## JOINT MISMANAGEMENT: REAPPRAISING THE OSLO WATER REGIME

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### **INTRODUCTION**

At the time of the first Israeli-Palestinian-International conference on water in December 1992, there was much talk of the need for joint management of regional water resources.<sup>2</sup> Yitzhak Rabin had just six months previously been elected as Israeli Prime Minister, a Labourled coalition was in power in Israel for the first time since 1977, and peace was in the air (even if the situation on the ground in the West Bank and Gaza continued to deteriorate). Secret negotiations were about to commence which would culminate, in September 1993, in the signing of the Oslo Accords and the onset of the Oslo peace process. The hope and expectation was clearly that, with a peace process firmly on the horizon, Israelis and Palestinians might soon be cooperating in the joint management of shared water resources, and in ameliorating the growing Palestinian water crisis.

And these hopes were not without foundation. Within a month of the famous handshake on the White House lawn, international donors had pledged over \$2 billion for the reconstruction and development of the West Bank and Gaza, in what was to become, in per capita terms, amongst the largest donor efforts ever undertaken by the international community.<sup>3</sup> Water was recognised as a priority sector from the outset, with over 10% of all aid money to the Palestinians between

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<sup>&</sup>lt;sup>2</sup> See the proceedings of the conference, Jad Isaac and Hillel Shuval (eds.), *Water and Peace in the Middle East* (Amsterdam: Elsevier, 1994).

<sup>&</sup>lt;sup>3</sup> Rex Brynen, 'International aid to the West Bank and Gaza: a primer', *Journal of Palestine Studies*, Vol. 25, No. 2 (1996), p. 46; World Bank, *Fifteen Months – Intifada, Closures and Palestinian Economic Crisis – An Assessment*, Final Report (18 March 2002), p. v.

1993 and 2000 being dedicated to water and wastewater projects.<sup>4</sup> Israel and the PLO had agreed in their Declaration of Principles to cooperate in managing the water resources of the West Bank and Gaza.<sup>5</sup> And within a couple of years this hoped-for co-operation started to take practical effect, with the September 1995 Oslo II Agreement committing the parties to the establishment of a Joint Water Committee (JWC) and several Joint Supervision and Enforcement Teams (JSETs), and to the 'co-ordinated management' of the West Bank's water and wastewater systems and resources.<sup>6</sup> This, most commentators ventured, represented a 'breakthrough' – 'a major step towards a permanent Israeli-Palestinian accommodation over water.'<sup>7</sup> Israeli-Palestinian water co-operation seemed to be a shining example of the potential for peaceful co-existence and for a two-state solution to the Israeli-Palestinian conflict.

The collapse of the Oslo process since September 2000 does not, of course, disprove these hopes and expectations, since - while continuing Palestinian water shortages can hardly have helped the cause of peace – the peace process collapsed for reasons that had little to do with the distribution of water supplies or the management of water resources. Yet twelve years on from the first Israeli-Palestinian-International conference on water, and with the Oslo process now dead, there is urgent need for a reappraisal of the successes and failures of joint water management under Oslo. Most discussions of Israeli-Palestinian water co-operation under Oslo still portray it in largely favourable terms. The joint management agreement, goes the usual story, was a significant 'step in the direction of an equitable water sharing agreement.'8 There was, as Fadel Qawash, deputy head of the Palestinian Water Authority (PWA) puts it, 'nothing wrong with the agreement', the problems having lain to the contrary in the Netanyahu government's unwillingness to implement the agreement

<sup>&</sup>lt;sup>4</sup> Alwyn Rouyer, *Turning Water into Politics: The Water Issue in the Palestinian-Israeli Conflict* (London: Macmillan, 2000), p. 229.

<sup>&</sup>lt;sup>5</sup> Israel and the PLO, *Declaration of Principles on Interim Self-Government Arrangements* (13 September 1993), Annex III, Article 1.

<sup>&</sup>lt;sup>6</sup> Israel and the PLO, *Interim Agreement on the West Bank and Gaza Strip* (28 September 1995), Annex III, Appendix 1, Article 40.

<sup>&</sup>lt;sup>7</sup> 'Negotiators achieve breakthrough on water rights', *Israel-Line* (25 August 1995); Greg Shapland, *Rivers of Discord: International Water Disputes in the Middle East* (London: Hirst and Co, 1997), p. 35.

<sup>&</sup>lt;sup>8</sup> Rouyer, *Turning Water into Politics*, p. 207.

fully.<sup>9</sup> And notwithstanding this, continues the orthodox narrative, the water sector remains one of the few areas where the parties are still cooperating, as evidenced by the fact that the JWC continues to meet in spite the collapse of the broader peace process.<sup>10</sup> Most discussions of the Oslo water agreements hold that, whatever else was wrong with the Oslo process, the water agreements themselves were a model for coordinated management and cooperation.

