kilometres to the east. I saw the officers driving the two tractors into the military camp. About an hour later, I saw a large trailer leaving of the military camp and carrying the two tractors away. It travelled to an unknown place. Before he left the area, Hayim handed two confiscation orders to me and to Ibrahim Abu-Sabha. [...] This is the first time the Israeli occupying authorities confiscate our tractors. By these practices, they intend to tighten their grip on us and force us to leave the area.”

In the Gaza Strip, destruction of water infrastructure frequently occurs during Israeli military operations, such as air strikes and ground incursions. Israel enforces the so-called buffer zone by levelling land and destroying or damaging private property located therein.170 According to the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), since the imposition of the illegal regime of closures in 2005, more than 300 water wells have been destroyed in the buffer zone, amounting to a total cost of replacement estimated at 9 million USD.172 In 2011 alone, the total cost of the damage to water and sanitation infrastructure in the Gaza Strip as a result of air strikes was approximately 1.3 million USD, according to EWASH.173

Furthermore, during the Israeli offensive code-named ‘Operation Cast Lead’ in 2008-2009, an additional 6 agricultural water reservoirs were destroyed in the buffer zone, all of which remain un repaired largely due to Israel’s illegal regime of closures.174 Other organisations have reported that during ‘Operation Cast Lead’ some 919 water wells, 229 irrigation pools and 243 water pumps were destroyed.175

4.3.3. Destruction of Humanitarian Aid

Lacking any alternative, communities as well as humanitarian agencies, are left to proceed without the required construction permits. EWASH estimates the cost of demolished infrastructure in the West Bank to have exceeded 100,000 USD in 2011 alone.176

Case Study 9: Demolitions of Dutch-funded wells and cisterns

“I work as a Project Coordinator at the Palestinian Agricultural Relief Committee [PARC] in the Salfit governorate. In cooperation with the Ministry of Agriculture, in 2010 we received a grant from the Netherlands Representative Office to the Palestinian Authority to reclaim and rehabilitate land. [...] On Monday, 21 April 2012, some farmers in Salfit and Kufr al-Deek informed me that the Israeli occupying authorities had destroyed water collection wells [...] on land covered by the project. In Kufr al-Deek, the Israeli occupying army destroyed a well belonging to farmer Majed Subhi ‘Ali. The well had a capacity of 70 cubic metres, and the construction costs totalled 3,103 USD. Of this, ‘Ali paid 1,490 USD. The Israeli army also [...] destroyed a bored well on land belonging to farmer Allam Taleb. As construction was still at an initial phase, the bored well cost almost 450 USD, of which Taleb paid 350 USD.”
- Excerpt from Al-Haq Affidavit No. 7306 /2012. Given by Bakr Hammad Rizqallah, Project Coordinator at PARC, Salfit Office, and a resident of Farkha village, Salfit governorate, West Bank, on 30 April 2012.

165 Al-Haq, ‘Five Water Wells Demolished in Jenin’ (n 167).
170 UN OCHA, ‘Between the Fence and a Hard Place: The Humanitarian Impact of Israel’s Imposed Restrictions on Access to Land and Sea in the Gaza Strip’ (n 171) 19.
172 EWASH, “Down the Drain” (n 148) 17-18.
173 Ibid., 17.
176 EWASH, “Down the Drain” (n 148) 16.
Similarly, on 16 July 2012, two Palestinian families were handed cessation of construction orders for their newly-built water wells in the al-Qanoub area in Sa’ir, eastern Hebron. The wells were both built through the ‘Improving Livelihood in the Occupied Palestinian Territories Program,’ funded by the Netherlands Representative Office to the Palestinian Authority, administered by PARC, and implemented by Land Research Centre.

“My brother Basem, the rest of my brothers and sisters and I own approximately 150 dunums of land in al-Qanoub area north of our town, Sa’ir, [eastern Hebron]. The land is cultivated with trees, but lacks a water source. About two years ago, my brother Basem and I submitted an application […] for construction of a water well on the land. In the context of a project funded by the Government of The Netherlands, the application was approved. We constructed a well with a capacity of 80 cubic metres […] and completed construction works about a year and a half ago. […] My brother Basem and I support our family with the income we get from our land. […] The notice claimed that I had constructed the well without the required license. It should be noted that I completed construction of the well a year and a half ago. We have title deeds that prove our ownership of the land. […] The notice stated: “Whereas you are the owner/ contractor/ disposer/ manager of work on the said real estate on which work has been or is being performed as is detailed above without a license/ in contravention of the content of the license/ in violation of the regulations, orders and instructions in force and/ or in breach of the scheme of the land of construction/ height/ number of stories/ site/ setback line/ a prohibited construction, you are therefore required in accordance with Article 38(1) (3) of the Law on the Planning Cities, Villages and Buildings No. 79 of 1966 to cease construction immediately as is detailed above.” […] My brother Basem and I support our families that comprise 20 members, including 11 children. […] Destruction of the well will cause us an exorbitant financial loss and will negatively affect productivity of the trees on the land. Construction works cost us more than 15,000 NIS [approximately 11,500 USD]. My brother and I paid more than two thirds of this amount.”


“My brothers and I own approximately 150 dunums of land in al-Qanoub area north of our town, Sa’ir, [eastern Hebron]. […] With support from the Government of The Netherlands, I received a grant to reclaim five dunums of land with the Land Research Centre. The project provided for building stone walls, cultivating tree seedlings and constructing a collector well to irrigate seedlings. […] On Monday morning, 16 July 2012, my relative Basem Khalil Shalalda […] found a notice for cessation of construction works on my well. […] The notice claimed that I had constructed the well without the required license. It should be noted that I completed construction of the well a year and a half ago. We have title deeds that prove our ownership of the land. […] The notice stated: “Whereas you are the owner/ contractor/ disposer/ manager of work on the said real estate on which work has been or is being performed as is detailed above without a license/ in contravention of the content of the license/ in violation of the regulations, orders and instructions in force and/ or in breach of the scheme of the land of construction/ height/ number of stories/ site/ setback line/ a prohibited construction, you are therefore required in accordance with Article 38(1) (3) of the Law on the Planning Cities, Villages and Buildings No. 79 of 1966 to cease construction immediately as is detailed above.”


Case Study 10: Demolition of Polish-funded water cistern in al-Rihiya, Hebron governorate

Last year, on 13 February 2012, the Israeli military forces demolished an ancient water cistern in the village of al-Rihiya, Hebron governorate. The Polish NGO Humanitarian Action had restored the water cistern with funding from the Polish Foreign Ministry. The Israeli authorities claimed, once again, that the Polish charity had no legal permission from the Israeli administration to carry out the project.


In October 2011, a member of the European Parliament asked the European Commission for details regarding the destruction of EU-funded development projects in the OPT between 2001 and 2011. In response, the European Commission made public a list of “physical damages inflicted by IDF attacks on EU-funded development projects” and further elaborated that “the total cost of physical damage inflicted by Israeli armed forces attacks on EU-funded Development Projects amounted to approximately EUR 49.14 million for the period from 2001-2011, with the estimated EU-funded share in the loss amounting to EUR 29.37 million.”

