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Achieving Sustainable Environmental
Peace in Asymmetric Transboundary Water
Conflicts – Human Rights-Based Approach
to Water Cooperation in the Israel-Palestine
Case

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Abstract

As a result of the rapid population growth, the increasing economic interests and the global climate crisis, disputes over freshwater resources become more frequent and severe. Although many States pursue environmental cooperation to avoid or resolve water conflicts, such cooperation agreements often suffer from a weak political will to implement just cooperation mechanisms. This is particularly the case in transboundary water disputes that are characterized by asymmetric power relations between the riparian states. In these settings, the more powerful State dominates the peace negotiations which are often the starting point for future interstate cooperation. The consequences are grave violations of the human right to water and other water-related socio-economic rights. It is therefore imperative to “re-hydrate” an issue which has already been largely discussed in the literature of environmental peacebuilding.

While international peacebuilding practices follow a rational, technical approach that aims at resolving water conflicts by eliminating water scarcity as such, this paper is an attempt to shed more light on the human rights-based approach as a potential long-term strategy for conflict resolution. For this purpose, the effectiveness of the human rights-based approach in eliminating the political root causes of transboundary water conflicts will be examined in the context of the Israel-Palestine case. The aim is to compare both peacebuilding approaches in transboundary settings and to clarify whether the human rights law mechanisms can contribute to the resolution of conflicts by granting protection for individuals and their right to water.

Given the depoliticizing effect of the technical approach to environmental peacebuilding, it has not proved being effective in considering contextual factors and in eliminating political root causes of water conflicts. Human rights law, in contrast, provides certain mechanisms that may help achieving sustainable peace. Concretely, it may foster the participation of local actors in decision-making processes and thereby enhance political dialogue. As a consequence, politically sensitive questions, such as equitable water distribution, can be raised and addressed more effectively. The implementation of human rights law is, however, dependent on national legal frameworks. Therefore, the conflict parties are likely to insist on their own national interests and their interpretation of the right to water which reduces the room for bargaining and eventually leads to the risk that there is no cooperation at all. Moreover, the disconnection of national and transboundary decision-making processes

renders the participation of non-state actors unfeasible and limits the effectiveness of human rights law.

Using a human rights-based approach is, in fact, useful for resolving intrastate conflicts; in transboundary conflicts it does, however, not inevitably help to address structural inequalities. Despite the increasing protection under international law, there are still many obstacles that impede the participation of the civil society and the realisation of the human right to water in practice. The human rights-based approach can therefore not overcome the shortcomings of the technical approach and it is – at least in transboundary water conflicts – no guarantor for sustainable environmental peacebuilding.

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I hope that this paper provides a new perspective on the role of human rights law in transboundary water conflicts and that it contributes to broader discourse on this topic.

Abbreviations

CEDAW	Committee on the Elimination of all Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESR	Center for Economic and Social Rights
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Committee on the Rights of the Child
COGAT	Coordinator of Government Activities in the Territories
HRBA	Human Rights-Based Approach
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICA	Israeli Civil Administration
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IWA	Israeli Water Authority
JWC	Joint Water Committee
NGO	Non-governmental organisation
PWA	Palestinian Water Authority
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNEP	United Nations Environment Programme

1 Importance and Purpose of the Study

The importance of environmental cooperation as a potential catalyser for conflict resolution has been largely elaborated in the peacebuilding literature. Numerous scholars pointed out the “virtues and vices” of peacebuilding practices and identified the technocratic turn in peacebuilding. Based on this, the human rights-based approach has been introduced as an alternate conflict resolution tool. However, this approach has been largely applied in intrastate conflicts over national water resources. This paper therefore aims at clarifying the effectiveness of the human rights-based approach in transboundary water conflicts that involve more than one state. A special focus lies on situations where the establishment of cooperation agreements is influenced by unequal power relations between the conflict parties. This is of great importance for the contextual adjustment of peacebuilding practices. By analysing the capability of human rights to overcome structural hindrances in interstate water conflicts that are especially due to political factors, this paper aims at contributing to the debate on environmental peacebuilding. It is an attempt to close – or at least to reduce – some gaps in the literature on the role of human rights in the resolution of international water conflicts.

