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**‘Essays on Human Rights: A Celebration of the Life of Dr. Janusz Kochanowski’**

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***‘The Lion’s Share of the Water’ – Addressing Violations of the Right to Water in the Occupied Palestinian Territories’***

*‘During summer the mains supply is cut off for approx 10 days in every month. This is due to limited supply from the water company...because of discrimination. They give more water to settlers...Israelis control all resources and they take the lion’s share of water.’<sup>1</sup>*

**Introduction**

This chapter will consider the human right to water within the Occupied Palestinian Territories. It will begin with an examination of the legal basis for such a right under international human rights law and is necessarily limited to this legal framework due to chapter constraints.<sup>2</sup> It will then investigate the main obstacles to the realisation of the right on the ground, including establishing violations of the right. Finally it will offer some recommendations as to what can be done to realise the right in light of the continuing occupation and international malaise regarding the Israeli / Palestinian peace process. In conclusion I will argue that despite development of an operational legal human right to water implementation in the OPTs is hindered by the continuing occupation by Israel. This does not mean that we should not continue to advocate a human rights approach to the water problems of the Palestinians, rather that we should intensify efforts to implement the right to water on the ground and to hold Israel accountable for their violations of the right.

The conflict between Israel and Palestine and the occupation of the Palestinian Territories by Israel has been widely documented and discussed in law, politics and international relations, current affairs, the media and in academia, as well as by human rights organisations. Further, many have addressed legal arguments pertaining to the conflict, including *inter alia* assessments of the legal status of the OPTs and of the legal status of the conflict under international humanitarian law.<sup>3</sup> However, little attention has been given to examining international human rights law applicable to the OPTs. Further, where human rights have

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<sup>1</sup> Interviewee 37, p.148 in Cahill-Ripley, A, *The Human Right to Water in the Occupied Palestinian Territories*, Routledge: Oxford, 2011.

<sup>2</sup> It is also the case that sources for a right to water can be found under international humanitarian law, Palestinian domestic law and Israeli domestic law. For a detailed analysis of these provisions see Cahill-Ripley, A, *The Human Right to Water in the Occupied Palestinian Territories*, Routledge: Oxford, 2011.

<sup>3</sup> See, Benvenisti, E, *The International Law of Occupation*, Princeton USA: Princeton University Press, 2<sup>nd</sup> Edition, 2004; Scobbie, I, ‘Natural Resources and Belligerent Occupation: Mutation through Permanent Sovereignty’ pp 253-260, in Bowen, Stephen, (ed) *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories*, Martinus Nijhoff / Kluwer Law International: London, 1997, pp 221-290; Watson, G, *The Oslo Accords – International Law and the Israeli-Palestinian Peace Agreements*, Oxford: Oxford University Press, 2000, pp.136-142.

been addressed the focus has been upon grave human rights violations within the conflict, such as the military incursions into various West Bank Palestinian towns and refugee camps in 2003 and the more recent renewed incursions into Gaza, little prominence is given to highlighting the everyday threats to and violations of economic and social rights within the OPTs. Moreover although the role of water within the conflict is well documented,<sup>4</sup> limited research has been conducted or published assessing the water crisis from a human rights perspective. Consequently, I wish to enhance the debate by focusing on such a human rights framework to illuminate the ‘on-the-ground’ reality of the water crisis. This examination of the enjoyment or lack of enjoyment of a human right to water will emphasize the unique benefit, in terms of potential empowerment, of the state-individual relationship of human rights law, as oppose to state-state mechanisms. Therefore, it is the objective of this chapter to focus upon the international human rights framework that is applicable in the OPTs in order to assess the added value of a human rights approach to resolution of the conflict. In particular, it will consider the role that the human right to water can have in offering a fresh perspective to tackling the issue of water which is a significant element of the conflict.

It is worth noting that the starting point from which this analysis begins is an acceptance of the joint application of both international human rights law and humanitarian law to the OPTs.<sup>5</sup>

### **The Legal Basis for the Human Right to Water under International Human Rights Law Applicable In Israel/ Palestine**

Previously there has been some discussion as to whether the right to water constituted an independent legal right.<sup>6</sup> However, since the adoption of the UN Committee on Economic, Social and Cultural Rights (UN CESCR) General Comment 15 in 2002<sup>7</sup> and subsequent legal

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<sup>4</sup> For example see Allan, J.A, *The Middle East water question: hydro-politics and the global economy*, London: I B Tauris, 2001; Daibes-Murad, F, *A New Legal Framework for Managing the World's Shared Groundwaters - A Case-study from the Middle East*, Water Policy Series, London: International Water Association, 2005; Selby, J, *Water, Power and Politics in the Middle East: The Other Israeli-Palestinian Conflict*, London: IB Tauris, 2003; Lonergan, S and Brooks, D, *Watershed: The Role of Fresh Water in the Israeli-Palestinian Conflict*, Ottawa: International Development Research Centre (IDRC), 1994; Trottier, J, *Hydropolitics*, Jerusalem: Palestinian Academic Society for the Study of International Affairs (PASSIA), 1999.

<sup>5</sup> A human right to water can be inferred from many of the humanitarian law provisions applicable to the OPTs regardless of the status of the conflict. See Cahill-Ripley, A, *The Human Right to Water and its Application in the Occupied Palestinian Territories*, Oxford: Routledge, 2011, pp.101-110; Scheinin, M, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mission to Israel, including visit to Occupied Palestinian Territory*, A/HRC/6/17/Add.4, 16 Nov 2007, para.7.

<sup>6</sup> For example see Cahill.A, ‘The Human Right to Water – A Right of Unique Status –The Legal Status and Normative Content of the Right to Water’, *International Journal of Human Rights*, Vol.9, No.3, Sept 2005, pp.389-410; Alvarez, I. J, ‘The Right to Water as a Human Right’ in Piccolotti and Taillent (eds) *Linking Human Rights and the Environment*, University of Arizona Press: USA, 2003; McCaffrey, S.C, ‘The Human Right to Water Revisited’ in Brown Weiss, Boisson DeChazournes and Bernasconi-Osterwalder, *Water and International Economic Law*, OUP, 2004; Gleick, P, ‘The Human Right to Water’, in *Water Policy*, Vol. 1, No.5, 1999.

<sup>7</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No.15 20/01/03, (29<sup>th</sup> session, Nov 2002) *The Right to Water (Arts 11 and 12 of the Covenant)* E/C.12/2002/11.

developments such as the adoption of a General Assembly Resolution<sup>8</sup> and the appointment of a UN Special Rapporteur on the human right to safe drinking water and sanitation,<sup>9</sup> the legal status of the right has been confirmed. It is therefore generally accepted that in the contemporary legal context water is a fully independent human right as provided for within the UN International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), Articles 11 and 12, which contain the implicit provision for a right to water, as well as the UN Convention on the Rights of the Child (CRC),<sup>10</sup> the UN Convention on the Elimination of all types of Discrimination against Women (CEDAW)<sup>11</sup> and the UN Convention on Persons with Disabilities,<sup>12</sup> where an explicit right to water is provided for.

In terms of legal standards, the comprehensive guidelines set out in GC15 are intended to clarify the legal basis<sup>13</sup> and the normative content of the right<sup>14</sup>, as well as confirming the obligations of state parties to the Covenant in realising the right.<sup>15</sup> The human right to water entitles everyone to, 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.'<sup>16</sup> As such the right to water is based upon the key principles of safety, accessibility, sufficiency and affordability. In addition it determines priorities for water use.

As Israel is party to the above international human rights treaties, they are bound by the legal provisions within to realise the human right to water.<sup>17</sup> It is notable however, that they have not ratified several of the additional protocols accepting complaints procedures including the Optional Protocol to the ICESCR.<sup>18</sup> This may be an indication of the current view of human rights held by the Israeli state; of their reluctance to accept that they are bound under these treaties, to fulfil their obligations, not only within the state of Israel proper but also within the

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<sup>8</sup> By a vote of 122 in favour to none against, with 41 abstentions on 28 July 2010, the UN General Assembly adopted a resolution recognising the human right to safe, clean, accessible and affordable drinking water and sanitation for all. See A/RES/64/292 *The Human Right to Water and Sanitation*, 3 August 2010.

<sup>9</sup> See Human Rights Council resolution A/HRC/RES/16/2 *The human right to safe drinking water and sanitation*, 8 April 2011, establishing the Special Rapporteur with an initial mandate for 3yrs.

<sup>10</sup> Article 24(c).

<sup>11</sup> Article 14(h).

<sup>12</sup> Article 28.2 (a).

<sup>13</sup> See GC15 paragraphs 3-5.

<sup>14</sup> See GC15 paragraphs 10-16.

<sup>15</sup> States Parties obligations are detailed within paragraphs 17-20 (general) and 21-29 (specific).

<sup>16</sup> GC15 paragraph 2.

<sup>17</sup> ICESCR, Signed 19/12/66, Ratification 03/10/91; CEDAW, Signed 17/07/80, Ratification 03/10/91, and the CRC, Signed 03/07/90, Ratification 03/10/91. Israel are also party to *inter alia*, International Covenant on Civil and Political Rights (ICCPR), Signed 19/12/66, Ratification 03/10/91; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Signed 22/10/86, Ratification 03/10/91; Convention on the Elimination of Racial Discrimination (CERD), Signed 07/03/66, Ratification 03/01/79. For a full overview of Israel's international human rights commitments including treaty obligations and current compliance with said obligations and special procedures see A/HRC/WG.6/17/ISR/2, 21 October 2013, Human Rights Council Working Group on the Universal Periodic Review, Seventeenth session Geneva, 21 October – 1 November 2013, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Note by the Secretariat.