### Case Study 11: Demolitions and confiscations in Sousiya, South Hebron Hills

In the village of Sousiya, located in the South Hebron Hills, residents rely on rainwater harvesting cisterns, as the community is not connected to the water network and there are no nearby water filling points. However, according to Sousiya’s Village Council, since 2001, the Israeli authorities have demolished 12 cisterns in and around the village and have issued demolition orders against 20 others. Two of these cisterns were demolished in 2011. As a result, many residents are increasingly dependent on purchasing expensive tankered water, leaving the average household to spend one-third of its income on water per year. Water consumption in Sousiya is 28 lpcd, which is significantly less than the 73 lpcd consumed by the average Palestinian in the West Bank and well below the WHO minimum domestic standard of 100 lpcd. In Sousiya, Israel conducted four separate demolitions in 2011 and confiscated 10 water tanks supplied by humanitarian agencies to relieve those who had had their cisterns demolished.

### 4.3.4. Confiscation of Water Resources by Settlers

A number of water springs upon which some Palestinian communities depend for their sole source of fresh water have been taken over by Israeli settlers with the support of the Israeli military. This phenomenon was highlighted in a UN report that surveyed 56 springs. 30 were found to be under full settler control, and the other 26 at risk of settler takeover. Palestinians were barred from accessing the spring areas by acts of intimidation, threats and violence by the settlers.

### Case Study 12: Settlers of the Havat Ma’on outpost bathe in Palestinian well

Since 27 June 2012, settlers from the ‘Havat Ma’on’ outpost in the South Hebron Hills have been using a Palestinian-owned water well as a public bath and have scared local shepherds away from this crucial source of water for their flocks. Settlers, gathering near the well frequently, have vandalised it with graffiti, scrawling slogans such as “death to Arabs” and “we want a Jewish state” across the well.
5. Legal Analysis

As the Occupying Power sharing a considerable portion of the region’s water resources with the Palestinians, Israel’s governance and use of transboundary water resources must be conducted not only in compliance with general principles of international law and customary international law, but also in accordance with the rules provided by international humanitarian law (IHL), international human rights law (IHR), and international water law (IWL).

5.1. International Humanitarian Law

Israel’s obligations under IHL are enshrined in the Regulations Annexed to the Hague Convention IV Respecting the Laws and Customs of Wars on Land of 1907 (Hague Regulations), reflective of customary international law, and in the Fourth Geneva Convention Concerning the Protection of Civilian Persons in Time of War of 1949 (Fourth Geneva Convention), for the most part reflective of customary international law,188 and all the customary norms included in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1997) (Additional Protocol I).

Countless resolutions of the UN General Assembly and the UN Security Council, as well as statements issued by governments worldwide have all affirmed the de jure applicability of the Fourth Geneva Convention to the OPT.190 Israel continues to maintain a practice that is contrary to this near universal position,190 which has also been confirmed by the ICJ in its 2004 Advisory Opinion on the Wall.191 Furthermore, ICI jurisprudence192 and practice confirm that obligations stemming from human rights conventions ratified by the Occupying Power also apply – without discrimination – to all people in the occupied territory.193

5.1.1. The Responsibility of the Occupying Power

Article 43 of the Hague Regulations: 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, while respecting, unless absolutely prevented, the laws in force in the country.

188 UN Security Council (UNSC) Letter Dated 24 May 1994 from the Secretary-General to the President of the Security Council (27 May 1994) UN Doc. S/1994/69, paragraph 55.


190 The Israel Government has declared that it will only abide by some ‘humanitarian provisions’ enshrined therein, without specifying which provisions it regards as having humanitarian character. See Al-Haq, ‘Legitimising the Illegitimate’, The Israel High Court of Justice and the Occupied Palestinian Territory (25 November 2010) 11-13.

191 Advisory Opinion on the Wall (n 113) paragraph 101.


193 This position was exposed by the UNGA in its Res 2675 (XXV) (9 December 1970) UN Doc. A/RES/2675(XV), the UN Human Rights Committee (Concluding Observations: Israel (18 August 1998) UN Doc. CCPR/C/79/Add.93, paragraph 10) and the European Court of Human Rights (Loizidou v Turkey, Judgment, 18 December 1996, 23 European Human Rights Reports, 515 in E Benvenisti, ‘Water Conflicts during the Occupation of Iraq’ (2003) 97 American Journal of International Law, 863, fn. 18).

Since occupation is by definition temporary, the Occupying Power does not acquire sovereignty over the occupied territory and the natural resources therein. While the sovereign rights over the territory remain with the occupied population, their ability to exercise these rights is restricted by the regime of occupation, which prevents them from fully controlling their territory and natural resources. Under the law of occupation, the Occupation Power acts merely as the de facto administrator of the occupied territory.195 The administration of the territory must preserve the sovereign rights of the occupied population – thus protecting the occupied population and their property from exploitation and depletion by the Occupying Power.195 In particular, IHL imposes strict limitations on the Occupation Power’s use of property and natural resources available in the occupied territory, thereby preventing the Occupation Power from exploiting the wealth of the occupied territory to benefit its own economy.

The measures adopted by the Occupation Power in the occupied territory must meet two important criteria: (i) the fulfilment of its own military necessity and (ii) respect for the interests of the local population.200 Under no circumstances may Israel administer the occupied territory


190 Israel has delineated the original regime of private rights to water, abolished pre-existing Jordanian laws and institutions, incorporated Palestinian water into Israeli metropolitan water network, and excluded any Palestinian role in the management of water resources at a regional or national level. See Section 3. of this study.

191 I Scobie, ‘Natural Resources and Belligerent Occupation: Mutation through Permanent Sovereignty’ (n 1) 277.


194 United States of America v A. Krupp et al., US Military Tribunal at Nuremberg (Judgment, 31 July 1948), 15 Annual Digest, 622-623. The Occupying Power is not entitled to interfere in the economic activity of the territory under its control, unless such interference results in the active or security needs; deports the expenses involved in the occupation, or protects the interests or well-being of the inhabitants of the occupied territory. A Case, Powers and Duties of an Occupying Power in Relation to Land and Natural Resources in E Playle (ed.), ‘International Law and the Administration of the Occupied Territories’ (Clarendon Press, Oxford, 1992), 422.

200 The local population does not include settlers residing in colonies, established in contravention of international law.
to benefit its own interests.201 The Occupying Power is allowed to adopt measures to counter threats to the security of its personnel and property (or administration) stationed in the occupied territory.202 However, these military necessities cannot result in trumping the needs of the occupied population.

5.1.2. The Property Protection Regime of the Hague Regulations

In times of belligerent occupation, the property of the occupied population is protected from exploitation and destruction by the Occupying Power. IHL distinguishes between public and private property, prohibiting the Occupying Power from seizing and destroying both movable and immovable property, barring exceptional circumstances of absolute imperative military necessity.203

Wells, pumps and other water installations are considered as privately owned property, even if owned by municipalities,204 while communally held or transboundary water resources, such as the Mountain and Coastal Aquifers and the Jordan River, are included in the regime of publicly owned immovable property.205

5.1.2.1. Legal Considerations for Water as Private Property

Article 46 of the Hague Regulations prohibits the Occupying Power from confiscating private property in occupied territory. This near absolute prohibition of seizure of private property is tempered only by the Occupying Power’s right to demand “[r]equisitions in kind and services [...] for the needs of the army of the occupation.”206 The Occupying Power’s subjection of privately owned property to its military needs must be compensated and can “only be in proportion to the resources of the country.”207 Arguably, it is incumbent on the Occupying Power to prove that military necessity justifies the requisitioning of private property, especially because such requisition is an exception to a rule contained in Article 46.208

5.1.2.2. Legal Considerations for Water as Public Property

The term public property is used to indicate the assets belonging to the State of the occupied territory and includes both moveable and immovable property. The relevant provisions of the Hague Regulations protecting publicly owned water resources are Articles 53 and 55, which respectively give the Occupying Power the right to seize public moveable property “for the needs of the army of the occupation,” or for the benefit of the occupied population in line with the general principles of IHL. On the other, the discrepancies in the per capita allocation and consumption rates between settlers and the occupied Palestinian population clearly reveal Israel’s failure to manage the water “in proportion to the resources of the country.”209

Israel’s requisitions of water subsequently allocated to settlers constitute a double illegality. On the one hand is the water used to serve and consolidate the presence of the army in the OPT rather than “for the needs of the army of the occupation,” or for the benefit of the occupied population in line with the general principles of IHL. On the other, the discrepancies in the per capita allocation and consumption rates between settlers and the occupied Palestinian population clearly reveal Israel’s failure to manage the water “in proportion to the resources of the country.”209

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204 Hague Regulations (1907) Article 56(1).