This assumption is in my view misplaced for at least three reasons: firstly, because the much-lauded 'joint management' regime established under Oslo was, and remains, an illusion; second, because the Oslo water regime was a license for environmental destruction; and thirdly, because the nature of the Palestinian political system created under (and as a bi-product of) Oslo inevitably led to weak governance and mismanagement in the Palestinian water sector. Unfortunately, these issues have consistently been obscured through a mixture of nationalist discourse and expert oversight. Palestinian nationalist discourse, for instance, has led PA water policy makers to downplay the extent to which they were already cooperating with Israeli water authorities prior to 1993, and has thus led them to overstate the novelty of joint management under Oslo. International experts, for their part, have typically approached the Oslo water agreements as if they were an obvious 'good', and without a sufficiently in-depth or critical understanding of the problems inherent in the structure of the peace process and Israeli-Palestinian relations. Of course, 'cooperation' is in general preferable to 'conflict', but we should not assume that any particular instance of 'cooperation' is good simply because it gives itself that name. And when we look at the Oslo water accords in detail, I would argue, we do not find a broadly positive model of 'joint management'. What we find, to the contrary, is a recipe for 'joint mismanagement' of the water sector, with little potential either to rectify the structure of Israeli-Palestinian relations or to ameliorate the Palestinian water crisis. It is this case that I set out below.

<sup>&</sup>lt;sup>9</sup> Quoted in *Al Quds* (16 April 1998), p. 22; PWA Press Conference (22 August 1998).

<sup>&</sup>lt;sup>10</sup> During the first few months of the second intifada there were no meetings of the JWC. In January 2001, however, the JWC made a joint declaration urging people to keep water infrastructures 'out of the cycle of violence' (JWC, 'Joint declaration for keeping the water infrastructure out of the cycle of violence', 31 January 2001). Since then, the JWC has been meeting, albeit irregularly.

#### THE CHIMERA OF 'COOPERATION'

The Oslo II agreement of 1995 committed Israel and the PA, as already noted, to establishing a Joint Water Committee, with responsibility for overseeing the management of all of the West Bank's water and sewage resources and systems.<sup>11</sup> The JWC would operate in seemingly egalitarian fashion: it would comprise an equal number of Israeli and Palestinian representatives, and decisions within it would be reached by consensus.<sup>12</sup> The JWC would have overall authority for surveying and protecting existing resources, for developing new supplies, for maintaining existing infrastructures, and for constructing new ones.<sup>13</sup> It would not, however, be responsible for the day-to-day management of resources and systems; it would function, rather, as a coordinating body, with most on-the-ground work being undertaken separately by one or other of the parties. Thus particular water and sewage systems would be controlled by either Israel or the PA: those systems 'related solely to Palestinians', which until then were 'held by the military government and Civil Administration', would be transferred to the PA, while all other systems would remain under Israeli control.<sup>14</sup> Irrespective of its name. the JWC would be a 'coordinated' rather than a 'joint' management structure.<sup>15</sup>

On the surface, this sounds eminently sensible and impressively cooperative. In reality, however, the JWC system merely formalised a discriminatory management regime that was, for the most part, already in existence. During the course of the occupation, Israel had constructed an integrated water supply network across the West Bank which conjoined Israeli settlements and Palestinian towns and villages within a single integrated supply network, but at the same time discriminated sharply between the two populations. Supply lines, many of them from within Israel, typically fed both existing Palestinian communities and the many new and expanding illegal Israeli settlements. But the lines feeding Palestinian communities

<sup>&</sup>lt;sup>11</sup> Israel and the PLO, *Interim Agreement*, Annex III, Appendix 1, Article 40 (11, 12).

<sup>&</sup>lt;sup>12</sup> Ibid., Article 40 (13 14).

<sup>&</sup>lt;sup>13</sup> Ibid., Article 40 (12); Schedule 8.

<sup>&</sup>lt;sup>14</sup> Ibid., Article 40 (4); Schedule 8 (2.a, b).

<sup>&</sup>lt;sup>15</sup> Ibid., Article 40 (12); Schedule 8.

were generally of much narrower diameter than those feeding Israeli settlements, and Palestinian storage reservoirs were likewise much smaller than those of their Israeli counterparts. Come the onset of the Oslo process in 1993, the West Bank's water supply systems had become clear testimony to the Israeli state's colonial and apartheid ambitions – on the one hand facilitating the territorial integration of the West Bank into Israel and the creeping colonisation of Palestinian lands, whilst on the other hand ensuring that the Israeli settler population received a disproportionate share of water supplies.<sup>16</sup>

Just as significantly, during the course of the occupation Israel had also established a delegated institutional regime for managing the Palestinian water sector. This institutional regime was premised on the Palestinian-staffed West Bank Water Department, as well as Palestinian municipalities and village councils, being responsible for liaising with Palestinian water users. While the Israeli Military Government (later Civil Administration) and its Water Officer retained overall regulatory control, and while Mekorot, after 1982, owned the water supply infrastructures, it was the Water Department and local Palestinian authorities which were responsible for maintaining distribution lines, for opening and closing supply valves to Palestinian communities, and for billing Palestinian communities. None of these Palestinian institutions had any power over or responsibility for Israeli settlers, however; the Water Department was not allowed to close water supply valves to Israeli settlements, for instance, and had no role in billing Israeli settlers.<sup>17</sup> These Palestinian institutions, and the Water Department in particular, thus functioned as a key institutional interfaces between the Military Government and the occupied Palestinian population, enabling the Israeli state to effect its colonial and apartheid water policies without having any direct contact with Palestinian users.

The implications of the management regime established under Oslo II should by now be clear. The Palestinians would henceforth be

<sup>&</sup>lt;sup>16</sup> I describe the structure and functioning of this water supply system at greater length in *Water, Power and Politics in the Middle East*, pp. 83-91.

