



Husseini & Husseini

Attorneys and Counselors at Law

The International Water Academy

The Management of Water Resources in Palestine

Prepared by: Attorney Dr. Hiba Husseini

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53 Irsal St. Awwad Bldg, 3rd Floor, Ramallah, Palestine
Tel (970/972) (2) 296-1733, Fax (970/972) (2) 296-0244
info@husseini.com, www.husseini.l.com



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The Management of Water Resources in Palestine

Introduction

The management of water resources in Palestine is a nascent and emerging concept. There are two unique characteristics to the Palestinian context of water management related issues. Firstly, the historical context underscored by the fact that Israel and the various previous regimes dictated the course for the Palestinian utilization of water resources. For a long time, this has pre-empted and precluded any independent Palestinian management of its own resources.

Palestine has just embarked on a path for water management. The complexity of the Palestinian-Israeli issue does not make it easy, since rights and management issues have yet to be fully addressed between Palestine and Israel, any desired legal and institutional framework for management remains fragile. Nevertheless, as we will see below, the new Palestinian water legislation is premised on the management of water resources—in tandem with international trends. This is a fresh start.

Secondly, the scarcity of the water itself in Palestine and the entire Middle Eastern region render management somewhat untenable. Palestine, along with its neighbors—Israel in particular—stand to face an impending fresh water deficit. This deficit has been and will increasingly reach crisis levels by 2015. Based on current trends in the use and management of the limited available resources, it will fall disproportionately on Palestine.¹ The crisis is both acute and chronic. At present, these two nations must rely on the same scarce water resources. The common water reserves have been overdrawn. Yet, the amount and quality available to Palestinians are inadequate.

¹ The historical, political and economic pressures are nowhere more palpable as they are in this region especially in Palestine and Israel. The Israeli exploitation, since 1967, had reached high proportions. Israel has been using close to 83% of the West Bank waters. Israel has restricted Palestinian use of water resources and drilling of wells.



Management in the Palestinian Legislative Context

The challenge facing Palestine today is the development of a comprehensive water resources management framework that incorporates cross-sectoral dimensions, including demand from urban, rural, industrial, agricultural, and environmental uses. Management applies to both the supply and demand sides. The trouble for Palestine is the number of hurdles that must be overcome. They include:

- delineation of the physical versus the political boundaries
- institutional and organizational elements and various water distribution system
- increasing Palestinian population and urban growth
- absence of Palestinian water infrastructure

The principles of water management involve the development of an entire infrastructure able to meet the needs of the present and future generations. This infrastructure includes design, operation and maintenance of target areas. In Palestine, this means management of surface and groundwater and its treatment as to quality and quantity. It also means institutional reforms.

The legal challenge is equally complex. The legal heritage in Palestine dates far back to the Islamic Sharia, Ottomans, British Mandate, Jordanians, Israeli military orders and last in the layers, Palestinian laws. Palestine has been subjected to various legal traditions for centuries. The Sharia, as discussed below, deems water a source belonging to all, i.e., public property. The Ottomans, between the Sixteenth-century and beginning of the twentieth (1917) maintained the Sharia principles but established rules for use. During the British Mandate (1917-1948), the same rules remained in operation, but for the first time, the management concept was introduced. During the Jordanian rule (1948-1967 in the West Bank) and Egyptian rule (1948-1967 in Gaza), the laws of Jordan reinforced the



principle of management of water resources. In Gaza, the British Mandate principles continued unchanged. Effectively, management principles emerged early and became operative in British Mandate Palestine. The Israeli Military Orders (1967-1994) considerably altered the principles of water use and management of water resources. The Palestinian Authority (1994-present) has endorsed, as a matter of policy, the principle of management of water resources.