206 Hague Regulations (1907) Article 52.

207 Hague Regulations (1907) Article 53.

208 After all, the doctrine of military necessity has never been internationally recognised as “an unqualified license to disregard the well-being of an occupied people or as a pretext to undermine their underlying sovereign rights.” R Falk and BH Weston, ‘The Relevance of International Law to Israeli and Palestinian Rights in the West Bank and Gaza’ in E Playfair (ed.), International Law and the Administration of Occupied Territories (Clarendon Press, Oxford, 1992) 137-138; A Cassese, ‘Powers and Duties of an Occupant in Relation to Land and Natural Resources’ (n 199) 439.

209 I Scobbie, ‘Natural Resources and Belligerent Occupation: Mutation through Permanent Sovereignty’ (n 1) 279-279.

Article 55 of the Hague Regulations (1907): “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.”

Under the usufructuary rule, the Occupying Power may administer public property situated in the occupied territory and enjoy the use of real property. For instance, the Occupying Power is entitled to use the ‘fruits’ that arise out of the property in question, but is at the same time prohibited from decreasing its value or exploiting it in a manner that leads to its destruction.

Similar to agricultural territories, forests, groundwater systems, such as the Mountain Aquifer and the Coastal Aquifer, supply a given annual yield of water provided that the quality of the underlying asset does not deteriorate. Based on the determination of groundwater systems as public immovable property, Israel would have the right to enjoy the ‘fruits’ of the OPT’s groundwater systems, provided that it is used to meet its security needs, defray the expenses of the occupation (not intended as the overall costs of the military operations) and promote the needs of the local population. It is strictly forbidden to use State property of the occupied territory to draw economic benefits for Israel’s economy or inhabitants. Moreover, Israel is limited in its use to the extent that the capital of the property must be safeguarded. However, its practice of consistent overexploitation and pollution has caused significant and irreparable damage to the aquifers, and has rendered groundwater a non-renewable resource.

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According to the most accredited interpretation, resources that are not renewable but finite, such as oil, minerals and hydrocarbons, cannot be considered as ‘fruits,’ but should rather be treated as immovable assets protected by Article 55 of the Hague Regulations. Groundwater, which bears many similarities to oil in the ground and is considered as public immovable property, must therefore not be considered as ‘the fruit of the tree, but as the tree itself’ and, as such, part of the occupied territory’s capital. Hence, it is protected by the rules of usufuct and cannot be depleted, damaged or destroyed by the Occupying Power’s actions.
Power. 223

In light of the temporary nature of the situation of occupation, Israel must also guarantee that the use of the property remains in line with its status prior to the occupation. Israel is prohibited from both exploiting groundwater resources more rapidly than the level of extraction carried out by the occupied population prior to the occupation 224 and from creating infrastructure for extraction that did not exist prior to 1967, 225 unless this is done for sole benefit of the occupied population.

5.1.3. Administrative Destruction of Water Infrastructure

Article 53 of the Fourth Geneva Convention prohibits the Occupying Power from destroying all property, whether public or private, situated in the occupied territory for any reason other than imperative military necessity. 226 While imperative military requirements may permit the Occupying Power to carry out destruction, in whole or in part, of certain private or public property in occupied territory, it must act in good faith to interpret the provision in a reasonable manner that respects the principle of proportionality. 227 In these instances, this principle must be applied restrictively as the military necessity has to be absolute.

The ostensible administrative nature of Israel's destruction of water infrastructure makes it apparent that such destruction is not justified by military necessity, thereby constituting prima facie evidence of its unlawfulness. Furthermore, while it has been argued that the Occupying Power's responsibility to ensure and maintain public order and civil life includes the exercise of administrative powers, such powers must be exercised in a reasonable manner that respects the principle of proportionality. 227 In these instances, this principle must be applied restrictively as the military necessity has to be absolute.

Israel has rendered any reasonable access and use of water resources in the OPT practically impossible for the occupied population. 228 According to the International Committee of the Red Cross (ICRC), “[t]he whole of Gaza’s civilian population is being punished for acts for which they bear no responsibility. The closure therefore constitutes a collective punishment imposed in clear violation of Israel’s obligations under international humanitarian law.” 229 Instead, Israel administers all Palestinian water resources and infrastructure in a manner designed to realise a specific goal: the extensive appropriation of water resources so that they can be allocated solely to those residing in Israel proper and in Israeli colonies in the OPT.

5.1.4. Forcible Transfer of the Palestinian Population

The effects of Israel's discriminatory policies and practices have virtually deprived the Palestinian population in the OPT of essential means of livelihood, at the same time for the benefit of the occupied population. 230 Instead – and in violation of its duty of good governance 231 – Israel has rendered any reasonable access and use of water resources in the OPT practically impossible for the occupied population. Seen in this light, the current practice of demolishing water infrastructure, premised on the specious lack of permits, is a clear abuse of the obligation to administer the occupied territory for the benefit of the occupied population. Similarly, Israel's regime of illegal closures in the Gaza Strip, which obstructs access to essential construction materials to rehabilitate water and sanitation infrastructure that was demolished during military operations, is premised on violations of Israel's legal obligations as an Occupying Power.
ensuring the de-development of local communities. Some Palestinian communities, in particular in the Jordan Valley – 90 per cent of which is classified as Area C – and the South Hebron Hills, struggle to survive, as the lack of water has not only completely crippled their agricultural and herding economy,233 but has left them parched, without ‘sufficient, accessible and affordable water’.234 Through the extensive deprivation of water, Israel has made it nearly impossible for some Palestinians to remain in their communities and has effectively forced the transfer of the protected population from their homes.235

Consequently, as an Occupying Power in the OPT, Israel is contravening the prohibition of forcible transfer of protected persons set out in Article 49(1) of the Fourth Geneva Convention, which foresees the evacuation of an area only “if the security of the [occupied] population or imperative military necessity so demand.”236 For instance, Israel has the right, in some instances even a duty, to partially or wholly evacuate an area if this area in danger as a result of military operations. However, evacuation is only permitted for the duration of the hostilities in the area, after which the occupied population must be brought back to their homes.237

Neither exception has been or can be invoked in this context, as it is clear that Israel’s aim is to remove Palestinian communities from certain areas and confine them to specific areas of the OPT with minimum resources available, in order to further its own interests of exercising sovereign rights over the occupied territory and appropriating the natural resources for its own economic benefit.238 The violation of the prohibition of forcible transfer of protected persons amounts to a grave breach of the Fourth Geneva Convention and it is considered as a war crime under Article 8(2)(a)(vii) of the ICC Statute.