<sup>&</sup>lt;sup>17</sup> Interviews with Taher Nassereddin, West Bank Water Department (12 April 1998), and Abdul Rahman Tamimi, Palestinian Hydrology Group (19 April 1998). I describe the structure and functioning of this institutional regime at greater length in *Water, Power and Politics in the Middle East*, pp. 80-3.

responsible for maintaining and operating internal systems within Palestinian towns and villages, as well as those connections to such internal systems which did not feed Israeli settlements. Yet given that by 1995 Israeli and Palestinian water supply networks were thoroughly integrated, this did not promise the Palestinians a great deal. Israel would continue to control the vast majority of supply lines, and would also continue to control all of the numerous deep wells which had been drilled by Mekorot since 1982, since these all supplied at least some Israeli settlements. Moreover, given that most local water supply and infrastructure management within the West Bank was already being undertaken by Palestinians – both by the West Bank Water Department, and by municipalities and village councils - the seeming novelty of Oslo II's co-ordinated management system was largely illusory. To the contrary, the water accords of the Oslo II Agreement merely formalised a supply management system which had been in operation for years, presenting it, misleadingly, as part of an egalitarian-sounding 'joint' and 'co-ordinated' management system.

Very much the same can be said regarding two other management issues, resource monitoring and water prices. The Oslo II agreement stipulated that the two sides would establish, under the supervision of the JWC, 'no less than five Joint Supervision and Enforcement Teams (JSETs)', for the monitoring and policing of the West Bank's water resources, systems and supplies.<sup>18</sup> As with the JWC itself, the JSETs would operate according to strictly egalitarian principles: each of them would be comprised of 'no less than two representatives from each side', and each side would have its own vehicle and cover its own expenses.<sup>19</sup> The JSETs teams would be responsible for locating unauthorised water connections, for supervising infrastructure developments, and for monitoring well extractions, spring discharges and water quality.<sup>20</sup> Three such teams were immediately established, each of them responsible for hydrological monitoring.<sup>21</sup> The twist lies, though, in the fact that these three JSETs followed precisely the same monitoring system as had been followed since the early 1970s

<sup>&</sup>lt;sup>18</sup> Ibid., Schedule 9 (1).

<sup>&</sup>lt;sup>19</sup> Ibid., Schedule 9 (2, 3).

<sup>&</sup>lt;sup>20</sup> Ibid., Schedule 9 (4).

<sup>&</sup>lt;sup>21</sup> Interviews with Mustapha Nuseibi, West Bank Water Department (27 June 1998); and Taher Nassereddin (15 August 1998).

by the West Bank Water Department. Monitoring was conducted by the same Palestinian technicians, and in line with the very same procedures and schedule; and data was recorded on forms which barely differed from those which had been used prior to the Oslo II Agreement.<sup>22</sup> The only significant differences post-Oslo were that the monitoring process became significantly more time-consuming (owing to the difficulty of organising security convoys in the territorially fragmented West Bank), and that the Palestinians became entitled, like their Israeli counterparts, to use JSETs data (and while this latter change was in principle significant, if was in practice nullified by Israel's refusal to transfer key historical and contemporary data, which meant that, throughout the Oslo period, Palestinians remained heavily reliant on Israeli databases, plans and models). From 1995 onwards, there did exist a formal mechanism for the joint supervision of the West Bank's water resources, but it was one which continued to enshrine overall Israeli control over politically-sensitive water-related information.<sup>23</sup>

As for water prices, Oslo II stipulated that 'in the case of purchase of water by one side from the other, the purchaser shall pay the full real cost incurred by the supplier, including the cost of production at the source and the conveyance all the way to the point of delivery'.<sup>24</sup> At first glance this would appear fair and reasonable. As noted above, however, the Israeli authorities would continue to exercise control over the West Bank's water resources, and over all 'upstream' facilities, such that the Israeli authorities would always be the 'suppliers', Palestinian authorities and communities the 'purchasers'. Moreover, the terms of this article applied only to transactions between Israelis and Palestinians, placing no constraints on purchases by Israeli settlers. And settlers receive their water at highly subsidised

<sup>&</sup>lt;sup>22</sup> Prior to the Oslo II Agreement, water data was recorded on forms headed 'State of Israel, Ministry of Agriculture, Water Commission, Hydrological Service', to be signed by an Observer and a District Engineer. Thereafter, the forms were reheaded 'Joint Water Committee, JSETS – Joint Supervision and Enforcement Team – Israeli-Palestinian', and were to be signed by an Observer, a District Engineer, and representatives of the Israeli and Palestinian Teams (in practice, the Observer and District Engineer once again). In all other respects these two sets of forms were identical.

<sup>&</sup>lt;sup>23</sup> See Water, Power and Politics in the Middle East, pp. 108-12 for fuller discussion.

<sup>&</sup>lt;sup>24</sup> Israel and the PLO, *Interim Agreement*, Annex III, Appendix 1, Article 40 (18).

rates: by one source, during the mid-1990s settlers were paying \$0.40 per cubic metre for domestic water and \$0.16 for agricultural uses, while Palestinians were paying \$1.20 for both domestic and agricultural supplies (this differential pricing being rendered possible because settlers are billed by the Israeli water supply company Mekorot rather than by the West Bank Water Department, as Palestinians are).<sup>25</sup> Thus under the reasonable-sounding terms of Oslo II, Palestinians had no option but to pay the 'full real cost' of production and supply to the Israeli authorities, while these same authorities were free to continue supplying settlers at rates well below the real cost of production and supply. As with the management of systems and supplies, Oslo II simply legitimised a discriminatory pricing mechanism which had existed since well before 1995.