<sup>18</sup> Also the ICCPR Optional Protocol I; CEDAW Optional Protocol (no action taken as of October 2013).

OPTs. Israel continues to question the application of these provisions to the OPTs.<sup>19</sup> Firstly, Israel denies the applicability of human rights treaties in times of conflict, including occupation. Secondly, Israel asserts that they are not responsible for the enjoyment of human rights within the OPTs: rather the obligations are held by the Palestinian Authority.

Concerning the question whether human rights are applicable during periods of conflict and occupation, the International Court of Justice (ICJ) has set precedence in determining that international human rights law is applicable in times of conflict. In their Advisory Opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons, they advised on the applicability of the UN International Covenant on Civil and Political Rights (ICCPR) in times of war: ‘...The protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency...’<sup>20</sup>

This view is also taken by the Human Rights Committee, who state:

The Committee has noted the State party's position that the Covenant does not apply beyond its own territory, notably in the West Bank and in Gaza, especially as long as there is a situation of armed conflict in these areas. The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law[...] The State party should reconsider its position and to include in its third periodic report all relevant information regarding the application of the Covenant in the Occupied Territories resulting from its activities therein.<sup>21</sup>

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<sup>19</sup> For Israel's position see CESCR *Second Periodic State Report of Israel*, Considered May 2003, E/1990/6/Add.32, 16 October 2001, para.5, para.6. Also [verbatim] Additional information submitted by States parties to the Covenant following the consideration of their reports by the Committee on Economic, Social and Cultural Rights, Addendum, ISRAEL, [20 April 2001], E/1989/5/Add.1414 May 2001, para.2, para.3; Human Rights Committee, *Second Periodic Report Israel*, [20 November 2001], CCPR/C/ISR/2001/2, 4<sup>th</sup> December 2001, para.8; International Commission of Jurists / Centre for the Independence of Judges and Lawyers, *The Civilian Judicial System in the West Bank and Gaza: Present and Future*, International Commission of Jurists / Centre for the Independence of Judges and Lawyers: Geneva, June 1994, p.29, note 37.

<sup>20</sup> International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8<sup>th</sup> July 1996, ICJ Reports 1996, p.240, para.25.

<sup>21</sup> *Concluding observations of the Human Rights Committee: Israel*, CCPR/CO/78/ISR, 21<sup>st</sup> August 2003, para.11. Original footnote omitted. See also *Concluding observations of the Human Rights Committee: Israel*, CCPR/C/79/Add.93, 18<sup>th</sup> August 1998, para.10.

Furthermore, in their Advisory Opinion, 9<sup>th</sup> July 2004, on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the ICJ stated: ‘More generally, the Court considers that the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights...’<sup>22</sup> Thus the ICJ advised that the application of human rights in times of conflict is not limited to the civil and political rights contained within the ICCPR, but also encompasses the rights contained within all international human rights conventions, including economic and social rights. This view has also been confirmed many times by international bodies and legal scholars.<sup>23</sup>

As such in regard to their claim that the law of armed conflict (international humanitarian law) is the sole body of law which applies, the State of Israel is in complete disagreement with wider international opinion, including judicial opinion.<sup>24</sup> In Israel’s second state report to the UN CESCR, Israel asserts this position:

...Israel has consistently maintained that the Covenant does not apply to areas that are not subject to its sovereign territory and jurisdiction. This position is based on the well-established distinction between human rights and humanitarian law under international law. Accordingly, in Israel’s view, the Committee’s mandate cannot relate to events in the West Bank and the Gaza Strip, inasmuch as they are part and parcel of the context of armed conflict as distinct from a relationship of human rights.<sup>25</sup>

In response to these claims, the government of Israel has received much criticism. The UN CESCR has noted its concern regarding Israel’s position<sup>26</sup> and has rejected outright their

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<sup>22</sup> ICJ Wall Opinion, 9<sup>th</sup> July 2004, para.106.

<sup>23</sup> Primary sources include: Human Rights in Armed Conflicts, Resolution XXIII adopted by the International Conference on Human Rights. Teheran, 12 May 1968; Respect for Human Rights in Armed Conflicts, Resolution 2444 (XXIII) of the United Nations General Assembly, 19 December 1968). For secondary sources see *inter alia*: Ssenyonjo. M, *Economic, Social and Cultural Rights in International Law*, Hart: Oxford, 2009, pp.39-42; Henckaerts. JM and Doswald-Beck. L, *International Committee of the Red Cross- International Customary Humanitarian Law, Volume 1 Rules*, Cambridge University Press: Cambridge, 2005, pp.299-306 at p.299; Henckaerts. Jean-Marie, ‘Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict’ in *International Review of the Red Cross*, Volume 87, No.857, March 2005, p195; International Commission of Jurists, 1994, p.28; Rowe. P, *The Impact of Human Rights Law on Armed Forces*, Cambridge University Press: Cambridge, 2006, p.120; Skogly.S, *Beyond National Borders: States’ Human Rights Obligations in International Cooperation*, Intersentia: Oxford/Antwerp, 2006, p.169 and p.199.

<sup>24</sup> See Amnesty International and others, A/HRC/WG.6/15/ISR/3, 8 November 2012, Human Rights Council Working Group on the Universal Periodic Review, Fifteenth session Geneva, 21 January – 1 February 2013, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 Israel\*, para.62.

<sup>25</sup> CESCR *Second Periodic State Report of Israel* – Considered May 2003, E/1990/6/Add.32, 16 October 2001, para.5. Also [verbatim] *Additional information submitted by States parties to the Covenant following the consideration of their reports by the Committee on Economic, Social and Cultural Rights, Addendum, ISRAEL*, [20 April 2001], E/1989/5/Add.1414 May 2001, para.2.

<sup>26</sup> E/C.12/ISR/CO/3, 16 December 2011, UN Committee on Economic, Social and Cultural Rights, Forty-seventh session 14 November-2 December 2011, Consideration of reports Submitted by States parties under articles 16 and 17 of the Covenant, *Concluding observations of the Committee on Economic, Social and*

assertion that human rights do not apply in situations of armed conflict.<sup>27</sup> Moreover they note that even if Israel's position was to be accepted, Israel still has human rights obligations under international humanitarian law.

Israel also states that they do not hold human rights obligations in relation to the OPTs because the territories are not under their jurisdiction.<sup>28</sup> Israel claims that it is the Palestinian Authority that has jurisdiction over the OPTs, as under the terms of the Oslo Accords, they have responsibility for civil matters within most of the West Bank area.<sup>29</sup> Subsequently, Israel asserts that it is the Palestinian Authority who has responsibility for implementation of the rights contained within the ICESCR and who carry the obligations correlative to those rights, 'pursuant to the Israeli-Palestinian Interim Agreement of 1995'. Israel claim that under this agreement the 'overwhelming majority of powers and responsibilities in all civil spheres (including economic, social and cultural) [...] have been transferred to the Palestinian Council, which [...] is directly responsible and accountable vis a vis the entire Palestinian population of the West Bank[...] with regard to such issues.'<sup>30</sup> Therefore, due to the 'jurisdiction of the Palestinian Council [...], Israel cannot be internationally responsible for ensuring the rights under the ICESCR in these areas.'<sup>31</sup> Furthermore, the state of Israel also declares this to be the case concerning application of the ICCPR, quoting verbatim the above position.<sup>32</sup>

Although the Palestinian Authority (Council) is the elected body of the Palestinian population living under occupation, it does not constitute a government of a sovereign state and therefore, they cannot become a State Party to the Covenants. However, the Israeli government do not see this as problematic and assert that, 'The fact that the Palestinian Council does not represent a State does not, in itself, preclude its responsibility in the sphere of human rights protection.' They further claim that under Article XIX of the Interim Agreement 'the Palestinians have taken it upon themselves to exercise their powers and responsibilities "with due regard to internationally accepted norms and principles of human rights and the rule of law".'<sup>33</sup>

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*Cultural Rights Israel*, para.8. Also, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*. 23/05/2003, E/C.12/1/Add.90, para.15.

<sup>27</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 31/08/2001, E/C.12/1/Add.69, para 12.

<sup>28</sup> *CESCR Second Periodic State Report of Israel*, 2001, para.5; *Additional information Addendum, ISRAEL*, 2001, para.2; Human Rights Committee, *Second Periodic Report Israel*, [20 November 2001], CCPR/C/ISR/2001/24, December 2001, para.8; International Commission of Jurists, 1994, p.26.

<sup>29</sup> Areas A and B under the terms of Oslo II.

<sup>30</sup> *CESCR Second Periodic State Report of Israel*, 2001, para.6; *Additional information Addendum, ISRAEL*, 2001, para.3.

<sup>31</sup> *CESCR Second Periodic State Report of Israel*, 2001, para.6; *Additional information Addendum, ISRAEL*, 2001, para.3.

<sup>32</sup> Human Rights Committee, *Second Periodic Report Israel*, 2001, para.8.

<sup>33</sup> *CESCR Second Periodic State Report of Israel*, 2001, para.7; *Additional information Addendum, ISRAEL*, 2001, para.4; Human Rights Committee, *Second Periodic Report Israel*, 2001, para.8.

