

**-TROUBLED WATERS -  
THE POLITICAL AND LEGAL ASPECTS OF ISRAEL'S VIOLATIONS  
OF THE PALESTINIAN'S RIGHT TO WATER**

---

A Thesis  
presented to  
the Faculty of Law and Political Science  
at Notre Dame University-Louaize

---

In Partial Fulfillment  
of the Requirements for the Degree  
Master of International Affairs & Diplomacy- International Law

---

by  
JOE-ANNA M. BOU KHALIL

DECEMBER 2020

**Notre Dame University – Louaize**

Faculty of Law and Political Science

Department of Law and Political Science

We hereby approve the thesis of

Joe-Anna Bou Khalil

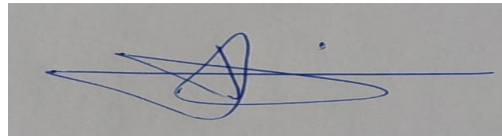
Candidate for the degree of Master of Arts in International Affairs & Diplomacy- International

Law

---

Dr. Dany Ghsoub

Chairperson, Assistant Professor



---

Dr. Celine Merheb

Committee Member



---

Dr. Maria Noujaim

Committee Member



## **DEDICATION**

To all the brave souls who fought and are still fighting for their freedom and basic human rights.

To every single person trying to make a difference in this world and refuses to stay silent in the face of injustice.

## **ACKNOWLEDGMENTS**

I would like to thank my advisor, Celine Merheb, Ph.D., for all the support and guidance offered during the whole process of writing the thesis dissertation.

I would also like to thank my committee members, each of whom has provided patient advice and guidance throughout the research process. Thank you all for your unwavering support.

Last but not least, a big thank you to my husband and mother for all their encouragement and support.

## ABSTRACT

This study presents and analyzes the political and legal aspects of the violations committed by Israel regarding the Palestinians' right to water. The study introduces the geography of Palestine and its water sources; tackles the historical background underlying the value and significance of water in religious and Zionist thought; assesses the political impact of the recognition of Palestine as a non-member observer state in the United Nations on Palestinian water rights; evaluates the legal dimensions of the Israeli violations of the Palestinian people's right to water resources starting by the international laws breached by Israel in the area of water resources; and investigates the international recognition of Israeli violations concerning Palestinian water resources and the consequences of establishing such recognition. It's worth noting that, the research was conducted based on numerous primary and secondary sources, including several interviews with Palestinian participants with an aim to answer the following question: What are the political and legal aspects of Israel's violations of the Palestinian's right to water? The study concluded with a set of research findings and recommendations to reach a mutual consensus that guarantees the rights of both parties.

**Keywords:** Palestine – Palestinian Water Resources – Palestinian Water Rights – Israeli Violations of Palestinian Waters

### ملخص البحث

تعرض هذه الدراسة وتحلل الجوانب السياسية والقانونية للانتهاكات التي ترتكبها إسرائيل فيما يتعلق بحق الفلسطينيين في المياه. فتتطرق الدراسة إلى جغرافية فلسطين ومصادر مياهها، وتتناول الخلفية التاريخية الكامنة وراء قيمة المياه وأهميتها في الفكر الديني والصهيوني، وتقيم الأثر السياسي للإعتراف بفلسطين كدولة مراقب غير عضو في الأمم المتحدة على حقوق الفلسطينيين في المياه؛ وتقيم كذلك الأبعاد القانونية للانتهاكات الإسرائيلية لحق الشعب الفلسطيني في الموارد المائية بدءاً من القوانين الدولية التي خرقتها إسرائيل في مجال الموارد المائية؛ وتحقق في الإعتراف الدولي بالانتهاكات الإسرائيلية فيما يتعلق بالموارد المائية الفلسطينية ونتائج الإقرار بهذا الإعتراف. ويجدر التنويه أنه تم إجراء البحث بناءً على العديد من المصادر الأولية والثانوية، بما في ذلك مقابلات عديدة مع مشاركين فلسطينيين بهدف الإجابة عن السؤال التالي: ما هي الجوانب السياسية والقانونية لانتهاكات إسرائيل لحق الفلسطينيين في المياه؟ وقد اختتمت الدراسة بمجموعة من نتائج البحوث والتوصيات للوصول إلى توافق مشترك يضمن حقوق الطرفين.

**الكلمات المفتاحية:** فلسطين – الموارد المائية الفلسطينية – حقوق الفلسطينيين في المياه – الانتهاكات الإسرائيلية للمياه الفلسطينية

## Table of Contents

<b>DEDICATION</b> .....	3
<b>ACKNOWLEDGMENTS</b> .....	4
<b>ABSTRACT</b> .....	5
<b>Chapter 1: Introduction</b> .....	9
<b>1.1 Purpose of the study</b> .....	9
<b>1.2 Research question</b> .....	10
<b>1.3 Hypothesis</b> .....	10
<b>1.4 Methodology</b> .....	11
<b>1.5 The limits of the study</b> .....	11
<b>1.6 Literature Review</b> .....	11
<b>1.7 Roadmap</b> .....	14
<b>CHAPTER 2: WATER RESOURCES IN PALESTINE</b> .....	15
<b>2.1 Sources of surface water in Palestine</b> .....	15
<b>A. Rivers</b> .....	19
<b>B. Valleys</b> .....	23
<b>2.2 Groundwater basins in Palestine</b> .....	25
<b>A. The Eastern Basin</b> .....	26
<b>B. The Northeastern Basins:</b> .....	27
<b>C. The western basin:</b> .....	27
<b>D. The coastal basin:</b> .....	28
<b>E. The Carmel basin:</b> .....	29
<b>CHAPTER 3: ISRAELI VIOLATIONS OF PALESTINIAN WATER</b> .....	31
<b>3.1 Surface water:</b> .....	32
<b>A. Jordan River Basin:</b> .....	32
<b>B. Gaza Valley:</b> .....	33
<b>3.2 Israeli violations of the common groundwater basins</b> .....	35
<b>A. Eastern Basin:</b> .....	35
<b>B. Coastal basin:</b> .....	38
<b>CHAPTER 4: WATER SOURCES IN THE PALESTINIAN-ISRAELI NEGOTIATIONS</b> .....	41
<b>4.1 Water sources in the Palestinian-Israeli negotiations</b> .....	41
<b>A. Historical background - the importance of water in religious and Zionist thought</b> .....	42
<b>B. The reasons behind the Israelis aspiration to acquire water resources in historic Palestine:</b> .....	42

C. Sources of water in the Palestinian negotiating agenda: .....	46
D. The prior-use principle: .....	47
E. Conditions for successful negotiation: .....	49
<b>CHAPTER 5: WATER IN THE PALESTINIAN-ISRAELI AGREEMENTS .....</b>	<b>54</b>
5.1 Palestinian negotiating performance .....	58
5.2 Features of Israeli negotiating behavior .....	59
<b>CHAPTER 6: ACCEPTANCE OF PALESTINE AS A Non-MEMBER OBSERVER STATE IN THE UNITED NATUONS AND ITS POLITICAL IMPACT ON PALESTINE WATER RIGHTS .....</b>	<b>61</b>
6.1 UN recognizes Palestine as a non- member observer state .....	62
6.2 Elements of power in the Palestinian negotiating position after the UN recognition.....	63
<b>CHAPTER 7: LEGAL DIMENSIONS OF THE ISRAELI VIOLATIONS OF THE RIGHT OF THE PALESTINIAN PEOPLE TO WATER RESOURCES .....</b>	<b>67</b>
7.1 The international laws that Israel has violated in the area of water resources. ....	68
7.2 The United Nations Framework Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997. ....	71
7.3 The Helsinki Rules for the Use of International Rivers Water 1966 .....	76
<b>CHAPTER 8: THE IMPACT OF RECOGNIZING PALESTINE AS A NON-MEMBER STATE IN THE UNITED NATIONS ON PALESTINIAN WATER RUGHTS .....</b>	<b>78</b>
8.1 Legal mechanisms to protect Palestinian water rights .....	79
8.2 The impact of the UN recognition of the Palestinian state on the negotiation strategy .....	79
A. Resorting to an international court .....	85
B. Forcing the Zionist entity to pay a political and diplomatic price .....	86
<b>CHAPTER 9: THE INTERNATIONAL RESPONSIBILITY FOR ISRAEL'S VIOLATIONS TO PALESTINIAN WATER RESOURCES.....</b>	<b>88</b>
9.1 The meaning behind international responsibility .....	88
9.2 The damage resulting from Israelis violation of Palestinian water rights.....	89
9.3 The consequences of achieving international responsibility .....	90
<b>Conclusion: .....</b>	<b>96</b>
A. Results: .....	97
B. Recommendations: .....	98
<b>References: .....</b>	<b>100</b>





## Chapter 1: Introduction

### 1.1 Purpose of the study

Water is indispensable to human life. Though plentiful, it is limited and global demand for freshwater has been growing rapidly due to population growth and greater affluence. At the same time, climate change and environmental degradation are altering the regional and seasonal availability and quality of water. The resulting competition over water use may lead to conflict and sometimes violence, though researchers emphasize that it is rarely the lack of water as such that fuels conflict, but rather its governance and management. The Israelis consider their control over the water resources of the “historical Palestine” and its surroundings as a prodigious objective. They have realized from ancient times its importance, perhaps even before the territory became a state. In 1919 the Zionist delegation addressed a message to the peace conference in Paris; a memorandum to the conferees, asking them to start the borders of the Hebrew state at some point on the Mediterranean coast north of the Litani (Qasmia) river and to extend them to the east of the Hasbani, Dan and Baniyas River. After the establishment of the state of Palestine, successive Israeli governments gave the issue of water the utmost importance, because they knew that their entity could never be created and developed without sufficient water. The Zionist entity has worked hard to ensure their control over the Palestinian’s water springs and sources. Even though in the midst of the national battle fought by the Palestinians as well as the Arabs, the issue of the stolen water, didn’t get the appropriate amount of attention by politicians and Arab jurists. Actually what the occupation did was to push all actors towards a “zero-sum game” establishing hence the basis of an unjust power. And now that Palestine has attained the status of a non-member observer state of the United Nations, and its geographic regions became officially recognized by the states, and after the new Arabs-Israelis relations that have converted to a win-win strategy, a new ground for the Palestinians was created to wage a

political and legal battle with the Israeli occupation on the Israeli violations of the right of the Palestinian people waters; a political opportunity to demand Palestinian water rights.

From a scientific point of view this study aims at discussing the political and legal dimensions of the Israeli violations of the Palestinian's right to water. From a political and legal points of view, this study aims at identifying the possible measures and proposals to preserve the Palestinian people's right to water resources. And from a practical point of view, this study intends to assist Palestinian diplomacy in defending Palestinian water rights. Whether in negotiations or in international institutions and forums.

## **1.2 Research question**

Israel and the Palestinian territories are in a severe water crisis. The accumulated water deficit in the region has reached the level of annual consumption. Such a deficit jeopardizes the quality, and hence the availability, of freshwater in the aquifers. Various attempts have been made to resolve the conflict as part of the Israeli–Palestinian peace process. It has been referred to as the world's "most intractable conflict," with the ongoing Israeli occupation of Palestinian territories. Yet with all the efforts made to resolve the issue of water we ask ourselves the following questions: what are the political and legal aspects of Israel's violations of the Palestinian's right to water? what are the shared water resources in Palestine with the Zionist entity? How did the Zionist entity violate the Palestinian water resources? And how can the Palestinian people's right to water resources be guaranteed politically and legally?

## **1.3 Hypothesis**

Tension over water scarcity is increasing across the globe. A new system flags up where this threatens to erupt into violence. The scarcity of water resources became an increasingly

accepted explanation for tensions among Middle Eastern states, and the shrill apprehension was heard from various circles that the next war in the Middle East would be fought over water.

#### **1.4 Methodology**

In order to conduct this study, we relied on primary sources such as books, references, periodicals, websites and previous studies which contributed immensely to understanding the scope of the Israeli-Palestinian water conflict. In addition, we relied on secondary data such as interviews with Palestinian people. We also used the descriptive-analytical approach based on the analysis of the content of the documents and writings that dealt with the subject of research, as this approach is best suited for such types of topics.

#### **1.5 The limits of the study**

- The temporal limit:

The temporal limit of the study covers the period from the beginning of the British mandate to Palestine until early 2015

- The spatial limit:

The spatial limit includes the borders of historic Palestine.

#### **1.6 Literature Review**

The literature review on the subject allowed us to conduct our research properly. Our research was based on authors such as Arbid, W. (2013). *Water as a strategic factor in the Arab-Israeli struggle*. The author discusses the strategic dimensions of the Arab water issue with a focus on Israel's attempts to link the Litani to the Jordan River geologically in order to claim its share of it, within the Zionist entity's unstoppable attempts to seize Arab water resources.

Armouti, K. (1999). *Water Diplomacy "A Political and Legal Vision for Water in the Jordan River Basin*. Published by Arab Services Press.

The researcher reviews the water resources in Palestine and the Israeli endeavor to control them by establishing settlements over water basins and issuing laws that restrict the Palestinian water use. He concluded then that the availability of suitable quantities of water is tightly linked to the political stability in Palestine. He finished by saying that the conflict over water between Israelis and Palestinians is an existential struggle due to limited resources and increasing population.

Bani-Hani, M. (2006). *Israel 's confiscation of Arab water*.

The study gives a historical background on the Israeli interests in the Arab waters, and on the political conflict between the Arab countries and Israel. Moreover, the study warns of the seriousness of the Israeli plans on the Arab water, old and new, and emphasizes the need to give the issue of water more importance to its high strategic value in the fields of construction and development.

Daibes-Murad, F. (2005). *A new legal framework for managing the world's shared groundwaters*. IWA Publishing.

Dr. Daibes concluded in her doctoral thesis that a legal framework should be developed to deal with it among countries that share groundwater basins, and dealt with the Palestinian situation with the Israelis as a case study. She also called for a gradual approach to the application of the rules of international law with a third party as a mediator to bridge the viewpoints, and stressed the importance of increasing the Palestinians' knowledge of international legal rules concerning water.

Idris, A. (2012). *Conflict about international waters in the light of international law and conventions*. Applied study on the Nile.

The researcher addresses the international laws that dealt with the issue of water since 1911, i.e. before the emergence of both the United Nations and the international system in its current form.

Kaaouch,F. (2012). *All of the claims proffered by the Israelis on Palestinian water rights have now been disproved. "Under international law, Palestine has riparian rights in all common groundwater basins."*

Kaaouch emphasizes on the impact of the international recognition of Palestine as a non-member state on the process of Palestinian negotiations with Israel, based on the bitter experience with the occupation in the period preceding that very important diplomatic development.

Kaaouch,F. (2013). *A comprehensive study of legal and technical aspects on the nature of Israeli violations of international water law on Palestinian water rights in shared water basins.*

Kaaouch reviews his experience as a member of the High Negotiations Committee and the Water Committee official, the process of negotiations and the Israeli methods of negotiation and the conduct of the Israeli commissioners, as well as extensively reviewing the legal rules violated by the Zionist entity by exploiting Palestinian waters.

Salame,Y. (2008). *Israeli Water Policy and its Impact in the West Bank. A study in geopolitics.*

Unpublished Master Thesis, Faculty of Graduate Studies, An-Najah National University, Nablus, Palestine.

The researcher reviews the Palestinian water sources and the colonial projects that they targeted for Israel, with a focus on the Jordan River. He discusses the Israeli water policy and the necessity of confronting it at the domestic level, through the development of policies and strategies for the sustainability of these water resources, as well as at the regional level, working jointly with Arab countries, to exploit water resources and recover rights.

Sawalhi, B. I., Mimi, Z. A., & Aliewi, A. S. (2001). Multi-criteria decision tool for allocating the waters of the Jordan Basin between all riparians. In *Proceedings of the International Conference "Globalization and Water Resources Management: The Changing Value of Water* (pp. 6-8).

The authors point to the importance of the Jordan basin of the riparian states and to the need to strengthen the legal path to solve the problem of water sharing according to the rules of the international water law and provide a mathematical model for the sharing of river water based on giving a balance to the factors that are based on the division of water contained in the Helsinki Rules for Shared River Water of 1966 United Nations Framework Convention on the Non - Navigational Uses of International Watercourses 1997.

### **1.7 Roadmap**

Our work was structured in eight main chapters. In the first chapter, we go through the geography of Palestine and its water sources to discuss in the second chapter the Israeli violations of Palestinian water sources. In the third chapter we go back to the historical background analyzing the importance of water in religious Zionist thought. In chapters four and five we tackle the political impact of the United Nations recognition of Palestine as non-member observer state on Palestinian water rights. Mentioning afterwards in the sixth and seventh chapter the legal dimensions of the Israeli violations of the right of the Palestinian people to water resources. In the final chapter we end up by analyzing the international responsibility for Israel's violations to Palestinian water resources.

## **CHAPTER 2: WATER RESOURCES IN PALESTINE**

From a climatic standpoint, Palestine is located in an arid and semi-arid region. Average rainfall ranges from north to south reaching about 600 mm per year in the north of Palestine, and about 400 mm per year in the middle, and almost zero in the Negev desert in the south. The water sources in Palestine are divided into two types, surface water and groundwater.

Surface water are scarce and include both the Jordan River; shared with four other countries (considering Israel as a riparian state), and Wadi Gaza, which stems from the West Hebron Mountains and flows into the Mediterranean Sea.

Groundwater resources on the other hand, in the Mountain Aquifer below the West Bank and the coastal basin, include the coastal plain area of Palestine and other basins mentioned below.

### **2.1 Sources of surface water in Palestine**

Palestine has always been part of the original homeland of the first human being, the cradle of the major celestial religions, a place for the emergence of ancient civilizations, and a crossing for commercial caravans and military invasions through different ages.

Palestine enjoys an attractive focal point for all those who wish to settle down and live well, making it always the focus of the greedy to control it and take advantage of its merits.