Islamic Sharia

In Islamic Shari'a, water is a gift from God, and thus is free for all. However, effective possession of water vests ownership rights with the possessor. Rights to use water were granted, namely, for purposes of drinking and irrigation.²

Ottoman Legislation (Pre-1917)

The Ottomans enacted two laws that contained provisions relating to water:

1. The Ottoman Civil Code of 1870 (Mejelle)

The Mejelle contained detailed provisions pertaining to water and its use. It codified the Islamic Shari'a norm stating that water is publicly owned.³ This included flowing ground waters,⁴ public wells not dug by any known person,⁵ seas and big lakes,⁶ and public rivers.⁷ These waters may be used by anyone for purposes of drinking or irrigation.

2. The Law on Land of 1858 ("The 1858 Law")

Article 124 of the 1858 Law gave priority to existing use when rights of drinking,

² CESAR (Center for Environmental Studies and Resource Management), Survey and Compilation of Normative Instruments: Applied and Applicable Legislation, West Bank and Gaza, 8+9.

³ Article 1234, of Mejelle.

⁴ Article 1235, *supra*.

⁵ Article 1236, *supra*.

⁶ Article 1237, *supra*.

⁷ Article 1238, *supra*.



irrigation or flow were disputed.

British Mandate (1917-1948)

The British authorities in Palestine did not repeal Ottoman laws unless they conflicted with legislation it enacted. Accordingly, the provisions pertaining to water in the Ottoman legislation remained in force. The Mandate authorities enacted a number of laws to regulate the use of water. The laws basically aimed to manage the use of water in Palestine and prevent its waste and misuse, as well as regulate matters pertaining to water supply and pricing⁸, and to authorize the Mandatory government to drill experimental boreholes on private lands for the purpose of conducting a hydrographic survey of the land⁹.

The most significant of the Mandatory era water law was The Law on Safeguarding of Public Water Supplies Ordinance of 1937 (“The 1937 Ordinance”). The 1937 Ordinance provided mechanisms for water management and ensured the adequate water supply for domestic use.¹⁰ It provided that the Mandatory authorities could proclaim any area containing water for public water supply as a Public Water Area, allowing the government to control it and use it for domestic purposes. It also imposed certain licensing requirements for new water supply construction in such areas.¹¹ Furthermore, the 1937 Ordinance changed the Ottoman concepts of water management by permitting the government to seize control over wells and other water supply structures.¹²

Jordanian and Gaza Laws (1948-1967)

1. Jordanian Laws (West Bank)

⁸ Municipal Corporations Ordinance of 1934.

⁹ Water Survey Ordinance of 1938.

¹⁰ CESAR *supra* 26.

¹¹ CESAR *supra* 26.

¹² CESAR *supra* 26.



The Jordanians kept the general principles of both the Ottoman and British water laws in force in the West Bank. They supplemented by having introduced a new set of legislation that regulated water management. These laws ranged from procedural legislation aimed at regulating the procedures for registration of water use¹³, to municipal laws that detailed the responsibilities pertaining to water management to be held by Municipalities.¹⁴

The Law on Water Control no. 31 of 1953 (“**Water Control Law**”) regulated the use of water for irrigation in the country and the necessary licensing for the construction of irrigation structure in areas proclaimed as “irrigation areas”. It also regulated the allocations of water for land parcels, especially in times of water shortages. However, the Water Control Law, recognized vested water ownership rights if the owner had constructed an irrigation structure.¹⁵

2. Egyptian Legislation (Gaza Strip)

Egyptian authorities in the Gaza Strip did not enact any new legislation pertaining to water in Gaza. Rather, the Ottoman and British Mandatory water legislation already prevailing in the area remained in force.

Israeli Military Orders (1967-1994)

1. West Bank

Among the first military orders promulgated by the Israeli Military Authorities in the West Bank were orders pertaining to water and land. The Israeli authorities centralized control over water in the West Bank, to guarantee the flow of water to Israel and to the Israeli settlements. Among the first orders to be enacted in 1967 was the Order on Powers Concerning Water Laws No. 92. The Order vested all the powers and authorities

¹³ Law on Settlement of Land and Water no. 40 of 1952.