Beyond this, the Oslo II arrangements had one extra benefit for Israel. Since the onset of the intifada in 1987, the West Bank Water Department had been facing increasing levels of non-payment by Palestinian municipalities and individuals, such that by 1995 it had debts of around NIS 18 million (\$4.5 million). With the inauguration of a formal 'joint management' system, these debts suddenly became taken on by the Palestinian side, being covered by the Palestinian Ministry of Finance. By 2002, these Water Department debts had risen to NIS 110 million (\$24 million).<sup>26</sup> The formalisation of Israeli-Palestinian co-operation had enabled Israel to divest itself of some of the most onerous burdens of occupation, without losing control of either water resources or supplies to Israeli settlements, and without having to forego its discriminatory pricing policy.

So much one might be willing to concede; but didn't the Oslo II Agreement also hold out the promise of additional water supplies for the West Bank's Palestinian communities? Indeed it did: 23.6 mcmy would be made available within the West Bank in order to meet the 'immediate needs of the Palestinians ... during the interim period', while a further 41.4-51.4 mcmy would be developed to meet the

 <sup>&</sup>lt;sup>25</sup> Jad Isaac and Jan Selby, 'The Palestinian water crisis: status, projections and potential for resolution', *Natural Resources Forum*, Vol. 20 (1996), pp. 18-20.
<sup>26</sup> Interviews with Taher Nassereddin (12 April 1998), and Mohammed Jaas, West

<sup>&</sup>lt;sup>26</sup> Interviews with Taher Nassereddin (12 April 1998), and Mohammed Jaas, West Bank Water Department (18 August 1999, and 1 June 2002).

'future needs' of West Bank Palestinian communities.<sup>27</sup> Yet significant as these provisions undoubtedly were, their overall import needs to be qualified in a number of regards.

Firstly, these provisions placed only a minimal burden on Israel. Of the total promised new and additional supply to the West Bank of 65-75 mcmy, Israel would be financially responsible only for the development of 4.5 mcmy, with the Palestinians bearing the capital costs of developing the remaining 61.5-71.5 mcmy. Moreover, Israel would have to sacrifice only a minimal loss of water, since of the planned additional West Bank supply of 65-75 mcmy, Israel would only have to supply 3.1 mcmy from its national water system.<sup>28</sup> In these respects, the Oslo II Agreement simply enabled Israel to divest itself of the burden of developing much-needed additional waters for the Palestinians, transferring the financial burden for improving Palestinian water supplies from Mekorot to the international donor community and in turn the PA (which will at some point have to start repaying its soft loans to international donors).

Secondly, the PA under Oslo was not entitled to unilaterally amend or abrogate any of the water-related military orders which were put in place by the Israeli authorities in the wake of the 1967 war.<sup>29</sup> As a result, ultimate decision making authority over water resources and systems continued to lie with the Water Officer of the Civil Administration, who could in theory veto any Palestinian infrastructure development proposal, even after it has received the consent of the JWC. Such in fact did occur on numerous occasions within the Israeli-controlled Area C (which constituted 60 per cent of the West Bank), especially when proposed well locations and supply lines clashed with Israeli plans for new settlements and bypass roads.<sup>30</sup>

<sup>&</sup>lt;sup>27</sup> Israel and the PLO, *Interim Agreement*, Annex III, Appendix 1, Article 40 (7), (7.b.vi).

<sup>&</sup>lt;sup>28</sup> Ibid., Article 40 (7).

<sup>&</sup>lt;sup>29</sup> Israel and the PLO, 'Interim Agreement', Article 18 (4.a).

<sup>&</sup>lt;sup>30</sup> Interviews with Ayman Jarrar, Palestinian Water Authority (17 August 1999), and Omar Zayad, Palestinian Water Authority (17 August 1999); also Rouyer, *Turning Water into Politics*, pp. 225-6, 232; and Schiff, 'Sharon suggests taking over water sources in West Bank,' *Ha'aretz* (21 May 1997).

Thirdly, the structure of the JWC set significant constraints on Palestinian development of the West Bank's water resources. We have already seen that decisions within the JWC operate by consensus. Yet given that all infrastructure development works 'require the prior approval of the JWC' (and this includes every pipeline of greater than 2 inch diameter or 200 m in length, and includes every well that needs constructing or rehabilitating), it so follows that each of the parties has an effective veto over the other's proposals.<sup>31</sup> While in principle this applies equally to both sides, in practice it places by far the biggest constraints on the Palestinians, simply because they are so much more needful of new and additional supplies. As it has turned out, Israel has generally vetoed the Palestinian development of 'other agreed sources in the West Bank'.<sup>32</sup> It has rejected several proposed well locations on the grounds of them being too close to Israeli settlements.<sup>33</sup> Moreover, the PA has only succeeded in avoiding the Israeli veto on its infrastructure development proposals by entering into a tacit modus vivendi with the Israeli authorities, one in which Israel has been willing to grant licenses for Palestinian development of the Eastern Aquifer, but only in return for permission to construct new and enlarged water supply systems from within the Green Line to Israeli settlements in the West Bank (the Oslo II Agreement places no limit on new supplies to Israeli settlements).<sup>34</sup> While the PA assented to this new construction work only on condition that it was not taken as implying recognition or acceptance of Israeli settlements, the fact remains that the PA had in practice little option, under the seemingly egalitarian terms of Oslo II, but to assent to the extension and entrenchment of Israel's illegal settlement building programme.<sup>35</sup> Given that the settlements are the central impediment to Palestinian statehood, it can guite reasonably