Palestine overlooks the eastern coast of the Mediterranean Sea, where the length of its coast is about 224 km, and the length of the coast on the Gulf of Aqaba is only 10.5 km.

The length of Palestine's borders in the northeast of Syria is 70 km, 79 km in the north of Lebanon, up to 360 km long in the east of Jordan , and 240 km long in the southwest of Egypt<sup>1</sup>.

---

<sup>1</sup> [http://www.wafainfo.ps/ar\\_page.aspx?id=2401](http://www.wafainfo.ps/ar_page.aspx?id=2401), National Information Center, Geography of Palestine.

It is also a link between the continents of the ancient world (Asia, Europe and Africa), which facilitates the spread to the surrounding areas.

From a geographical point of view, Palestine is located between longitudes 34,15 and 35,40 east and between the latitude 29,30 and 33,15 north.<sup>2</sup>

The climate of Palestine is closely related to its geographic terrain as well as its location.

Therefore, there is three clearly well-known geographical units:

- The rich coastal plains south of the Negev desert.
- The central hills of 1205 m in Mount Meron near Safed.
- The Jordan Valley and Wadi 'Araba are unlike most other river valleys, forming the deepest valley in the world, terminating at an elevation lower than 400 meters below the sea.<sup>3</sup>

---

<sup>2</sup> Ibid

<sup>3</sup> Abdel Rahman, H., Geography of the Arab World, Dar Al-Fikr al-Maasir, Damascus, 1977, p. 300





The topography of Palestine is known for its variety. It's rich mountains as in the West Bank, and arid dry desert, such as the Negev desert, which covers about 40% of Palestine, it's also rich in low-lying regions such as the eastern border adjacent to the waste pit known as geological fault extending across the continents of Asia and Africa over a distance of six thousand kilometers

<sup>4</sup> The Jordan River, [https://en.wikipedia.org/wiki/Jordan\\_Valley#/media/File:JordanRiver\\_en.svg](https://en.wikipedia.org/wiki/Jordan_Valley#/media/File:JordanRiver_en.svg)

from southern Turkey in the north to the south of the Red Sea in the south. According to the Palestine Weather Network website, the most important factors affecting the climate of Palestine are the location, the topography and the Mediterranean<sup>5</sup>.

#### 1- Location:

Palestine is located in the eastern Mediterranean Sea on the right of the atmospheric depressions affecting the eastern Mediterranean basin in winter. Heavy rains fall in northern Palestine and the amount of rainfall decreases in the south. The Mediterranean has helped to moderate the summer and winter temperatures and high humidity in coastal areas. Also, the location of Palestine in the eastern Mediterranean in the northern hemisphere has made it affected by the ranges of atmospheric pressure centers (Azurian and Siberian highlands), the Mediterranean lowlands and the Red Sea low.

#### 2- Terrain:

The topography of Palestine is one of the most important geographical factors affecting the spatial variability of climate elements, where the distribution of rain, heat and humidity takes the form of longitudinal ranges extending from north to south, and its borders coincide with the boundaries of terrain and extend in the same direction, affecting the terrain in the rates of degrees, therefore, temperature rises in low-lying areas such as the Jordan Valley and decreases in the high areas. The terrain affects the variability of rainfall, with less rainfall in the city of Beersheba (250 mm), and more rainfall in the city of Hebron (600 mm), which is located in the east of mountain highlands.

---

<sup>5</sup> [http://www.اَل\\_اِنفو.پس/ار\\_page.aspx?id=2401](http://www.اَل_اِنفو.پس/ار_page.aspx?id=2401), National Information Center, Geography of Palestine.

### 3- Mediterranean Sea:

The Mediterranean Sea has a clear impact on the climate of Palestine. Coastal areas are milder and rainier than inland areas, with the exception of mountainous highlands. The coastal city of Gaza has lower summer temperatures compared to the city of Beersheba in the east, and in winter the temperatures in Gaza are higher than in Beersheba, as are the rains, which decreases the further away from the coast and from the movement of the atmospheric depression in the eastern Mediterranean basin<sup>6</sup>.

#### **A. Rivers**

Jordan River:

It is one of the permanent rivers in the Arab region, and the only one in Palestine shared by four other countries: Lebanon, Syria, Jordan and the Zionist entity. The Jordan River has a great historical and religious significance. It consists of four main components: the main stream, the Sea of Galilee, the valleys that feed it and the Yarmouk River. The main stream begins to form from a point five kilometers from the border with Lebanon inside the Palestinian territories<sup>7</sup>.

The headwater of the Jordan River originates from three tributaries:

Dan River:

This river originates from the Palestinian territories occupied in 1948 at an altitude of 90 meters above sea level, with an annual flow rating about 310 million cubic meters. The Dan River is the most contributing tributaries of the Jordan River<sup>8</sup>.

---

<sup>6</sup> Ibid

<sup>7</sup> Shedid, O., *Palestinian Water and Security*, Majdalawi Publishing House, Amman, 1999, p. 105

<sup>8</sup> Ibid

a- Baniyas River:

This river stems from the slopes of Mount Hermon in the Syrian territory at an altitude of 329 meters from the sea. The Baniyas River is making its way into a narrow 9-kilometer course to connect to the Dan, with an annual flow rate of 160 million cubic meters of water<sup>9</sup>.

b- Hasbani River:

This river originates in the Lebanese territory from 900 meters high and is connected to the Danes and Baniyas. The annual flow rate is about 285 million cubic meters of water. It is worth mentioning that a small river called the fleas flows into the Hasbani River before it connects to Dan and Baniyas.<sup>10</sup>

In addition, a number of springs and valleys pour into the Jordan River equivalent to about 140 million cubic meters annually from both sides of the river, and the river continue to flow south until it reaches Lake Tiberias. Up to this point the river is called the upper basin of the Jordan River, the Upper Jordan River, or the Sharia River. The total amount of water from all sources of the Upper Jordan River Basin is about one billion and one hundred million cubic meters of water per year.

According to the estimates of the American peace mediator Eric Johnson in 1953, the annual flow rate of the Jordan River after adding some streams and springs, as well as the Yarmouk River is about 287.1 billion and two hundred and eighty-seven cubic meters, it is proposed to be distributed as follows<sup>11</sup>:

Lebanon: 35 million cubic meters.

---

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Al-Mousa, S. : Water in the Arab-Israeli Negotiations, Institute for Palestine Studies, first edition 1997, p. 33

Syria: 132 million cubic meters.

Israel: 400 million cubic meters.

Jordan: 720 million cubic meters (505 million cubic meters for the East Bank and 215 million cubic meters for the West Bank).

Israel committed itself to its share until 1967, through a major territorial expansion that controlled all the sources of the Jordan River and a greater proportion of the Yarmouk River. The figures in the Johnson Plan, which give Israel alone 400 million cubic meters of water annually, while giving the Palestinians and Jordanians, where the high population density of 720 million cubic meters, less than the share of Israelis, as well as giving the Syrians and Lebanese relatively small quantities despite their significant contribution to the river water certainly reflects the view of the United States that is biased towards the Israeli side, but the Palestinian side did not agree with it. Johnson's plan was the first internationally supported US attempt to divide the waters of the river between riparian states, especially as it came after Syrian-Israeli military skirmishes against the backdrop of the Arab attempt to divert the Yarmouk River. The lower Jordan River is called the part of the river that starts from the south of Lake Tiberias to the mouth of the Dead Sea. Its western shore overlooks the West Bank, through which the Palestinian water of the Jordan River, which is 215 million cubic meters, The Johnson Plan. The Jordan River is only about 140 kilometers long in a straight line, but because of the many convolutions in its course, it can measure 350 kilometers long.<sup>12</sup> This is the distance from the point of formation, which is the confluence of the three main tributaries as well as the upstream of Lake Tiberias passing through the Hula plain and its marshlands, which were drained by the Israeli authorities into one narrow stream called the Upper Jordan River or the Sharia River with

---

<sup>12</sup> Yacoubi, A. , Abdel-Ghafour, D. : A Brief on Palestinian Water Resources, PWA Publications , June 2011 p. 21

the remaining part of the Degania Gate south of the Lake Tiberias which upstream into the Dead Sea so-called the "Lower Jordan River".<sup>13</sup>

c- Lake Tiberias:

When talking about the Jordan River, it is necessary to stop at Lake Tiberias, which in turn is considered part of the Jordan River basin as a freshwater reservoir with an area of 165 km<sup>2</sup>, and can accommodate about 3.4 billion cubic meters of water and the water level is 213 meters below The sea's deepest point is 259 meters below sea level, with a water height of about 46 meters.

And since there are some salty springs below the lake Tiberias and others on its sides, the salinity in the lake ranges between 280-410 mg of chloride ion that causes salty taste per liter and up to 680 in the south of the lake at the Degania Gate.<sup>14</sup>

d- Yarmouk River:

It originates from the Syrian lands and runs along the Syrian-Jordanian border until it meets the Jordan River at a point of 15 km north of the Hula region. The annual flow rate is approximately 420 million cubic meters, that's why it is considered the largest tributary of the Jordan River<sup>15</sup>.

---

<sup>13</sup> Al-Mousa, S., op.cit ., p. 20

<sup>14</sup> Ibid

<sup>15</sup> Yacoubi, A. , Abdel-Ghafour, D. op.cit ., p. 9

## **B. Valleys**

A valley is a seasonal river, in which water only forms and runs in the rainy season. There are two groups of valleys, considered to be a source of water in Palestine: The Gaza Valley and the West Bank Valley.

### a- The Gaza Valley:

The annual water authority report for 2011 issued by the Palestinian National Water Authority indicated that the Gaza Valley originates from the eastern borders of the Gaza Strip while the valley originates from the eastern slopes of the Hebron Mountains. The report did not mention its annual flow rate which appears to be a lack of water authority information on Although it is the largest valley in the Gaza Strip although it is the largest valley in the Gaza Strip. According to the National Information Center - Wafa - the length of the valley in the Gaza Strip is about eight kilometers, while the total length from the source to the estuary is about 160 kilometers starting from Al-Samu' area in the Hebron Mountains, to its estuary in the Mediterranean Sea on the Gaza coast. The area of the basin is about 3500 square kilometers, and its annual flow rate is about 35 million cubic meters<sup>16</sup> before the Israeli authorities establish Dams on its course to take full advantage of it, and before the valley crosses the eastern borders of the Gaza Strip also called the Besur Valley.<sup>17</sup>

There are two other valleys in the Gaza Strip whose runoff is unknown and which are not being used in any way: Wadi Beit Hanoun located in the middle of the Strip, which ends in the northern part of the occupied lands since 1948, and Wadi Al Salqa, which is located in the middle of the Gaza Strip and ends up in the west of Deir Al Balah.<sup>18</sup>

---

<sup>16</sup> National Information Center, Wafa

<sup>17</sup> Al-Mousa, S. op.cit., p. 16

<sup>18</sup> Yacoubi, A. , Abdel-Ghafour, D. op.cit ., p. 34

b- The West Bank Valley:

The Jordan River is nourished from these valleys, which are part of the surface waters in Palestine. The annual water report for the year 2011 issued by the Palestinian National Water Authority indicated that there are 33 valleys with a total annual flow of about 131 million cubic meters per year.<sup>19</sup> These major valleys overflow in three directions:

- Nine valleys flow towards the Jordan Basin, such as Al-Far'a, Al-Maleh, and Al-Auja.
- Eight valleys flow towards the Dead Sea, such as Wadi Hebron and Wadi Al Nar.
- Sixteen valleys flow towards the Mediterranean, such as Wadi Srida and Wadi Qana.

---

<sup>19</sup> Annual Water Status Report 2011, Palestinian Water Authority, p.21



## 2.2 Groundwater basins in Palestine

Rain is the main source of groundwater in Palestine, where the average annual rainfall in the northern West Bank is about 700 mm, and reaches about 100 mm in the northwestern areas of the Dead Sea<sup>20</sup>. As for Gaza, the highest rain rate was recorded at 450 mm in the northern regions of the Strip, while it reached about 225 mm in the southern Gaza Strip. The average yearly rate for all of the sector is around 365 mm annually<sup>21</sup>, and of course, most of this rain evaporates, what remains of it is seeped into the ground through layers of impermeable and mud rocks until it reaches the underground water reservoirs whose depth ranges between 100 to 400 meters, and is drawn from them through mechanical pumping to be recharged with fresh water in the following seasons. In the literature of water workers, underground water basins that extend under the ground beneath the West Bank, are called a mountain basin, and it is divided into three sections, according to geographical position and hydraulic inclinations, that is, the direction of flow of water under the ground. For example: in the western reservoir, the groundwater moves to the west towards the Mediterranean, and in the eastern reservoir, the groundwater moves east toward the Jordan River basin, and when the reservoir is northeast, the groundwater moves north and east towards the Beit She'an plains, Tiberias plains and the Jazreel Valley<sup>22</sup>.

---

<sup>20</sup> Yacoubi, A. , Abdel-Ghafour, D. op.cit ., p. 33

<sup>21</sup> Ibid

<sup>22</sup> Al-Mousa, S. op.cit., p. 14

### **A. The Eastern Basin**

This entire basin is located within the borders of the West Bank in the Jordan River Valley and in the eastern highlands of Jerusalem, Bethlehem and Hebron. Its rocks are composed of limestone, nymphs, Dalmatian and modern sediments. The basin has an area of 2895 square kilometers which is considered to be the first basin in the West Bank in terms of area, with 51.3% of the total number of basins, and it consists of six sub-basins: Bardala, Al-Baqa, Al-Far'a, Fasayel-Al-Auja, Ramallah, Jerusalem, and the South Jerusalem desert basin<sup>23</sup>.

This basin of rocks contains two underground aquifers; in the southern parts of this water basin towards Ain Al-Fashkha, there are springs all flowing into the Al-Fashkha Reserve, with an annual discharge of 40-85 million cubic meters. The Zionist entity drilled artesian wells in the northwestern highlands and obtained sweet water for the benefit of the settlers in the Jericho area, while the Palestinians are using the underground reservoir to extract an amount of water ranging from 8-9 million cubic meters per year for drinking and agricultural purposes<sup>24</sup>. This basin includes all water slopes that slope eastward from areas in the northern West Bank, such as Jenin, Tubas, and even Hebron in the south. The amount of renewable water annually in this basin is estimated at 175 million cubic meters annually, about 55 million cubic meters of which are considered to be a brackish (salty) water flow into the Dead Sea. The Palestinians receive about 65 million cubic meters of renewable water annually from this basin, while the Israelis get 40 million cubic meters, meaning that this basin is not fully utilized and the Palestinians do not benefit from their full share of water<sup>25</sup>, because the Zionist entity refuses to give them permits to

---

<sup>23</sup> Salame, Y. *Israeli Water Policy and its Impact in the West Bank. A study in geopolitics*. Unpublished Master Thesis, 2008, p.62

<sup>24</sup> Shedid, O., *op.cit.*, p. 105

<sup>25</sup> Kaaouch, F. *A comprehensive study of legal and technical aspects on the nature of Israeli violations of international water law on Palestinian water rights in shared water basins*, 2013 p.12

dig new wells, especially since this basin includes the Jordan Valley, which is a closed military zone.

### **B. The Northeastern Basins:**

This water basin is located in the northeastern region of the West Bank, and it includes all water slopes descending from the governorates of Tubas, Jenin and Nablus towards the northern borders of the West Bank, which caused the emergence of a group of springs such as, Ras al-Ain, Bayt al-Maa, Awarta, Askar, Taliban and other springs<sup>26</sup>. Its total area is 981 square kilometers, as it overlaps with occupied Palestine and its divided into two basins:

#### a- The basin of Nablus - Jenin – Jalboun

It covers an area of 500 square kilometers, and the amount of pumped water ranges from 92 to 104 cubic meters per year.

#### b- Tanak Basin - Jenin<sup>27</sup>

The amount of renewable water in it is about 158 million cubic meters. The Palestinians receive 33 million cubic meters from this basin, while Israel gets 125 million cubic meters.<sup>28</sup>

### **C. The western basin:**

This subterranean basin is the largest and most important underground basin in the West Bank, and includes all areas and mountain slopes whose waters are heading towards the western part of the West Bank, where the western parts of the governorates of Tulkarm, Nablus, Ramallah and Hebron. The amount of renewable water in this basin is 362 million cubic meters annually, and the movement of groundwater is to the west. Palestinians receive from it about 20 million cubic

---

<sup>26</sup> Shedid, O., op.cit., p. 128

<sup>27</sup> Salame, Y. ., op.cit., p. 62

<sup>28</sup> Kaaouch, F., op.cit., p. 11

meters of water annually, although 95% of the feeding areas for this basin are in the West Bank. Whereas the Israelis withdraw about 340 million cubic meters annually from the water of this basin from a group of deep wells inside the Green Line<sup>29</sup>.

**D. The coastal basin:**

The coastal aquifer is the largest aquifer in Palestine, with a length of about 120 kilometers, extending from the Carmel Mountains in the north to the south of the Gaza Strip with a width of 3-10 km in the north, and up to 20 km in the south<sup>30</sup>. Thus, it is a comprehensive reservoir for the underground Gaza Strip, which is a sediment of gravel and sandy clay interfering with clay layers. The thickness of these sediments is between 50 - 160 meters and its thickness decreases as we go east towards the mountain range. The amount of renewable water in the entire coastal basin is about 970 million cubic meters annually<sup>31</sup>, while Israel claims, for political reasons, that the safe withdrawal from the entire original water basin is 395 million cubic meters, in the Israeli water study submitted to the World Bank in 1994.

The share of the Gaza Strip basin is about 45 million cubic meters of renewable water annually<sup>32</sup>, although the Gaza Strip extracts an equivalent of 180 million cubic meters<sup>33</sup>, meaning that there is water pressure equal to 135 million cubic meters annually, which led to an increase in the salinity of water and the emergence of the so-called leakage Sea water to the aquifer, which threatens to destroy it.