Whilst it is true that the Palestinian Authority have agreed to be bound by the principles of human rights law, they are not however the principal obligations holders in respect of these rights.<sup>34</sup> Ultimately, it is the Israeli government who are the State Party to the Covenants and it is the state of Israel who holds ‘effective control’ over the territories in question. As such, it is the state of Israel that is legally obligated to ensure enjoyment of human rights.<sup>35</sup> In addition, in a significant legal opinion, the ICJ in considering the extra-territorial obligations of human rights treaties within their Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory<sup>36</sup> concluded that both the ICCPR and the ICESCR were applicable to the territories and that Israel held obligations in this respect. In relation to the ICCPR, the Court noted that under Article 2 the treaty is applicable to not only to individuals within the state’s territory, but also those individuals outside the national territory, but subject to the state’s jurisdiction.<sup>37</sup> Concerning the ICESCR, the ICJ observed that ‘although the treaty does not contain any provision on its scope of application,<sup>38</sup> nevertheless, this cannot be interpreted as excluding areas where a state exercises extra-territorial jurisdiction’.<sup>39</sup> As such, the Court held that Israel was responsible for their implementation as State Party to the Covenants and as the occupying power exercising effective control:

...The territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.<sup>40</sup>

Note also that the ICJ acknowledge that the Palestinian Authority have some responsibility in the implementation of rights, where they have capacity to do so. In a step further, the Center for Economic and Social Rights, argues that the Palestinian Authority have full human rights obligations in Areas A under the Oslo Accords, where full civil and military authority has been passed to the Palestinians.<sup>41</sup> However, the problem with this view is that even though the PA has ‘responsibility’ for these areas, they are still in reality subject to the control of Israel in many aspects which affect the capacity of the PA to implement economic and social rights, including *inter alia* the supply of water. Therefore, although they may have obligations to respect human rights in regard to certain civil rights, for example the activities

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<sup>34</sup> The Palestinian Authority may have human rights obligations as a third party.

<sup>35</sup> As noted previously, both the UN Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee have stated this opinion. See also CCPR/C/79/Add.93, para.10; CCPR/CO/78/ISR, para.11; CESCR *Concluding Observations to Israel*, E/C.12/1/Add.90, para.15 and 31.

<sup>36</sup> ICJ Wall Opinion, 9<sup>th</sup> July 2004, para.107-109.

<sup>37</sup> ICJ Wall Opinion, 9<sup>th</sup> July 2004, para.107-109.

<sup>38</sup> Unlike the ICCPR, Article 4.

<sup>39</sup> ICJ Wall Opinion, 9<sup>th</sup> July 2004, para. 112.

<sup>40</sup> ICJ Wall Opinion, 9<sup>th</sup> July 2004, para. 112.

<sup>41</sup> Center for Economic and Social Rights, *Applying Economic and Social Rights in Palestine*, New York/Gaza: Center for Economic and Social Rights, January 2000, pp.8-9; p.12, note 23; p.13, note 30.



of the Palestinian police force, in respect of economic and social rights such as the right to water and food, Israel still maintains control of supplies of imported resources, through control of the borders and can restrict access to or maintenance of food and water supplies from within the OPTs. As such, the Palestinian Authority can only hold a moral obligation and/or legal obligations at the level of third party obligations, as they do not have the control over the necessary means to implement such rights.

In addition, as noted, Israel argue that the Palestinian Authority is responsible for the enjoyment of all human rights within the OPTs in all areas, under the terms of the Interim Agreement, Article XIX, which states that international human rights norms must be adhered to. According to Hunt, these norms must include the provisions within the International Bill of Rights. Consequently, 'in this indirect way the Palestinian authorities have obligations [as do Israel] in respect of [economic], social [and cultural] rights enshrined in the ICESCR', even though they are not a party to the Covenants.<sup>42</sup> Conversely, this 'indirectness' is the key to understanding the status of the PA obligations under this agreement. The said article of the Interim Agreement states that the PA must 'adhere' to these norms, which implies respect for human rights in their activities but not a legal obligation to fulfil these rights. Thus, although the PA may have a moral obligation and may have a legal obligation to respect, as contained in the bilateral agreement, it is evident that the nature and level of Palestinian Authority obligations is unclear.

The international human rights obligations of the PA, regarding the economic and social rights of the Palestinians in the West Bank as a whole, may draw parallels with those of service providers in the private sector,<sup>43</sup> in the main, at a level of a duty to respect. In Areas A, where they have civil and military control, for example, control of the police, they may be of a higher level and include an additional duty to protect. Where the Palestinian Authority has some capacity to control and distribute resources they may have a duty to fulfil/facilitate within their limited capabilities. However, they cannot be held responsible at international level for realisation of ESCRs, as they do not have the means to do so.<sup>44</sup> The situation is now further complicated by the UN General Assembly's recognition of Palestine as a Non-Member Observer State in 2012.<sup>45</sup> In theory this now allows the Palestinian Liberation Organisation (PLO) to ratify international human rights treaties. However, this would then make the PLO directly accountable for human rights within the territories despite lacking capacity to implement such rights and uphold full legal obligations. Conversely the PLO need

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<sup>42</sup> Hunt. Paul, 'Economic and Social Rights: Issues of Implementation', in Bowen, 1997, pp 201-220 at p.201.

<sup>43</sup> See De Feyter.K and Gomez Isa.F, *Privatisation and Human Rights in the Age of Globalisation*, Antwerp: Intersentia, 2005, for details of third party obligations of service providers including water authorities.

<sup>44</sup> For an interesting theory of obligations based upon capacity to act rather than subjectivity see Clapham. A, *Human Rights Obligations of Non-State Actors*, Oxford: OUP, 2006, pp.70-73.

<sup>45</sup> On 29 Nov 2012 the UN General Assembly voted by 138 to 9 with 41 abstentions to recognise Palestine as a Non-Member Observer State. See A/RES/67/19 *Status of Palestine in the United Nations*, 4 December 2012 (The PLO proclaimed the State of Palestine on 15 December 1988).

to consider signing such instruments in order to satisfy demands from certain member states that they are serious about seeking a peace deal and eventual statehood.<sup>46</sup>

Ultimately, the indistinct status of the territory of 'Palestine' and the continuing occupation has implications for the legal obligations that the PA can hold. Until the OPTs constitute a sovereign state of Palestine the legal obligations concerning the human rights of the Palestinian government will remain ambiguous. At present, the PA can only act as the elected body of an occupied people and territory and is thus limited in its capacity to act. Therefore, it is the occupiers, the state of Israel, who hold the full legal obligations with regard to the right to water and all economic and social rights under international human rights law.

### **The Enjoyment of the Right to Water within the OPTs**

Having ascertained the applicability of the relevant international human rights instruments to the OPTs and having established that Israel is responsible for the realisation of human rights within the OPTs, a close examination of their compliance with their obligations in relation to the right to water is necessary. This will illustrate the enjoyment or lack of enjoyment of the right on the ground.

As established, Israel refuses to recognise their responsibility for implementation of economic and social rights within the OPTs. Owing to their position, within their periodic state reports to the Human Rights Council Universal Periodic Review and the various UN treaty monitoring bodies including the UN CESCR. Israel does not include any data on the enjoyment of economic and social rights by the Palestinian population within the OPTs. This is despite several requests from the Committee:

'The Committee regrets the absence in the State party's third periodic report as well as in its replies to the list of issues of information related to the enjoyment of economic, social and cultural rights as enshrined in the Covenant in the Occupied Palestinian Territory.

The Committee urges the State party to include information on the enjoyment of economic, social and cultural rights as enshrined in the Covenant in the Occupied Palestinian Territory in its fourth periodic report. The Committee reminds the State party of the Advisory Opinion rendered on 9 July 2004 by the International Court of Justice, as the United Nations' principal judicial body, which stated that Israel is bound by the Covenant with regard to the Occupied Palestinian Territory and that it should also not raise any obstacle to the exercise of such rights in

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<sup>46</sup> For further discussion see Human Rights Watch, 'Palestine: Newest Observer State should Act on Rights Treaties', 29 November 2012 at, <http://www.hrw.org/news/2012/11/29/palestine-newest-observer-state-should-act-rights-treaties>

Last accessed 9 January 2014.

those fields where competence has been transferred to the Palestinian authorities.’<sup>47</sup>

Moreover, in the most recent state report to the Committee, Israel does not attempt to justify or explain their position. In fact there is no reference to the OPTs, nor is there any data included from the OPTs, other than that from Israeli settlers who are included in the population of Israel proper.<sup>48</sup> This refusal to report on the enjoyment of rights in the territories makes an assessment of the enjoyment of the right to water by the Palestinian population difficult. However, owing to parallel reports by non-governmental organisations with special consultative status with the United Nations, information is available, if limited and some evaluation can be made. The UN CESCR have noted that violations of economic and social rights within the territories are taking place and there are several reasons for this: The main factor noted by the Committee, which impedes the implementation of the rights contained within the ICESCR, is the continued emphasis placed upon security measures by the Israeli government.<sup>49</sup> However, the Committee does not see these security concerns as justification for Israel to derogate from their obligations under the Covenant including not reporting on the situation in the OPTs. Consequently, it has stated strongly that although it recognises that Israel has ‘serious security concerns’, they also have an ‘obligation to report and to fully guarantee and implement the Covenant rights for all persons in all territories under its effective control.’<sup>50</sup> More specifically,

The Committee urges the State party to ensure that any security measure it adopts does not disproportionately limit or impede the enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to land and water resources by Palestinians, and that adequate restitution and compensation are provided to those who have incurred damage to and loss of property and lands as a result of these security measures.<sup>51</sup>

Notably the UN CESCR explicitly refers to the negative impact of security measures on the right to water. Specific measures which impede the enjoyment of the right include the policy of curfews and closures, the constructed Separation Barrier or Wall and incursions and deliberate targeting in times of high intensity conflict.