2 Introduction

The environmental debate has experienced a rapid change in understanding the relation between environmental issues and peace in the past decades. There is a growing acceptance of causal linkages between resource scarcity, conflict and cooperation. Concretely, environmental stress is an essential element among socio-political and economic factors that may trigger instability and violent conflicts between interstate parties claiming resources.¹ Particularly the availability of water resources plays a major role for the emergence of a conflict. For example, the Middle East region faces a severe water conflict that derives from decreasing water availability in the Jordan River basin. Given the future predictions on economic growth and the rapid increase of the population, the water availability in this region is likely to be reduced even more. In view of the vital role of water resources, conflicts over such resources are often highly politicized and securitized. In the Israel-Palestine conflict, for example, this politicization minimizes the

¹ Dresse/Fischhendler/Nielsen/Zikos., *Moving beyond natural resources as a source of conflict: Exploring the human-environment nexus of environmental peacebuilding*, Integrative Research Institute on Transformations of Human-Environment Systems, Discussion Paper No. 2016-2, p. 6.

willingness of cooperation related to the joint management of shared water resources. As a result, water cooperation efforts, such as negotiations concerning the governance of water resources, are less likely to be successful. Hence, cooperation initiatives at the political level shifted from formal water diplomacy (government to government) to informal, technical cooperation which includes neutral technical experts and thus follows a scientific, rational approach to enable a broader space for transboundary negotiation on water-related issues.

Given that people often do not have equitable and reasonable access to water resources, human rights, such as the rights to health, food, and particularly the right to water, are negatively affected by water scarcity. Considering the major threats to life resulting from the ongoing COVID-19 crisis, the realisation of the right to water and sanitation more than ever is imperative since it plays a crucial role for ensuring hygienic standards and thus helps to stop the spread of the virus. International law plays a crucial role in strengthening the populations' water rights. As regards peacebuilding in post-conflict societies, human rights law and humanitarian law may impose obligations on the riparian states to ensure equitable water distribution by allowing civil participation in decision-making processes as well as access to information and legal redress. Community action and active participation of user groups can ensure that services delivered by public institutions or private actors are adapted to actual needs and respect traditional methods of water management. A multi-stakeholder dialogue involving the various authorities, the private sector, civil society organisations, and poor and marginalized groups, is considered to strengthen the political will and the design of reforms in water management, taking into account the various needs and rights of groups concerned. It could also contribute to making decisions transparent and holding public authorities accountable. Redress and justice can in many places also be sought through redress and dispute resolution mechanisms provided by international law.

Using a legal approach to sustainable peacebuilding in the fragile domestic system of post-conflict states has been debated extensively. It is, however, questionable whether a human rights-based approach can overcome the challenges that arise with the emergence of transboundary water governance. This becomes relevant in cases where water conflicts are not only triggered by a lack of water availability but also by socio-political drivers, such as structural inequalities that derive from asymmetric power relations between

riparian states. For instance, in the Israel-Palestine conflict, Palestinian people do not have reasonable access to water resources because Israel dominates the negotiations over water allocation and thereby perpetuates its position of power. The realisation of the right to water therefore lies not only in the hand of the state of Palestine but is dependent on the Israeli system as well.

The overarching objective of this paper is thus to identify whether sustainable peacebuilding can be attained in transboundary water conflicts that are characterized by unequal power relations between riparian states. For this purpose, one needs to take a closer look at technical peacebuilding practices as they constitute the prevalent strategy of conflict resolution. In a first step, it must therefore be clarified to what extent a technical approach fosters cooperation in asymmetric water conflicts. Are technical cooperation practices capable of addressing contextualized root causes of water conflicts? This appears problematic given that the rational approach to water cooperation avoids hydro-political concerns and wider participation of the society as these factors are considered inhibiting the efficiency of cooperation. The Israeli-Palestinian case reaffirms this assumption and illustrates that the work of the JWC as cooperation mechanism is ineffective as it perpetuates the power asymmetry between the states.² By focusing too much on action and behaviour the wider social and historical process is being neglected.³ The ability of technocratic initiatives to foster sustainable peacebuilding may therefore be illusory. Consequently, in cases where such strategy fails, it is necessary to integrate a different approach that provides alternative or, at least, complementary solutions to peacebuilding. As already alluded to, the human rights-based approach may be suitable for establishing equitable water access and thereby correct the shortcomings of the technocratic approach. By emphasizing the obligation of states to realize individuals' human rights, wider participation in environmental decision-making can be strengthened which, in turn, may establish equitable water allocation. Hence, the major questions that this paper attempts to answer are: To what extent can an HRBA, in particular the procedural rights that are embodied in it, enhance an equitable water allocation process