---

<sup>29</sup> Ibid

<sup>30</sup> Shedid, O., *op.cit.*, p. 140

<sup>31</sup> Ibid

<sup>32</sup> Kaaouch, F. A., *op.cit.*, p. 13

<sup>33</sup> Palestinian Water Authority, Annual Water Status Report 2011, p.38

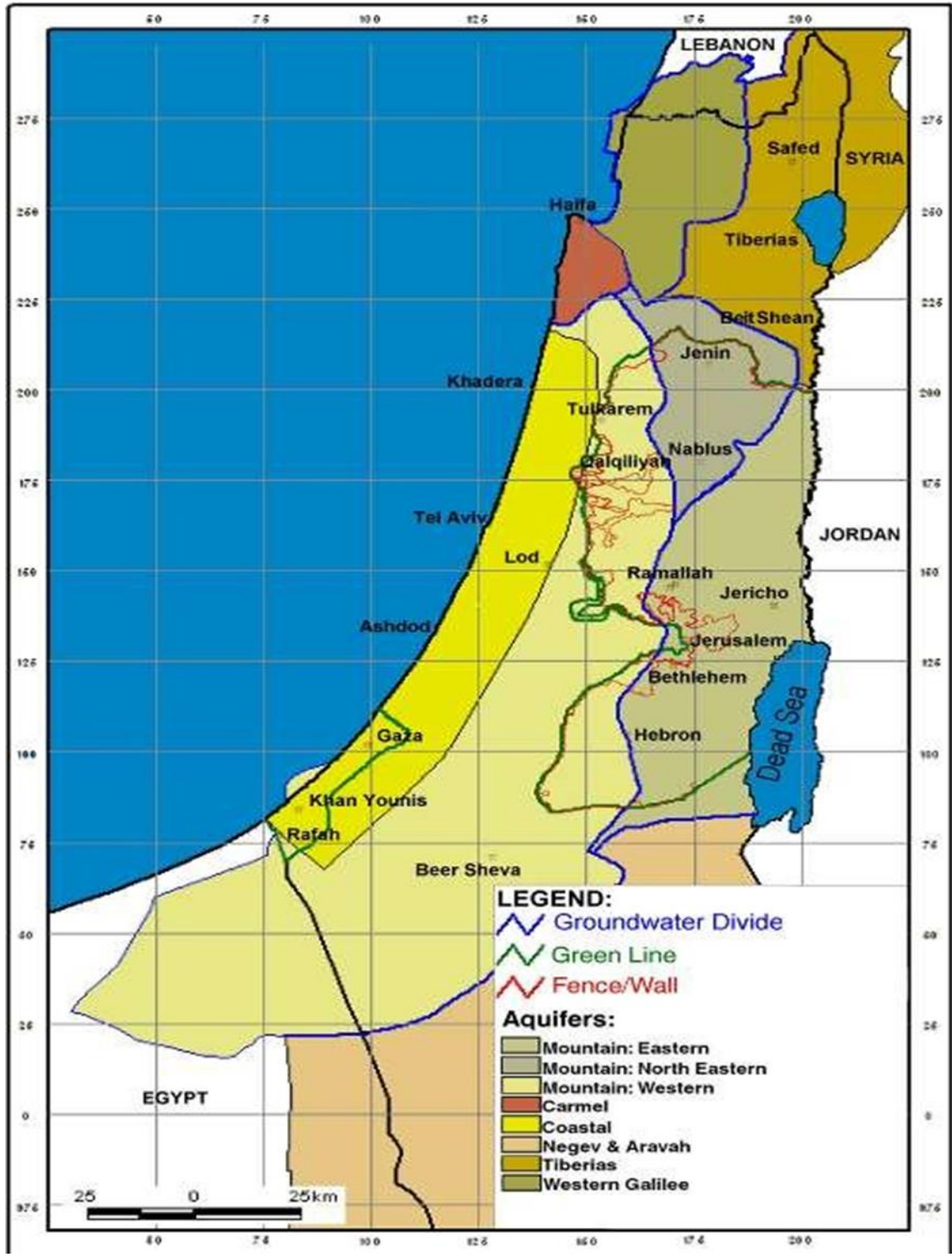
**E. The Carmel basin:**

The Carmel Basin is located under the areas of Mount Carmel and Haifa, it extends into the plain of Marj Ibn Amer, and it forms a unified hydrology system for a common international water course with mountainbeds of mountainous basins in the West Bank. Its annual renewable water capacity is estimated at about 47 million cubic meters but then the Israelis withdraw it taking full advantage of it. This basin is mainly fed by monsoon waters and seasonal torrents that slope from the northwestern areas of the West Bank<sup>34</sup>.

Accordingly, it's clear that the quantities of renewable water in the Palestinian underground basins are sufficient for Palestinian needs and are geographically distributed in a way that makes it easier for Palestinian consumers to reach.

---

<sup>34</sup> Kaaouch, F. A., *op.cit.*, p. 13



35

<sup>35</sup> Amnesty International- <http://www.amnesty.org/>-

## **CHAPTER 3: ISRAELI VIOLATIONS OF PALESTINIAN**

### **WATER Sources:**

Since about the year 1873, and even before the establishment of Israel; when the process of establishing the state was in the planning stage, the Israeli ambitions began in the Palestinian water sources in particular, then continued to the water sources of the neighboring Arab countries. Ever since its establishment, Israel has controlled the waters of the Jordan River and those of the Gaza Valley, and after the 1967 war and its occupation of the West Bank, it has completed its control of the remaining sources of the West Bank basins and the Gaza Strip basin. All of this is considered to be a violation of the rules of international law that criminalize the occupying power to exploit the natural resources of the people under occupation. This couldn't be done without the immense military power that Israel possess and the suspicious international silence also helped them achieve their aim.

### **Preface**

International rivers are navigable rivers that pass through the territory of two or more countries, or adjacent to their lands. In most of the cases, conflicts arise between the riparian states because of the desire of each country to acquire the largest possible amount of river water, especially with the steady increase in the population and the expansion of agricultural and industrial development in them, which leads to limited water resources. In the start, the international river was confined only to its natural course. However, international lawyers have expanded this concept to include the whole basin introducing the concept of tributaries and springs that feed the

river, and what it irrigates from fields and farms regardless of their proximity or their distance from the river course.<sup>36</sup>

### **3.1 Surface water:**

#### **A. Jordan River Basin:**

As indicated before, controlling the water sources and providing enough water was the first and foremost concern for the Jews when they decided to settle in Palestine, and this was a clear dimension in their thinking and strategic planning and in their relentless pursuit to establish their state in Arab Palestine. In 1875 the British Royal Society sent a mission to Palestine to answer two questions: 1- Is the Negev desert suitable for the settlement of Jews in it?

2- Is there enough water in place to reclaim and settle the Jews there? The mission's response in its report to the British Royal Society was that the place is sufficient to accommodate 15 million Jews, but water must be brought from the north, for the area to be viable<sup>37</sup>.

In 1955, and in his talk about the Negev, Ben-Gurion indicated that they are fighting with the Arabs the water battle, and on the results of which the future of their presence in Palestine will be determined. Well, it seems that it was during this period that the idea of transferring the waters of the Jordan River from its confluence point in Tiberias to the northern Negev for the sake of irrigation and agriculture, and the establishment of an industrial base for the next country, began to take shape. Studies indicate that the project consists of two phases: the first is for four years and consists of giant pumping stations on the northwestern edge of Lake Tiberias in the Tabgha region and then pumping water to the Al-Batouf Plain as natural reservoirs, as well as digging a large tunnel in the Middle Galilee with a length of 6700 meters,

---

<sup>36</sup> Armouti, K, *Water Diplomacy "A Political and Legal Vision for Water in the Jordan River Basin*. Published by Arab Services Press, 1999, p. 69

<sup>37</sup> Shedid, O., *op.cit.*, p. 177



to be then The inauguration of giant water pipes with a diameter of 108 inches and a length of eighty kilometers, sufficient to pump an amount equivalent to 550 million cubic meters annually reaching the Ras Al-Ain plains in Tel Aviv.

And the second phase starts with branching the main line from the outskirts of Tel Aviv in two branches, one is a 60-inch diameter that extends to the western Negev and is near the eastern borders of the Gaza Strip, and the second is a 70-inch diameter that extends to the eastern Negev to the occupied city of Beersheba<sup>38</sup>.

In this way, their dream of building the Negev and bringing in more settlers will be realized. In international law, according to the Madrid Declaration 1911<sup>39</sup>, it is not permissible to change the course of the international river for two reasons:

First, the need of riparian states must be satisfied before disposing of the surplus by one of the riparian parties.

Second, approval of all parties must be obtained which did not happen since everyone; the Lebanese, the Syrians, the Jordanians and the Palestinians needed water. The Arabs continued for several decades to take a unified stance from Israel's ambitions to rob Arab water<sup>40</sup>, which means that Israel applied the law of the jungle relying on their military strength, as well as the support of great colonial states and taking advantage of the weaknesses of Arab countries.

### **B. Gaza Valley:**

The Gaza Valley is the largest valley in Palestine in terms of the area of its feeding and drainage basin. Its basin is located in a region with little rainfall, ranging from 350 mm in the north and

---

<sup>38</sup> Bani-Hani, M. *Israel's confiscation of Arab water*, 2006

<sup>39</sup> Amnesty International, op.cit

<sup>40</sup> Bani-Hani, M. op.cit

100 mm in the south. The Gaza Valley is the result of a large number of valleys meeting, and all of them are seized in one stream. This stream is the main valley that occupies the southwestern strip extending from the southeast towards the northwest of the Gaza Valley basin<sup>41</sup>, and its length from the source in the Samu Mountains in the Hebron region to the mouth in the Mediterranean Sea on the shore of the Gaza Strip is about 160 km whereas it measures approximately eight kilometers in the Gaza strip. The area of the basin is about 3500 square kilometers, with an annual flow rate of about 35 million cubic meters, and it flows into the Mediterranean Sea<sup>42</sup>. The beginnings of the Wadi Gaza Strip consist of a number of small and big streams that descend from heights with an average altitude above sea level of 500 meters north of Jabal al-Mahya and 600 m in heights of the Al-bakkar trea. And 675 meters in the mountains of Hoshira. From these three regions, rainwater and torrents gather to meet in three small valleys, which are the Valley of the Shepherd coming from the mountains of Al-Huseera, the Valley of Halqim, and the Valley of Gaza. The Gaza Valley is also called Wadi Al-Thamilah.<sup>43</sup> Wadi Gaza water is considered to be fresh water, for it is essentially rain water; the percentage of chloride ion and salinity is about 35 parts per million, but Israel has built dams on the eastern borders of the Gaza Strip, in order to seize the water from the Strip's thirsty population, and it has pumped the water to areas in North of the Negev, Israel has also dug water wells inside the valley basins to withdraw and pump groundwater into the conveying diversion system, thereby it has also violated the international law that is primarily based on equitable use of water and cooperation and does not tolerate harming others.

---

<sup>41</sup> <https://www.palestinapedia.net/>  
Palestinian Encyclopedia - Gaza Valley

<sup>42</sup> National Information Center, WAFA

<sup>43</sup> <https://www.palestinapedia.net/> op.cit

### **3.2 Israeli violations of the common groundwater basins**

#### Preface

All of Palestine, with the exception of the Negev desert region, is located on underground water basins. In the north are the Carmel and Baisan basins. In the middle is the mountain basin, in the West Bank are the eastern basin, the northeastern basin, and the western basin. These three basins as well as the coastal basin consist of sub-basins. Israel exploits the water of all these basins, leaving a few for the Palestinians to drink, farm and use. Force was the only means of Israel to control these basins through a series of military orders that we will review in this part.

#### **A. Eastern Basin:**

Some Israeli and strategic political analysts believe that the issue of Israel's need for water is caused by its great expansionist intentions which may not stop at the borders of the Nile and the Euphrates, but to Mecca, Yathrib, and Hijaz. Essentially, water was one of the main reasons for the great regional expansion in the 1967 war, in which Israel has tightened control over the headwaters of the Jordan River, a greater part of the Yarmouk River, the mountain basins in the West Bank, and the Gaza Valley. In that war, Israel added to its entire area the West Bank, the Golan, and the Sinai Peninsula. The new occupation authorities have plundered the three underground basins in the West Bank. This is a new episode of a systematic pillaging of Palestinian water knowing that it violates international laws and norms which does not give the occupying power any sovereign rights on the ground or underground and on human beings as well, but it seems that the occupation is seen as a de facto authority. However, before the end of the military operations on 7 June 1967 AD, Israel issued the first military order stating that "all the waters present in the newly occupied lands are property of the State of Israel". Thus, the new

occupation authorities sent two indications to the Palestinians, the first being that they laid their hands on the underground reservoirs which is the largest theft and pillage in human history. The second indication is that the fact that the first Israeli military order was concerned with the issue of water, this indicates the exceptional importance that Israel attaches to the issue of water. After that, the military orders for the water issue began

It can be summarized as follows<sup>44</sup>:

- 1- The military Ordinance of 15 August 1967, issued under Ordinance No.92 stipulates that "all powers related to water control shall be granted to the Israeli water officer appointed by the Israeli occupation authorities."
- 2- The military Ordinance of 19 August 1967, issued under Ordinance No.58 stipulates that "the establishment of any new water facility without a permit is strictly prohibited, and the Israeli water officer has the right to reject any license without giving reasons."
- 3- The military Ordinance of October 1, 1967, issued under Ordinance No. 158 stipulates that "all wells, springs, and water projects are under the direct authority of the Israeli military government."
- 4- The military Ordinance of 1967, issued under Ordinance No. 291 stipulates that "all water sources in the Palestinian territories have become the property of the Israel in accordance with the Israeli law issued in 1959."

---

<sup>44</sup> Israeli military orders issued by the Israeli authorities regarding water since 1967- National Information Center, WAFA

- 5- The Military Ordinance of 11/14/1974 AD, issued under Ordinance No. 948, stipulates that “every citizen in the Gaza Strip must obtain the approval of the Israeli military ruler if he wants to implement any project related to water.”

And this long series of decisions that reinforce Israeli control over the Palestinian water sources and the underground basins in particular aim at:

- 1- Setting a limit for the amount of water that owners of wells in the West Bank and Gaza Strip are allowed to pump so that it does not exceed 100 cubic meters per day.
- 2- Restricting the drilling of new wells for agricultural purposes.
- 3- Taking permits for drilling new wells and using springs.
- 4- Confiscating Palestinian farmers' wells in favor of Israeli settlements.
- 5- Determining the depths of drilling wells, no more than 120-140 meters.

Israel has declared the Jordan Valley a military zone to prevent the Palestinians from reaching the western shore of the Jordan River, and to benefit from what remains of it after it turned the vast majority of it into the Sea of Galilee.

According to the publications of the Palestinian Water Authority<sup>45</sup>, Palestinians and Israelis can withdraw a quantity of water from the Palestinian underground basins as follows (in millions of cubic meters / year).

The Palestinians	The Israelites	
------------------	----------------	--

<sup>45</sup> Annual Water Status Report 2011, Palestinian Water Authority, p. 15

22	340	Western basin
42	103	Northeast Basin
54	40	The eastern basin
118	483	Total

All water is renewable, so that withdrawal is safe, but the Palestinians do not benefit from all the amount prescribed to them in the agreement, all what they withdraw does not exceed 98 million cubic meters annually, because they do not have sufficient wells to withdraw from them all the amount prescribed to them in the 1995 Interim Agreement and they cannot dig new wells, except with Israeli approval, which often does not occur despite the agreement made and this is considered a violation of the agreement signed between the two parties<sup>46</sup>.

Whereas the Israelis exceed their share of the withdrawal from the limit permitted by the aforementioned agreement, reaches 556 million cups annually and with a simple calculation, we find that the Palestinians benefit by 15% of the amount of water extracted from the Palestinian underground basins while the Israelis account for the rest.

#### **B. Coastal basin:**

The coastal underground reservoir is the largest underground water reservoir in Palestine, with a length of about 120 km extending from the Carmel Mountains in the north to the south of the Gaza Strip with a width of 3-10 km in the north and up to 20 km in the south. In his

---

<sup>46</sup> Selby, J. Cooperation, domination and colonization, The Israeli-Palestinian joint water committee. *Water Alternatives*, 6(1), 2013.

book, "Palestinian water and water security" engineer Omar Shedid said that the safe withdrawal from this basin is estimated at 476 million cubic meters, while Israel says that it is 395 million cubic meters and that was written in the Israeli water study submitted to the World Bank in the year 1994 AD<sup>47</sup>. This same source also says that Israel dug artesian wells inside and outside the Green Line of the Gaza Strip, and in the upper reaches of the underground water courses that feed the area of the Strip, causing a lack of nutrition and thus a lack of groundwater reserves. Israel also drilled a group of artesian wells in areas where there is good quality groundwater to secure water for domestic and agricultural uses in the settlements established within the borders of the Gaza Strip and outside it<sup>48</sup>. The area of the basins has shrunk from 75 square kilometers to 45 square kilometers in the northern region of the Gaza Strip, and from 45 square kilometers to 35 square kilometers in the southern region of the Gaza Strip, during the period from 1972 to 1995, due to the unfair use by Israel of these basins to meet the needs of its settlements in the region.<sup>49</sup> This Israeli behavior is a violation of the shared water sources, which contradicts the principle of equitable use, as well as the principle of not causing harm to others with regard to the use of common groundwater basins as stipulated in the Helsinki Agreements and the 1997 agreement which relates to the uses of shared water sources for non-navigable land. Israel controlled the water resources that feed the Palestinian areas, and that control was depriving the other Arab parties, such as Syria and Jordan, of the water of the river basin. Before 1967, the control represented 3% of the basin area. After the war, it became more than 90% to include the most important part of

---

<sup>47</sup> Shedid, O., *op.cit.*, p.141

<sup>48</sup> *Ibid* p.136

<sup>49</sup> Al-Adayleh, A., *The Struggle over Water in the Middle East, War and Peace*, p. 158.

the basin<sup>50</sup>. It is clear that by force, the Zionist entity has taken control of all Palestinian water sources, whether surface or groundwater without any consideration for international laws and rules that determines for the occupying power the limits of its conduct in relation to the natural resources of the occupied people.