The forcible displacement of the protected Palestinian population is instrumental to Israel’s unlawful transfer of its own civilian population into the occupied territory – a transfer expressly prohibited by Article 49(6) of the Fourth Geneva Convention regardless of its motive.239 The transfer of Israeli nationals into the OPT is directly imputable to the Occupying Power’s consecutive governments, which have consistently been heavily involved in the planning, implementation and financing of the transfer of Israel’s own civilian population into the OPT. Ultimately, the absolute prohibition of transfer of Israel’s nationals into the OPT strengthens the prohibition on using natural resources belonging to the occupied territory or its inhabitants for the furtherance of Israel’s own interests.240 The Israeli settlement enterprise in the OPT is therefore in direct contravention of the absolute prohibition of transfer of the Occupying Power’s nationals into occupied territory. The prohibition encompasses any political, military or financial measure enacted by the Occupying Power to bolster the establishment or the expansion of colonies, including the encouragement and financial support to develop industries, such as agricultural enterprises, in the occupied territory.241
5.2. Right to Self-determination and the Principle of Permanent Sovereignty over Natural Resources

Through Israel’s policies that have resulted in the complete integration the OPT’s water system into its own, Israel illegally exercises sovereign rights over Palestinian natural sources. This demonstrates the existence of a governmental policy aimed at dispossessing the Palestinian population of their natural wealth. As such, this constitutes an infringement on the right of the Palestinian people to self-determination and to permanent sovereignty over their natural resources.

The right to self-determination constitutes an essential principle of international law and its realisation is an indispensable condition for the effective guarantee and observance of individual human rights. The right to self-determination holds that all people have the right “freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the [UN] Charter.”

Rooted in the United Nations Charter and embodied in common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), it is recognised as a peremptory international legal norm from which no derogation is permitted. Consequently, the obligation to ensure the enjoyment of the right to self-determination is owed by each State to the international community as a whole.

Since 1948, UN bodies, including the General Assembly and the Security Council, have reiterated the right of the Palestinian people to self-determination, at the same time condemning the continuous violation of this right by Israel. In addition, the General Assembly often linked this right with the fundamental principle of customary international law concerning ‘permanent sovereignty over natural resources,’ clarifying that it is a fundamental component of the right to self-determination.

The principle of permanent sovereignty over natural resources prohibits the Occupying Power from unlawfully exploiting and disposing of the occupied territory’s natural resources. Considered as an essential and inherent element of sovereignty, the principle protects the occupied population’s ability to freely dispose of their natural wealth and resources in accordance with their interests of national development and well-being. This includes the right to use, conserve and manage natural resources to promote national development; to explore, develop and market them; and the right to an equitable share in transboundary water resources. The occupied Palestinian population will only be able to fully exercise these rights once Israel’s occupation of the OPT is brought to an end.

The right of the occupied population to permanent sovereignty over its natural resources becomes even more relevant when considering the situation of prolonged occupation, since the Occupying Power’s right to use and ‘consume the fruits’ deriving from the occupied territory’s property cannot last for an indefinite period. It should be noted that a situation of occupation is intended to be of a temporary nature and that Article 55 of the Hague Regulations of 1907, which imposes a limit of five years on military occupation, becomes even more relevant when considering the situation of prolonged occupation.

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Regulations supports a narrow understanding of the concept ‘enjoy the fruits.’ However, Israel’s _carte blanche_ interpretation of this notion effectively produces an incentive to prolong the occupation in order to maintain, _inter alia_, control over the water resources located in the OPT and to exploit them for its own benefit. As a result, this practice directly compromises the Palestinians’ right of permanent sovereignty over their natural resources and risks enabling the Occupying Power to exploit these resources ‘indefinitely,’ in clear defiance of the occupied population’s right to self-determination.253

### 5.3. International Human Rights Law

The right to water, although not explicitly recognised as a self-standing human right in international treaties, is nonetheless protected by IHRL, which entails specific obligations on States that relate to the access to safe drinking water for personal and domestic use.254

In November 2002, the UN Committee on Economic, Social and Cultural Rights adopted its General Comment No. 15 on the right to water,255 stating that “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”256 Recognised as a component of the right to an adequate standard of living under Article 11 of the ICESCR, the right to water is also essential to the realisation of other rights, such as the rights to food and to adequate housing (Article 11(1) ICESCR), and the right to the highest attainable standard of health (Article 12(1) ICESCR).257

In July 2010, the UN General Assembly formally recognised “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”258 Subsequently, the UN Human Rights Council stated that the right to drinking water and sanitation is legally binding and is linked to existing human rights treaties.259 The Council further affirmed “that the right to safe drinking water and sanitation derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity” enshrined in the ICCPR.260

While the ICESCR obliges States to progressively realise the full enjoyment of the right to water, thereby recognising the constraints that may exist as a result of limited resources, there are nonetheless core obligations which are immediately incumbent upon States. These core obligations, specified in General Comment No. 15, are non-derogable and no justification can be made for non-compliance.261 Furthermore, States may not under any circumstances actively introduce policies or practices that run counter to the requirements of the ICESCR, such as policies promoting unequal and discriminatory access to water resources.

#### Key Elements of the Right to Water

The right to water contains both freedoms and entitlements. These include non-discrimination and non-interference with regard to access to existing water supplies,262 as well as access to a minimum amount of safe drinking water to sustain life and health and to meet basic needs.263

- **Availability:** entitles all to sufficient and continuous water supply for domestic and personal usage.
- **Quality:** water must be safe – free from hazardous substances that could jeopardise human health – and of an acceptable colour, odour and taste for each personal or domestic use.
- **Accessibility:** water services and facilities must be within safe physical reach and affordable to all – in law and in fact and without discrimination.264

General Comment No. 15 identifies three types of obligations incumbent upon States parties, namely, the obligations to respect, protect and fulfil.265

Thereto, Israel must respect the right of the Palestinian people to water by “refrain[ing] from interfering directly or indirectly with the enjoyment” of their right. As such, Israel’s policies that result in, for instance, wilful and systematic destruction of Palestinian rainwater cisterns and other water infrastructure, pollution of water resources, or reduce water provision to certain areas in order to meet demands in other areas for the benefit of its citizens only, are in violation of its obligation to respect the right of the Palestinian people to water.266

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253 O Ben-Naftali, ‘PathoLAWgical Occupation’ (n 202) 154.
254 This is defined as “water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene.” UN Office of the High Commissioner for Human Rights (UN OHCHR), ‘The Right to Water’ (Fact Sheet No. 35) (2010) 3.
255 General comments provide an authoritative interpretation by an expert body on provisions under various international covenants, including the International Covenant on Economic, Social and Cultural Rights (ICESCR).
257 _ibid.,_ paragraph 3.
258 UNGA Res 64/292 (8 July 2012) UN Doc. ARES/64/292, paragraph 1. The UNGA makes explicit reference to the UN CESCR’s General Comment No. 15 (2002) on the right to water.
261 UN CESCR, General Comment 15 (n 256) paragraph 37, 40.
262 _ibid.,_ paragraph 37(a) “To ensure the right of access to water and water services and sanitation on a non-discriminatory basis, especially for disadvantaged or marginalized groups.”
263 _ibid.,_ paragraph 37(a) “To ensure access to a minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease.”
264 _ibid.,_ paragraph 10, 12, 17, 37, 40.
265 _ibid.,_ paragraph 20.
266 _ibid.,_ paragraph 21, 22, 32, 44.
Japan must further protect the right of the Palestinian people to water by preventing third parties from interfering in any way with the enjoyment of their right. This includes preventing individuals, such as Israeli settlers in the OPT, corporations and agents acting under State authority, such as ‘Mekorot,’ or others, from “polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.”

Furthermore, “water should never be used as an instrument of political and economic pressure.”