<sup>&</sup>lt;sup>31</sup> Israel and the PLO, *Interim Agreement*, Annex III, Appendix 1, Schedule 8 (1.b). The same point is made by Sharif Elmusa, *Water Conflict: Economics, Politics, Law and the Palestinian-Israeli Water Resources* (Washington DC: Institute for Palestine Studies, 1997), p. 131; and Rouyer, *Turning Water into Politics*, p. 223. Bureaucratic details from interview with Mohammed Jaas (26 August 1999).

<sup>&</sup>lt;sup>32</sup> Interview with Taher Nassereddin (15 August 1998); Rouyer, *Turning Water into Politics*, pp. 225, 228.

<sup>&</sup>lt;sup>33</sup> Rouyer, *Turning Water into Politics*, pp. 228, 232; Schiff, 'Sharon suggests taking over water sources in West Bank'.

<sup>&</sup>lt;sup>34</sup> Interviews with Ayman Jarrar (17 August 1999), Omar Zayad (17 August 1999), and Mohammed Jaas (18 August 1999).

<sup>&</sup>lt;sup>35</sup> Interview with PA water official, to remain anonymous.

be concluded that the Oslo II water accords, by licensing (and forcing the Palestinian authorities to assent to) continued settlement growth, were a regressive rather than progressive development, decidedly not a step in the right direction.

In each of these regards, the promises of new and additional supplies contained in the Oslo II Agreement were much less significant than they at first appear. What must also be emphasised is that these limitations follow directly from the terms of the Oslo II Agreement, not from their post-hoc interpretation and implementation. There were indeed problems of implementation during the Oslo period: there was, for instance, a relative breakdown in Israeli-Palestinian water relations during the early part of Netanyahu's tenure as Israeli Prime Minister; and Israeli pipelines were on several occasions laid to West Bank settlements without having first received JWC permission (and in some cases where Israeli proposals have been rejected by Palestinian JWC officials).<sup>36</sup> But the central problems with the 'joint management' regime established under Oslo lay with the terms of the regime itself, rather than with their inadequate implementation. The Oslo water agreements did not transfer significant authority to the Palestinians: as under the occupation, they were responsible for local supply management and administration, but had no control over resources. Equally, the accords did nothing to amend the discriminatory water distribution and water pricing systems established under occupation: the only difference now was that Israeli water apartheid was granted official Palestinian consent. As during the occupation, countless Palestinian communities would go three or months without piped supplies each summer. Indeed, the main consequences of the Oslo water accords were not any significant transfer of power to the Palestinians, or any amelioration of Palestinian water shortages, but rather three things: the construction of extra layers of bureaucracy (the JWC, the JSETs, the PWA) which above all served to dissimulate Palestinian autonomy; a transfer of power from Palestinian 'insiders' to PLO 'outsiders' returning with Arafat from Tunis; and a transfer of some of the major burdens of occupation (the costs of investing in new infrastructures, and of

<sup>&</sup>lt;sup>36</sup> Interviews with Karen Assaf, Palestinian Water Authority (13 July 1998 and 17 August 1999), Mohammed Jaas (26 August 1999 and 1 June 2002), and Taher Nassereddin (15 August 1998); also Rouyer, *Turning Water into Politics*, p. 247.

coping with non-payment) from Israel to the PA and the international donor community.

It is true, as the standard account has it, that Israeli-Palestinian 'cooperation' over water issues has continued since the breakdown of the peace process. However, in light of the above this should come as no surprise. Israeli and Palestinian water managers were 'cooperating' before Oslo, and equally, they have continued to 'cooperate' since its collapse, despite Israel's renewed oppression of the Palestinians, and colonisation of the West Bank Palestinian land. The PWA is still approving new supply lines to Israeli settlements: during early 2002, for instance, approval was granted for an 11 km and 32 inch pipeline from the Green Line to Gush Etzion.<sup>37</sup> For many, the very fact that the JWC is still meeting is a positive sign. But I would beg to disagree. A 'joint management' system in which one party has no option but to assent to the colonisation of their own land is little more than a 'dressing up of "cooperation" as domination.'<sup>38</sup>

#### A LICENSE FOR ENVIRONMENTAL DESTRUCTION

One further problem with the terms of the Oslo II water accords, not discussed thus far, was that the main water resource granted to the Palestinians was simply not fully there for the taking. The Oslo II agreement stipulated that all of the Palestinians' immediate and future water needs (estimated at 70 to 80 mcmy) would be met through development of 'the Eastern Aquifer and other agreed sources in the West Bank,' the Eastern Aquifer being one of the three major West Bank aquifers, and the only one, according to Oslo II, that was not yet being exploited to its fullest.<sup>39</sup> Handily, there remained, according to Oslo II, an as-yet unexploited 78 mcmy within the Eastern Aquifer, an annual yield that was uncannily close to meeting all of the Palestinians future needs.<sup>40</sup> It was on the strength of these figures that, in the wake of the 1995 agreement, international donors started pouring money into the development of the Eastern Aquifer. The sites for sixteen production wells were agreed upon shortly after the

<sup>&</sup>lt;sup>37</sup> Interview with Mohammed Jaas (1 June 2002).