---

<sup>50</sup> Armouti, K., *op.cit.*, p.93



## **CHAPTER 4: WATER SOURCES IN THE PALESTINIAN-ISRAELI NEGOTIATIONS**

The political dimensions of Israel's control of Palestinian water sources have always been present in the minds of Israeli politicians, whose ultimate goal is to possess enough water to establish the state itself, and what is sufficient to sustain its agricultural and industrial development process, as well as achieving a level of welfare that can be a magnet for Jewish immigrants to it. As for their second goal, it is to work to prevent the establishment of any Palestinian entity between the sea and the river, and they still have the hope associated with hard work to attract more Jewish immigrants to install the pillars of their state, which they believe is experiencing existential risks<sup>51</sup>.

### **4.1 Water sources in the Palestinian-Israeli negotiations**

The Palestinians had a difficult negotiation experience with the Israelis on the issue of water, therefore, the Israeli negotiating premises cannot be understood without bring up the historical approach through a review of both the historical and religious components of the Israelis' view of the water issue. Likewise, it is necessary to review the strengths and weaknesses in the Palestinian negotiating performance and to know the deficiencies in order to avoid them in the future, so that the process of Palestinian political action is enriched, and developed with appropriate strategies to deal with the Israeli methods of negotiations. Also it's important to present the way in which the issue of water was addressed in the Palestinian-Israeli agreements and to diagnose the flaws that were the reason for the failure of the Palestinian negotiating experience.

---

<sup>51</sup> Tal, A. *International Water Law and Implications for Cooperative Israeli-Palestinian Transboundary Water Management*. In *Integrated Water Resources Management and Security in the Middle East*, 2007, pp. 213-236.

### **A. Historical background - the importance of water in religious and Zionist thought**

In order to understand the political dimensions of the Israeli violations of the right of the Palestinians water in particular and the Arab water sources in general one must review the historical and religious background of the establishment of the Zionist entity. Water occupied an important and strategic place in the Jewish and Western plans to establish the state of the Zionist entity for a simple reason that they were consciously aware of the importance of water in the establishment, survival and development of any given entity. In the last quarter of the nineteenth century and the beginning of the twentieth century, when the actual planning and implementation of the establishment of the Zionist entity began, the Jewish leaders declared that the state borders should include the headwaters of rivers in northern Palestine, as well as an important part of the Yarmouk River and the southern part from the Litani River. In a memorandum to the Council of Paris in 1919, the Jewish Agency considered that Jabal Al-Sheikh is the true father of water in Palestine<sup>52</sup>, and in a letter that “Haim Watzman” addressed to the Peace Conference in Paris, he stated that there is no possibility to establish a Jewish national home without the waters of Jordan and the Litani<sup>53</sup>. Likewise, “Ben-Gurion” stressed in a note sent to the British Labor Party that the most important rivers of “Israel” are Jordan, the Litani and Yarmouk<sup>54</sup>. The Jews cling to the Upper Galilee region and its water sources, during the partition project in 1947<sup>55</sup> therefore, it is easy to understand the political dimensions of the Israeli desire to acquire water resources in historical Palestine and the neighboring Arab countries.

### **B. The reasons behind the Israelis aspiration to acquire water resources in historic Palestine:**

b1- Ensuring the survival of the Zionist entity

---

<sup>52</sup> Shedid, O., op.cit., p. 179

<sup>53</sup> Ibid p. 180

<sup>54</sup> Water in the final negotiations- Palestinian Ministry of Foreign Affairs-  
<http://www.mofa.pna.ps/ar-jo/>

<sup>55</sup> Ibid

It is inconceivable that the Zionist entity and any other human grouping would exist without the availability of sufficient quantities of water. Life without water would not have originated in the first place. For instance, personal use of water for hygiene helps to maintain the required levels of health status, and leads to social stability as well as the emergence of industrial and agricultural businesses, and all of this engender political stability, which is an indication of the fact that the Israeli entity is on the path of survival and growth as seen by its strategic planners.

#### b2- Bringing more Jewish immigrants to Palestine

The expansionist plans in the process of bringing more immigrants to the "promised land" as they like to call the land of Palestine have always been linked to the availability of additional quantities of water. Their dreams don't stop at the historic mandatory Palestinian borders, but covers the area between the two great rivers, the Nile. The Euphrates, and reaches the holy city of Mecca and the Islamic holy places in the Arabian Peninsula. Essentially the two blue lines in the Israeli flag refer to the Nile and the Euphrates, and what is written on the door of the Knesset "From the Euphrates to the Nile, your King Israel" is also a proof of this. It must be noted here, that the Israeli state is the only country in the world that obtained the birth registrations and membership later on without indicating in its constitution or its internal system fixed borders that the world recognizes, as Moshe Dayan once said when asked about the boundaries of Israel: "The borders of Israel, are where the tracks of our tanks arrive"<sup>56</sup>. But the Western world that created Israel to get rid of the Jewish problem at the expense of the Palestinian people, does not care about such statements, and treat this artificial entity with a clear political advantage and provides it with all the possibilities of survival and steadfastness in a region characterized by its

---

<sup>56</sup> Mahmoud,K., *African Journal of Political Sciences*, 6(1).

extreme hostility towards it .The Israelis give great strategic importance to the issue of controlling the Negev region, because they see it as a way out of the Israeli congestion. Data indicate that about 80-90% of the population of Israel is gathering in an area that extends about 120 km along the beach between Haifa and Ashdod what poses a real security threat to Israel<sup>57</sup>. The Negev region is the hope of Israel for the future in terms of military, economic, and geographical aspects, as well as agricultural, and all these factors depend on the availability of water in this region as a necessary condition for its reconstruction.

### b3- Preventing the formation of a Palestinian Entity:

Before the establishment of the Zionist entity, the Zionist circles in the West promoted the saying that Palestine is a land without a people for a people without a land so that Western citizens may like the idea of usurping the land of Palestine from its people whose generations have been living peacefully throughout history. The legitimacy of the Palestinian people's presence did not diminish the relatively short foreign invasion, including the current Israeli invasion that up to this point did not last long if compared to other invaders such as France's 130-year occupation of Algeria, which means that the age of the Zionist entity is still relatively small if we compare it to the age of French occupation of Algeria Despite that, the Palestinians practiced all forms of resistance in their legitimate reaction to the usurpation and displacement of their lands by the Zionist brute force, which the British forces that controlled Palestine in the name of the international mandate provided all the reasons for success, and the Palestinian forms of resistance varied from demonstrations, strikes, civil disobedience to military resistance with tools Simple, limited and old guns. Successive Palestinian revolutions persuaded the world of the

---

<sup>57</sup> Ibid

existence of the Palestinian people, which culminated in the recognition by the Israeli entity of the existence of the Palestinian people and the Palestine Liberation Organization as its representative. And this recognition, which means that this people has rights, including the right to self-determination, of course, and its right to control its natural resources and their water resources, as we find that the Zionist entity in its negotiations and subsequent agreements with the Palestinians seeks to place its hand on the water sources in the West Bank and Gaza Strip after having He placed his hand on the Palestinian water sources in northern Palestine and the waters of the Jordan River basin. The Israeli side's attempts to acquire and control Palestinian waters before and after the Oslo agreements are essentially aimed at preventing the establishment of an independent Palestinian entity with full control and sovereignty over its natural resources, which is a necessary condition for survival and growth for the new entity. Consequently, the water battle with the Israeli entity is an open battle until agreements are reached, and this is a matter of doubt by influential intellectual and political currents in Palestinian society, where some believe that the conflict with the enemy is a conflict of existence and not a border conflict as well as a water struggle<sup>58</sup>. Therefore, the Palestinians, even in negotiations regarding the interim period, must adhere to their water rights, not what the Israelis offer them to meet their needs on humanitarian grounds.

---

<sup>58</sup> Sawalhi, B. I., Mimi, Z. A., & Aliewi, A. S.. Multi-criteria decision tool for allocating the waters of the Jordan Basin between all riparians. In Proceedings of the International Conference "Globalization and Water Resources Management: The Changing Value of Water, 2001, pp. 6-8.

### **C. Sources of water in the Palestinian negotiating agenda:**

The issue of water in the occupied Palestinian territories does not occupy a large place in the Palestinian political agenda despite its paramount importance not only as a necessary condition for human existence, but also because of its developmental, social, economic and political dimensions in the emergence and permanence of any political entity. In fact, water has always been at the end of the agenda of Palestinian politicians or is not in the list at all, although it should be present in all forums and at negotiation tables at every possible opportunity. This lack of interest in such an important issue drew the attention of a German expert in the field of water in the Middle East Mr. Messerschmid<sup>59</sup> who wrote in his book “resounding silence about the water crisis in the occupied Palestinian territories” the four possible reasons for neglecting such an important issue as water which he cited as follows:

- 1- The water problem may be related to the social classes of the Palestinian people, and accordingly it is logical that the upper class are affected less than other classes on the issue of water, and therefore they have less motivation to pay attention to the problem and solve it. He added that if there were dry water lines or there was an epidemic disease spreading in Ramallah, the press would write and everyone would care to solve the problem and it might even scatter to reach outside the borders.
- 2- The public debate in Palestine about water takes place in the context that it is a fateful problem related to nature and rain, and these sayings are supported and promoted by the Israelis and the West in order to reduce the impulse of the Palestinians towards demanding the restoration of their water rights, and unfortunately, some Palestinians working in the field of water accept the idea and believe it.

---

<sup>59</sup> Messerschmid, C. The Silent Stakeholder—the Role of the Public in the Palestinian Water Sector. *Water: Rights and Values*, 2009, p.284

- 3- Water as a commodity and an industry achieves less profits than any other industry such as petroleum. From their viewpoint, it is not a strategic economic commodity and has no great importance in political economy.
- 4- The Oslo Accords made Israel the true regulator of Gaza Water, therefore, little progress has occurred, for example, in increasing water supplies for disadvantaged groups, according to the 2009 World Bank report. Thus, the Palestinian water workers' keenness to maintain financial support leads them to turn a blind eye on the real causes of the water problem and work to solve it.

The expert concludes that water and negotiations over water, which have a great impact on the Palestinian people, are not an issue of public debate among the Palestinian people but been dealt with extreme secrecy in the Palestinian society rather than disclosure, and secrecy always serves the strong party in the negotiations, and here of course it is not the Palestinians who definitely needs popular support in their negotiations<sup>60</sup>.

What the expert have mentioned is of a great value. It is necessary to re-evaluate the Palestinian negotiating strategy regarding water and raise the issue to the public level as a public issue. Negotiation is considered the only peaceful, civilized method in the settlement of disputes, because the alternative is war with all its collateral damages, destruction, killing and sabotage.

#### **D. The prior-use principle:**

The principle of prior use of water indicates that the first time user of water is the holder of the first right to use, and the person or entity that uses the water first is called the big user, and the

---

<sup>60</sup> Ibid

subsequent users are called the small users, and the big user acquires a right called the right of priority<sup>61</sup>. In order to preserve the right of the big user to his share of water, many countries have resorted to specific and fair methods and mechanisms for determining quotas and managing water rights, and this is what the Helsinki Rules of 1966<sup>62</sup> brought, it also appeared clearly in the 1997 United Nations Convention on the law of the Non-Navigational Uses of International watercourses<sup>63</sup>. This convention assumes that the countries sharing the water basins are obliged to negotiate the division of quotas within the framework of the guidelines set by the agreement. Other mechanisms can be resorted to, such as resorting to the international judiciary to reach solutions when normal negotiations fail.

The prior-use principle has remained the cornerstone of the Israeli negotiating approach with the Palestinians. Some studies have reported that nearly eighty years ago, that is, long before the establishment of the state of Israel, Jewish farmers in the Jordan Valley, and other valleys, were using large quantities of water within the scope of safe withdrawal from the mountain reservoir, springs and deep wells, by means of the peasants or through local, organized initiatives, and all of these were obtaining official approvals from the British Mandate authorities, which granted the engineer, Pinhas Rutenberg, a Jewish engineer, an exclusive privilege to use the water of the Yarkon River<sup>64</sup>. And until the moment, the Israeli occupation authorities extract water from the western basin through 300 wells located to the west of the Green Line, taking advantage of the hydraulic inclination of the water of the western basin towards the west, and from the hydraulic

---

<sup>61</sup> Tal, A. *International Water Law and Implications for Cooperative Israeli-Palestinian Transboundary Water Management*, 2007, p.213

<sup>62</sup> Siyad, M. A. *HELSINKI RULES ON THE USES OF WATERS OF INTERNATIONAL RIVERS AND INDUS WATERS TREATY*, 2005, *article 5*.

<sup>63</sup> Abu-Zeid, K. *International water law from Helsinki rules to the United Nations convention on the law of the non-navigational uses of international watercourses*, 2001, pp.26-31

<sup>64</sup> Shuval, H., & Dweik, H. *Water Resources in the Middle East*, 2007, p. 288



inclination of the waters of the northeastern basin towards the north and east. The prior-use principle was one out of eleven factors established by international agreements (the Helsinki Convention and the United Nations Convention in 1997) on the basis of the two agreements, water is divided and the amounts due for each of the riparian countries are calculated in the shared water or surface basins.

Therefore, there are several necessary conditions that must be met by any party that wants to go through a successful negotiation process, which we review below with its implications for the Palestinian case.

#### **E. Conditions for successful negotiation:**

##### e1-Negotiating power:

Negotiating powers refers to the amount of power, freedom of movement and decision that a negotiator enjoys, given by his state. Negotiators in Palestine always have the confidence of the leaders and have the appropriate mandate. With the existence of a normal, permanent state of coordination with the leadership in charge of following up on negotiations, while the leadership maintains its right to be the final decision-maker<sup>65</sup>.

##### e2- Negotiating capacity:

Negotiating capacity refers to personal characteristics, technical competence, dexterity and familiarity with the conditions of the negotiation process. It is proven that the Palestinian negotiating teams did not have professional negotiators to confront their Israeli counterparts, and

---

<sup>65</sup> Elmusa, S. *Water conflict: economics, politics, law and Palestinian-Israeli water resources*, 1997, p. 368

this issue is very dangerous as catastrophic mistakes have resulted from it; the Palestinian negotiator agreed to give Israel the right to veto the joint management of the three water basins in the occupied West Bank, and here the issue has become as if the Israelis obtained a legal approval from the Palestinians to manage the underground reservoir when the process was considered illegal and illegitimate in the pre-negotiation era<sup>66</sup>.

### e3-Negotiating information:

Information is very important to the negotiating team, whether information about the issue under negotiation or about the negotiating team of the other party, and here the Palestinian negotiating team and the Palestinians in general had a major problem, as the Palestinians' interruption of the water issue for nearly thirty years led to a very serious information gap. That why they needed to sought information about the water issues that concern them from their opponent, whose integrity and credibility was never known<sup>67</sup>. Even the information announced by foreign missions and research institutions in the West about water in the period before 67 and before 48 as well, cannot be trusted enough, since it is politically tailored information made to serve the agenda of the Zionist movement that was behind most of these missions in order to send political messages. These messages serves the goal of displacing Jews to Palestine or settling Palestinian refugees in their new places of residence, and perhaps the Johnson Committee sent by the US President to resolve the dispute over the Jordan River waters gave Jordan a reasonable amount of river water (Jordan used to represent the East and West Banks) of about 756 million cubic meters

---

<sup>66</sup> Ibid

<sup>67</sup> Shedid, O., op.cit., p. 340

annually, in order to facilitate the resettlement process of refugees in eastern Jordan at the time<sup>68</sup>. The availability of information about the people of the other negotiating team in terms of knowing each person's scientific and academic history, his military biography and perhaps the circumstances of his upbringing, personal qualities and inclinations, helps the negotiating team to understand the psychology and motives of the other person's behavior, and helps a lot to reduce the degree of tension, and gives the negotiator a greater clarity of vision. Especially if the Palestinian negotiator has some degree of experience in the field of psychology. None of the Palestinian negotiating team did have sufficient information about the Israeli team, and that is because Israel imposes a blackout on the real information on the water issue. Palestinians cannot access the Israeli database, while the Israelis have access to the Palestinian Water Authority database<sup>69</sup>. President of the Palestinian Water Authority, Dr. Shaddad Atili pointed out that the source of the information and water statistics on the basis of which the Oslo agreements were built were drawn from the Israeli side. The Palestinian side cannot conduct geo-hydrological studies on the capacity of the water basins, due to the Israeli refusal<sup>70</sup>.

