

The right to water

On 28 July 2010, the United Nations General Assembly declared that access to safe, clean drinking water and to sanitation is a right essential to the full enjoyment of life and integral to the realization of all human rights. In September 2010, the United Nations Human Rights Council stated that the right to water and sanitation derives from the right to an adequate standard of living. It follows that access to water and sanitation is a right enshrined in international conventions to which Israel is duty-bound. In terms of international law, Israel's obligations as an occupying state to the population under its control must be distinguished from the rules governing the use of water sources shared by Israel and the Palestinians, which are considered international waters.

A. Administration of the water sector in occupied territory

1. Prohibition on altering legislation

[Article 43](#) of the 1907 Hague Regulations prohibits an occupying state from changing the legislation in effect prior to occupation. The military orders that Israel issued regarding water resources and the supply of water in the Occupied Territories introduced a substantial change to the legal and institutional structure of the water sector. The change meant that the water resources of the Occupied Territories were integrated into the Israeli legal and bureaucratic system and that Palestinians' ability to develop those resources was severely curtailed.

2. Illegal utilization of water courses

[Article 55](#) of the Hague Regulations restricts the right of occupying states to utilize the water sources of occupied territory. The water may be used only for military needs and may not deviate from past use. According to 2012 data, Israeli national water company Mekorot annually extracts some 42.5 million cubic meters (mcm) of water from drills in the West Bank, primarily in the Jordan Valley, and sells Palestinians approximately 50.2 mcm a year. This use does not meet Article 55 criteria and is therefore illegal.

3. Discrimination between Palestinians and Israeli settlers

[Article 27](#) of the Fourth Geneva Convention of 1949 prohibits an occupying state from discriminatory practices with regard to residents of occupied territory. In the West Bank, the amount of water supplied to the settlements is greater by far than that supplied to the Palestinians. In addition, while Israelis enjoy a regular water supply at all times, Palestinians throughout the West Bank receive water on rotation, facing particularly long breaks in supply in summer.

B. Utilization of shared water sources

Israel and the Palestinians share two major water sources. The first is the Mountain Aquifer – a network of groundwater reserves that spans the border between Israel and the West Bank. The aquifer consists of three major basins – north, east and south – divided by the direction of water flow. Hundreds of drills extract water from the aquifer in Israel and the West Bank. Most of Israel's drills are located within the Green Line, i.e., within Israel proper. The Mountain Aquifer serves as the major water resource for Palestinians in the West Bank for all purposes: domestic, urban, industrial and agricultural. It supplies about one quarter of Israeli water usage, mostly for domestic and urban use. In 2014 approximately 86% of water extracted from the Mountain Aquifer goes to Israel and settlements, and the other 14% to Palestinians (although some of the water that Israel extracts is sold to Palestinians via Mekorot Water Company).

The second common water resource is the Jordan River drainage basin, which includes the upper Jordan River and

the streams that flow into it, the Sea of Galilee, the Yarmuch River, and the lower Jordan River. This water is also used by Syria, Lebanon and Jordan. The Palestinians in the West Bank are entitled to this water because of their location along the lower Jordan River. About one third of Israel's water usage is supplied by the Jordan River drainage basin. Due to increased utilization of Sea of Galilee water by Israel and of Yarmuch River water by Syria, Jordan and Israel, the current water-flow in the lower Jordan River into the Dead Sea is a negligible 30 mcm a year. The water's high salinity and pollution renders it useless without desalination. As a result, Palestinians can make no use whatsoever of water from the Jordan River basin.

In principle, another common resource is the Coastal Aquifer, which runs from the area of the city of Haifa in northern Israel to Rafah in the southern Gaza Strip, and supplies most of Gaza's water. However, the aquifer runs only from east to west, which means that the Israeli and Gazan sections of the aquifer are independent of one another, and therefore generally considered two separate networks. The section that serves Gaza has been seriously over-pumped for decades, even before Israel's occupation in 1967. At present, double the recommended quantity – based on its rate of refill – is currently being pumped from the aquifer.

Under international law, the division of water courses common to two or more states is grounded in the principle of equitable and reasonable utilization, which is based on the limited-sovereignty doctrine. Owing to the fact that all parts of the drainage basins of watercourses are interdependent hydrologically, the doctrine provides that states may not unilaterally utilize water located in their territory. They must take into account the other states that share the resource. All rules pertaining to shared water courses under international law apply only to natural water.

The principle of equitable and reasonable utilization does not offer a precise formula for quantifying the rights of each state in a shared international watercourse. Instead it offers the factors to be taken into consideration in multi-state negotiations determining the division of water. [Article 6](#) of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses enumerates seven factors:

1. Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
2. The social and economic needs of the watercourse states concerned;
3. The population dependent on the watercourse in each watercourse state;
4. The effects of the use or uses of the watercourses in one watercourse State on other watercourse states;
5. Existing and potential uses of the watercourse;
6. Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
7. The availability of alternatives, of comparable value, to a particular planned or existing use. When the current division of water between Israel and the Palestinians is explored in relation to the various elements of the principle of equitable and reasonable, it is clear to see that the division violates Palestinian rights and contravenes international water law.