 <sup>&</sup>lt;sup>38</sup> Selby, 'Dressing up domination as "cooperation": the case of Israeli-Palestinian water relations', *Review of International Studies*, Vol. 29, No. 1 (2003), pp. 121-38.
<sup>39</sup> Israel and the PLO, *Interim Agreement*, Annex III, Appendix 1, Article 40 (7.b.vi).

<sup>&</sup>lt;sup>40</sup> Ibid, Schedule 10.

signing of the accords, with donors, led by USAID, seeing the development of the Eastern Aquifer as the key to ameliorating the water supply crisis in the West Bank. What few of them realised and still fewer were prepared to admit, however, was that the Eastern Aquifer did not have nearly the potential claimed.

The data for the Eastern Aquifer contained within the Oslo II agreement was arrived at by two Israeli hydrologists at the Israeli water planning company, Tahal, who, following a recharge methodology, calculated the safe yield and remaining potential of the Eastern Aquifer by totalling the yearly volume of spring discharges and well extractions from it.<sup>41</sup> In their view, the significant discharge from the Ayn Fashkha springs along the Dead Sea shore provided strong evidence of significant remaining potential in the aquifer. The relevant figures were passed to Israel's Oslo II water negotiators, who in turn annexed them to the Oslo II agreement. Palestinian negotiators, lacking any precise figures of their own, could hardly rebut the Israeli data.

Yet the problem is that there is compelling evidence that the agreement vastly overstated the remaining potential of the Eastern aquifer.<sup>42</sup> In the first place, and as one of the two Israeli hydrologists who produced the Oslo II data admits, if the Eastern Aquifer were fully exploited, then salt water from the floor of the Jordan valley would flow up into the lower stretches of the aquifer, possibly contaminating existing wells: as the hydrologist in question suggests, a minimum 20 mcmy would have to be allowed to continue flowing from the Dead Sea springs in order to negate this possibility.<sup>43</sup> Secondly, the volume of existing discharge from the Dead Sea springs appears to have been over-estimated within the Oslo II calculations, these calculations having been premised on monitoring work undertaken by the Israeli Hydrological Service during 1992, on the back of heavy rainfall during the previous winter (the IHS calculated discharge at 80 mcmy), rather on the more conservative and, in most experts' views, representative findings of Tahal in the late 1980s

<sup>&</sup>lt;sup>41</sup> Interviews with Yossi Guttman, Tahal (4 August 1998); and Ze'ev Golani, Mekorot (6 August 1998).

<sup>&</sup>lt;sup>42</sup> I discuss this evidence at greater length in *Water, Power and Politics in the Middle East*, ch. 5.

<sup>&</sup>lt;sup>43</sup> Interview with Yossi Guttman (4 August 1998).

(which put discharge at only 40 mcmy).<sup>44</sup> Third, it seems likely that much of the seeming remaining potential of the Eastern Aquifer is inaccessible, both because it comes from deep saline aquifers (some of the water emerging from the Dead Sea springs fell as rain 25,000 years ago, as far away as the Atlas Mountains), and because it flows so thinly through the upper, non-saline parts of the aquifer as to render exploitation economically, and perhaps even technologically, unfeasible.<sup>45</sup> For all of these reasons, it seems clear that the Eastern Aquifer has nowhere near the potential claimed in the Oslo II agreement.

More startling still, however, water table levels are already rapidly declining in certain parts of the Eastern Aquifer and have been doing so for years. Water table levels in one of the wells, Herodian 3, just south of Bethlehem, have been declining at a rate of 5m per year since 1981.<sup>46</sup> Moreover, according to the Israeli Hydrological Service, the water table of the Herodian Aquifer (as they call the Herodian area of the Eastern Aquifer) dropped by 1.75m between 1972 and 1996.<sup>47</sup> Extraction was excessive even before Oslo, but since then 'the drilling of more wells into an already depleted aquifer [has] exacerbated the problem of unsustainability.'<sup>48</sup> As a study conducted in 1998 for the PWA concluded, if all of the then planned wells were

<sup>&</sup>lt;sup>44</sup> Interviews with Dvor Gillad, Israeli Hydrological Service (16 August 1998); Yossi Guttman (4 August 1998); David Scarpa, Water and Soil Environmental Research Unit, Bethlehem University (30 March 1998); and Abdul Rahman Tamimi (19 April 1998).

<sup>&</sup>lt;sup>45</sup> David Scarpa, personal communication (3 September 2000). On the composition and origins of the Eastern Aquifer waters see J. Kronfeld et al, 'Natural isotopes and water stratification in the Judea Group aquifer (Judean Desert)', *Israel Journal of Earth Sciences*, Vol. 39 (1992), pp. 71-6; and Emanuel Mazor and Magda Molcho, 'Geochemical studies on the Feshcha Springs, Dead Sea basin', *Journal of Hydrology*, Vol. 15, (1971), pp. 37-47. On the problem of accessing dispersed waters see Yossi Guttman, 'Hydrogeology of the Eastern Aquifer in the Judea Hills and the Jordan Valley', Report for the German-Israeli-Jordanian-Palestinian Joint Research Program for the Sustainable Utilization of Aquifer Systems (18 January 1998). Thanks also to David Scarpa on this latter issue (interview, 25 August 1998). <sup>46</sup> Amjad Aliewi and Ayman Jarrar, 'Technical Assessment of the Potentiality of the

Herodian Wellfield Against Additional Well Development Programmes', Report for the Palestinian Water Authority (April 2000), p. 6.