#### e4-Negotiating experience:

It refers to the skills necessary for a negotiator, which are formed after going through several negotiation experiences, or at least see successful negotiation experiences experienced by others from friends and possibly enemies as well, which makes him deal flexibly with the concepts of

---

<sup>68</sup> Ibid p.213

<sup>69</sup> Smith, H. To what extent does the issue of water play a role in the Israel-Palestine conflict, 2011, pp 31-32

<sup>70</sup> Ibid

negotiation theory and negotiation strategy that have been agreed upon in Back rooms for negotiation rooms. The Palestinian negotiator has not gone through previous negotiations, and it does not appear that he has been sufficiently familiar with the experiences of others in negotiating, even on the experience of our predecessors, the Egyptians and Jordanians, who went through long negotiation experiences with the Israelis, and who have sufficient experience of the arduous, bitter and inconvenient Israeli negotiation method<sup>71</sup>.

e5-The balance of power between the two parties:

There is no doubt that the balance of power plays a decisive role in determining the final outcome of the negotiation process. But here, the balance of power is not intended only as the balance of military power, but rather the comprehensive force elements, which include the legal force supported by international agreements and treaties as well as the public support that the issue under negotiation enjoys from the masses whose interests are being affected as well as the extent of external political support from regional and international powers that this issue enjoys, and the extent of its contribution, whether negatively or positively, to establish stability in the global political system. Only a skilled and experienced negotiator will benefit from these elements. Israel has been keen to deviate as much as it can from international law, because moving away from international law and international legitimacy causes the Palestinians to lose one of their most important political and negotiation cards with the Israelis, which creates a state of imbalance of power between the two parties, and the Israeli argument has always been that Palestinian negotiators are not a legal entity for international laws to apply to them, but rather a political group that lives on this land owned by the Zionist<sup>72</sup>. And, of course, this was before the

---

<sup>71</sup> Elmusa, *SWater.*, *op.cit.*, p. 340

<sup>72</sup> Kaaouch, F., *op.cit.*, p. 46

international recognition of Palestine as a non-member observer state in the United Nations on the territories occupied in 1967 AD<sup>73</sup>, and this recognition that put the negotiation process legally in front of a new opening, and put in the hands of the Palestinian negotiator new weapons in his political and legal battle in international forums, perhaps He takes advantage of it and uses it skillfully to calculate an issue in water and other issues. For this, it can be said that the three technical aspects, which are the negotiation experience, the negotiation information, and the Palestinian negotiating cadres, were not prepared to fight a negotiation battle with the Israelis who possesses full information, has sufficient experience and has excellent trained and equipped human cadres, in addition to two main factors which are:

- 1- the Israeli side did not have the desire to reach an agreement based on the principles of justice, truth and equity over water.
- 2- The balance of military forces and Israeli military control on the ground, as well as other components of the balance of power, such as the weak Arab position, and European and American political and financial pressure, all of this was definitely reflected on the negotiating table at the expense of the Palestinian side.

---

<sup>73</sup> Nichols, M. U.N. (2018, October). Allows Palestinians to act more like full member in 2019. **Reuters**

## **CHAPTER 5: WATER IN THE PALESTINIAN-ISRAELI AGREEMENTS**

The Palestinians and the Israelis signed three agreements that included in their texts the issue of water:

- 1- The Declaration of Principles of 9/13/1993 in Washington, in which the issue related to water came in what was stated as: The two sides agree to form a permanent Israeli-Palestinian committee for economic cooperation in order to develop and implement the programs specified in the protocols 3 and 4 which states that cooperation in the field of water, including the water development project, should be prepared by experts from both sides, and that will later define the form of cooperation in managing water resources in the West Bank and Gaza Strip, and will include proposals for studies and plans on the water rights of each party, as well as on the equitable use of water resources. All this will be implemented during and after the transition period<sup>74</sup>. This text is extensively vague for it only discusses a joint program for developing water and managing its resources, and

---

<sup>74</sup> Shlaim, A. The Oslo Accord. *Journal of Palestine Studies*, 23(3), 1994, pp. 24-40

plans and studies on how to develop resources without specifying the rights of each party in these resources. Why not talk about Palestinian water rights that are based on the principles of international law? Why not refer to well-known international legal mechanisms and clear international agreements through which water is shared in a fair and equitable manner for both parties? This ambiguity is not a matter of coincidence. Rather, it has a dimension in Israeli thinking that appeared a lot in the statements of the Israeli delegation that the signing of any water agreement between the Palestinians and the Israelis does not mean that the Israelis are willing to forfeit any drop of water from what they are currently. In any case, Oslo was a declaration of principles, and all these issues had to be clarified in detailed agreements in future stages.

- 2- The Gaza-Jericho Agreement - signed on May 4, 1994, which concerns the transfer of powers and responsibilities from the Civil Administration<sup>75</sup>. In this agreement, which concerns the Gaza and Jericho regions, the Israelis have resorted to expressing their concern over resources, as the agreement stipulated that the Palestinian Authority be granted all powers of managing and maintaining the water system and digging wells, but without harming the resources. The ambiguity involved in the term "harm" opened the way for the Israeli side to explain "harm" in their way that achieves their own goals of making the most of Palestinian water under the pretext of preserving resources. The agreement was also distinguished by the abundance of texts that stipulate the formation of joint committees to discuss outstanding problems and matters of mutual interest to preserve resources, and these committees work by consensus between the two parties.

---

<sup>75</sup> Shehadeh, R. Questions of jurisdiction: a legal analysis of the Gaza-Jericho agreement. *Journal of Palestine Studies*, 1994, pp. 18-25.

There is no reference when disagreeing, whether it is a technical, political or legal reference. Consequently, the agreement was able to achieve strategic interests that serve settlements and army camps, as well as Israeli cities and villages<sup>76</sup>.

- 3- The Israeli-Palestinian Interim Agreement for the West Bank and Gaza Strip. The temporary Interim Agreement between the Palestinians and the Israelis, sometimes called Oslo 2, was signed on September 28, 1995, and the article devoted to water and sanitation was Article 40 with all its clauses and it is located in Appendix 3 - the Protocol on Civil Affairs in which the Israelis recognize in the first clause of this article Palestinian water rights in the West Bank, and this is an unexpected and very important development in the Israeli position, which was keen from the beginning to deal with the water issue with the Palestinians as a matter of needs and not as a matter of rights<sup>77</sup>. Negotiations over these rights were postponed while the Israeli authorities were working to convert temporary conditions into permanent ones, as Yitzhak Rabin, the former prime minister of Israel, repeated more than once that dates are not sacred. The agreement also included a repeated Israeli insistence on the parties' endeavors to develop additional water sources, in a clear implicit indication that the Israelis are unwilling to give up their water even if it is not their right. Evidence of this is the statement of Ben Meir, head of the Israeli delegation in the High Joint Committee on the issue of Water, according to Haaretz newspaper on August 27, 1998, that there is no possibility for the Palestinians to obtain additional quantities of water as stipulated in the agreements. Article 9 refers to technical assistance provided by the Israelis to the Palestinians in determining the locations of

---

<sup>76</sup> Ibid

<sup>77</sup> OSLO, B. Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, 1995, *Appendix II Annex III Article, 40*.



digging new wells<sup>78</sup>. This confirms the information poverty that the Palestinians suffered from for the 9th article gives the Israelis the opportunity to control the location of wells to serve their goals. The aforementioned article did not refer to the meaning of the word “assistance”; does it mean the authority to reject or accept, or is it only advisory? the second most prominent development in this agreement was the formation of what was called the Joint Water Committee-JWC, which has the daily coordination function in the joint water issues, including management of water resources and water system, and agreement on future projects in the West Bank. It was also agreed that the committee’s decisions would be unanimous. The committee consists of six persons, three Palestinians and three Israelis<sup>79</sup>. Thus, Israel has legal authority with Palestinian approval over water resources in the entire West Bank, through the right of veto over any Palestinian projects to extract enough water to irrigate Palestinian cities and villages, and this is one of the big mistakes that the Palestinian negotiator committed. As for the Gaza Strip, the agreement emphasized that the conditions and agreements prevailing in the Gaza Strip would not change. The agreement included a clear explanation of the areas of cooperation between the Palestinian and Israeli sides, but in all fields the Israeli hand remained supreme, because they possess power, information, experience and excellent knowledge of international law despite their lack of respect for it.

---

<sup>78</sup> Ibid

<sup>79</sup> Mahler, G. S. Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip (September 28, 1995). In *The Arab-Israeli Conflict*, 2009, pp. 243-249

## 5.1 Palestinian negotiating performance

There are many issues related to the Palestinian negotiating performance that can be examined, including:

a-Knowledge of the nature of the negotiator and his backgrounds

The Palestinian negotiator did not realize the religious and historical nature of the Israeli negotiator's position on the water issue and the reason for the elusiveness in the negotiation process. He therefore ignored the historical dimension whose goal was to make the water resources in Palestine within the borders of the Israeli state for nearly eighty years before the state materialized into a reality, and this is what gives the water issue greater importance and sanctity. In 1955, Ben-Gurion stated, that Israelis are fighting with the Arabs the battle of water, and based on the outcomes of the battle their presence ceases or continues<sup>80</sup>. And since water was for them a matter of life and death, their expansion plans remained organically linked to the quantities and sources of water that they control. The Palestinians showed a lot of flexibility, leniency and disregard for small details on the grounds that these agreements are of a transitional nature and have specific deadlines, while the Israeli side met them with a different behavior that expresses its intentions to control the water resources and not grant the Palestinians any rights related to this matter, hence they promoted the saying that the water resources in the area are no longer sufficient to meet the needs of its residents, and that the underground reservoirs have been depleted and polluted, which means that Israel is not willing to negotiate over the water resources it currently uses<sup>81</sup>.

---

<sup>80</sup> Salame, Y. ., op.cit., p. 75

<sup>81</sup> Al-Adayleh, A., op.cit., p.243

b-The temporary nature of the agreements and joint management

The Palestinian-Israeli agreements were designed to serve a five-year period, which is the transitional phase, which the Palestinians believed would lead to the establishment of their future state. The joint management of water basins in the West Bank granted the Israeli side the right of veto with regard to the management of the aquifer and the necessary extractive projects. Consequently, it deprived the Palestinian side of exploiting its natural resources<sup>82</sup>.

c-Postponing consideration of the issue of Palestinian water and water rights to final status negotiations

Discussing the Palestinian water and water rights issues was postponed, which resulted in making Palestinian water resources at the mercy of the Israelis, and that those same resources would remain in a state of depletion by the Israelis until a final agreement is reached regarding the Palestinian problem.

## **5.2 Features of Israeli negotiating behavior**

a- Refusal to commit to any negotiating terms of reference

The Israelis refused to abide by any negotiating references, such as international law or international legitimacy decisions, despite their prejudice to the Palestinian right in general and its water rights in particular, as the Israeli negotiators refused to deal with the Palestinian negotiators as holders of rights recognized by international law, but rather insisted on dealing

---

<sup>82</sup> Salame, Y. *Israeli Water Policy and its Impact in the West Bank. A study in geopolitics*. Unpublished Master Thesis, 2008 p.62.

with them not as representatives of a state, but as representatives of a liberation movement, which is the Palestine Liberation Organization. And they were confronting them with words, such as go back to international law and read it carefully. You can't be a party in international law; you do not represent a state<sup>83</sup>. Accordingly, the issue of their dealing with an issue Accordingly, they were dealing with the water issue on the basis of human needs and not rights, and this is a dangerous matter for Palestinian water rights.

b- Arrogance, dominance and the transcendent method of dealing

Israelis acted as if water was a present on the land that the Lord granted them, and it is a heavenly historical right that no one can share. Modern international law also gives them this right based on the principle of prior-use; first in time, first in right, as they were the first to benefit from this water, while ignoring the simple truth that the Palestinians have used this same water for more than four thousand years<sup>84</sup>.

c-Refusing to agree on any negotiating agenda

The Israeli negotiator wanted to develop common sources of non-conventional water so that both parties benefit from them, and to discuss the possibility of financing projects from a third party. He therefore has clearly refused to agree on a negotiating agenda regarding water issues, even he refused to receive and discuss the draft Palestinian agenda on water issues during all eight meetings that took place during 2008, because this Palestinian agenda included provisions unacceptable to negotiation from their point of view, even though It was based on the references of international law and international legitimacy<sup>85</sup>.

---

<sup>83</sup> Kaaouch, F., op.cit., p. 54

<sup>84</sup> Ibid

<sup>85</sup> Ibid

#### d-Delaying tactics

Procrastination and gaining time were manifestations of the method adopted by the Israeli negotiators, as it was clear that they did not want to negotiate. They come to the meetings without papers and without a draft agenda aiming at sending a message to the international community that they are negotiating, and that they are not the ones who obstruct and place obstacles in the way of the negotiation process. This approach in the Israeli negotiating mentality was the dominant one in all negotiations, not just in the issue of water<sup>86</sup>.

## **CHAPTER 6: ACCEPTANCE OF PALESTINE AS NON-MEMBER OBSERVER STATE IN THE UNITED NATIONS AND ITS POLITICAL IMPACT ON PALESTINE WATER RIGHTS**

The UN recognition of Palestine as a non-member observer state in the United Nations has added some credibility and strength to the Palestinian negotiating position. First, it is an acknowledgment of an internationally agreed upon Palestinian geography, which make the Palestinian claim for water rights granted by this geography have a political dimension that can be relied upon in negotiations with Israel. All the previously planned diplomatic campaigns that aim at extracting all Palestinian rights, especially water rights, can no longer be done. Such claims as the West Bank and Gaza Strip are a disputed land and not an occupied land are no longer accepted. This may become a starting point for the demand for

---

<sup>86</sup> Ibid

other rights, such as compensation, for example, for Israel's exploitation of Palestinian water resources throughout the occupation period.

### **6.1 UN recognizes Palestine as a non-member observer state**

Many politicians who support the idea of peace between the two states consider that it may be a decisive moment towards resolving the historical conflict in Palestine and finally recognizing it as a Palestinian state on the borders of June 4, 1967, which the Israelis insisted is a disputed land that is not subject to any international political reference, whether or not Judicial. The UN recognition of Palestine as a non-member observer state was an influential step for resolving the conflict politically and legally on the ground, which is represented by the Israeli withdrawal to the borders of June 4, 1967 and the establishment of a fully sovereign Palestinian state that controls its full resources and exercises its role in the United Nations as any other state committed to international law<sup>87</sup>.

---

<sup>87</sup> Gleick, P. H. Water in crisis Oxford University Press. New York, 1993.

## **6.2 Elements of power in the Palestinian negotiating position after the UN recognition**

The recognition of the state of Palestine is the recognition of the existence of this state, so that this state becomes entitled to claim its rights and privileges and has the right to conclude agreements and alliances, and it has the right to resort to international judicial bodies such as the International Court of Justice and the International Criminal Court to obtain its rights.

The recognition of the State of Palestine in 2012 will clearly affect the Israeli-Palestinian negotiations about the issue of Palestinian water rights as these negotiations have now terms of references, which are represented in the following:

- 1- In previous negotiations, Israeli negotiators have always been accustomed to refusing to resort to international legal references such as international agreements and United Nations resolutions, on the grounds that the Palestinians do not represent a political entity<sup>88</sup> nor do they represent a person of international law to which the provisions of international law apply. Recognition of the Palestinian state enhances the right of the Palestinian negotiator to demand his rights and to resort to international law and international legitimacy decisions, and the Israeli side is obligated to do so before entering into new negotiations.
- 2- It became possible for Palestinians to wave the paper of appeal to the international judiciary by going to the International Court of Justice, as well as the International Criminal Court against Israeli individuals and officials who commit crimes against humanity in the areas of water and the environment within the line of June 4, as it came

---

<sup>88</sup> Kaaouch, F., *op.cit.*, p. 68

to apply to this area the four Geneva Convention which states that the occupation forces are a temporary authority that does not possess any kind of sovereign powers, and is not entitled to exercise this sovereignty and attack the natural resources of the occupied people under any pretext.

- 3- The Israelis can no longer act on the basis of giving the Palestinians the water they need for drinking purposes only, and preventing water for agriculture, which until now is considered to be the backbone of the Palestinian economy. It is no longer possible or acceptable for the Palestinians to accept the principle of need, but rather there are rights that must be restored.
- 4- Palestinians do not benefit from the West Bank basins by more than 15%, the rest is used by the Israelis. Noting that that 95% of these basins are located in the West Bank, and the rest is located in the Palestinian territories pre-1967, As for the remaining amount of water, it is withdrawn from the many wells that are located within the Green Line or in the area that has become within the borders of Israel due to the Segregation Wall that was established by the occupation state, which the Israelis see as representing the water borders of the Zionist entity, despite the fact that Palestinian cities and villages in the West Bank suffers from a water crisis in the summer, while Jewish settlers in the West Bank enjoy about 10 times what the Palestinian gets<sup>89</sup>. The EWASH reports indicates, that the daily consumption rate of the Palestinian citizen has reached 73 liters of water, which is much lower than the rates set by the World Health Organization as a minimum

---

<sup>89</sup>EWASH is a coalition of Palestinian and international organizations working on water and sanitation in Palestine <https://reliefweb.int/report/occupied-palestinian-territory/ewash-concerned-water-restrictions-west-bank-resulting-israeli>



consumption of 100 liters of water per capita. While the average Israeli per capita consumption is no less than four times what the Palestinian citizen gets from fresh water, and sometimes increases to 300 liters. Vulnerable communities in the West Bank, such as camps, remote villages and Bedouin settlements, which are many on the Palestinian geographical map, live on what does not reach 20 liters per day per capita, which is the minimum recommended by the World Health Organization in emergency situations to sustain life<sup>90</sup>.

- 5- The Palestinians can now demand financial compensation for the quantities of water that the Israelis have exploited from 1967 to the present day, amounts that experts estimated at a financial value of about a quarter of a trillion dollars.<sup>91</sup>
- 6- The fact that the West Bank borders the Jordan River in the Jordan Valley, this issue brings back the dispute over the waters of the Jordan River Basin to point zero, and because Palestine is a riparian state, it has the right to claim its share based on international laws and agreements, especially the 1966 Helsinki conventions<sup>92</sup> as well as the 1997 United Nations Convention on the Law of the Non-Navigational Uses of the Shared International Watercourses that entered into force recently in 2014<sup>93</sup>.
- 7- The Israelis and Jordanians can no longer act on the issue of the Bahrain Canal in isolation from the Palestinian side due to its direct repercussions on the Dead Sea, which

---

<sup>90</sup> Ibid

<sup>91</sup> Kaaouch, F. *All of the claims proffered by the Israelis on Palestinian water rights have now been disproved. "Under international law, Palestine has riparian rights in all common groundwater basins*, 2012, p.120

<sup>92</sup> Abu-Zeid, K., *op.cit.*, pp.26-31

<sup>93</sup> McCaffrey, S. C. *The 1997 UN Watercourses Convention: Retrospect and Prospect. Pac. McGeorge Global Bus. & Dev.*, 2008, p.165.

covers the Palestinian lands in the northwestern side of it, as well as the joint benefit of the riparian parties, including Palestine, in any economic projects or tourism project in the Dead Sea region.