¹⁴ Law on Municipalities no. 29 of 1955; Law on Villages Administration no. 12 of 1956; Law on the Organization of Matters of Drinking Water in the Jerusalem District no. 9 of 1966.

¹⁵ CESAR *supra* 29.



pertaining to water, and subjected all water organizations and bodies to the control of the West Bank highest military commander. In 1968, the Israeli authorities enacted Order No. 158, which amended the Jordanian Water control Law, and subjected *all* water production installations (drinking or irrigation purposes) to the control of the highest military commander. Moreover, existing water production installations were required to obtain re-licensing. Military Order No. 158 “annulled existing rules recognizing private water ownership and subjected, for the first time in the West Bank, all water production to the centralized control of the highest military commander.”¹⁶

Israel enacted other military orders pertaining to water management in the West Bank, such as Order No. 291 of 1969, which repealed all water and land settlement procedures; Order Amending the Law on the Regulation of the Natural Resources (No. 457 of 1972), among others.

2. Gaza Strip

Since no water-related legislation was enacted in the Gaza Strip during the period 1948-1967, the military orders in the occupied territories focused on amending the mandatory laws still in force. Military Order No. 360 amended the 1937 Ordinance by extending the material scope of its applicability to public water supply. According to the Order, the Israeli “Military Commander” had the authority to proclaim any area as a Public Water Supply area if he deems it to be an endangered area—thus any well drilling in such area required licensing from the authorities.¹⁷

Another significant Military Order that was enforced in the Gaza Strip was Order on Water no. 498 (“**Order 498**”). This Order regulated all aspects of water resources management in Gaza, and encouraged their prudent use. It aimed to centralize the various water management authorities in the hands of a single authority. An “Official in

¹⁶ CESAR *supra* 33.

¹⁷ CESAR *supra* 38.



Charge” was appointed and authorized to prescribe means of effective use of water resources.¹⁸ Furthermore, Order 498 subjected all uses of water and the drilling of new wells to licensing, and vested the Official with the authority to compel a producer/supplier of water to provide water from their own resources to new consumers.¹⁹

Peace Agreements Framework (1994-Present)

Pursuant to the Interim Agreement signed between the Palestinians and Israelis on September 28, 1995 (Article 40) (1), Israel recognized Palestinian water rights in the West Bank. Both sides agreed to cooperate to develop programs that address water management, water rights and equitable utilization of joint water resources. Under this Article, Palestinians will purchase water from Israel. A Joint Water committee (JWC) was established to coordinate the management of water and sewage resources systems.

Palestinian Law

When the Palestinian Authority took office, one of the first areas to be addressed was water. Since 1995, various decrees and laws were enacted. Most recently, a seminal work leading to the draft Palestinian Water Law was undertaken.²⁰ This law went through the entire legislative process, commencing with public debate sponsored by the PWA, followed by extensive discussions then adoption by the Palestinian Legislative Council (Parliament). It was then reviewed by the Cabinet and is now under consideration by the President’s Office. The President’s signature enacts the draft into law. It will enter into force thirty days from publication in the *Official Gazette*. The process has taken approximately 4 years to date.

¹⁸ CESAR *supra* 39.

¹⁹ CESAR *supra* 40.

²⁰ The Draft Water Law was made possible by a grant from the Norwegian Ministry of Foreign Affairs to the Palestinian Water Authority. Cesar and a team of Norwegian attorneys provided extensive expertise. The Author is fortunate to have been part of this team.



Below is a summary of the various water-related legal instruments that are in operation at present pending the entry into force of the Water Law.

1. Presidential Decree No. 90 of 1995

This Decree called for the establishment of a Palestinian Water Authority (PWA) with a head and deputy head.

2. Law No. (2) of 1996 on the Establishment of the Palestinian Water Authority.

This Law implemented Presidential Decree No. 90 of 1995. It set the parameters for the PWA and established the National Water Council.