<sup>&</sup>lt;sup>47</sup> IHS, 'The Development, Exploitation and Condition of Groundwater Sources in Israel up to the Fall of 1997' (1998), p. 192.

<sup>&</sup>lt;sup>48</sup> David Scarpa, 'Hydropolitics in recent Israeli-Palestinian relations', *Hydrology: Science and Practice for the 21<sup>st</sup> Century*, Vol. 2 (2004), p. 149.

to be drilled and brought into operation, there would be an estimated decline in the Herodian wellfield of up to 120m over only a four-year period.<sup>49</sup>

The Oslo II water accords were a recipe for the environmental destruction of the Eastern Aquifer. Unwilling to forgo all but a smattering of their existing water supplies, the Israeli authorities 'fabricated the facts about aquifer yields,' and through so doing managed to conjure up a sparkling new and until then barely noticed resource.<sup>50</sup> Given the prevailing power dynamic, Palestinian negotiators had little option but to accept the Israeli data. And once this data was embedded within the Oslo II agreement, it became the standard and unquestioned reference point for Israelis, Palestinians and international donors alike. The Israeli authorities had little political interest in the fate of what would at some point become an internal West Bank aquifer; the Palestinian water authorities were likewise unwilling to recognise to forego development of the one water resource they had been offered under Oslo; and international donors, with eyes only on propping up the peace process, generally did not conduct environmental assessments of their own.<sup>51</sup> As two leading Palestinian water experts write, 'the consequences might be disastrous.<sup>52</sup> Under the Oslo regime, the environment was endangered for the short-term purposes of political expediency hardly evidence of progressive joint management in action.

#### THE PROMOTION OF BAD GOVERNANCE

Third and finally, the character of the Palestinian political system created under Oslo made it impossible for the Palestinian water authorities to manage their water sector adequately. To understand why this was so, we need to turn away from water issues for a

<sup>&</sup>lt;sup>49</sup> CDM/Morganti, 'Task 18: Study of the Sustainable Yield of the Eastern Aquifer Basin. Final Report' (1998).

<sup>&</sup>lt;sup>50</sup> Amjad Aliewi and Anan Jayyousi, 'The Palestinian Water Resources in the Final Status Negotiations: Technical Framework and Professional Perception', Report for the PWA (4 May 2000), p. 14.

<sup>&</sup>lt;sup>51</sup> Palestinian Hydrology Group, 'Water for Palestine: A Critical Assessment of the European Investment Bank's Lending Strategy in the Rehabilitation of Water Resources in the Southern West Bank', Report for the Reform the World Bank Campaign (2000).

<sup>&</sup>lt;sup>52</sup> Aliewi and Jarrar, 'Technical Assessment of the Potentiality of the Herodian Wellfield Against Additional Well Development Programmes', p. 3.

moment, and consider the structure of the peace process more broadly. The Oslo process was driven all along by three things: first, by Israel's desire to subcontract many of the more onerous burdens of occupation, particularly in relation to policing and security; second, by Israel's desire to achieve this without making too many territorial sacrifices, and without divesting overall control of the economies of the West Bank and Gaza, or of its natural resources, most importantly water; and third, by the political desperation of the Tunis-based PLO, and of Yasser Arafat in particular. For Yitzhak Rabin, the security considerations were paramount: 'Palestinians will be better at it [imposing order] than we are,' he observed with brutal candour, 'because they will allow no appeals to the Supreme Court and will prevent the Israeli Association of Civil Rights from criticising the conditions there by denying it access to the area. They will rule by their own methods, freeing, and this is most important, the Israeli army soldiers from having to do what they will do.<sup>53</sup> In line with this fundamental security principle, Israel sought to enable and increase Arafat's security powers over Palestinian society. It raised few objections to the proliferation of Arafat's security agencies, or to the ever-growing numbers of police and security officers employed by him – both in contravention of signed agreements.<sup>54</sup> Instead it sought to deepen his powers over the Palestinian population, both by allowing his security agencies to enforce order in areas outside the PA's formal control, and by topping up his personal finances and hence powers of patronage (until 1999, remittances from Palestinian labourers in Israel and the settlements were being forwarded by Israel not into an official PA bank account, but rather into a personal Bank Leumi account held by Arafat).<sup>55</sup> For his part, Arafat faced strong challenges from opposition forces and local political elites within the West Bank and Gaza, and was therefore more than willing to accept those extra security responsibilities and powers of patronage granted him by Israel. At the heart of the Oslo process, in sum, lay a

<sup>&</sup>lt;sup>53</sup> Ha'aretz (7 September 1993); quoted in Graham Usher, *Dispatches From Palestine: The Rise and Fall of the Oslo Peace Process* (London: Pluto, 1999), p. 74.