- 8- The Palestinians have the legal capacity to demand in international forums the cessation of the Israeli violations against the Gaza Valley and to give the Palestinians a share of the water that the Israelis are holding behind the dams in the eastern borders of the Gaza Strip. Noting that the annual flow of the Gaza Valley is about 35 million cubic meters annually, it mainly originates from the Samu Mountains in the Hebron region, and therefore it originates from Palestinian land and flows into the Palestinian Sea of Gaza. The Israeli authorities' control of the waters of the Gaza Valley prevented the Palestinians from benefiting from it and exposed them to damages due to the opening of the gates of the dams when the water level rose and bursts in large quantities, causing harm and destruction to the residents on both sides of the valley from the villages bordering it.
- 9- The regulations of the World Bank, which is considered one of the most important international lenders for large water projects resorted to by countries that want to obtain a larger share than what the law allows them, allow the affected countries to resort to the so-called financial veto, through a carefully formulated policy related to drenching rivers. It is the bank's policy to refuse financing if another riparian country objects to the project<sup>94</sup>.

The UN recognition of Palestine has opened great political and diplomatic horizons for the Palestinians to save what can be salvaged from historic Palestine. 22% of the historical area of

---

<sup>94</sup> Mallat, S. Water in the Middle East. Publications and the Ministry of Syrian Culture. Damascus, 1997, p. 395.

Palestine is not an aspiration for anyone, but the political, geographical, and historical factors and the complexities of the impotent Arab system and the dominant international system may not allow them to do more than that at the present time until the opportunity arises for them to be able to regain all their rights.

## **CHAPTER 7: LEGAL DIMENSIONS OF THE ISRAELI VIOLATIONS OF THE RIGHT OF THE PALESTINIAN PEOPLE TO WATER RESOURCES**

Most indications show that the legal dimension of the Israeli violations of Palestinian water resources was almost absent or less present in the Palestinian handling of the water issue, before Palestine obtained the status of a non-member observer state in the United Nations, and this was evident in the public Palestinian discourse in international forums<sup>95</sup>. Instead of resorting to the language understood by large sectors of the global public opinion; the language of international law and facts proven on the ground by the testimony of highly credible international bodies, the

---

<sup>95</sup> Besson, S. Theorizing the sources of international law. In *The philosophy of international law*, 2010, pp. 163-185

Palestinian discourse was emotional and cloudy<sup>96</sup>. This was reflected in the negotiations process and their results. The Palestinian authority should have had more knowledge of the rules of international water law that Israel has violated and the legal loopholes in the Israeli negotiating position. Now, after the change in the legal status of Palestine, it has become necessary to prepare a negotiating strategy based on the rules of international water law that give the Palestinians many of the rights that the Israelis have usurped. This strategy includes confirming the international responsibility of Israel for its violation of Palestinian water resources and pursuing the consequences of this responsibility.

### **7.1 The international laws that Israel has violated in the area of water resources.**

International law is a set of legal rules and an agreement issued as a result of the explicit or implicit consent of states. It regulates the international community and is binding on all states in their actions at the external level, and defines the rights and duties of each state vis-à-vis other states<sup>97</sup>. In Article 38, the Statute of the International Court of Justice referred to the sources of international law, as follows:

---

<sup>97</sup> Ibid

- 1- International, general and private agreements that establish rules expressly recognized by the conflicting states.
- 2- International custom as evidence of a general practice accepted as law.
- 3- General principles of law endorsed by civilized nations
- 4- Court rulings and the doctrines of major authors in public law in various nations, and this is considered as a backup source for the rules of international law.

In the modern era, the era of international regulation, the need to regulate the relationship between the countries participating in the groundwater basins or the surface water from rivers and others has emerged. The Food and Agriculture Organization of the United Nations (FAO) has compiled the sources of international water law from framework agreements, international declarations, draft decisions and decisions that were adopted by international non-governmental institutions and international courts in the field of international water resources, and they were all published in a famous document in 1998<sup>98</sup>. Among the most important of these documents was the Madrid Declaration issued in Madrid on April 20, 1911. This announcement was the first release of the Institute of International Law. It dealt early with international rivers; those that flow in the lands of more than one country, the declaration indicated in the first clause of its second article, that if international rivers pass through the borders of a country naturally or long ago, then it is not permissible for this country to change the point from which the river enters the state's borders without the consent of other countries. And in the sixth clause of Article Two, it indicates that it is impermissible to make changes to the rivers that leave the lakes and that go to other countries without the consent of those countries<sup>99</sup>.

---

<sup>98</sup> Agriculture Organization of the United Nations. Development Law Service, & FAO. Legal Office. Development Law Service, 1998.

<sup>99</sup> Wolf, A. T, Shared waters: Conflict and cooperation, 2007, pp. 241-269.

The closure of the southern exit to Lake Tiberias, as well as the establishment of the Israeli national water carrier is considered as a diversion of the Jordan River, and this is considered an explicit violation of the Madrid Declaration, especially Articles Two and Six of the aforementioned first clause. Although the 1907 Hague Agreement referred to the obligations of the occupying forces in the territories under their occupation to preserve water resources, the 1911 Madrid Declaration was the first of the decisions adopted by the Institute of International Law and the focus was clear in the declaration on the principle of not causing any harm to others, that is, other riparian countries. While the decisions of the International Law Federation<sup>100</sup> focused on the principle of fair and reasonable use of water by the countries sharing an international river basin<sup>101</sup>. The International Law Federation's focus on the principle of fair and reasonable use of water was evident in the Declaration of Helsinki issued by the International Law Federation in its session of meetings in 1966, which focused on the use of the waters of international navigational and non-navigational rivers. It redefined the water basin, including both surface water and groundwater basins if there is a hydrogeological connection between them, or they are heading towards a single estuary, and this is the first time that transboundary aquifers have been exposed through an international legal document<sup>102</sup>.

The Helsinki Agreement referred to 11 criteria, which are considered the bases or justifications for dividing water between countries sharing ground basins or surface water on their foundations, including the prior-use principle.

It is known that the legal rules issued by the Institute of International Law and the Federation of

---

<sup>100</sup> PECHÁČKOVÁ, Š. Political and development issue of transboundary water resources management.

<sup>101</sup> Salman, S. M. The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: perspectives on international water law, 2007, pp. 625-640.

<sup>102</sup> Ibid

International Law are not binding in themselves, but they remained for a period of thirty years after their issuance of the main principle that is referred to when it is necessary to refer to international law until the 1997 framework agreement was issued by the United Nations. The International Law Union, which issued the laws of Helsinki, developed the laws and added other elements to them and issued them in a declaration containing a set of new laws in Berlin in 2004, 7 years after the issuance of the 1997 framework agreement<sup>103</sup>.

## **7.2 The United Nations Framework Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997.**

In 1947, the United Nations General Assembly issued a resolution to establish the International Law Commission (ILC); a body of six experts, elected through the nominations of member states, whose mission is to codify the rules of customary international law and the progressive development of existing laws. On December 8, 1970, the United Nations General Assembly requested the International Law Commission to study the issue of international waterways, and

---

<sup>103</sup> International Law Association, Berlin Conference (2004). pp, 3-55.

the committee began its work in 1971 and completed the draft in 1994, and after three years of discussion among member states in the General Assembly, the draft was approved by the United Nations General Assembly on May 21, 1997<sup>104</sup>. Some countries didn't accept to sign this agreement because of a conflict of interests, and yet the agreement has a guiding value for international judges, as they return to its texts when needed. The State of Palestine requested to join the agreement in early 2015, when the Palestinian President signed the documents required.

Of course, it is a comprehensive agreement that includes the work of the Institute of International Law and the Federation of International Law together and includes the principle of fair and reasonable use of the waters of the common international water streams, as well as the principle of not causing harm to others, as stated in the famous Helsinki rules. The presence of about 300 international rivers, 100 international lakes, and a large number of underground reservoirs, shared by more than one country, is a source of challenge to the international judiciary in the modern era in which the population is increasing and resources are scarce, which requires continuous development follow-up to prevent wars and crises<sup>105</sup>.

In its first article, the agreement indicates the necessity for the countries sharing watercourses to take the necessary measures to protect watercourses. Engineer Fadel Kaaoush, former head of the Palestinian Water Authority and Chairman of the High Committee for Water Negotiations in the Palestinian-Israeli negotiations, indicated that according to the hydrological data and facts, the most important and largest shared water basins between the Palestinians and the Israelis constitute shared water courses between the two parties and includes two main systems:

---

<sup>104</sup> Ibid

<sup>105</sup> Salman, S. M. The World Bank policy for projects on international waterways: an historical and legal analysis, 2009, p.67-68



- The system of groundwater basins, which includes a group of mountain aquifers, the coastal basin and the Mount Carmel basin, and Israel controls and exploits more than 90% of the combined water energy annually for these basins.
- The Jordan River Basin, which is an international watercourse in which five parties are sharing its basin: Jordan, Syria, Lebanon, Palestine, and the Zionist entity. Noting that Israel controls and exploits more than 87% of its resources<sup>106</sup>.Israeli practices do not apply to the two shared water systems with any of the provisions of the agreement, as it is clear that Israel has not adhered to the texts of the agreements nor their spirit of course, as it considers itself outside the nation system.

The United Nations Framework Convention on the Law of the Non-Navigational Uses of International Watercourses of 1997 aims to protect waterways and their proper management<sup>107</sup>.

In clear violation of this article, Israel did the following:

- 1- Diversion of the natural course of the Jordan River by closing the southern exit to Lake Tiberias, which deprived its partners in the Palestinian and Jordanian basin on the Jordan River of their full rights to water<sup>108</sup>.
- 2- Diversion of salty springs flowing into Lake Tiberias to the natural course of the Jordan River south of Lake Tiberias, as well as agricultural drainage water contaminated with fertilizers, which caused irreparable damage to the entire ecosystem of the Jordan River Basin south of Lake Tiberias.

---

<sup>106</sup> Kaaouch, F. A., *op.cit.*, p.1

<sup>107</sup> See Article No. (1) of the Agreement.

<sup>108</sup> Kaaouch, F. A., *op.cit.*, p.7

All of this violates Article 1 of the Convention.

The agreement explicitly refers to the necessity of sharing and equitably using shared waters. Countries with a waterway should use the watercourse in their territories in a fair and equitable manner, and should develop it with the aim of reaching the sustainable and comfortable global use of it, and to maintain its partnership with others. This partnership carries two aspects which are, the right to use the watercourse and the duty to cooperate in preserving and developing it as stipulated in the core of the agreement<sup>109</sup>.

Israel consumes 87% of the water resources in the Jordan River basin. Likewise, polluting the southern part of the river by throwing polluted waste into it, as it does not preserve it, develop it, or use it in a fair and equitable manner. The agreement referred to the main principle of international water law, which is the principle of fair and reasonable use of international watercourses<sup>110</sup> and here we are, of course, talking about non-navigational uses) which calls for the need to take into account a number of considerations and circumstances when distributing shared quantities of water between the riparian states on the basin

Such as:

- 1- Geographical, Hydrological, Hydrogeological, Climatic and Ecological factors.
- 2- Socio-economic requirements of the countries covered by the waterways.
- 3- Population associated with watercourses in every country with a watercourse.
- 4- The reflection of uses of watercourses in the watercourse country on the second country.
- 5- Prior use of international waterways, including current use.

---

<sup>109</sup> See Article No. (2) of the Agreement.

<sup>110</sup> See Article No. (6) of the Agreement.

- 6- Maintaining, protecting and developing the waterway, economizing on its use, and the expenses associated with these procedures.
- 7- The extent of availability of water alternatives of the quality and value of the common international watercourse in any of the countries.
- 8- The existence of committees of experts to determine the share of each of the riparian countries.

Although this paragraph carries future solutions to the problems arising from the participation of a group of countries in the waterway, it indicates the depth of the crime that Israel committed against its partners in the Jordan River by seizing most of the river's water and depriving its partners in the river of their rights to the water without reference to the mechanisms of international water law, which aim to the equitable sharing of the Jordan River's water. The damage is enormous and cannot be estimated at all, such as:

- 1- Deprivation of the rest of the participants in the basin of water, and the resulting impact on the life of a person who has lost ways of life on his land.
- 2- The entire ecosystem in the river basin south of Tiberias is completely destroyed due to water retention
- 3- Diversion of agricultural wastewater contaminated with fertilizers, as well as saline spring water, into the river basin south of the Sea of Galilee, which led to the complete destruction of the basin, which requires huge sums to be repaired.

Thus, we find ourselves facing water, environmental, ecological, human, social and economic damages that cannot be repaired or compensated for, and that amount to war crimes and crimes against humanity. This agreement stresses the necessity for the cooperation of the riparian states in an international river basin on the basis of equality in

sovereignty, territorial integrity and mutual benefit<sup>111</sup> and also indicates the possibility of establishing legal mechanisms or joint committees to facilitate cooperation on benefiting from, developing and preserving the waters of the Basin.

### **7.3 The Helsinki Rules for the Use of International Rivers Water 1966**

The Helsinki Agreement is the first serious attempt to codify the rules of customary international water law. It falls within the context of the progressive development of water laws, and it remained for a period of thirty-one years as a set of main and basic laws referred to in United Nations resolutions and international judicial councils until the United Nations General Assembly approved the United Nations Framework Convention on the Non-Navigational Uses of International Watercourses in 1997. This convention mainly relied on what was stated in the Helsinki rules with expansion and modernization which commensurate with the entanglement and complexity associated with the evolution of water problems in the world. Although the title of the agreement refers to international rivers, in reality it deals with groundwater and surface water, and this is something new as mentioned in the first clause of the agreement. It also dealt with the navigational uses of international riverbeds<sup>112</sup>, after the United Nations General Assembly approved the Framework Convention on the Non-Navigational Uses of International Sewage in 1997. The International Law Association (ILA) developed the Helsinki rules and approved in its session held in Berlin 2004 the Berlin Agreement 2004, which includes all issues related to international waterways, noting that the 2004 Berlin Convention adopts the Helsinki Conventions and the United Nations Framework Convention 2004.

---

<sup>111</sup> See Article No. (7) of the Agreement.

<sup>112</sup> See Article 1 of the 1966 Helsinki Agreement.

**Chapter 7** The impact of recognizing Palestine as a non-member state in the United Nations  
on Palestinian water rights

**Part I:**

Legal mechanisms to protect Palestinian water rights

**Part II:**

The impact of the UN recognition of the Palestinian state on the negotiation strategy

A- Accessing to the rules of international water law

a- International agreements

b- International legitimacy decisions

b1- United Nations General Assembly decisions

b2- International Agreement on Civil and Political Rights

c- Agreements signed between the Palestinians and Israelis

B- Resorting to an international court

A- Forcing the Zionist entity to pay a political and diplomatic price

## **CHAPTER 8: THE IMPACT OF RECOGNIZING PALESTINE AS A NON-MEMBER STATE IN THE UNITED NATIONS ON PALESTINIAN WATER RIGHTS**

The recognition of Palestine as a non-member observer state of the United Nations is considered a fundamental legal turning point in the issue of Israeli violations of Palestinian water resources, through building a negotiation strategy and invoking the rules of international water law represented in international agreements such as the United Nations Framework Convention on the Non-Navigational Uses of International Watercourses of 1997, the United Nations resolutions in all its branches, such as the Security Council, the General Assembly of the United Nations, the Economic and Social Council, the International Charter of Human Rights and the International Agreement on Political and Civil Rights, and the international agreements signed between the Palestinian and Israeli parties. As well as resorting to the international judiciary,

represented by the International Court of Justice and the International Criminal Court, and also to push for the rules of international law to be the basis for any Palestinian move in the matter of achieving Palestinian water rights, including compensation for the damage caused to the Palestinian people and their water resources as a result of the occupation.

### **8.1 Legal mechanisms to protect Palestinian water rights**

The resolution issued by the United Nations General Assembly declaring Palestine a non-member observer state in the United Nations means that the member states of the United Nations, whether they voted yes or not in the General Assembly, have become obligated to deal with the State of Palestine as a legal status with commitment to the laws that govern relations between States in terms of duties and obligations. Palestine has a specific geography on the basis of which the rights that stem from this geography can be claimed according to the applicable rules, whether they are customary or written rules of international law. Perhaps this recognition, after all what the Palestinians went through with the Israelis can be seen as an advantage. As the Palestinians have had negotiating experience and acquired rich experience in negotiating with a state that is armed with a high capacity for political maneuver, it is expected that the Palestinians have known and absorbed the Israeli negotiation methods well, as well as the basis for a deep understanding of international laws<sup>113</sup>.

### **8.2 The impact of the UN recognition of the Palestinian state on the negotiation strategy**

A- Accessing to the rules of international water law

---

<sup>113</sup> Kaaouch,F. All of the claims proffered by the Israelis on Palestinian water rights have now been disproved. "Under international law, Palestine has riparian rights in all common groundwater basins, 2012, p.147

Palestine has become under the UN recognition a non-member observer state and accordingly there is no more justification for not resorting to laws that govern and regulate relations between equal states in terms of the ability to claim rights on the basis of the principle of equality between states. There is also no justification for the Palestinian negotiator to discuss water issues or any other issues outside of international laws. Noting that the Israeli side insisted on rejecting all the negotiating references that the Palestinians demand, on top of which is international law, especially what is related to the principles and rules of international water law, and relevant international legitimacy decisions<sup>114</sup>.