Israel efforts to withhold water as a means of forcible transfer of Palestinian communities in pursuit of its own goal of illegally exercising sovereign rights over land and natural resources in the OPT constitutes use of water as an instrument of political and economic pressure.

Professor Iain Scobbie notes that: “while international humanitarian law prohibits an occupant’s use of water resources for reasons other than the needs of the army of occupation, an unlawful extraction made to benefit the occupant’s home population could also be seen as an inequitable extraction, which the occupant has a duty to prevent, or as an arbitrary interference with established arrangements of water allocation, and consequently a breach of its duty to ensure the right to water.”

Finally, Israel must fulfil the right of the Palestinian people to water by adopting the necessary measures that facilitate enjoyment of the right, promote education concerning use of water and the preservation of water resources, and provide means to those unable to realise their right. The positive obligation to assist in the realisation of this right includes a duty to ensure that water is affordable, and to allow for the development of water infrastructure, including the acquisition of the necessary tools to construct or rehabilitate rainwater harvesting structures and wells.

5.4. International Water Law

Whilst IHL and IHRL constitute legally binding standards that States have a duty to uphold in relation to the population of territories under their effective control, IWL regulates the relationship between watercourse States.

Relevant provisions of IWL are codified in the 1966 Helsinki Rules, reflective of customary international law, and the 1997 UN Watercourses Convention and the 2008 Draft Articles on Transboundary Aquifers.

The latter two treaties contain essential customary rules pertaining to shared water resources, as well as several procedural and substantive obligations States must abide by in their respective use of shared watercourses.

The Mountain and Coastal Aquifers and the Jordan River, individually, form international watercourses as described by Article 2 of the UN Watercourses Convention. As such, watercourse States must utilise international watercourses in accordance with the prevailing principle of equitable and reasonable utilisation.

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includes a non-exhaustive list of factors to be considered in determining equitable apportionment. Among the factors, whose relative priority will vary depending on the context of a specific situation, great emphasis is consistently placed on human dependence upon the watercourse in question. Other relevant factors are the natural character of the water sources, social and economic needs, and availability of alternative water sources.276 Naturally, these and other variables underlying the allocation of water between watercourse States will affect the determining factors for equitable apportionment, and a need might arise to adjust the allocation of water.277

In addition to the cardinal rule of equitable and reasonable utilisation, watercourse States are bound under customary international law to “take all appropriate measures to prevent the causing of significant harm to other watercourse States.”278 Such harm may take its form in, for instance, a diminution in the quantity of the water as a result of excessive pumping of groundwater, or of the quality of water due to pollution or increased salination. However, the scope of the ‘no-harm rule’ is not limited to one State’s direct use of the watercourse causing harm to another State’s use thereof, but could also be indirect, for example through a diversion of the flow of the watercourse.279

A further well-established customary obligation requires States to cooperate in order to “attain equitable and reasonable utilisation and adequate protection of an international watercourse.”280 This obligation extends beyond the watercourses to include a duty to cooperate in the maintenance and protection of “installations, facilities and other works related to an international watercourse,”281 and provides a consultation mechanism if a watercourse State has “reasonable grounds to believe that it may suffer significant adverse effects.”282

Irrefutably, Israel extracts far beyond what is to be considered “equitable and reasonable utilisation,” restricting Palestinian usage of groundwater supplies, and preventing Palestinians from increasing their exploitation of the groundwater resources to – even at bare minimum – extraction levels as agreed under Oslo II. Moreover, as noted above, Israel’s practice of consistent overexploitation and pollution has caused extensive and irreparable damage to international watercourses in violation of its obligation not to cause significant harm. Further harm has been caused by Israeli colonies’ discharge of wastewater and sewage in an inappropriate manner, leading to pollution of the groundwater resources underlying the West Bank.283 Additional harm was caused during ‘Operation Cast Lead’ in 2008-2009, when heavy destruction of wastewater infrastructure caused significant amounts of sewage to percolate into the groundwater, thereby contaminating the Coastal Aquifer.284 Lastly, Israel’s efforts to paralyse infrastructural development are illustrative of its refusal to cooperate in the management of joint water resources. Such cooperation would assist in achieving equitable apportionment and in providing appropriate protection and preservation of international watercourses. Its policies of administrative destruction of Palestinian water installations and facilities serves as an indication of State conduct that is inconsistent with the well-establish principle to cooperate in their maintenance and protection.

276 UN Watercourses Convention (1997) Article 6(1).
277 O McIntyre, Environmental Protection of International Watercourses under International Law (n 272) 155-159; J Stein, “Waging Water Wars” (n 185).
278 UN Watercourses Convention (1997) Article 26 (1): “Watercourse States shall, within their respective territories, employ their best efforts to prevent the causing of significant harm to other watercourse States.”
279 Ibid, 93.
280 Ibid, Article 26 (2) (a).
281 UN Watercourses Convention (1997) Article 26 (1): “Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.”
282 Ibid, Article 26 (2) (b).
284 ARLU, Water resource allocations in the occupied Palestinian territory: Responding to Israeli claims (n 27) 25.
6. The Colonial Nature of Israel’s Occupation of the OPT

Israel’s policies and practices in the OPT have created a situation of occupation in which natural resources are unlawfully exploited and appropriated. Israel’s water policies represent only one element of an irreversible structural process that can only be described as colonial. Colonialism can be distinguished from other forms of foreign domination by an open claim to sovereignty by the dominant power or where a dominant power adopts measures that deliberately deny – or demonstrate an intention to permanently deny – the people of the territory the full exercise of their sovereign rights and their right to self-determination.

Israel’s intention to permanently change the status of the occupied territory, de facto exercising sovereignty, reveals itself through the establishment and expansion of colonies in the West Bank (currently over 200) and by the creation of a network of roads and flourishing agricultural enterprises for their benefit. The presence of settlements aims to permanently deny the Palestinian population the exercise of their right to self-determination by fragmenting the OPT and preventing the Palestinian people from exercising sovereignty over natural resources, in particular land and water.

The prohibition of colonialism, codified in the UN General Assembly’s Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 (Declaration on Colonialism), rejects all forms of colonial domination on the grounds that it violates fundamental norms of human rights and is a threat to international peace and security. The Declaration on Colonialism “solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.” Similarly, the UN General Assembly’s Declaration on Friendly Relations and Co-operation among States stresses the duty of every State to promote, through joint and separate action, the realisation of the principle of equal rights and self-determination of peoples through, inter alia, “bringing a speedy end to colonialism.”

Colonialism is absolutely contrary to international law.

While from the outset of the occupation Israel has denied Palestinians their sovereign rights over the water resources, its colonial enterprise reached its zenith with the conclusion of the Oslo Accords. Instead of providing for greater access to water, they preserved and formalised Israel’s unilateral control over the shared water resources and facilitated its illegal exercise of sovereignty over Palestinian water resources.
7. Israel’s Policies and Practices Amount to ‘Water-Apartheid’

7.1. The Prohibition of Apartheid

Reflective of customary international law, the prohibition of apartheid is a peremptory norm of international law, creating obligations owed by each State to the international community as a whole (obligations erga omnes). Although inspired by the South African apartheid regime, its application extends beyond the situation as it existed between 1948 and 1994 in southern Africa. However, many parallels can be drawn, specifically with regard to the South African policy of ‘Grand Apartheid,’ which provided for the establishment of separate ‘self-governing’ entities, labelled ‘Homelands’ or ‘Bantustans’ into which the denationalised black majority was transferred and forced to reside.

