



International Law and Water in the Occupied Palestinian Territory (OPT)

“The 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.”¹

International Humanitarian Law (IHL)

- As an Occupying Power, Israel does not acquire sovereignty over the Occupied Palestinian Territory (OPT), which is comprised of the West Bank, including East Jerusalem, and the Gaza Strip, but rather merely acts as the *de facto* administrator of the territory for so long as the occupation continues.²
- According to IHL, this means that Israel’s use of property and natural resources in the OPT is strictly limited to prevent it from exploiting or depleting the wealth of the occupied territory to benefit its own economy.³
- Israel’s practices of confiscation, demolition and destruction of Palestinian water infrastructure, overexploitation of aquifers and consequent forcible transfer of protected persons from the occupied territory violate IHL, including, Articles 43, 46, 53, 55 of the Hague Regulations and Articles 49 and 53 of the Fourth Geneva Convention. Israel’s violations of Articles 49 and 53 amount to grave breaches of the Fourth Geneva Convention.⁴

Co-opting Water Resources

- Although Israel may adopt measures to address threats to its own personnel or property, these actions of military necessity must still respect the interests of the local population⁵ and under no circumstances may Israel administer the occupied territory to benefit its own interests.⁶
- Furthermore, IHL dictates that Israel may only confiscate privately owned property for its military needs. These confiscations must be compensated and can “only be in proportion to the resources of the country.”⁷ Wells, pumps and other water installations are considered privately owned property, even if owned by municipalities,⁸ 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.⁹



- IHL stipulates that Israel must administer the territory in accordance with the rules of usufruct of public property in the occupied territory and is therefore only permitted to consume “the fruits”¹⁰ of such property, while safeguarding the property’s capital i.e. “the tree.”¹¹
- Israel’s consistent overexploitation and pollution of groundwater systems has caused significant and irreparable damage to the region’s aquifers, rendering the groundwater a non-renewable resource.
- Therefore groundwater, which bears many similarities to oil in the ground and is considered public immovable property, cannot be considered “the fruit” of the tree,” but instead is “the tree itself” and, as such, part of the occupied territory’s capital.¹² As an immovable asset, groundwater is protected by Article 55 of the Hague Regulations.¹³ Hence, it is protected by the rules of usufruct and cannot be depleted, damaged or destroyed by Israel.¹⁴

Destroying Water Resources

- While Israel has a responsibility to ensure and maintain public order and civil life, it must administer the OPT for the benefit of the occupied population.¹⁵ Therefore, the current practice of demolishing water infrastructure, premised on the lack of permits, is a clear abuse of the obligation to administer the territory for the benefit of the occupied population.
- Israel has also instituted a regime of illegal closures in the Gaza Strip, obstructing access to essential construction materials to rehabilitate water and sanitation infrastructure that was demolished during military operations.

Forcible Transfer of Population

- Finally, as an Occupying Power in the OPT, Israel is violating the prohibition of forcible transfer of protected persons set out in Article 49(1) of the Fourth Geneva Convention. Through the extensive deprivation of water, Israel has made it nearly impossible for Palestinians to remain in their communities, effectively forcing the transfer of this protected population from their homes.¹⁶
- Israel’s efforts to forcibly transfer Palestinians from their homes is instrumental to its 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.¹⁷

Right to Self-determination and the Principle of Permanent Sovereignty over Natural Resources

- The right to self-determination is an essential principle of international law.
- The obligation to ensure the enjoyment of the right to self-determination is owed by each State to the international community as a whole.¹⁸



- UN bodies, including the General Assembly and the Security Council, have reiterated the right of the Palestinian people to self-determination, which is linked to the right of permanent sovereignty over natural resources.¹⁹
- Israel's policies have exerted control over and completely integrated the OPT's water system into its own. This governmental policy aimed at dispossessing the Palestinian population of their natural wealth²⁰ is an infringement on the right of the Palestinian to people permanent sovereignty over their natural resources and consequently, their right to self-determination.

International Human Rights Law (IHRL)

- According to IHRL, Israel has four types of obligation with regard to the right to water; the obligations to **respect, protect, fulfil** and **not** to use water as **an instrument of political and economic pressure**.²¹
- Israel must **respect** the right of the Palestinian people to water. Israel's policies that result in the destruction or damaging of Palestinian water infrastructure are therefore in violation of its obligation to respect Palestinians' right to water.²²
- Israel must **protect** the right of the Palestinian people to water by preventing third parties from interfering in any way with the enjoyment of the right to water. This includes preventing individuals, such as Israeli settlers in the OPT, corporations and agents acting under the State authority, such as Israel's national water company 'Mekorot', from "polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems."²³
- Finally, Israel must **fulfil** the right of the Palestinian people to water by adopting the necessary measures that facilitate enjoyment of such a right. Israel's illegal closures in the Gaza Strip, which inhibit access to essential construction materials to rehabilitate water and sanitation infrastructure, constitute a violation of this duty.²⁴
- Israeli 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.