Among the most prominent legal sources that the Palestinian negotiator can rely on are the following:

a- International agreements:

- The United Nations Framework Convention on the Non-Navigational Uses of International Watercourses, 1997.
- The laws of Helsinki 1966 relating to the uses of shared waterways and the laws of Berlin 2004, which are an extension of the laws of Helsinki after modernization and development.

b- International legitimacy decisions:

b1- United Nations General Assembly decisions:

It is known that the United Nations resolutions issued on the Palestinian problem or the so-called Arab-Israeli conflict are more than the decisions issued on any other issue since the establishment of the United Nations after World War II<sup>115</sup>. From 1947 to 2004, the United

---

<sup>115</sup> Ibid



Nations General Assembly issued 820 resolutions for Palestine<sup>116</sup>. There is no need to review and discuss these decisions, as they fall outside the scope of our discussion on the water rights of the Palestinian people, but we will discuss the decisions that deal with the issue of water, especially the most recent ones which are in line with the almost daily developments of the Israeli attacks on Palestinian water sources. Perhaps the most prominent of these decisions is the Resolution 66/225 of 22 December 2011, issued by the United Nations General Assembly in its 66 session, entitled the permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources<sup>117</sup>.

The preamble to the resolution begins with reference to the United Nations General Assembly Resolution 65/179 issued in the previous session of the General Assembly itself on December 20, 2010. Likewise, there is another reference to the United Nations Economic and Social Council Resolution 2011/41, which deals with the issue of Palestinian water resources. The resolution says that the General Assembly reaffirms the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources, and expresses its concern about the exploitation of Israel, the occupying power, of the natural resources in the Occupied Palestinian Territory, including East Jerusalem, and in the other Arab lands occupied by Israel since 1967. The Israeli settlements have a negative impact on Palestinian natural resources and other Arab natural resources, especially due to the confiscation of land and the diversion of water

---

<sup>116</sup> al-Qalqili, A, Land in the Palestinian Memory: Based on the Oral History in Jenin Camp, 2004.  
[https://kias.asafas.kyoto-u.ac.jp/1st\\_period/contents/pdf/kb3\\_1/12hanafi.pdf](https://kias.asafas.kyoto-u.ac.jp/1st_period/contents/pdf/kb3_1/12hanafi.pdf)

resources by force and the harmful impact of the obvious socio-economic consequences in this regard.

Based on the above, the General Assembly decided the following:

- The General Assembly reaffirms the inalienable rights of the Palestinian people and the inhabitants of the occupied Syrian Golan over their natural resources, including land, water and energy resources.
- The General Assembly calls on Israel, the occupying Power, to stop exploiting the natural resources in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, or to destroy them, or cause them to be lost, exhausted, or endangered.

This decision was based on a report prepared by the Economic and Social Commission for Western Asia (ESCWA) on the economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem and the occupied Syrian Golan, after field visits to the occupied territories and meeting with all parties. This committee has high credibility for its neutrality and accuracy of the description of the Palestinian situation in the occupied Palestinian territory<sup>118</sup>. Submitting the report to the Secretary-General of the United Nations, who referred it to the General Assembly. This means that the Palestinians have a documented international certificate of Israeli violations of Palestinian water rights and this constitutes a complete condemnation of Israel's practices in

---

<sup>118</sup> Dellapenna, J. W. (2001). The customary international law of transboundary fresh waters. *International journal of global environmental issues*, 1(3-4), 264-305

the field of water and natural resources, confirms the isolation of the entity's state and clarifies its defiance of international law and the will of the international community in general.

- Economic and Social Council decisions

Here it is worth noting the United Nations Economic and Social Council Resolution 41/2011 entitled Economic and Social Implications of the Israeli Occupation on the Living Conditions of the Palestinian People in the Occupied Palestinian Territories, including East Jerusalem and the Arab population in the occupied Syrian Golan, issued by the plenary session of the Economic and Social Council on its 49th session on July 25, 2011. The resolution begins its preamble by referring to its previous decisions in this regard of July 2010 and to General Assembly Resolution 65/179 of December 20, 2010, guided by the principles of the United Nations Charter which affirms the inadmissibility of seizing land by force. It also refers to the applicability of the four Geneva Convention relating to the protection of civilians in times of war of August 15, 1949 to the occupied Palestinian territories, including East Jerusalem, and to the International Agreement on Civil and Political Rights and the International Agreement on Economic, Social and Cultural Rights<sup>119</sup>. It reaffirms the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources, expressing concern in this regard about the exploitation of natural resources by Israel, the occupying power, in the occupied Palestinian territories, including East Jerusalem, and in the occupied Syrian Golan.

The resolution calls for a series of demands directed at the Israeli occupation state. In Article 8, it reaffirms the inalienable right of the Palestinian people and the Arab population in the occupied

---

<sup>119</sup> Ibid

Syrian Golan to all their natural and economic resources and demands that Israel, the occupying Power, not exploit these resources or endanger them, or causing its loss or depletion.

In Clause No. 10, Israel is required to immediately end its exploitation of natural resources, including water and minerals, and to stop dumping all waste into the Occupied Palestinian Territory, including East Jerusalem and the occupied Syrian Golan, which severely damages its natural resources, specifically water, land and energy resources, and pose a grave danger to the environment and the health of the civilian population. It also demands that Israel remove all obstacles that prevent the implementation of critical environmental projects, including wastewater treatment plants in the Gaza Strip.

#### b2- International Agreement on Civil and Political Rights

It was stated in the International Agreement on Civil and Political Rights issued by the United Nations General Assembly on December 26, 1966 No. 2200, and which is an international document binding on all those who signed it<sup>120</sup>, that all people have the right to freely dispose their wealth and natural resources without prejudice to any obligations arising from the requirements of international economic cooperation based on the principle of mutual benefit and international law, and it is not permissible in any case to deprive any people of their own livelihood<sup>121</sup>. This is another clear reference to the legitimate rights of the Palestinian people to their livelihoods and natural resources, of which water is the mainstay. Therefore, it's clear that Israel has violated the international documented and impartial testimonies of international laws related to the inalienable Palestinian water rights.

---

<sup>120</sup> See the text of the International Covenant on Civil and Political Rights issued by the United Nations General Assembly on December 26<sup>th</sup> 1966 No. 2200

<sup>121</sup> See Article No. 1 Clause No.2

c- Agreements signed between the Palestinians and Israelis

These are binding international agreements, like the Oslo II agreement or the so called Taba agreement signed in May 1995, specifically Article No. 40 of the agreement, which deals with the issue of water and sanitation, and in which the Zionist entity recognizes in its first article the Palestinian water rights provided that they are dealt with in the final status negotiations<sup>122</sup>.

Here, it is necessary to discuss the issue of the extent of the benefit that accrues to the Palestinian side from postponing the discussion on the issue of restoring Palestinian water rights, and linking them to the final status negotiations for which a time limit has been set that does not exceed the year 2000, but no one imagined that the final negotiations on water would be also postponed to no end, especially with the increasing growth of Palestinian water needs, as well as the maximum Israeli exploitation of Palestinian water resources in clear violation of the previous United Nations General Assembly resolutions. Thus, time will be on the side of the Israeli side, who benefits from procrastination.

**A. Resorting to an international court**

After their recognition as a non- member observer state in the United Nations, the Palestinians can now resort to international justice institutions, which are represented by the International Court of Justice, from which the Palestinians previously obtained a ruling in their favor, and they can now obtain other decisions on issues related to the Palestinian right to water. Although it has a non-binding legal effect, the Zionist entity and its supporters come to be in a very critical position with regard to international laws. It is also possible to

---

<sup>122</sup> See Article 40 of the Taba Agreement (Oslo II)

resort to the International Criminal Court to negotiate the Israeli violations of Palestinian water resources, which violate the four Geneva Convention which deal with the protection of civilians in time of war, and clearly indicates the impermissibility of seizing or demolishing public facilities located in the occupied areas, which causes harm and inconvenience to the population. Civilians, and the occupying state is forbidden to dispose of public and private property, of which, of course, are water sources. The issuance of rulings by the International Criminal Court against Israeli officials and individuals for water crimes has a severe and harsh impact, and here it is necessary to focus on Palestinian dealings with greater attention to issues of the international judiciary because it is one of their most important and most effective weapons to obtaining their rights to their water resources and preventing their exploitation to the maximum extent possible.

### **B. Forcing the Zionist entity to pay a political and diplomatic price**

Forcing the Zionist entity to pay a heavy political and diplomatic price in international political forums by showing its aggression, aggressiveness, racism and theft of Palestinian water resources is an effective way to pressure this entity to return water rights to their owners, However, this depends on providing the Palestinian political and diplomatic apparatus with important information regarding the occupation's violations of Palestinian water resources, and linking it to international laws. It is a hard and fruitful work, that requires a necessary step by the Palestinian leadership, which is to join international organizations without delay, making the stage ready for a political and diplomatic battle with guaranteed results, and benefiting from local and international experiences in law, politics, diplomacy and public relations<sup>123</sup>.

---

<sup>123</sup> Hussein, G., the Principles of Public International Law, House of Culture for Publishing and Distribution Jordan, 2005, p. 299.

It goes without saying that collecting and documenting all the Israeli attacks on Palestinian water sources, documenting pictures and numbers and with international testimonies if possible, gives more momentum to any diplomatic public relations campaign against the practices of the usurper and aggressor Zionist entity. Based on the foregoing, Palestine has legal rights as a state and it has obligations, and the national leadership must explore these rights, and make use of them to the maximum, to pressure the Israeli entity politically, diplomatically and morally to restore these rights and force it to pay a heavy price for its practices and its exploitation of such rights.

## **CHAPTER 9: THE INTERNATIONAL RESPONSIBILITY FOR ISRAEL'S VIOLATIONS TO PALESTINIAN WATER RESOURCES**

The international responsibility for Israel's violations to Palestinian water resources

In international law, international liability is referred to as the obligation imposed by international law on a person to repair the injury in favor of whoever was the victim of an act in violation of the provisions of international law or to bear punishment as a result of this violation<sup>124</sup>.

### **9.1 The meaning behind international responsibility**

There are three elements that must be met to arouse international responsibility<sup>125</sup>

- 1- Harm, and it is the first element that is required to be provided, because if the harm is absent, the penalty will be absent. When discussing the issue of harm, several aspects are addressed. Is the damage material or intangible, or is it direct or indirect, and has it been repaired or no?
- 2- The wrongful act, where the harm must be a result of an illegal act according to international laws.
- 3- The act is attributed to the state.

Contemporary international law has prohibited the use of force to settle disputes between nations after the laws of the League of Nations restricted its use only, as the use of force was to settle

---

<sup>125</sup> Hussein,G., op.cit., pp. 335-337



disputes between nations was permissible at the beginning of the modern era or the era of international organization. Article 2 (4) of the United Nations Charter prohibits the threat or use of force against the territorial integrity or political independence of any country or in any other way that is not in line with the goals of the United Nations. Dr. Abu Al-Khair, Chairman of the Consultative Council of the Palestinian Association for Human Rights considered in a research entitled: compensation for the occupation in international law that the occupation must be considered as an international war crimes and must be prosecuted. Even the heads of state should no longer have immunity from that, and this is what was stipulated in the statute of the International Criminal Court in Article 27 thereof, and before Article 25 of the same Basic Law stipulates the international criminal responsibility of individuals<sup>126</sup>

## **9.2 The damage resulting from Israelis violation of Palestinian water rights**

There is no doubt that Israel's violation of Palestinian water resources, and harnessing them to meet their own goals, has caused harm to the Palestinians, the original owners of the land. Depriving the Palestinians of their right to their water has negatively affected all aspects of their lives. The agriculture, which is the backbone of the Palestinian economy, has suffered negatively from the restrictions set by the Israelis. The extraction of water by Palestinian farmers, as well as the Israeli control of the Jordan River water, deprived the Jordan Valley of the same causes of life as well as development and prosperity, and this greatly affected economic and social development, forcing the Palestinians to change all their lives. In this regard, Sharif Al-Mousa says in his book, *Water in the Palestinian-Israeli Negotiations*, that based on his review of some of the effects that resulted from the Israeli violations of water resources, the Israeli policy towards the Palestinian water sector has limited agricultural expansion in the West Bank since

---

<sup>126</sup> Abu al- Khair, M., *Compensation for the occupation in international law*, The Palestinian Association for Human Rights, 2013

1967. The water for domestic use was kept at a low level, which negatively affected the standard of living and weakened the local institutional development. The Palestinians demanded compensation for these damages resulting from that<sup>127</sup>.

### **9.3 The consequences of achieving international responsibility**

#### **A- Restoring Palestinian water rights**

In case the elements of international responsibility are provided, the aggressor or offending country is bound by international laws to three procedures:

- 1- To stop the internationally wrongful act and to provide guarantees of non-repetition<sup>128</sup>
- 2- In-kind response, i.e. stopping the damage and returning the situation to the situation in which it was present or which would have existed if the unlawful act was not committed<sup>129</sup>
- 3- Compensation and filling any gaps that may remain in order to reach full reparation for the damage and it is by means of financial compensation, which is most common and is done by consent, or moral with an apology.

The water rights required to be returned to the Palestinians are as follows<sup>130</sup>:

- Sovereign rights and full legal participation in the management of the basin as a full partner at the same level with the rest of the other coastal parties in the Jordan River Basin and Lake Tiberias, and a share in the Jordan River water previously estimated according to the

---

<sup>127</sup> Al-Mousa, S., op.cit., p. 80

<sup>128</sup> Ahmad,A., Public international law. 2nd Edition, *House of Culture for Publishing and Distribution*, Amman – Jordan, 2010, p. 291

<sup>129</sup> Ahmad,A., op.cit., p. 293

<sup>130</sup> Ahmad,A., op.cit., p. 299

Johnston Plan of about 220 million cubic meters, and according to the Arab Plan 320 million meters cubic.

- Removing the barriers erected at the entrances to the Gaza Valley that prevent the passage of water to the valley course within the Gaza Strip, including the installations and cesspits, to return water to the course of this basin, as it was in the past, in a way that enables Palestinians to benefit from its water and protect its natural environment in The part located inside the Gaza Strip.
- The right to fully control and dispose of Palestinian water rights in the aquifer water resources after agreeing on them on the basis of the principles of international legitimacy related to shared basins such as utilization and fair and reasonable use, taking into account each party's interests and commitment to cooperate to ensure sustainability and adequate protection of the basins without any kind of interference from Before the Israeli side.

#### B- Compensation

The principle of compensation is considered one of the well-established principles in international law and occurs when one state causes harm to another country. For every mistake that causes harm to others, the perpetrator is required to pay compensation<sup>131</sup>. And since the occupation is considered to be an international crime in the eyes of international law, any damage resulting from this occupation obliges the perpetrator to pay compensation. In the Palestinian case for example, the Palestinians have full right to claim for compensation for the damages caused by the Zionist entity to them; for occupying their land and displacing them. By

---

<sup>131</sup> Abu-Zeid, K., op.cit., p.36

this, we mean the Resolution 194 issued by the United Nations General Assembly on 12/11/1948, which is considered to be the most important source for Palestinian rights. Although decisions of the United Nations General Assembly are non-binding, recommendations usually does not diminish its importance, because the international community has affirmed it 110 times over 50 years in the UN General Assembly and the Security Council resolutions, and this clearly indicates on an international consensus that amounts to binding<sup>132</sup>. Resolution 194 states, in its 11<sup>th</sup> article, that the United Nations General Assembly decides that refugees wishing to return to their homes and live in peace must be allowed to return as soon as possible, and that the governments and responsible authorities should consider paying compensation, for property, and for every person missing or injured.