The prohibition of apartheid has been codified in various international legal mechanisms, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965, which holds that “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.” Further, the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) expressly declares apartheid – as a distinct and severe form of racial discrimination – unlawful.

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292 Occupation, Colonialism and Apartheid Study (n 90) 51-52.

293 This is evidenced by the explicit reference to apartheid in Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965). The Committee on the Elimination of Racial Discrimination articulated in its General Recommendation No. 19 that “[t]he reference to apartheid may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation and all measures designed to prevent the establishment of separate ‘self-governing’ entities, labelled ‘Homelands’ or ‘Bantustans’ into which the denationalised black majority was transferred and forced to reside.”

294 The Banstans were never recognized by the African National Congress (ANC) or the international community. The UN consistently condemned the Banstans as violations of both South Africa’s territorial integrity and of the rights of the African peoples of South Africa as a whole to self-determination. The forced residence in the ‘Banstans’ facilitated and preserved white supremacy over the majority of the territory of South Africa. See further, Occupation, Colonialism and Apartheid Study (n 90) 20.

295 The Bantustans were never recognized by the African National Congress (ANC) or the international community. The UN consistently condemned the Bantustans as violations of both South Africa’s territorial integrity and of the rights of the African peoples of South Africa as a whole to self-determination. The forced residence in the ‘Banstans’ facilitated and preserved white supremacy over the majority of the territory of South Africa. See further, Occupation, Colonialism and Apartheid Study (n 90) 20.

296 ICERD (1965) Article 3. See further, Article 2 of the Universal Declaration of Human Rights (1948) and the preamble of the Convention on the Elimination of Discrimination Against Women (1979), which states that “[e]nforcement of the right of self-determination in territories is essential to the full enjoyment of the rights of men and women.”

297 The UNGA adopted the Apartheid Convention on 30 November 1973 with 91 votes in favour, four against (South Africa, Portugal, the United States and the United Kingdom) and 26 abstentions. The Apartheid Convention entered into force on 18 July 1976 and, as of November 2012, 108 States have ratified it, notably not including Israel.

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Article 2 of the Apartheid Convention:

For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.
The prohibition of apartheid as enshrined in the Apartheid Convention and its proclamation of apartheid as a crime against humanity297 supplement the general prohibition under the ICERD, and were followed by the inclusion of the crime of apartheid in Article 85(4)(c) of Additional Protocol i,298 and Article 7(2)(h) of the ICC Statute.299

The three core elements of the definition of ‘the crime of apartheid’ require that: (1) two distinct racial groups be identified; (2) ‘inhuman acts’ are committed against the subordinate group;301 (3) such acts of systematic oppression are committed in the context of an institutionalised regime302 of domination by one group over the other.

7.2. The Three Pillars of Israel’s ‘Water-Apartheid’

Three core elements of the crime of apartheid are reflected in the legislative measures and institutionalised policies through which Israel implements its apartheid regime. These laws and policies form the matrix on which the three pillars of Israel’s apartheid regime stand.303

A troika of key legislative measures and institutionalised policies and practices have enabled Israel to illegally exercise sovereign rights over Palestinian water resources, with the ultimate goal of satisfying its own interests. Thereto, Israel has exerted considerable military and political efforts (1) to gain, maintain and consolidate exclusive access to Palestinian water resources, (2) to appropriate water resources for the sole benefit of Israelis, including settlers, and (3) to paralyse Palestinian water infrastructure development in the OPT, aimed at forcibly transferring Palestinian communities. As such, these policies and practices have laid the foundations and underpin the three principal pillars of Israel’s ‘water-apartheid’.

7.2.1. The First Pillar: Demarcation of the Population Along Racial Lines

The first pillar mirrors the first element of the definition of the crime of apartheid, which requires the identification of two distinct racial groups. The determination of a racial group under international law is a practical question and demands nothing more than ‘an identifiable group.’ This is either based on self-perception or identification by others, for example through ethnicity,304 national identity, religion,305 or discriminatory measures.306

The first group identified are the Palestinians. This group has been sub-divided across the geographic expanse mainly through imposed constructed legal status into Palestinians citizens of Israel, the occupied population in the OPT, and Palestinian refugees in exile.307 Nonetheless, Palestinians, because of their identity as the indigenous people of Historic Palestine, the country in which they resided and were entitled to rights and guarantees under the British Mandate, remain a single people entitled to their universally recognised collective right to self-determination.308

The second group is composed of ‘Jewish-Israelis,’ meaning ‘Israelis with Jewish identity.’ This is an official category imposed and monitored by the State of Israel. It does not define a person as Jewish by virtue of religious observance, but recognises a person as a member of the global Jewish community, thereby granting Jewish people certain rights, such as immigration and residency.309 They are a group unified by Israeli Basic Laws through their identification as ‘Jewish nationals’ and thus entitled to the privileged status of ‘Jewish nationals and citizens’ in Israel.310 Membership of the dominant Jewish-Israeli group can only be acquired by birth and is thus experienced as immutable and incontestable for its members.311

7.2.2. The Second Pillar: Segregation into Different Geographical Areas

The demarcation along racial lines allows Israel to maintain a system intended to segregate the population into different geographical areas. Jewish-Israelis are privileged, as they have an uninterrupted and abundant supply of water, while Palestinians are discriminated against.312

Inside Israel, the distinction between the two racial groups is used to restrictively grant citizenship to only those Palestinians who remained inside Israel after 1948 and at the same time denied Palestinians the exercise of their collective right to self-determination.313

304 Defined as the fact or state of belonging to a social group that has a common origin and culture.

305 ICERD (1965) Article 1(1). ICERD applies a broad construction of the meaning of the term ‘racial discrimination’ which includes discrimination ‘based on race, colour, descent, or national or ethnic origin.’

306 The Committee on Elimination of Racial Discrimination has identified groups, which would not be considered ‘races’ in the traditional sense of the word, for instance caste groups from South Asia, non-citizens such as migrant workers, and nomadic peoples. See D Keane, ‘Elements of the Definition of Apartheid: Racial Groups under International Law’ (Evidence to be presented before the Third International session of the Russell Tribunal on Palestine, Cape Town, 5 to 7 November 2011) (Written Testimony).

307 Israel has constructed complex and integrated legal and physical barriers that continue to prevent Palestinian refugees and their descendants to return to their homes, thereby denying Palestinians the exercise of their collective right to self-determination.

308 UNGA Res 3236 (XXIX) (22 November 1974) UN Doc. ARES/2326(XXIX). See further Section 5.2 of this study.

309 For a detailed overview of the rights afforded to Jewish Israelis under Israeli Basic Laws, H Zoabi, ‘Arabs and Jews in Palestine: different reality, different law, different set of rights in the same territory and in the same state?’ (Evidence to be presented before the Third International session of the Russell Tribunal on Palestine, Cape Town, 5 to 7 November 2011) (Written Testimony).

310 The 1950 Law of Return allows any member of the Jewish community to immigrate to Israel and gain citizenship. See World Zionist Organisation-Jewish Agency (Status Law), 5713-1952 [http://www.archives.gov/agents/worldorganization/1952/5713/5713statuslaw.html].

311 R Graham, ‘Israel, Jews, Palestinians and the Apartheid Question’ (Evidence to be presented before the Third International session of the Russell Tribunal on Palestine, Cape Town, 5 to 7 November 2011) (Written Testimony).