3. Proposed Water Law, expected to be signed into law 2002

The philosophy of this new Palestinian legislation is that the water resources of Palestine are public property; they are controlled and managed by the government for the benefit of the people and for the development of Palestine (proposed Article 2). The same Article entrusts the government with the protection of water resources from depletion and pollution. The main highlights of the law are below.

Private Ownership/Licensing Use

The private ownership concept of water resources is altogether eliminated (proposed Article 3). There is only a private right of use. The right to water allocation is linked to a use. There is no right to sell or transfer the right even for another private use.

Accordingly, and even prior to final enactment, a special transitional/gradual program is under way in Palestine. It is aimed at fundamentally changing the legal concepts that have prevailed for centuries, i.e., land ownership included the right to use the water flowing through the land, beneath it or drawn from wells situated on the land²¹. Under the new legislation, a regime of licensing production and use will replace ownership.

²¹ The Israeli Military Orders laid the ground work for the elimination of private ownership.



The licensing extends to use for landowner's own private consumption. The proposed law allows private water production, pumping and supply.

Public Ownership

There is, equally, no public ownership of water, there is only management.

Beneficial Uses of Water

The legislation defines uses. Water is allocated to specific beneficial uses including:

- Domestic
- Agriculture
- Industrial
- Commercial
- Tourism
- Other private of public uses

These uses must be licensed pursuant to the Law (proposed Article 5(2)).

Licensing

Licensing for special activities is regulated by (proposed Article 4). These licenses include:

- Use license
- Production license
- Recharge license
- Drilling license
- Excavation, extraction, operation and collection license
- Wastewater treatment
- Desalination



The Draft then addresses the institutional framework, discussed below. It also addresses environmental protection. It contains various provisions dealing with the violations and penalties.

The Institutional Framework

Having capable institutions is central to creating a comprehensive water management system. The acuteness of the problem in Palestine requires setting long-term strategies and allocation policies. Like the legal framework, the institutional framework has been characterized with numerous agencies often times performing competing duties.

In 1995, the Palestinian National Authority issued a decree establishing the Palestinian Water Authority (“PWA”). In 1996, the Palestinian Legislative council (“PLC”) promulgated the Law on the Establishment of the Palestinian Water Authority no. 18 of 1996 (“**The 1996 Law**”). According to the 1996 Law, the PWA is an independent entity²² that aims to efficiently administer the management of water resources and their development, to implement the water policies adopted by the National Water Council, to undertake water projects and supervise their implementation, and to achieve full coordination among the municipal agencies and other distribution bodies.²³ Under the proposed Law, the existing National Water Council (“Council”) and PWA are grandfathered. The Council sets the policies and strategies for the management of water resources; the PWA is the administrator and “manager”. It shall prepare the water master plan, allocate beneficial uses, license and supervise. The proposed Law calls for the creation of regional utilities and associations (Article 25) to rehabilitate and upgrade existing utilities and associations.

Conclusions

²² Law on the Establishment of the Palestinian Water Authority no. 18 of 1996, article 2.



The promulgation of the Water Law is one step in the adoption of comprehensive water resource management plan for Palestine. The development of the infrastructure and institutions capable of addressing existing and future water issues will continue to be a major challenge to the Palestinians. Divestment of vested private rights will be a formidable challenge in the implementation process.

The greater challenge is the sustained development of the sector. To balance the historical inequities, a phased out approach is required with a focus on demand management. Demand management is critical because of the scarcity of the water resources in Palestine. The challenge includes addressing agency coordination of responsibilities and functions (PWA, regional utilities and associations), water management and related land use reform, treatment of vested private interests, and centralized policy and strategy planning with proper divestment to regional utilities and association on the implementation level.

To address the scarcity of the resources and the Palestinian claims, international law principles of equitable utilization, good neighborliness and appreciable harm could lead to a fair and just resolution. The foregone conclusion is that these principles are far fetched at present given the Palestinian-Israeli equation. Hard and painful decisions must be made.