<sup>&</sup>lt;sup>54</sup> Usher, 'The politics of internal security: the PA's new intelligence services', *Journal of Palestine Studies*, Vol. 25, No. 2 (1996), pp. 21-34; Danny Rubinstein, 'Protection racket, PA-style', *Ha'aretz* (3 November 1999).

<sup>&</sup>lt;sup>55</sup> R. Bergman, 'Israel deposited NIS 1.5b in Arafat's personal account', *Ha'aretz* (8 October 1999); Amira Hass, 'Chairman Arafat straightens out his financial accounts', *Ha'aretz* (13 January 2000).

convergence of interests between Yasser Arafat and the Israeli state: these were, as Chomsky puts it, the 'Israel-Arafat agreements'.<sup>56</sup>

The consequence of all this was that the Palestinian political system created under, and necessitated by, Oslo was dominated by Arafat's powers of patronage and security services, and, as an inevitable corollary, had weakly developed institutions and rule of law. In Michael Mann's terms, the PA system was 'despotically strong' but 'administratively weak'.<sup>57</sup> For Arafat, as well as for Israel, doing Israel's security bidding was more important than building the institutional infrastructure for statehood.

The impact of this pattern of rule on the water sector were as evident as in any other arena of Palestinian life. Under Oslo, the Palestinian water sector was characterised by violent local water conflicts, by high levels of water theft, by thriving black markets, by the misallocation of scarce resources, and by further environmental despoliation. In the southern West Bank, in particular, there were regular violent conflicts between Palestinian communities, with local municipalities and villages councils competing for scarce water supplies, and with the central Palestinian water authorities being generally unable to control these local authorities and impose the rule of law. Municipalities in control of important wells (Hebron, for instance) would use these as a source of local political leverage, charging exorbitant water prices to surrounding towns and villages. Communities on major supply lines would tap into them illegally, while powerful down-pipe communities (of which Hebron is, once again, a shining example) would take matters into their own hands in order to secure their supplies. Individual theft and non-payment were also high. Individuals, sometimes it seems with the connivance of local authorities and security agencies, would steal water from supply lines before delivering it by tanker at exorbitant black market prices. Local supply inequalities would result, with the quality of supply differing wildly from one Palestinian town or village to the next. And in those areas, most notably the Gaza Strip and Jenin district, where groundwater could be readily accessed through shallow wells,

<sup>&</sup>lt;sup>56</sup> Noam Chomsky, *Fateful Triangle: The United States, Israel and the Palestinians*, 2<sup>nd</sup> edn. (London: Pluto, 1999), ch. 10.

<sup>&</sup>lt;sup>57</sup> Michael Mann, *The Sources of Social Power, Vol. II: The Rise of Classes and Nation-States, 1760-1914* (Cambridge: Cambridge University Press, 1993), p. 59.

unregulated drilling promised the further destruction of aquifers. All of this occurred because the central Palestinian water authorities, and indeed the PA at large, lacked the administrative capacity to govern the Palestinian water sector adequately. And this, in turn, was no less than embedded in the structure of the Oslo process. Palestinian mismanagement of the water sector was in large part the product of a defective peace process that prioritised short-term Israeli security, and that not only permitted but also supported the creation of a corrupt and fragmented Palestinian Authority.<sup>58</sup>

#### CONCLUSIONS

In autumn 2000, the Oslo process collapsed. Unable to fulfil the security functions for which it had been established, the PA and Arafat were declared 'irrelevant', first by Ariel Sharon and later by the Bush administration. Unable to rely upon its client police force in the West Bank and Gaza, Israel has since March 2002 largely destroyed the PA's policing capacity and re-established direct occupation. Israel and the international community now insist that 'reform' of the Palestinian Authority must take place before negotiations can recommence. But we should not interpret this as a sudden conversion to the principles of 'good governance': the main thing that has changed from the days when Israel was priming Arafat's personal bank account is that the language of reform now suits the Israeli right's interest in delaying the re-start of negotiations.

Until there is a serious commitment to Palestinian good governance from the Israeli state and the Palestinian Authority alike, it is highly unlikely that internal Palestinian water management will improve. Equally, until there is a serious commitment to proper 'joint management', in which powers and responsibilities are meaningfully restructured rather than merely re-presented in the language of 'cooperation', it is highly unlikely that the Palestinian water crisis will be ameliorated. It is a mistake, I believe, to think that Oslo and its water accords failed because of electoral changes in Israel, or because

<sup>&</sup>lt;sup>58</sup> These issues regarding the internal Palestinian water arena are discussed further in *Water, Power and Politics*, ch. 7; as well as my 'Governance and resistance in Palestine: simulations, confrontations, *sumoud*', in Feargal Cochrane, Rosaleen Duffy and Jan Selby (eds.), *Global Governance, Conflict and Resistance* (Basingstoke: Palgrave, 2003), pp. 118-134. For a related analysis, see also Julie Trottier, *Hydropolitics in the West Bank and Gaza* (Jerusalem: PASSIA, 1999).

of some failure to fully implement agreements that were in essence sound. To the contrary, the Oslo accords, and the Oslo II water agreements too, were rotten from the very beginning. The lessons, I think, are clear: future final status talks and agreements need to construct a proper joint management regime, as distinct from ongoing Israeli domination; they must not be reached at the expense of precious natural resources; and they must do all that they can to enable Palestinian authorities to create a well-regulated Palestinian water sector. Unless this happens, the mistakes of Oslo are more than likely to be repeated.