312 The focus of this study is to identify how Israel’s policies and practices in relation to water have laid the foundations for Israel’s regime of ‘water-apartheid.’ It is, therefore, beyond its scope to address discriminatory water access and allocation in Israel proper. Nonetheless, issues such as the lack of water supply to Bedouin communities in the Negev due to Israel’s non-recognition of these communities, the decreased access to water for Palestinian farmers in the north of Israel, and lack of water supply to Palestinian communities in Israel, support the analysis of Israel’s ‘water-apartheid.’
time to extend Israeli citizenship beyond its territory to all Jews, regardless of their geographical location, personal history or affiliation to the territory.\textsuperscript{313} However, the demarcation along racial lines is more apparent inside the OPT, where the physical separation and segregation has facilitated the creation of two parallel and unequal societies. The first is a Jewish-Israeli settler society that resides in colonies with better living conditions. Israeli domestic laws and institutions are operating in the OPT to afford them special rights and privileges, thereby ensuring that Jewish-Israelis maintain, \textit{inter alia}, greater access to the natural resources of the OPT.\textsuperscript{314}

By contrast, a second and disadvantaged Palestinian society living in the same territory is denied most of its basic rights. Palestinian use of and access to water has been severely restricted through Israel’s illegal exercise of sovereignty over water resources. Its imposition of a discriminatory permit regime and policies of confiscation and destruction furthermore have systematically thwarted all Palestinian infrastructural development, thereby paralysing it. As a result, Palestinians are forcibly confined to a land-locked archipelago of territory with minimum water resources available. This has caused the economic and agricultural de-development of Palestinian communities – ultimately strangling them – and thus impeding their full development as a group.

The creation of such enclaves in which basic human rights are denied and full development of the subordinate group is impeded are listed in Article 2(d) and (c) of the Apartheid Convention as inhuman acts to which the term “crime of apartheid” shall apply. As such, the implementation and maintenance of institutionalised policies that separate the two racial groups in geographical areas across the region underpins the commission of ‘inhuman acts against the subordinate group’ in the sense of the second core element of the definition of apartheid.

7.2.3. The Third Pillar: Use of ‘Security’ to Justify an Institutionalised Regime of Domination and Systematic Oppression

The third pillar upon which Israel’s ‘water-apartheid’ rests is its ‘security’ laws, policies and practices.\textsuperscript{315} Justified by security needs, Israel gained control over the shared water resources in 1967. Since then and under the same guise, Israel has pursued an aggressive settlement policy ultimately aimed at annexing the OPT’s land and other natural resources.\textsuperscript{316} Subsequent efforts undertaken to revisit the allocation of the shared water resources have merely consolidated Israel’s exclusive control, thereby enabling Israel to further institutionalise a discriminatory water regime that is characterised by domination and systematic oppression of the Palestinians as a group. Any act of dissent or non-compliance is sanctioned with denial of permits, destruction and confiscation of water infrastructure. As such, the pretext of ‘security’ is used to justify inhuman acts that confine Palestinians to enclaves, and suppress them through the denial of basic human rights associated with water. It further purports to mask the underlying true intent of maintaining domination over and forcibly transferring the Palestinian people as a group.\textsuperscript{317}

Because the commission of individual inhuman acts alone is not sufficient to characterise a discriminatory regime as a system of apartheid, a correlation must exist between the individual inhuman acts and the institutionalised State policies and practices. Israel’s policies and practices in relation to water do not occur in a vacuum, but are integrated in an institutionalised system of Jewish-Israeli domination and oppression of the Palestinians as a group – thus amounting to a system of ‘water-apartheid.’\textsuperscript{318}

\begin{itemize}
\item \textsuperscript{315} R Greenstein, Israeli Jews, Palestinian Arabs and the Apartheid Question’ (n 311).
\item \textsuperscript{316} See for a more in depth discussion of Israel’s use of the pretext of security for the establishment of settlements, Al-Haq, ‘The Silent Annexation of the Jordan Valley: Israel’s Illegal Appropriation of Palestinian Land’ (April 2013) (forthcoming).
\item \textsuperscript{317} Occupation, Colonialism and Apartheid Study (n 90) 275.
\item \textsuperscript{318} Ibid., 275-276.
\end{itemize}
8. Legal Consequences for Violations of International Law

8.1. Israel’s State Responsibility for Violations of International Law

This study has identified how Israel’s illegal exercise of sovereign rights over Palestinian water resources in the OPT are aimed at permanently denying the occupied population’s sovereignty over their territory and natural resources. Israel systematically commits inhuman acts against the Palestinians as a group through the denial of access to water, which occurs in the context of an institutionalised system of Jewish-Israeli domination. These violations amount to breaches of peremptory norms of international law, including the right to self-determination, the prohibition of extensive destruction and appropriation of property, as well as the international legal prohibitions of colonialism and apartheid in the OPT.

Israel has extensively and unlawfully appropriated Palestinian water resources in the OPT for the sole benefit of those residing in Israeli proper and in Israeli colonies, while maintaining a practice of extensive destruction of Palestinian water infrastructure. These practices are aimed at forcibly transferring Palestinian communities from their homes, which is instrumental to Israel’s unlawful transfer of its own civilian population into occupied territory. As such, Israel is in violation of Articles 49 and 53 of the Fourth Geneva Convention. In addition to its State responsibility, these violations constitute war crimes, amounting to grave breaches. As a High Contracting Party to the Geneva Conventions, Israel has an obligation to put an end to all violations of IHL and investigate and prosecute those responsible for violations of the Conventions.

Furthermore, Israel consistently fails to meet its obligations under international human rights law by refusing to respect, protect and fulfill the right of the Palestinian people to water, which is derived from existing human rights treaties. Israel excessively and relentlessly extracts far beyond its equitable and reasonable share of the transboundary waters, thereby causing significant harm through increased pollution and salination of the watercourses. Israel also refuses to cooperate in the maintenance, protection and preservation of transboundary watercourses and water installations. Thus, Israel is in violation of its obligations vis-à-vis Palestine as a watercourse State under the customary principles of international water law.

In order to meet its obligations under these international legal frameworks, the Israeli authorities must immediately cease all internationally wrongful acts, offer appropriate guarantees of non-repetition and make full reparations for the injury caused, including material or moral damages. Full reparations must take the form of restitution where materially possible, compensation or satisfaction otherwise.

8.2. The Legal Consequence for Third-Party States for Israel’s Violations of International Law

By virtue of Israel’s breaches of peremptory norms of international law, certain obligations arise for third-party States. Article 41 of the ILC Draft Articles on State Responsibility, which reflects customary international law, affirms that in the case of breaches of peremptory norms of international law, all States are under an obligation not to recognise the situation as lawful, not to render aid or assistance in maintaining the illegal situation, and to actively cooperate in order to bring it to an end. Furthermore, third-party States should ensure that Israel makes full reparations for the damages caused.

In light of Israel’s violations of international humanitarian law, such as the extensive destruction of private and public property situated in occupied territory, the violation of the rule of ususfruct and of Israel’s responsibilities as an Occupying Power in the OPT, the forcible transfer of the occupied population from their homes, as well as the transfer of its own civilian population into the occupied territory, the High Contracting Parties to the Geneva Conventions are under an obligation to ensure, as per Common Article 1 of the Conventions, Israel’s respect for international humanitarian law and must refrain from condoning or rendering support to its illegal policies in the OPT. In addition, under Articles 146 and 147 of the Fourth Geneva Convention, States have the obligation to search for and prosecute those responsible for grave breaches.
9. Conclusion

For more than four decades of occupation Palestinians in the OPT have endured severe and continuous infringements of their water rights. Israel maintains a system of water governance that attests to its ‘self-interested administration’ of the region’s shared water resources, and unlawfully exploits and appropriates Palestinian water resources for the benefit of those residing in Israel and in Israeli colonies at the expense of the protected Palestinian population in the OPT. Moreover, Israel’s illegal exercise of sovereign rights over Palestinian water resources and its discriminatory policies and practices are integral elements of an institutionalised system of Jewish-Israeli domination over Palestinians as a group, in the form of a colonial and apartheid regime.