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<sup>47</sup> E/C.12/ISR/CO/3, 16 December 2011, UN Committee on Economic, Social and Cultural Rights, Forty-seventh session 14 November-2 December 2011, Consideration of reports Submitted by States parties under articles 16 and 17 of the Covenant, *Concluding observations of the Committee on Economic, Social and Cultural Rights Israel*, para.8. See also previous *Concluding Observations* 23/05/2003, E/C.12/1/Add.90, para.15. ; 31/08/2001, E/C.12/1/Add.69, para 11.

<sup>48</sup> See Israel (State of ) Ministry of Justice and Ministry of Foreign Affairs, *Third Periodic Report Concerning the Implementation of the ICESCR 2008* (Advance Unedited Version), E/C.12/ISR/3.

<sup>49</sup> See *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 23/05/2003, para.11 and *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 04/12/1998, E/C.12/1/Add.27, para.7.

<sup>50</sup> E/C.12/ISR/CO/3, 16 December 2011, UN Committee on Economic, Social and Cultural Rights, Forty-seventh session 14 November-2 December 2011, Consideration of reports Submitted by States parties under articles 16 and 17 of the Covenant, *Concluding observations of the Committee on Economic, Social and Cultural Rights Israel*, para.3.

<sup>51</sup> *Concluding Observations of the CESCR: Israel*, 23/05/2003, para.40.

## *The Wall*

As part of their counter-terrorism policy Israel began construction of a ‘security fence’ in 2002. The current status of the Wall’s construction is that 62% of the wall is completed, 10% is under construction and 28% remains planned.<sup>52</sup> Further the barrier does not follow the Green Line<sup>53</sup> but is largely located within the West Bank, with 85% of the route running inside the West Bank itself<sup>54</sup> and ‘fingers’ extending deep into Palestinian territory.<sup>55</sup> The ‘Wall’ is of huge detriment to the lives of Palestinians living within the West Bank, as it prevents or restricts people from accessing their land and subsequently their foodstuffs and water sources, or the land and water sources are requisitioned and appropriated, resulting in the denial of means to make a living.<sup>56</sup> In addition due to restrictions in access, for example closures and a complex permits system Palestinians face difficulties in travelling to and from places of work, school and university and from accessing healthcare.<sup>57</sup> The permit regime also threatens the integrity of family units<sup>58</sup> and in the worst cases families have been separated on two different sides of the barrier.<sup>59</sup> This has resulted in widespread violations of economic and social rights<sup>60</sup> including violations of the right to water.<sup>61</sup> Specifically in relation to the effects of the construction of the security wall, the UN CESCR has noted that it will ‘infringe upon the surface area of the occupied territories which would limit or even impede access by Palestinian individuals and communities to land and water resources.’<sup>62</sup> The completed phases of the Wall have already impeded the access of Palestinians to ‘vital water, sanitation and hygiene services’.<sup>63</sup> In certain areas the Wall has blocked storm water drainage, resulting in flooding damaging housing and crops and causing a threat to health.<sup>64</sup> Moreover, the completion of the Wall will prevent Palestinians from access to some of the

<sup>52</sup> See UN Office for Coordination of Humanitarian Affairs – occupied Palestinian Territory (OCHA), *The Humanitarian Impact of the Barrier- Fact Sheet July 2013*, OCHA: East Jerusalem, July 2013, p.1. See also UN Office for Coordination of Humanitarian Affairs – occupied Palestinian Territory (OCHA), *Five Years after the International Court of Justice Advisory Opinion – a Summary of the Humanitarian Impact of the Barrier*, OCHA: East Jerusalem, July 2009.

<sup>53</sup> The 1949 Armistice Line between Israel and Jordan and recognised border between Israel and the OPTs.

<sup>54</sup> UN OCHA, July 2013, p.1.

<sup>55</sup> Scheinin, 2007, para.32.

<sup>56</sup> International Commission of Jurists, *Israel’s Separation Barrier – Challenges to the rule of law and human rights*, ICJ: Geneva, July 6<sup>th</sup> 2004, p.48.

<sup>57</sup> UN OCHA, 2009, p.12; Scheinin, 2007, para.39-41. See also UN Office for Coordination of Humanitarian Affairs – Occupied Palestinian Territories (OCHA), *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005, p.6 and pp.8-31.

<sup>58</sup> Scheinin, 2007, para.42. See also OCHA, July 2013, p.1.

<sup>59</sup> UN OCHA, July 2013, p.1; March 2005, p.11.

<sup>60</sup> Including the rights to housing, health, work, freedom of movement, family life and education. For further details see the International Commission of Jurists, July 6<sup>th</sup> 2004, p.45 and pp 47-49.

<sup>61</sup> Al Haq, *Water for One People Only – Discriminatory Access and Water Apartheid in the OPT*, Al Haq: Ramallah, 2013, p.44; International Commission of Jurists, July 6<sup>th</sup> 2004, p.45 and pp.47-49; Palestinian Hydrology Group (PHG), *Water for Life – Israeli Assault on Palestinian Water, Sanitation and Hygiene During the Intifada*, WaSH Monitoring Report 2004, PHG: Ramallah, 2004, pp.72-85.

<sup>62</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 23/05/2003, E/C.12/1/Add.90, para.24.

<sup>63</sup> PHG, *Water for Life 2005 – Continued Israeli Assault on Palestinian Water, Sanitation and Hygiene During the Intifada*, PHG: Ramallah, 2005, p.73. Also, Oxfam International, *Five Years of Illegality. Time to dismantle the Wall and respect the rights of Palestinians*, Report, Oxfam International, July 2009, p.22-25.

<sup>64</sup> PHG, 2005, p.77.

best water sources in the West Bank (the Western Aquifer) and result in Israel's territorial superiority over the Western Aquifer.<sup>65</sup>

Several legal bodies have considered the legality of this barrier and/or the negative consequences of the wall upon the enjoyment of human rights by the Palestinians within the OPTs of the West Bank. The ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory<sup>66</sup> sought to ascertain whether the construction of the Wall had violated the rules and principles of international human rights and humanitarian law.<sup>67</sup> In conclusion they found that the construction of the Wall and its associated regime is illegal as it violates the Palestinians' freedom of movement, right to work, to health, to education and to an adequate standard of living, as well as breaching obligations under international humanitarian law.<sup>68</sup> The Israeli High Court of Justice responded that they did not accept the findings of the ICJ, firstly, on the principle that they had no jurisdiction to consider a case, as it was a matter for Israel and they did not give their consent for such an international opinion and secondly, as the opinion was based on inaccurate facts and lack of information. They further stated that the Wall should not be considered as a whole but rather each particular section considered on its own merits, on the principle of proportionality.<sup>69</sup> For example, in the case of *Beit Sourik Village Council v. Government of Israel and the Commander of the IDF Forces in the West Bank*,<sup>70</sup> the Israeli High Court decided that the impact of the Wall upon the humanitarian needs of the Palestinian village must be taken into account when planning the route of the fence.<sup>71</sup> They noted that according to the principle of proportionality, security considerations must be balanced with the 'rights and needs and interests of the local population'.<sup>72</sup> This resulted in the rerouting of this particular section of the Wall,<sup>73</sup> as they ruled that the effects of the Wall upon the Palestinians, in this case, were indeed disproportionate.<sup>74</sup> However, in a further case *Mara'abe et al v. The Prime Minister of Israel and others*,<sup>75</sup> the court held that Israel has a right to build the security fence beyond the Green Line in order to protect Israeli settlements and Israeli citizens,<sup>76</sup> even if Palestinian communities were disproportionately affected. Although they ordered a review of the current route, they implied that the security needs of

<sup>65</sup> Al Haq, 2013, p.44; Amnesty International, *Troubled Waters- Palestinians Denied Fair Access to Water*, Amnesty International Publications, 2009, pp.46-55; PHG, 2005, p.70; PHG, 2004, pp.72-85.

<sup>66</sup> International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9<sup>th</sup> July 2004.

<sup>67</sup> ICJ Wall Opinion, para.114.

<sup>68</sup> Ibid, paras.123-137.

<sup>69</sup> Israeli High Court of Justice Statement, 23<sup>rd</sup> February 2005. See summary at State of Israel, Ministry of Defence, Israel's Security Fence, News Briefs, *Israel's response to the ICJ advisory opinion on the Security Fence*, 28/02/2005, [www.seamzone.mod.gov.il](http://www.seamzone.mod.gov.il)

<sup>70</sup> *Beit Sourik Village Council v. Government of Israel and the Commander of the IDF Forces in the West Bank*, H.C.2056/04. Hereinafter referred to as Beit Sourik case.

<sup>71</sup> Beit Sourik case, para.44.

<sup>72</sup> Beit Sourik case, para.34.

<sup>73</sup> Decided by the Government of Israel, 20 February 2005.

<sup>74</sup> Beit Sourik case, paras.60-62.