In the subsequent article, the resolution indicates that the United Nations General Assembly issues instructions to the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of refugees, as well as pay compensation and maintain close contact with the Director of the United Nations Relief for Palestinian Refugees and through him with the appropriate specialized bodies and agencies in the United Nations<sup>133</sup>. Some politicians confuse the right of return with compensation but neither of them is considered an alternative to the other. Dr. Abu al-Khair deals with his concept of compensation on the basis that compensation is not equivalent to the right of return, because this is considered a sale of Palestinian lands, but compensation is for individual material losses. Such as the destruction of homes and the exploitation of property for up to 66 years to date, as well as individual moral losses such as suffering, asylum, loss of family members, and mass material losses such as roads

---

<sup>132</sup> Ibid

<sup>133</sup> See the text of Resolution 194

and airports, railways, ports, water, minerals, holy places ... etc.<sup>134</sup>. Here, too, in our discussion of the legal references on which the Palestinian claim for compensation from the occupying power, we must refer to what was stated in the United Nations General Assembly Resolution 66/225 adopted on December 22, 2011 under the title of permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory. Including East Jerusalem and for the Arab population in the occupied Syrian Golan on their natural resources and that in the 66<sup>th</sup> session of the General Assembly it recognizes the right of the Palestinian people to demand compensation as a result of the exploitation of their natural resources, their destruction, loss, depletion or endangering in any way, due to the unlawful measures taken by Israel. The occupying authority in the occupied Palestinian territories, including East Jerusalem, and expresses hope that this issue will be addressed within the framework of the final status negotiations between the Palestinian and Israeli sides. This means that the world, represented by the United Nations, recognizes their right to compensation for their natural resources, and it remains for the Palestinians, through their political leadership and their negotiators, not to concede, postpone, or reduce these compensation, or view it as a less important matter than what is actually, and historical precedents in the issue of compensation are many. The most recent compensation perhaps is the one paid by Iraq to Kuwait, as well as the compensation paid by Germany to the Jews after the establishment of Israel, which historians view as the mainstay of the establishment of the state. And its continuation, and we do not forget the compensation that Germany paid to the United States after the Second World War, and here we stress the necessity not to waive the Palestinian right to compensation and to proceed from an imperative rule in international law that may not be violated, not even agreeing on what contradicts it, as well as the belief that the right to

---

<sup>134</sup> Abu-Zeid, K., *op.cit.*, p.41

compensation is an individual and collective right that is not nullified by any agreements signed between two states. The issue of compensation is a thorny issue when it comes to negotiations or agreement on water, or even when discussing general compensation for Palestinians in relation to the damages they suffered as a result of the Israeli occupation of their country, their expulsion, their displacement, and the exploitation of the waters and resources of the occupied lands after 1967, for two reasons. The first is that the issue of compensation does not occupy an appropriate space in the Palestinian political, diplomatic and negotiating discourse, and the second reason is the magnitude and bifurcation of the indirect damages that resulted from Israel's violation of Palestinian water resources, which requires hard work .However, this does not in any way preclude estimating these compensation according to the available possibilities of calculating direct and indirect damages. In his aforementioned research on the right of Palestinian refugees to compensation in international law, Dr. Abu Al-Khair refers to the compensation value they estimated in 1950 at 350 million pounds sterling noting that according to the estimates of many specialists and experts at the United Nations, the value of these losses in Palestinian damages and property today is about 625 billion dollars, and these figures, of course, include compensation for water, even if there is no indication of the share of water from these compensation. Kaaouch referred to the issue of the quantitative assessment of compensation for Palestinian stolen water in his paper entitled: “The Israeli pretexts regarding Palestinian water rights have fallen<sup>135</sup>”

Under the heading of the volume of Palestinian water resources looted by the Israelis since 1967 and their economic value, he indicated that the volume of Palestinian water resources looted by the Israelis since 1967 is estimated at about 850 million cubic meters per year distributed among the following sources: from the main course of the Jordan River at a rate of 220 million cubic

---

<sup>135</sup> Kaaouch, F. A., *op.cit.*, p.154

meters per year from groundwater basins at a rate of 600 million cubic meters per year. From the eastern valleys of the Gaza Strip at a rate of 30 million cubic meters. The volume of stolen water over a period of 45 years is estimated at about 38.3 billion cubic meters. The economic value of the stolen Palestinian water resources since 1967 is estimated at about 97.5 billion dollars, based on the return of a cubic meter from agriculture and industry at a rate of 12 shekels, which is economically known as the value of shadow. The damage caused to the Palestinians in all moral aspects, social, environment, and health in both the West Bank and Gaza Strip exceeds \$ 280 billion, according to a research study previously prepared in 2005 in this regard, by foreign experts, funded by the United Nations Development Program<sup>136</sup>. The issue of compensation is closely related to rights, so that it must be upheld, highlighted, and legal grounds prepared to support the Palestinian claim to it. Governing Sovereignty, and whether the water compensation claim is raised separately or included in the general agreement, Palestinians must reasonably define it and elaborate on their legal and technical arguments. The Palestinians' access to the international judiciary as part of their national battle to obtain their water rights has become necessary, and it is no longer permissible to disregard international legal work on the basis that the international system controlled by colonial countries is biased towards the Zionist entity, provided the necessary human and material capabilities to fight the confrontation with the Zionist entity in the arenas of the international judiciary, where it is possible to refute the allegations and false claims of the occupation in compliance with international law. Likewise, the Palestinians must, in a strong way, re-raise the issue of compensation, because it is a national entitlement and must be given the attention it deserves.

---

<sup>136</sup> Ibid

**Conclusion:**

This study, has reviewed the surface water sources in Palestine such as the Jordan Valley Basin and the Gaza Valley Basin, as well as the groundwater sources that are represented in the three mountain basins below the West Bank lands, in addition to the coastal basin that includes the



Gaza Strip Basin. Then it has addressed the nature of the Israeli violations of Palestinian water resources. Ending up by explaining the political dimensions of the Israeli strategy of violating the right of the Palestinian people to water resources, as well as the legal dimensions of these violations. As a result of this research, this study reaches a set of findings and recommendations, which are as follows:

**A. Results:**

- 1- Palestinians and Israelis share water resources, considering that the line of June 4, 1967 are separating borders between them, and these resources are represented in the Palestinian ground basins in the Palestinian West Bank, the coastal basin, the Jordan River basin and the Gaza Valley
- 2- The Zionist entity fully controls the water of the underground basins, and allows the Palestinians to extract water only 80 million cubic meters, while it sells them the rest of their water needs, which means that the Zionist entity does not recognize the Palestinian people's right to sovereignty over their water resources.
- 3- The Palestinians do not benefit from the coastal basin except for the part that lies under the Gaza Strip, and they extract about 130 million cubic meters from it, despite the fact that the amount of available water does not exceed 80 million cubic meters, which leads to a gap that is compensated by the withdrawal of sea water, resulting in the intrusion of salty seawater into the aquifer and therefore to the gradual destruction of the aquifer in the Gaza Strip, as the salty seawater reached a distance of one kilometer below the surface of the earth towards land in Gaza, which threatens dire consequences.
- 4- Unlawfully, Israel controls the waters of the Jordan River Basin, and deprives Jordan of benefiting from its right to water sources except for a little of what is obtained from the Yarmouk River before it reaches the Jordanian-Palestinian borders. The Zionist entity

also diverted the Jordan River through channels and tunnels to irrigate part of the Palestinian coast area that is under occupation and another part in the north of the Negev, equivalent to 550 million cubic meters, through the main water line that connects the north of the occupation state with its center.

- 5- The Israeli authorities are depriving the Palestinians of their right to water the Gaza Valley, whose surface runoff is about 35 million cubic meters per year. The Israeli authorities also suddenly open the dams that block the valley water from the Gaza Strip, causing great damage to the properties of Palestinian citizens.
- 6- The Israeli authorities' denying the Palestinians their right to water sources impedes the independence of the Palestinian state and its exercise of its right to exploit its natural resources.
- 7- The control of Israel over water resources negatively affects the negotiations between the Palestinians and the Israelis, as water resources are considered a pressure card that the Israeli government uses against the Palestinian negotiator in order to accept settlements on Palestinian land.
- 8- The Palestinian negotiating performance was poor, as the Palestinian negotiator was suffering from lack of experience and lack of information regarding water resources, which led to his agreement at times to grant the Israeli side the right to veto the Palestinian exploitation of their groundwater, or his agreement to postpone the agreement on water issues.

## **B. Recommendations:**

- 1- The issue of water should occupy a greater place than Palestinian concern and a higher position on the agenda of work and political, diplomatic and legal activity.

- 2- The Palestinian negotiator must be fully and comprehensively acquainted with the details and subtleties of the water situation in terms of geology, hydrology and geo-hydrology, and not to accept the Israeli allegations and the information that the Israeli negotiator promotes to serve his interests at the expense of the Palestinian right.
- 3- The necessity of coordination between the Palestinian and Jordanian governments as riparian parties in the Jordan River basin in order to open the Jordan River file diplomatically and politically, and to form permanent pressure on the Israeli government, to respond to the rights of both parties.
- 4- The Palestinian government must start moving politically and legally to demand compensation from the Israeli government as a result of its illegal exploitation of Palestinian water resources.
- 5- The Palestinian side should take advantage of the international recognition of Palestine as a non-member state with the United Nations in 2012, as well as Palestine's accession to many international organizations and agreements, in order to reinforce the claim of the State of Palestine for its right to sovereignty over its water resources.
- 6- The Palestinian government should prepare a legal file on Israeli violations of Palestinian water rights and present it to the International Criminal Court as a war crime, considering that these violations constitute a grave violation of the Four Geneva Conventions.
- 7- The Palestinians should develop institutions with competence to be able - within a strategic national vision - to exploit water.

**References:**

Abu al- Khair, M.,(2013). Compensation for the occupation in international law, The Palestinian Association for Human Rights.

Abu-Zeid, K. (2001). International water law from Helsinki rules to the United Nations convention on the law of the non-navigational uses of international watercourses. *Water Resources Impact*, 3(4), 26-31.

Agriculture Organization of the United Nations. Development Law Service, & Development Law Service. (1998). *Sources of International Water Law* (Vol. 65). Food & Agriculture Org..

Ahmad,A.,(2010). Public international law. 2nd Edition, *House of Culture for Publishing and Distribution*, Amman – Jordan, p. 291

Al Hallaq, A. H. (2009). The Israeli Policies in Depleting Gaza Strip Fresh Groundwater.

Al-Adayleh, A.,The Struggle over Water in the Middle East, War and Peace, p. 158.

Al-Mousa, S.(1997), Water in the Arab-Israeli Negotiations, *Institute for Palestine Studies*, first edition, p. 33

al-Qalqili, A. F. (2004). Land in the Palestinian Memory: Based on the Oral History in Jenin Camp.

Amnesty International- <http://www.amnesty.org/>-

Annual Water Status Report 2011, Palestinian Water Authority.

Arbid,W. (2013). *Water as a strategic factor in the Arab-Israeli struggle*.

Armouti, K.(1999). *Water Diplomacy "A Political and Legal Vision for Water in the Jordan River Basin*. Published by Arab Services Press.

Bani-Hani,M. (2006). *Israel 's confiscation of Arab water*.

Beinin, J., & Stein, R. L. (2006). *The struggle for sovereignty: Palestine and Israel, 1993-2005*. Stanford University Press.

Besson, S. (2010), Theorizing the sources of international law. In *The philosophy of international law*, 2010, pp. 163-185

- Bogdanovic, S., Bourne, C., Burchi, S., & Wouters, P. (2004). International Law Association Berlin Conference 2004. *Water Resources Committee report: Dissenting opinion*.
- Daibes-Murad, F. (2005). *A new legal framework for managing the world's shared groundwaters*. IWA Publishing.
- Dellapenna, J. W. (2001). The customary international law of transboundary fresh waters. *International journal of global environmental issues*, 1(3-4), 264-305.
- Eckstein, Z., Zackai, D., & Nachtom, Y. (1993). The division of water sources between Israel, the West Bank and Gaza: an economic analysis. *Manuscript, the Armand Hammer Institute for Peace, Tel-Aviv*.
- Elmusa, S. (1997). *Water conflict: economics, politics, law and Palestinian-Israeli water resources* (p. 368). Washington, DC: Institute for Palestine Studies.
- Environment Programme United Nations. (2003). *Desk study on the environment in the occupied Palestinian territories*. na.
- EWASH is a coalition of Palestinian and international organizations working on water and sanitation in Palestine <https://reliefweb.int/report/occupied-palestinian-territory/ewash-concerned-water-restrictions-west-bank-resulting-israeli>
- Feitelson, E., & Haddad, M. (Eds.). (2012). *Management of shared groundwater resources: The Israeli-Palestinian case with an international perspective* (Vol. 18). Springer Science & Business Media.
- Gleick, P. H. (1993). *Water in crisis* Oxford University Press. *New York*.

Hadden, R. L. (2009). Water Resources in the Middle East: Israel-Palestinian Water Issues—from Conflict to Cooperation. Volume 2 of the Hexagon Series on Human and Environmental Security and Peace. <http://www.mofa.pna.ps/ar-jo/>

Hussein, G., (2005). The Principles of Public International Law, *House of Culture for Publishing and Distribution* Jordan, p. 299.

Idris,A. (2012). *Conflict about international waters in the light of international law and conventions. Applied study on the Nile.*

International Crisis Management - Dr. Hisham Okal, Associate Professor at the Free Netherlands University, published on his blog, according to Dr. Muhammad Hassan Al-Khudairi.

International Law Association. (2004). Berlin Conference (2004). *Water Resources Law*, 3-55.

Isaac, J. (1994). Water supply and demand in Palestine. *ARIJ (unpublished)*.

Isaac, J. (1994). *Core issues of the Palestinian-Israeli water dispute*. Applied Research Institute.

Isaac, J. (1994, October). Optimization of water in Palestinian agriculture: status and potential for development. In *conference Optimization of Water Usage in Horticulture in the Middle East. sponsored by the French Foreign Ministry. Amman.*

Isaac, J., & Selby, J. (1996, February). The Palestinian water crisis: status, projections and potential for resolution. In *Natural resources forum* (Vol. 20, No. 1, pp. 17-26). Oxford, UK: Blackwell Publishing Ltd.

Isaac, J., & Selby, J. (1996, February). The Palestinian water crisis: status, projections and potential for resolution. In *Natural resources forum* (Vol. 20, No. 1, pp. 17-26). Oxford, UK: Blackwell Publishing Ltd.

Isaac, J., & Shuval, H. (Eds.). (1994). *Water and peace in the Middle East*. Elsevier.

Kaaouch, F. A. (2013). *comprehensive study of legal and technical aspects on the nature of Israeli violations of international water law on Palestinian water rights in shared water basins*.

Kaaouch, F. (2012). *All of the claims proffered by the Israelis on Palestinian water rights have now been disproved. "Under international law, Palestine has riparian rights in all common groundwater basins*, p.120

Lindholm, H. (1992). *Water and the Arab-Israeli Conflict: An Imperative for Regional Cooperation?. Regional Case Studies Of Water Conflicts, Peace And Development Research Institute, Goteborg*.

Mahler, G. S. (2009). *Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip (September 28, 1995)*. In *The Arab-Israeli Conflict* (pp. 243-249). Routledge.

Mahmoud, K., *African Journal of Political Sciences*, 6(1).

Main, C. T. (1961). *The unified development of the water resources of the Jordan Valley Region*.

Mallat, S. (1997). *Water in the Middle East*. Publications and the Ministry of Syrian Culture. Damascus, p. 395.

McCaffrey, S. C. (2008). *The 1997 UN Watercourses Convention: Retrospect and Prospect*. *Pac. McGeorge Global Bus. & Dev. LJ*, 21, 165.

Messerschmid, C. (2009). *The Silent Stakeholder—the Role of the Public in the Palestinian Water Sector*. *Water: Rights and Values*.

Mimi, Z. A., & Sawalhi, B. I. (2003). *A decision tool for allocating the waters of the Jordan River Basin between all riparian parties*. *Water Resources Management*, 17(6), 447-461.



National Information Center, Wafa

Nichols, M. U.N. (2018, October). Allows Palestinians to act more like full member in 2019. **Reuters**

OSLO, B. (1995). Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip. *Appendix II Annex III Article, 40*

Palestinian Encyclopedia - Gaza Valley

Palestinian Water Authority, Annual Water Status Report 2011, p.38

PECHÁČKOVÁ, Š. Political and development issue of transboundary water resources management.

Phillips, D. J., Attili, S., McCaffrey, S., & Murray, J. S. (2007). The Jordan River Basin: 1. Clarification of the allocations in the Johnston plan. *Water International*, 32(1), 16-38.

Salame, Y. (2008): *Israeli Water Policy and its Impact in the West Bank. A study in geopolitics*. Unpublished Master Thesis, p.62

Salman, S. M. (2007). The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: perspectives on international water law. *Water Resources Development*, 23(4), 625-640.

Salman, S. M. (2009). The World Bank policy for projects on international waterways: an historical and legal analysis, p.67-68

Sawalhi, B. I., Mimi, Z. A., & Aliewi, A. S. (2001). Multi-criteria decision tool for allocating the waters of the Jordan Basin between all riparians. In Proceedings of the International Conference "Globalization and Water Resources Management: The Changing Value of Water (pp. 6-8).

- Selby, J. (2013). Cooperation, domination and colonisation: The Israeli-Palestinian joint water committee. *Water Alternatives*, 6(1), 1.
- Sexton, R. (1990). Perspectives on the Middle East water crisis: analysing water scarcity problems in Jordan and Israel. *ODI IIMI Irrigation Management Network Paper*, (3f).
- Sharkansky, I. (1997). Israel: a metropolitan nation-state. *Cities*, 14(6), 363-369.
- Shedid, O.,(1999). Palestinian Water and Security, *Majdalawi Publishing House, Amman*, p. 105
- Shehadeh, R. (1994). Questions of jurisdiction: a legal analysis of the Gaza-Jericho agreement. *Journal of Palestine Studies*, 23(4), 18-25.
- Shlaim, A. (1994). The Oslo Accord. *Journal of Palestine Studies*, 23(3), 24-40.
- Shuval, H. (1993). Estimate of the water resources and water demands of Syria, Lebanon, Jordan, Palestine and Israel up to the year 2025. *Harvard Middle East Water Project*.
- Shuval, H., & Dweik, H. (2007). *Water Resources in the Middle East* (p. 288). Springer-Verlag Berlin Heidelberg.
- Siyad, M. A. (2005). HELSINKI RULES ON THE USES OF WATERS OF INTERNATIONAL RIVERS AND INDUS WATERS TREATY. *Himalayan and Central Asian Studies*, 9(3), 60.
- Smith, H. (2011). To what extent does the issue of water play a role in the Israel-Palestine conflict.
- Tal, A. (2007). International Water Law and Implications for Cooperative Israeli-Palestinian Transboundary Water Management. In *Integrated Water Resources Management and Security in the Middle East* (pp. 213-236). Springer, Dordrecht.

United Nations. Division for Palestinian Rights, & United Nations. Committee on the Exercise of the Inalienable Rights of the Palestinian People. (1985). *The United Nations and Non-governmental Organization Activities on the Question of Palestine* (No. 0-5). United Nations Division for Palestinian Rights.

Water in the final negotiations- Palestinian Ministry of Foreign Affairs-

Wolf, A. (1993, October). Principles for confidence-building measures in the Jordan River watershed. In *International Symposium on Water Resources in the Middle East: Policy and Institutional Aspects*. University of Illinois, USA, October (pp. 24-27).

Wolf, A. T. (2007). Shared waters: Conflict and cooperation. *Annu. Rev. Environ. Resour.*, 32, 241-269.

Yacoubi, A. , Abdel-Ghafour, D. (2011) : A Brief on Palestinian Water Resources, *PWA Publications* p. 21

Yakoubi, A. (2005). *Sustainable water resources management of Gaza coastal aquifer - Palestine* ,Workshop on Decision support system ,ACSAD-BGR ,Damascus .

Zarour, H., & Isaac, J. (1993). Nature's apportionment and the open market: a promising solution to the Arab-Israeli water conflict. *Water International*, 18(1), 40-53