International Water Law (IWL)

IWL Obligations

Israel, a watercourse state as defined by Article 2 of the UN Watercourses Convention, must abide by the three cardinal principles of IWL that reflect customary international law:

- 1) Equitable and reasonable utilisation.
- 2) Prevent causing significant harm to other Watercourse States.
- 3) Duty to cooperate in protection and maintenance of water infrastructure.²⁵



- 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.
- This overexploitation and pollution has caused extensive and irreparable damage to international watercourses in violation of its obligation **not to cause significant harm.**
- 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 and water installations.

Conclusions and Recommendations

Israel has extensively and unlawfully appropriated Palestinian water resources in the OPT for the sole benefit of Israeli consumers in Israel proper and in Israeli settlements, while maintaining a practice of extensive destruction of Palestinian water infrastructure. These practices are aimed at forcibly transferring Palestinian communities from their homes and are instrumental to Israel’s unlawful transfer of its own civilian population into occupied territory. Israel has an obligation to put an end to all violations of IHL and investigate and prosecute those responsible for violations of the Conventions.

Accordingly:

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.
- II. Bring to an end all its practices of consistent overexploitation and pollution of all shared water resources, as Israel has relentlessly caused significant and irreparable damage to the international watercourses in the region in clear violation of the customary ‘no harm-rule’ codified in international water law.
- III. 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.



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

- I. 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. Prevent business relationships with economic actors allegedly 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 relating to Palestinian water rights.

The International Community of Donors, including Donor States and International and UN Humanitarian and Development Agencies must:

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

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 Union 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.



Endnotes

¹ 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.

² I Scobbie, 'Natural Resources and Belligerent Occupation: Perspectives from international humanitarian and human rights law' in S Akram, M Lynk, I Scobbie and M Dumper (eds), *International Law and the Israeli-Palestinian Conflict: a rights-based approach to the Middle-East conflict* (Routledge Publishers, London/New York, 2010) 231.

³ A Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' in E Playfair (ed.), *International Law and the Administration of the Occupied Territories* (Clarendon Press, Oxford, 1992), 422.

⁴ A list of all grave breaches and war crimes has been reflected in Article 8 of the ICC Statute.

⁵ A Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' (n 3) 420.

⁶ *Ibid.*

⁷ Hague Regulations (1907) Article 52.

⁸ Hague Regulations (1907) Article 56(1).

⁹ A Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' (n 3) 431.

¹⁰ Y Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law and its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, Leiden/Boston, 2009) 198.

¹¹ Y Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, Cambridge, 2009) 213-218.

¹² H Dichter, 'The Legal Status of Israel's Water Policies in the Occupied Territories' (1994) 35 *Harvard International Law Journal*, 565, 582, 592-593.

¹³ ER Cummings, 'Oil Resources in Occupied Arab Territories under the Law of Belligerent Occupation' (1974) 9 *Journal of International Law and Economics*, 533, 563, 565.

¹⁴ *United States of America v E. Von Weizsaecker et al.*, US Military Tribunal at Nuremberg (Judgment, 14 April 1949), in *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. XIV, 747.

¹⁵ Hague Regulations (1907) Article 43.

¹⁶ Human Rights Watch, 'Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories' (December 2010) 5, 19, 67.

¹⁷ M Cottier, 'Article 8, War Crimes' in O Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court – Observers' Notes, Article by Article* – (2nd ed.) (Beck and Hart Publishers, Oxford, 2008) marginal 92.

¹⁸ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* ICJ Rep 2005, paragraph 64 (hereafter: *Armed Activities Congo/Uganda*); *Ibid.*, Separate Opinion of Judge Ad Hoc Dugard, paragraphs 4, 10.

¹⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) ICJ Rep 2004, paragraph 118.

²⁰ *Armed Activities Congo/Uganda* (n 18) paragraph 242.

²¹ UN CESCR, General Comment 15, The right to water (arts. 11 and 12) (20 January 2003) UN Doc. E/C.12/2002/11, paragraph 20 and UNHRC, 'Human rights and access to safe drinking water and sanitation', Resolution (6 October 2010) UN Doc. A/HRC/RES/15/9, paragraph 32.

²² *Ibid.*, paragraph 21, 22, 32, 44.

²³ *Ibid.*, paragraph 23, 44.

²⁴ *Ibid.*, paragraph 25-28, 44.

²⁵ UN Watercourses Convention (1997), Article 5, 7 and 8.