<sup>75</sup> *Mara'abe, Ahmed, Shuahani, Udah, Udah, Udah and The Association for Civil Rights in Israel v. The Prime Minister of Israel, The Minister of Defence, The Commander of IDF Forces in the Judea and Samaria Area, The Separation Fence Authority, The Alfei Menashe Local Council*, H.C.J.7957/04, (2005). Hereinafter referred to as 'Alfei Menashe' case.

<sup>76</sup> 'Alfei Menashe' case, para.112. Also paras.100-101. See also State of Israel, Ministry of Defence, Israel's Security Fence, News Briefs, 'The Supreme Court and the ICJ' 15/09/2005.

the Israeli settlers were of a higher priority than the needs of the Palestinian communities affected by the Wall's construction.<sup>77</sup>

In addition, the International Commission of Jurists has noted that the construction of the Wall is based on a policy that 'equates to a deliberately retrogressive measure in the implementation of the ICESCR'.<sup>78</sup>

### *Closures and Curfews*

The UN CESCR also criticise the Israeli policy of closures, which restricts the movement of both Palestinian population and goods and has a detrimental effect on the health and well-being of Palestinians, preventing them from working and earning an income and denying access to resources including water and food. This results in an exacerbation of poverty and malnutrition.<sup>79</sup> In a previous small scale study the author documented violations of the core obligations of the right to water due to closures and curfews which impeded physical access to water sources as well as causing reliance on poor quality water sources due to inability to access safe water.<sup>80</sup> Most recently the Committee have been concerned with the continuing closures and blockade in Gaza and the destruction of water infrastructure in both Gaza and the West Bank. In their concluding observations of 2011 their continued concern regarding the lack of enjoyment of the right to water is clear,

'The Committee is concerned that Palestinians living in the Occupied Palestinian Territory do not have access to sufficient and safe drinking water and adequate sanitation. It is also concerned about the continuing destruction of the water infrastructure in Gaza and in the West Bank, including in the Jordan Valley, under military and settler operations since 1967. (art.11)

The Committee urges the State party to take measures to ensure the availability of sufficient and safe drinking water and adequate sanitation for Palestinians living in the Occupied Palestinian Territory, including through the facilitation of the entry of necessary materials to rebuild the water and sanitation systems in Gaza. The Committee urges the State party to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank including in the Jordan Valley, affected by the destruction of the local civilians' wells, roof water tanks, and other water and irrigation facilities under military and settler operations since

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<sup>77</sup> See *Alfei Menashe*' case. For an analysis of the rulings of the Israeli High Court in relation to the Wall and international law see Lynk, M., 'Down By Law: The High Court of Israel, International Law and the Separation Wall' in *Journal of Palestine Studies*, Vol. XXXV, No.1, Autumn 2005, pp.6-24. For further information on the opinion of the Israeli court see the State of Israel, Ministry of Defence, Israel's Security Fence, *Execution Aspects*, <http://www.seamzone.mod.gov.il/Pages/ENG/execution.htm> Last updated 31-01-07. Last accessed 9 January 2014.

<sup>78</sup> International Commission of Jurists, July 6<sup>th</sup> 2004, p.48.

<sup>79</sup> See *Concluding Observations of the CESCR: Israel*. 04/12/1998, para.18.

<sup>80</sup> Cahill-Ripley, 2011, pp.137-172.

1967. The Committee draws the State party's attention to its general comment No.15 (2002) on the right to water.'<sup>81</sup>

Thus in addition to the negative impacts caused by closures the deliberate targeting and destruction of the water infrastructure is also of concern.<sup>82</sup> Al Haq notes that Israeli forces regularly target water collection systems, both for confiscation or for destruction.<sup>83</sup> This includes rainwater cisterns, as well as pipes and wells. Moreover often humanitarian agency or NGO funded water infrastructure is also demolished or damaged. For example EU, Polish and Dutch funded water infrastructure has been demolished.<sup>84</sup> Furthermore, violence against Palestinian water infrastructure by settlers is an increasing problem. In 2012 OCHA published a report noting that settlers were taking over the control and use of Palestinian springs. The main methods used to deter Palestinians from accessing the spring areas is by acts of intimidation, threats and physical violence by the settlers.<sup>85</sup> Violence includes shootings, beatings, stoned throwing, verbal abuse and dog attacks.<sup>86</sup>

### ***High Intensity Conflict***

Periods of high intensity conflict are of further detriment to the enjoyment of the right to water. In 2002 and 2003 the Israelis mounted incursions into various refugee camps in the West Bank in response to renewed attacks by Palestinian militants. These military incursions resulted in massive violations of human rights resulting in loss of life and severe injury, destruction of homes and public buildings such as schools and hospitals and infrastructure such as water pipelines and electricity networks.<sup>87</sup> Limited freedom of movement and curfews meant restrictions on work and access to land, agriculture and water resources. The incursions therefore further exacerbated poor living conditions including causing problems accessing clean and sufficient water.<sup>88</sup> More recently in Gaza the impact of Operation Cast Lead has resulted in extensive violations of economic and social rights<sup>89</sup> including the right to water;

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<sup>81</sup> E/C.12/ISR/CO/3, 16 December 2011, UN Committee on Economic, Social and Cultural Rights, Forty-seventh session 14 November-2 December 2011, Consideration of reports Submitted by States parties under articles 16 and 17 of the Covenant, *Concluding observations of the Committee on Economic, Social and Cultural Rights Israel*, para.29.

<sup>82</sup> Al Haq, 2013, pp.59-60.

<sup>83</sup> Ibid.

<sup>84</sup> Al Haq, 2013, pp.63-67.

<sup>85</sup> UN Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), *How Dispossession Happens – The Humanitarian Impact of the Takeover of Palestinian Water Springs by Israeli Settlers, Special Focus March 2012*, OCHA: East Jerusalem, March 2012, p.2; 5.

<sup>86</sup> Ibid.

<sup>87</sup> B'Tselem, *Operation Defensive Shield: Soldiers' Testimonies, Palestinian Testimonies*, July 2002; B'Tselem, *Civilians Under Siege: Restrictions on Freedom of Movement as Collective Punishment*, January 2001; Human Rights Watch, *Israel, the Occupied West Bank and Gaza Strip, and the Palestinian Authority Territories - Jenin: IDF Military Operations*, May 2002, Vol. 14, no. 3 (e).

<sup>88</sup> For evidence of violations of the right to water due to incursions see Cahill-Ripley, 2011, pp.137-172.

<sup>89</sup> UN Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48, 25 September 2009, Section XVII, paras.1217-1335.

‘At the height of the military operations some 500,000 Palestinians did not have access to running water at all, whereas the rest received water for few hours a week. Sanitation and water facilities in public shelters were overwhelmed, and raw sewage ran through fields and streets in some areas. The water authorities’ reparations team were prevented from going to the sites to carry out urgent repairs and had to wait in most cases until Israeli troops had withdrawn.’<sup>90</sup>

It is clear that the high intensity conflict in Gaza worsened the already poor enjoyment of economic and social rights including the right to water.<sup>91</sup> The mission concludes that Israel carried out a ‘series of acts that deprive Palestinians in the Gaza Strip from their means of subsistence, employment, housing and water’<sup>92</sup> so serious of which they have deemed they may constitute crimes against humanity.<sup>93</sup>

Overall, Israel’s security policies can be seen as a major factor impeding the enjoyment of the right to water (indeed all economic and social rights) in the OPTs.

### ***Domination and Control of Water Resources***

Another major obstacle to the enjoyment of the right to water in the OPTs is the continuing domination and control of water resources by the Israeli state.<sup>94</sup> Although the climate in the region is arid or semi-arid, there are many renewable water resources, especially in the elevated mountainous areas of the West Bank.<sup>95</sup> However, when Israel occupied the West Bank and Gaza in 1967 they took control of all the water resources previously controlled and owned by the Palestinians under Jordanian, Egyptian, Ottoman and British Mandate law. The Israelis imposed military orders<sup>96</sup> preventing the Palestinian population from accessing water resources through the drilling of wells and pumping stations and restricting the amount of water supplied to them. Regarded as valid law by the Israeli military and administration and backed up through the Israeli court system,<sup>97</sup> these military orders have, ‘effectively displaced the law previously in force on many issues,’<sup>98</sup> including water.

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<sup>90</sup> UN Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48, 25 September 2009, Section XVII, para.1249.

<sup>91</sup> The continuing restrictions on the movement of people and goods in Gaza have had further negative impacts on the enjoyment of economic and social rights. For further information on the impact of the incursions and closure of Gaza see UN Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), *The Gaza Strip: The Humanitarian Impact Of Movement Restrictions On People And Goods - Fact Sheet July 2013*, OCHA: East Jerusalem, July 2013; Amnesty International UK and others, *Failing Gaza: No rebuilding, no recovery, no more excuses - A report one year after Operation Cast Lead*, Amnesty International UK and others, December 2009.

<sup>92</sup> UN Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48, 25 September 2009, Section XVII, para.1334.

<sup>93</sup> *Ibid*, para.1335.

<sup>94</sup> Al Haq, 2013, pp.32-44.

<sup>95</sup> See PHG, 2004, p.16; UN Environment Programme (UNEP) *Desk Study on the Environment in the Occupied Palestinian Territories*, Geneva: UNEP, January 2003, pp.12-16.

<sup>96</sup> Palestinians living within the OPTs are not subject to Israeli national law; rather they are subject to the laws of the Israeli Civil Administration, known as Military Orders.

<sup>97</sup> See Quigley, in Bowen, 1997, p.40.

<sup>98</sup> Shehadeh and Kuttub, *The West Bank and the Rule of Law*, 1980, pp.101-106.