While the violations of international law set out in this study entail responsibilities for Israel and for third-party States to bring the illegal situation to an end, the current state of the water sector in the OPT and Israel will not improve unless structural changes are made to the use and management of the shared water resources. These changes, in the intermediate term, should include removing physical and administrative restrictions on Palestinian access to and use of the shared water resources, as well as halting the extraction of water from the Palestinian share of the transboundary water resources by corporations and agents acting under Israel’s authority. However, ultimately, lasting structural changes will require bringing Israel’s occupation of the OPT to an end and substantially reforming the relationship to one of equal partnership in the administration of water resources based on reasonable and equitable standards. To ensure that Palestinians can exercise their full rights in the OPT, the access to, use and allocation of shared water resources must not be determined on the basis of one side’s dominant negotiating power over the other, but must strictly abide by international legal norms.

10. Recommendations

1. The Government of Israel, as the primary duty-bearer in the OPT, must:

   I. Immediately cease the unlawful appropriation and exploitation of Palestinian water resources, as well as confiscation, demolitions and destruction of Palestinian water infrastructure in the OPT. Thereto, Israel must:

      A. Bring to an end all its practices of consistent overexploitation and pollution of all shared water resources and the resultant significant and irreparable damage to the international watercourses in the region.

      B. Bring to an end its policies of systematic destruction of Palestinian cisterns, wells and other water infrastructure, as well as its reduction of water provision to certain areas in the OPT in order to benefit its national interests.

   II. Immediately lift physical and administrative restrictions on access to and use of all shared water resources and guarantee Palestinians the exercise of their sovereign rights, including permanent sovereignty over natural resources. Thereto, Israel must:

      A. Immediately cease its discriminatory policies and practices that deprive the occupied Palestinian population in the OPT of essential means of livelihood, in particular water, and that forcibly transfer protected persons to areas with minimum resources available.

      B. Adopt the necessary measures to ensure that water is accessible, affordable and of acceptable quality and allow for the development of water infrastructure, which includes the acquisition of the necessary tools for Palestinians to construct or rehabilitate rainwater harvesting structures, wells and other water infrastructure, especially in the Gaza Strip, in accordance with its duty under international human rights law.

      C. Allow Palestinian access to and use of its rightful share of the Jordan River in accordance with the customary principle of ‘equitable and reasonable utilisation’ as codified in international water law.

      D. Prevent Israeli settlers in the OPT from polluting and taking over wells, springs and other water distribution systems in the OPT.

      E. Prevent corporations and agents acting under Israel’s authority, such as ‘Mekorot,’ from inequitably extracting water from the Palestinian share of the transboundary water resources.
F. Investigate and prosecute all companies and private individuals involved in war crimes in the OPT, including the unlawful appropriation and destruction of Palestinian water resources and infrastructure in the OPT.

III. Comply with its customary duty to cooperate in the management, protection and preservation of joint water resources, water installations and facilities.

IV. Extend a standing invitation to all Special Procedures of the UN Human Rights Council, specifically the Special Rapporteur on the human right to safe drinking water and sanitation.

2. The Palestinian Authority, the PWA and the CMWU must:

I. Demand compensation from Israel for its past consumption at a rate that exceeded its rightful share of the water resources in the region, including for the extraction of water for the benefit of Israel’s national economy and settlement provision in accordance with international legal norms.

II. Reassess its involvement in the JWC. In particular, the PA must denounce this discriminatory management regime that facilitates Israel’s illegal exercise of sovereign rights over Palestinian water resources.

III. Promote a national approach to water planning and management that protects the territorial integrity of the OPT, namely the West Bank, including East Jerusalem, and the Gaza Strip.

IV. Tackle the root causes of the water crisis in the Gaza Strip, which derive from Israel’s occupation of the OPT, including its illegal regime of closures, rather than focus on short-term and costly solutions, such as desalination projects only.

3. The Member States of the United Nations must:

I. Request that the UN General Assembly urge Israel to take all necessary measures to ensure indiscriminate access to adequate water and sanitation infrastructure, in particular in occupied East Jerusalem and Area C, and to refrain from hindering the construction of such infrastructure in the Gaza Strip.

II. Request that the UN General Assembly urge Israel to remove all physical and administrative barriers to the protection and recovery of water resources, especially in the Gaza Strip.

III. Urge the UN General Assembly to take action and promote mechanisms to reverse Israel’s policies of forcible transfer of the Palestinian population, conducted under a racial and segregationist regime.

IV. Request that the UN Environment Programme and, when applicable, other UN specialised agencies, conduct an assessment on the impact of the settlement enterprise on environmental, social, and economic viability in the OPT in the last 46 years.

V. Urge the UN Security Council to be seized of the matter of Israel’s discriminatory allocation of water resources in the OPT.

4. The European Union must:

I. Comply with its customary international law obligations and act in accordance with Article 215(5) of the Treaty on the Functioning of the European Union322 by banning produce originating from Israeli settlements in the OPT, because of the serious violations of peremptory norms of international law that settlements and their related infrastructure entail, including the access to water for Palestinians.

5. Third-Party States, including the High Contracting Parties to the Geneva Conventions, must:

I. The High Contracting Parties to the Geneva Conventions must promptly comply with their obligation to ensure respect for the Geneva Conventions as established under Common Article 1 by adopting effective measures to pressure Israel to abide by its obligations under international humanitarian law.

II. Uphold their obligations under Articles 146 and 147 of the Fourth Geneva Convention to search for and prosecute those responsible for grave breaches of the Fourth Geneva Convention.

III. End all business relationships with economic actors involved or suspected to be involved in violations of international law in the OPT. Take appropriate measures to ensure that business enterprises domiciled in their territory or under their jurisdiction do not participate in violations of international law, including those relating to Palestinian water rights.

IV. Ensure the full implementation of the recommendations of the recent report of the International Fact-Finding Mission on Settlements. In particular, States must comply with their obligations under international law to uphold their responsibilities in the face of Israel’s breaches of peremptory norms of international law, such as the prohibition of colonialism, apartheid, extensive destruction and appropriation of property, and the violation of the right of the Palestinian people to self-determination.

6. The international community of donors, including donor States and international and UN humanitarian and development agencies must:

I. Abandon the practice of conditioning funding upon JWC approval for water infrastructure projects in the OPT. Emphasis on JWC approval reinforces Israel’s system of domination over development of Palestinian water infrastructure, and operating within this discriminatory system may amount to recognition of a wrongful conduct under Article 41 of the ILC Draft Articles on State Responsibility. As such,
this discriminatory mechanism must be systematically challenged, including by refraining from cooperating with it and by prioritising development projects improving access to water without permits.

II. Make assessments to determine to what extent their projects may in fact facilitate Israel’s violations of international law and ensure that all projects are carried out in compliance with Third State responsibility under international law.

III. Make enquiries and issue public statements challenging the legality of Israel’s demolitions of Palestinian water infrastructure and demolition orders implemented and adopted by the Israeli authorities in the OPT.

IV. Hold Israel accountable for demolitions of water infrastructure projects, including through demanding compensation from the Israeli authorities.

V. Carry out and make public assessments to determine to what extent their humanitarian projects and programs have been adversely affected by Israeli demolitions.
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