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Water and Palestinian-Israeli Peace Negotiations

by Jad Isaac

Overview:

19 August 1999—The maldistribution of water in Israel and the Palestinian territories reflects an unequal balance of power rather than internationally formulated agreements or international law. Although water has been a major issue in the Oslo peace negotiations—starting with the Declaration of Principles signed by Israel and the Palestine Liberation Organization (PLO) in September 1993—little progress has been made on the bilateral or multilateral negotiating tracks. While Israel recognized Palestinian water rights in the September 1995 Taba Agreement (Oslo II), that agreement reserves water as one of the issues to be addressed in the so-called “final status” negotiations. Thus far, however, those negotiations, which were to begin in May 1996 and conclude by 4 May 1999, have yet to start. Meanwhile, in this year of record drought, Israelis consume more than four times as much water as Palestinians do, including 80 percent of Palestinian ground water.

Oslo II included arrangements for delivering an additional 28.6 million cubic meters (mcm) of water to the Palestinians. This supply was intended to satisfy their immediate domestic water needs during the interim period before the final status negotiations were to have ended. Regrettably, Israel has released only 7 mcm of additional water so far—not nearly enough to meet the growing needs of a population experiencing severe water shortages. In brief, the “peace process” has not translated into continuous water supply or additional water in the taps—nor into much else of substance, for that matter—to the average Palestinian. While the Palestinian Water Authority (PWA) is working to rehabilitate the water infrastructure, it is being impeded by Israeli interference.

Israel’s Approach:

In the political arena, Israeli politicians have exploited water as a security issue. The implication is that, as a water-scarce country, Israel’s viability depends on retaining all the water resources it now controls.

Israel’s proposed solutions to the water conflict have focused on “enlarging the pie” by increasing water supplies to the region. Its proposals range from multi-billion dollar Red Sea or “Med-Sea” canals, “peace pipelines,” and “Medusa Bags” ferrying water through the Mediterranean from water-rich countries, to icebergs tugged from



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northern seas and massive desalination projects. A recent Israeli proposal advocates a huge desalination plant in Gaza to provide 50 mcm of water per annum to solve the water crisis in Gaza. The estimated capital costs for such a plant are \$250 million, with an estimated additional cost of \$1 for each cubic meter of desalinated water produced. Gazans would need to spend five percent of their gross national product just to satisfy their domestic water needs. Certainly, it makes more sense to build such desalination plants in Israel, which has a larger Mediterranean shore and where the gross domestic product per capita in 1998 was \$17,500.

Israeli Negotiating Tactics:

Israel has refused to approach the water conflicts with its Arab neighbors in an integrated manner. It has appointed itself as the regional water commissioner and seeks to strike a separate deal with each of its neighbors, without regard to the geo-hydrological nature of surface and ground-water basins. With Israel holding all the water cards, it insists on bilateral versus multilateral negotiations. This ensures that Israel will maintain overall control over water resources, providing its neighbors with the quantities of water it chooses, whether or not this was what was agreed upon.

Such an approach is neither acceptable nor sustainable. The October 1994 peace treaty between Israel and Jordan addressed the water dispute between the two states and resolved the issue on the basis of mutual recognition of the “rightful allocations” of both parties to the Jordan and Yarmuk Rivers, as well as to the Araba ground waters. Then, in the spring of 1999, Israel announced its intention to reduce its water allocation to Jordan because of the drought, but soon retracted its statement. While the Israel-Jordan agreement was a positive step forward, bilateral agreements cannot substitute for an integrated and comprehensive approach that includes all riparians of the region’s water resources.

The Legal Dimension:

Resolution of the Palestinian-Israeli water dispute should be governed by international law, which recognizes the West Bank (including East Jerusalem) and the Gaza Strip as occupied territories. Israel is violating the Hague Regulations (1907) and the Fourth Geneva Convention (1949) by controlling and exploiting Palestinian natural resources.

Soon after the occupation began in June 1967, Israel imposed a number of military orders to control Palestinian water resources. Among them was Order No. 92, issued on 15 August 1967 by the Israeli military commander, stating that water was to be considered a strategic resource. Numerous other orders followed, extending complete Israeli control over Palestinian water resources. According to international law, Palestinian water rights include:



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1. Absolute sovereignty over all the Eastern Aquifer resources, as this aquifer is completely located beneath the West Bank and is not a shared resource;
2. Equitable water rights in the Western Aquifer and Northeastern Aquifer, as these aquifers are recharged almost entirely from the West Bank;
3. Equitable water rights in the Jordan River system: As a downstream riparian to the Jordan River system, the area of the Palestinian territories is legally entitled to an equitable share of the system's water resources. In this context, the Johnston Plan for Middle East water allocation, which was developed in the mid-1950s, called for, among other things, the West Ghor canal to supply the West Bank with 250 mcm to meet the needs of Palestinians. While this canal was never built because of the political conflict, the Palestinian water rights in the Jordan River system remain.
4. Water and fishing rights in Lake Tiberias: This natural reservoir is an integral part of the Jordan River system, in which the area of the Palestinian territories is a riparian with the privilege of equitable utilization.
5. Full compensation for damages to Palestinian water resources caused by Israel, and for Palestinian water utilized by Israel over the years: International water compensation expert Thomas Stauffer has estimated compensation for water, at a minimum, at \$45 billion, not including interest.

Achieving these rights should be among the Palestinians' main goals in the final status negotiations.

Key Recommendations:

1. Israel immediately needs to initiate confidence-building measures to alleviate Palestinian fears of a dry peace. These include providing Gaza with 50 mcm through its National Water Carrier system to address the water catastrophe there, facilitating the efforts of the PWA to link all its communities to public water services, and increasing the water supplies to Palestinians according to Oslo II. Such measures would demonstrate that Israel genuinely seeks peace, and would create a positive environment for addressing the larger riparian disputes.
2. Final agreement should be based on the principles of equal utilization and joint management of water resources. All water west of the Jordan River should be shared between, and managed by, Israelis and Palestinians based on their respective populations. A joint management structure should be created to monitor compliance with water quotas, ensure the protection of the aquifers, and periodically reallocate water based on climatic and demographic changes.
3. Israel and the Palestinian Authority should immediately adopt a holistic approach to the water conflict. The interdependency between water management, environmental protection, social progress, and economic growth is clear and necessitates a just and sustainable agreement both for Palestinians and Israelis. Unless water allocation and compensation are addressed immediately and properly according to international law, the



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Palestinians' severe water crisis could undermine the sustainability of the peace process.

4. The Palestinian-Israeli water dispute should be resolved with an eye for justice rather than military might. Independent arbitration, particularly to calculate water compensation, may be necessary.