Several of these military orders have had a far-reaching negative impact on the Palestinians' enjoyment of their right to water. The first military law to be passed which was to be the basis for all further military orders regarding restriction of Palestinians' water rights was Proclamation No.2/1967. Passed after the 1967 war, it declared all water resources in the territory as state property.<sup>99</sup> Military Order 92, 15 August 1967, followed. This order reiterated the declaration and formally transferred all administrative, executive, judicial and monitoring authorities from the various governors, municipalities and village councils to an Israeli official, appointed by the military governor, thus giving the Israeli government complete authority over water management and resources in the OPTs.<sup>100</sup> Military Order 158 of 19<sup>th</sup> November 1967 adjusts the Jordanian Water Monitoring Law No.31, 1953. Under Article 4 (A) of this order, it states that it shall not be permissible for any person to set up, or to assemble, or to possess, or to operate a water installation unless he/she has obtained a license from the area military commander. Furthermore, the commander may, at his/her discretion, refuse to grant license without giving reason, and may amend or make conditional any permit. He/she also has the authority to cancel permits at any time. It is also stipulated that this official's decisions cannot be appealed against.<sup>101</sup> This military order can severely curtail the Palestinians' right to water: For example, if the water supplied is insufficient or of poor quality, the Palestinians cannot take action to access different sources. It can also be used to prevent storage of water by preventing construction of water tanks and cisterns, thus negatively impacting access to water as well as sufficiency and quality of water.

The cumulative effect of the above military orders, as well as others imposing pumping quotas,<sup>102</sup> has been the seizure of total control by the Israeli government over Palestinian water resources. This in turn has had a hugely detrimental effect upon the enjoyment of the right to water in the OPTs. In addition, indirectly, other military orders relating to land use and access, agriculture, issues of planning law for housing, building of bypass roads and settlements and most recently, the Separation Wall, have all had a harmful effect on the Palestinians' right to water.<sup>103</sup>

Further, despite the establishment of the Palestinian Water Authority (PWA) under the Interim Agreement,<sup>104</sup> it can only operate with limitations due to continued Israeli control

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<sup>99</sup>Al Haq, 2013, pp.33; Hussein. Hiba, 'The Palestinian Water Authority: Developments And Challenges Involving The Legal Framework And Capacity Of The PWA', *Paper Presented to the International Israeli-Palestinian Water Conference*, October 10-14 2004, Antalia, Turkey, p.5.

<sup>100</sup> See Al Haq, 2013, p.34; PHG, 2004, p.12; Center For Economic And Social Rights, 2003, p.12.

<sup>101</sup> See Al Haq, 2013, p.34; PHG, 2004, p.13; Center for Economic and Social Rights, 2003, p.12.

<sup>102</sup> For example Military Orders in 1975, 1986, see PHG, 2004, p.13,

<sup>103</sup> For example MO 58, July 23<sup>rd</sup> 1967 defining 'absentee property' leading to the confiscation of Palestinian wells. See PHG, 2004, p.12. For further discussion see World Bank, *West Bank and Gaza Assessment of Restrictions on Palestinian Water Sector Development*, April 2009, pp.53-56; Amnesty, *Troubled Waters*, 2009, pp.11-15.

<sup>104</sup> PWA established in 1995 by Presidential Decree No.5/1995, following the provisions of Article 40 of the Interim Agreement 1995. Law No.2/1996 defines its objectives, functions and responsibilities, giving the PWA the mandate to manage water resources, execute water policy, establish, supervise and monitor water projects, and to initiate coordination and cooperation between the stakeholders in the water sector. Presidential Decree No.66/1997 establishes the internal regulations of the Palestinian Water Authority and the rules of procedures and Article 7 of the Palestine Water Law No.3/2002 defines the tasks and responsibilities of PWA and provides

over water resources. Although the PWA has passed a water law and consolidated the legal framework, the PWA remains constrained financially and politically. Although Israel cooperates in certain water-related matters, Israeli policies ensure that Israeli settlers and Israel proper have priority in water use and allocation. For example, the Joint Water Committee is one of the main mechanisms by which the Israeli authorities can control water resources, particularly through the use of their veto power.<sup>105</sup> This means they can prevent the issue of permits for drilling new wells on Palestinian land, control and limit Palestinian extraction quotas and limit protection of water resources and development of water and sewage infrastructure within the OPTs.<sup>106</sup> In sum, 'the PWA cannot deliver in the absence of full sovereignty and control over its water resources...The PWA cannot manage and administer what it does not have. It will not be able to manage the increased demand so long as it has no role in managing and sharing the supply.'<sup>107</sup>

The UN CESCR has also noted the domination and control of water resources by Israel, 'The Committee is particularly concerned about limited access to and distribution and availability of water for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control.'<sup>108</sup> In 2013 in several stakeholder reports submitted to the Human Rights Council for the Universal Periodic Review of Israel<sup>109</sup> noted the continuing Israeli domination and control of water resources in OPT.<sup>110</sup> The problem is also one of inequitable distribution. Water is distributed inequitably, with settlers in the territories receiving far more water per capita than their Palestinian counterparts:

The Committee also notes with concern that while the Government annually diverts millions of cubic metres of water from the West Bank's Eastern Aquifer Basin, the annual per capita consumption allocation for Palestinians is only 125 cubic metres while settlers are allocated 1,000 cubic metres per capita.<sup>111</sup>

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further legal basis for the water authority including granting it legal personality. For further information see Hussein Hiba, 2004.

<sup>105</sup> See Article 40 Interim Agreement 1995.

<sup>106</sup> Al Haq, 2013, pp.40-43. See also Selby, J, 'Cooperation, Domination and Colonialism: The Israeli-Palestinian Joint Water Committee' in *Water Alternatives*, Vol.6 (1), 2013, pp.1-24.

<sup>107</sup> Hussein Hiba, 2004, pp.13-14. For details of the limitations on the Palestinian water sector see World Bank, April 2009.

<sup>108</sup> *Concluding Observations of the CESCR: Israel*, 23/05/2003, para.25.

<sup>109</sup> 29 October 2013.

<sup>110</sup> Further these NGOs argue that Israel should ensure Palestinians access to sufficient adequate water and sanitation services. See A/HRC/WG.6/15/ISR/3, 8 November 2012, Human Rights Council Working Group on the Universal Periodic Review, Fifteenth session Geneva, 21 January – 1 February 2013, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 Israel\*, Section 8. Right to social security and to an adequate standard of living, para.51.

<sup>111</sup> *Concluding Observations of the CESCR: Israel*, 04/12/1998, para.24. See also UN Office for Coordination of Humanitarian Affairs (OCHA) – occupied Palestinian territory, *Humanitarian Impact on the Palestinians of Israeli Settlements and other Infrastructure in the West Bank*, OCHA: East Jerusalem, July 2007, p.114; Amnesty, *Troubled Waters*, p.45.

In conclusion the Committee calls upon Israel to stop the building of illegal Jewish settlements in the territories and to cease the expropriation of natural resources, including water, belonging to the OPTs.<sup>112</sup> The Committee:

...strongly urges the State party to take immediate steps to ensure equitable access to and distribution of water to all populations living in the occupied territories, and in particular to ensure that all parties concerned participate fully and equally in the process of water management, extraction and distribution. In that connection, the Committee refers the State party to its General Comment No. 15 on the right to water.<sup>113</sup>

Despite the absence of data on the Palestinian population of the occupied territories, the Committee continue to pressurise Israel to recognise their obligations regarding the right to water of the Palestinians in the territories.<sup>114</sup> This is also the case under the Human Rights Council Universal Periodic Review Working Group who recently recommended that Israel uphold its human rights obligations 'not only in its own territory but also in places under its control'<sup>115</sup> but also to take all necessary measures to guarantee Palestinians in the OPTs access to adequate water, renovation of water infrastructure and equitable access to basic water services and natural resources.<sup>116</sup> Overall, the refusal of Israel to accept responsibility for the enjoyment of economic and social rights within the OPTs is a breach of their obligations under the ICESCR. The continuing occupation, security measures and domination and control of water resources and services by Israel is detrimental to the realisation of the right to water for Palestinians. Moreover, the realisation of the individual human right to water is inextricably linked to resolution of the larger macro-level political dispute over water ownership and inequitable utilisation of trans-boundary groundwater resources in the region.<sup>117</sup>

### **The Impact of these Obstacles upon the Enjoyment of the Right to Water – Establishing Violations**

The occupation, protracted conflict and acute violent events in the OPTs have a direct impact on the enjoyment of the human right to water for the Palestinian people. Problems faced by Palestinians on a daily basis include insufficient water supply, poor water quality and

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<sup>112</sup> See *Concluding Observations of the CESCR: Israel*, 04/12/1998, para.24 and para.41.

<sup>113</sup> *Concluding Observations of the CESCR: Israel*, 23/05/2003, para.41.

<sup>114</sup> See E/C.12/ISR/CO/3, 16 December 2011, UN Committee on Economic, Social and Cultural Rights, Forty-seventh session 14 November-2 December 2011, Consideration of reports Submitted by States parties under articles 16 and 17 of the Covenant, *Concluding observations of the Committee on Economic, Social and Cultural Rights Israel*, para.3; *Concluding Observations of the CESCR: Israel*, 04/12/1998, para.32; *Concluding Observations of the CESCR: Israel*, 23/05/2003, para.35, 41.

<sup>115</sup> Human Rights Council Working group on the universal periodic review, Seventeenth session Geneva, 21 October – 1 November 2013 *Draft report of the Working Group on the Universal Periodic Review*, Israel, A/HRC/WG.6/17/L.12, para.137.30.

<sup>116</sup> Human Rights Council Working group on the universal periodic review, Seventeenth session Geneva, 21 October – 1 November 2013 *Draft report of the Working Group on the Universal Periodic Review*, Israel, A/HRC/WG.6/17/L.12, paras.137.205;137.226;137.227;137.228;137.234;137.235.

<sup>117</sup> For an in depth analysis of the restrictions on the Palestinian water sector and the dominance of Israel in abstraction of water see World Bank, April 2009; Amnesty, *Troubled Waters*, 2009.

restricted access to water, both physical and economic.<sup>118</sup> Subsequently, these problems can lead to water related disease and poor health and hygiene, restrictions on work, housing problems and family and community stress resulting in conflict and exacerbation of poverty.<sup>119</sup> Furthermore, these problems are compounded by lack of water infrastructure, poor condition of the water network, poor sanitation and waste management and resource and service mismanagement at local, as well as national level.

In terms of sufficiency (availability of water), the current daily amount of water deemed sufficient for drinking and personal use, by the World Health Organisation, is an optimum access of 100 l/c/d,<sup>120</sup> 50 l/c/d as an intermediate level and 20 l/c/d as a very minimum basic supply for drinking only.<sup>121</sup> This is compared with the average daily amount of water used by a Palestinian of 50 l/c/d<sup>122</sup> and as little as 10 l/c/d in some cases.<sup>123</sup> This is well below the WHO recommended amounts. Moreover, the least amount recommended by the WHO for emergency response is 7.5 - 15 l/c/d as a minimum level to avoid epidemics.<sup>124</sup> This means that some areas of the West Bank Palestinians have water access comparable to those living in disaster areas. The disparity with Israeli consumption per capita is also significant: The average domestic daily consumption of water for an Israeli is 300 l/c/d<sup>125</sup> and the 450,000 Israeli settlers in the West Bank use more water than the entire population of 2.3 million.<sup>126</sup> These basic figures alone indicate the scale and nature of the problem faced.<sup>127</sup>

In addition, the accessibility of water is compromised. As noted previously, because of the military occupation many Palestinians face physical danger when trying to access water, due to violent behaviour by Israeli settlers or from direct targeting by the military and military incursions. The effect of curfews and closures upon access to water is also evident. In terms

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<sup>118</sup> See *inter alia* Cahill-Ripley, 2011, pp.137-172; Amnesty, *Troubled Waters*, 2009; World Bank, April 2009; PHG, 2004; B'Tselem, *Thirsty for a Solution – The Water Crisis in the Occupied Territories and its Resolution in the Final Status Agreement*, B'Tselem – The Israeli Information Centre for Human Rights in the Occupied Territories: Jerusalem, July 2000; B'Tselem, *Not Even A Drop – The Water Crisis in Palestinian Villages Without a Water Network*, B'Tselem: Jerusalem, July 2001; B'Tselem, *Disputed Waters – Israel's Responsibility for the Water Shortage in the Occupied Territories*, B'Tselem: Jerusalem, September 1998; Kothari, M., UN Special Rapporteur on the right to Adequate Housing, *Report of visit to the Occupied Palestinian Territories*, 5-10<sup>th</sup> Jan 2002, E/CN.4/2003/5/Add.1, 10<sup>th</sup> June 2002.

<sup>119</sup> See *inter alia* PHG, 2004; B'Tselem, July 2000; B'Tselem, July 2001; B'Tselem, September 1998.

<sup>120</sup> l/c/d meaning litres per capita (person), per day.

<sup>121</sup> See Bartram, J and Howard, G, 'Domestic water quantity, service level and health: what should be the goal for water and health sectors', Geneva: WHO, 2003, (WHO/SDE/WSH/03.02). See also Gleick, P, 'Basic water requirements for human activities: meeting basic needs', *Water International*, Vol. 21, 1996, pp. 83-92 and WHO, 2003, pp. 12-18.

<sup>122</sup> World Bank, April 2009, p.17, para.48; Previously average daily consumption was estimated at 50-70 l/c/d. See PASSIA, Special Bulletin, *Water: The Blue Gold of the Middle East*, July 2002, p.6.

<sup>123</sup> World Bank, 2009, p.17, para.49.

<sup>124</sup> Sphere Project, *Sphere Humanitarian Charter and Minimum Standards in Disaster Response Handbook*, Chapter 2: Minimum Standards in Water Supply, Sanitation and Hygiene Promotion, 2004, pp.63-64 at <http://www.sphereproject.org/>

<sup>125</sup> Amnesty, *Troubled Waters*, 2009, p.3.

<sup>126</sup> *Ibid*, p.4.

<sup>127</sup> For comparison, the average domestic water consumption in the UK is 154 l/c/d according to UK HM Government Department for the Environment, Food and Rural Affairs, *Water for Life*, UK Crown: London, December 2011, para.1.18; See also the UK Office of Water Services (OFWAT), *Security of supply 2006-07 report: OFWAT – Protecting consumers, promoting value and safeguarding the future*, UK Crown, October 2007, Table 5, p.14.

of economic accessibility the physical obstacles that prevent Palestinians accessing safe water ensure their reliance on expensive tanker water for example. Further the price of mains water is prohibitive to many and cannot be relied upon due to lack or of intermittent supply.<sup>128</sup> Moreover Palestinians are often forced to rely upon poor quality water due to lack of physical and economic accessibility of safe water sources.<sup>129</sup>

However, do these problems translate into violations of the right to water? There are several important factors to consider when determining whether Israel is in violation of their obligations concerning the right to water in the OPTs: Firstly, do they have overall responsibility for the realisation of the right in this territory? Have they used all available resources? Have they allowed the situation in the OPTs to stagnate and or have they taken retrogressive measures? Subsequently, is their non-compliance with their obligations deliberate? Guidance can be taken from GC 15, as well as from UN CESCR General Comment 3 on the nature of States parties' obligations,<sup>130</sup> the Limburg Principles and the Maastricht Guidelines:

Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question. This is true under conditions of colonialism, other forms of alien domination and military occupation. The dominating or occupying power bears responsibility for violations of economic, social and cultural rights. There are also circumstances in which States acting in concert violate economic, social and cultural rights.<sup>131</sup>

Therefore that Israel holds the responsibility for the enjoyment of the right to water as provided for under international human rights law is clear. However, in order to be in breach of their obligations concerning the right to water, Israel must be deliberate in their actions or omissions and as such, any inability to comply must be ruled out: 'In determining which actions or omissions amount to a violation of the right to water, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the right to water.'<sup>132</sup> As noted previously, Israel have argued that they cannot comply with obligations to realise the right to water in the OPTs because they do not have full control of the area and due to the delivery of water by local service providers. However, the Palestinian Water Authority have no control over what water resources they receive and have no

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<sup>128</sup> Cahill-Ripley, 2011, pp.151-158.

<sup>129</sup> Cahill-Ripley, 2011, pp.158-164.

<sup>130</sup> CESCR General Comment 3, *The nature of States parties obligations* (Art. 2, para. 1 of the Covenant), 14/12/90, particularly para.9 progressive realisation, para.10 core obligations and maximum resources.

<sup>131</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights 1997, 'Alien domination or occupation' para.17. See also International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9<sup>th</sup> July 2004, para.102-113 on responsibility of Israel for human rights in the OPTs.

<sup>132</sup> GC 15, para.41. See also the Maastricht Guidelines para.13 *Inability to comply* and para.11 *State policies* which clarifies what constitutes a violation.

autonomy in developing infrastructure, due to the full veto right of the Israeli members of the Joint Water Committee.<sup>133</sup> Israel does control all regional water resources and all borders. As such Israel has effective control of the water sector and as previously noted, has deliberately implemented policies which discriminate between Israelis, both within the OPTs and within Israel proper and Palestinians in the OPTs.

Moreover, the fact that Israeli settlements within the West Bank are supplied with adequate safe water supply illustrates that the water is available but supplied by Israel on an inequitable basis. Thus, Israel cannot argue that they are unable to comply with their obligations through resource constraints. Even if resources are scarce Israel must ensure that they comply with their minimum core obligations under the ICESCR.<sup>134</sup> As such, scarcity of water is no excuse for the state of Israel to deny the Palestinians of the occupied territories a minimum essential level of the right to water.<sup>135</sup> This is especially true when Israelis consume between four and five times the amount of water that Palestinians consume.<sup>136</sup> Furthermore, Israeli settlers within the West Bank consume an average 9 times more the amount of water than their neighbouring Palestinians.<sup>137</sup> Therefore, it is evident that the policy and practice of Israel in regard to violations of the right to water for Palestinians in the OPTs is deliberate in its planning and actions. As the GC 15 notes, 'A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant.'<sup>138</sup>

It is clearly established therefore that Israel are responsible for violations of the right to water within the OPTs. It is with these violations in mind that implementing the legal protection for a right to water in the OPTs and holding Israel to account for their breach of the corresponding obligations to ensure such a right is realised, is imperative to ensuring minimum basic living standards for the Palestinian people and in the long term to the resolution of the conflict.

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<sup>133</sup> See provisions of Article 40 Interim Agreement 1995.

<sup>134</sup> See Maastricht Guidelines 1997, para.10, '...as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.' See also GC 15, para.41.

<sup>135</sup> Although water is scarce throughout the whole Middle East region, the Palestinian water problem is related to political and economic factors and is limited as a direct result of the occupation.

<sup>136</sup> UN Office for Coordination of Humanitarian Affairs (OCHA), *Humanitarian Impact on the Palestinians of Israeli Settlements and other Infrastructure in the West Bank*, OCHA: East Jerusalem, July 2007, p.114; B'Tselem, July 2000, p.4; PHG, 2004, p.23.

<sup>137</sup> UN Development Programme (UNDP), *Human Development Report 2009/10 occupied Palestinian territory - Investing in Human Security for a Future State*, UNDP, 2010, p.49. See also UNDP, *Beyond Scarcity: Power, poverty and the global water crisis - Human Development Report*, UNDP, 2006.

<sup>138</sup> GC 15, para.41.

## Conclusion

It is evident that at present despite codification of the human right to water under applicable international human rights law, enjoyment of the right to water is severely lacking within the OPTs. Violations of the right are frequent as evidenced and the situation does not seem to be improving despite strengthening of international legal standards. Presently, the institutional capacity to implement any national human rights standards is lacking and access to remedy at local level is therefore also lacking. As such, the combination of the various international instruments concerned with economic and social human rights, in particular the ICESCR, in conjunction with the relevant provisions under international humanitarian law offers the optimum framework for realisation of the right within the OPTs at this current time. For example, for serious breaches resulting in a threat to human life, due to military activity, international humanitarian law would be the *lex specialis* in this case. Conversely, it is human rights law that should act as the *lex specialis* during most breaches within the context of occupation, as the daily existence under conditions of occupation resembles more closely a peacetime situation than conditions of war.<sup>139</sup>

There are several practical steps which can be taken to improve conditions: Concrete measures must be taken immediately, by the government of Israel, to implement the core elements of the right to water. In relation to availability, Israel must ensure continuous supply of sufficient water to Palestinian communities connected to the water network, including supply to municipalities for local management. They must stop discrimination in supply and sufficiency of water received between Palestinians and settlers and take action against any settlers who tamper with existing water sources. Settlers should also be prevented from threatening or attacking Palestinians trying to access water, thus allowing them safe access.

In relation to safe physical accessibility, Israeli forces must cease all attacks on water infrastructure including stopping demolitions of buildings which result in damage to the water infrastructure (wells, pumps, pipelines and roof-tanks and cisterns). Any attempt to injure or kill Palestinians collecting water must cease. Freedom of movement and immediate access must be given to those supplying water tankers and to those trying to carry out repairs to water infrastructure. Concerning economic accessibility, water must be affordable to all Palestinians. Therefore there must be an end to the Israeli government policy of closures. This will enable freedom of movement for people and goods, therefore aiding economic

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<sup>139</sup> In relation to the Israeli-Palestinian conflict, this conclusion is especially pertinent as the Israeli view is that international humanitarian law alone is applicable to these territories and then only certain aspects of it. The traditional view of which body of law is primarily applicable in the territories has not been international human rights law but international humanitarian law and it is only within recent years that the applicability of human rights law in times of conflict has been generally accepted. For further reading on the question of the *lex specialis* principle in the context of armed conflict and occupation see *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, ICJ Reports 2005, paras.216-220, 345(3); ICJ *Wall Opinion*, 2004, para.106; ICJ *Nuclear Weapons Opinion*, 1996, para.25. In *Congo v. Uganda* the ICJ determined independent violations of human rights law during armed conflict without applying the *lex specialis* of humanitarian law. See also Kalin, W, Alston, P, Kothari, M, Hunt, P, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council", Mission to Lebanon and Israel (7-14 September 2006)*, A/HRC/2/7, 2 Oct 2006, para.16 including notes. Supporting the view that the *lex specialis* in times of long-term occupation should be human rights law, with regard to economic and social rights, see Lubell, N, 'Challenges in applying human rights law to armed conflict' in *International Review of the Red Cross*, Vol.87, No.860, December 2005, pp.737- 754.

development, giving access to employment and services and lowering costs whilst increasing economic assets.

Action is also required on the part of the Palestinian Authority. As the recognised government of the Palestinian people they have a moral obligation to do whatever is within their means to realise the right to water for their people. When the PA have control of local water services it must ensure equitable distribution, as far as is possible, of whatever water is available. Further there must be an end to any corruption in the provision of equitable access. Long-term measures are also needed by the PA to ensure there is a viable legal basis for the right to water and other human rights within future domestic law. Codification of the right to water is necessary at domestic level if the right to water is to be implemented effectively.<sup>140</sup>

Concerning water quality, Israel must ensure that deliberate contamination of Palestinian water supplies, both by settlers and Israeli forces and by industrial dumping of waste is stopped. Israel must also ensure adequate water supply, as shortage of water can produce poor hygiene and subsequent potential for contamination of water. Furthermore, provision of adequate piped water supply would put an end to reliance on poor quality sources. Also, maintenance and repairs of the water infrastructure must be allowed to take place to reduce the risk of contamination. Further, waste disposal must not interfere with water supplies. Therefore, adequate sanitation provision is essential to prevent contamination of water and possible disease.

If the right to water is to be respected, protected and provided for within the current long-term occupation, it is essential to apply international human rights law. The application of the detailed provisions contained within these instruments, is imperative if we are to determine violations of the right and to seek redress for them. Crucially more needs to be done to hold Israel to account for violations of the right to water through legal and political mechanisms. In addition to the immediate practical measures to be taken by the government of Israel, there is a responsibility on the part of other states parties to the ICESCR (and to the Geneva Conventions and Additional Protocols), to address the continuing denial of Israel to comply with their obligations to realise the enjoyment of the right to water under these treaties. As a part of their international obligations under the ICESCR Article 2, other state parties are obliged to assist Israel in realising this right. Furthermore, Israel must be pressurised to comply with their immediate core obligations and must be held accountable for their actions or omissions under international human rights law, by using established procedures for remedy; For example both treaty monitoring bodies and the HRC UPR must continue to pressurise Israel to comply with their monitoring obligations and include information in their state periodic reports concerning all areas under their jurisdiction and effective control. As noted previously, the CESCR have strongly condemned Israel's refusal to report on the economic, social and cultural rights in the occupied territories. However, it is imperative that all treaty monitoring bodies take a vigorous approach concerning Israel's compliance with their reporting obligations. This is also true of the HRC utilising the UPR mechanism.

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<sup>140</sup> For example, the Palestinian Basic Law 2003 and the Palestinian Water Law 2002 offer possibilities for amendment and adoption of provisions for a human right to water. However, to ensure optimum human rights protection, extensive human rights legislation needs to be adopted, encompassing the substantive protections provided for in the international covenants. With this in mind, assistance and advice should continue to be offered to the PA on how to develop and strengthen their legal system, to increase human rights protection in the OPTs and with a view to independence and sovereignty.



Furthermore, the HRC should insist on the cooperation of Israel with the Special Procedures of the HRC and allow country visits by the Special Rapporteur for the OPTs.<sup>141</sup> The reports and work of other UN bodies continue to be vital in maintaining a picture of the human rights situation in the OPTs.<sup>142</sup> The work of local and international NGOs is also imperative in assisting individuals and groups in seeking remedy for violations of the right to water through whatever means are possible. Advocates are essential to document and report violations, as well as offering advice and assistance to those who are victims of violations of the right to water.

To conclude, more generally the evolution of thinking about water problems has resulted in various approaches to tackling issues of water shortage and lack of access to clean and sufficient water. From international water law, to development and environmental perspectives, all of these ideas, whether embodied in hard law or soft law have assisted in the promotion of the idea that water should be available for all human beings at a level to sustain life and ensure human dignity. The particular benefit of the human rights approach to water is its capacity for empowering individuals and communities, particularly for the most vulnerable in society, as the demand for fulfilment of their water needs are transformed into legal entitlements. Furthermore the legal framework of human rights provides for monitoring of the enjoyment of the right and state compliance with their obligations, as well as providing a mechanism for establishing and providing remedy for violations. As such, the recent focus upon a human right to water is an important and significant development.

However, action is required to implement the human right to water within the OPTs. Much can be done to improve the current situation by implementing advances in remedy for economic and social rights as a whole internationally and regionally as well as domestically. However there are tangible measures that can be taken now to ensure accessible, safe and sufficient water for the Palestinians. In the long-term, the key event necessary for the realisation of the full scope of the right to water in the OPTs is an end to the occupation by Israel and self-determination over water resources and land for the Palestinian people. Ending the occupation is the first step to enabling optimum realisation of all human rights.<sup>143</sup> Only then can the Palestinians begin to build infrastructure and foster a social and legal environment which positively embraces international human rights standards.

**8,911 words**

**13,363 words including footnotes**

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<sup>141</sup> UN Human Rights Council Working Group on the Universal Periodic Review, Fifteenth session Geneva, 21 January – 1 February 2013, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 Israel\**, A/HRC/WG.6/15/ISR/3, 8 November 2012, paras.5-8.

<sup>142</sup> Such as, the General Assembly, other UN human rights bodies and Special Rapporteurs, UNRWA, UNEP and UNDP.

<sup>143</sup> For an interesting discussion on human rights post occupation see Alnajjar, G, 'Human Rights in a Crisis Situation: The Case of Kuwait after Occupation' in *Human Rights Quarterly*, Vol.23, No.1, 2001, pp.188-209.

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