² Selby, *Dressing up domination as 'cooperation': the case of Israeli-Palestinian water relations*, Review of International Studies, Vol. 29, 2003, p. 135.

³ Jägerskog, *Are there limits to environmental peacebuilding? A critical reflection on water cooperation in the Jordan basin*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 14, p. 216.

in transboundary settings? Can the HRBA help to overcome structural inequalities in interstate conflicts?

After introducing the concept of environmental peacebuilding and transboundary cooperation (2.), the paper examines the prevalent conflict resolution strategy, namely the technocratic approach to peacebuilding (3.). For this purpose, I will refer to the water conflict in the Middle East (Lower Jordan Basin) and, in particular, to the Israel-Palestine water cooperation governed by the Oslo II Accords. By analysing the cooperation agreement and the socio-political circumstances in the Israel-Palestine case, section 4. finally identifies the pitfalls and constraints of technical peacebuilding. In a next step, the paper thus introduces the human rights-based approach (HRBA) as a potential alternative that may correct the shortcomings of technocratization (5.). In this context, the substantive right to water and the procedural rights deriving from IHRL are being addressed. Concretely, I will explain the human rights principles that form the basis for procedural rights and that are crucial for defining the state obligations. I will then elaborate the state obligations resulting from the right to water and list potential mechanisms for legal redress. Section 6. then assesses the implementation of the human right to water in transboundary settings. After applying the HRBA to Palestinian water management, the relevant international legal frameworks will be identified in order to determine the extent to which the riparian states are bound by their obligations. Finally, I will elaborate the challenges that arise when using an HRBA in transboundary conflicts that are characterized by power inequalities.

3 Limitations

As this paper puts a strong focus on the comparison between the technical and the rights-based approach in the environmental peacebuilding programmes, the philosophical core of peacebuilding practices themselves will be mentioned but not discussed in detail. Particularly the moral values and frameworks of the concept of peacebuilding as well as their connection to liberal democratic structures will not be subject of this paper. In this context, the criticism that human rights law is a notion that is prevalent in the global north and that sustainable peace therefore requires the establishment of economic structures as they exist in the western world, will be included as an argument but not further examined since this discussion is beyond the scope of this thesis. Based on this,

the post-colonial perspective on human rights and international peacebuilding initiatives is an important aspect in this respect that cannot be examined profoundly in this thesis.

4 Delimitations

In spite of the multitude of conflicts that are related to water issues, the Israel-Palestine case is a striking example for the significance of water resources. Whereas in many other cases, such as the Iran-Afghanistan case, the peacebuilding practices have been largely effective in establishing cooperation and in paving the way for peaceful relations, the Israel-Palestine conflict illustrates the problems that can arise when attempting to foster transboundary cooperation. Concretely, it is the best example for proving the ineffectiveness of common cooperation measures in resolving conflicts that are not only rooted in water scarcity but in structural inequalities between riparian states resulting from unequal power relations.

Given the profound impact of water conflicts on human rights, such as the right to health and the right to food, the wide range of effects cannot be addressed in detail. Moreover, this paper will not focus on the assessment of a special human right that is correlated to water conflicts. Rather, the scope is limited to the realisation of the right to water as such which is the prerequisite for fulfilling other human rights respectively.

5 The Concept of Environmental Peacebuilding

The fact that environmental stress strongly contributes to the emergence of conflicts has been proved through several research projects.⁴ Environmental scarcity may, for example, result in a lack of freshwater resources, which in turn constitutes a threat for the livelihoods of people and ultimately for social stability. This is even more evident in post-conflict societies where the environment has been damaged during violent conflict and where people thus have been deprived of access to existential resources.⁵ A failure of the post-conflict state to satisfy environmental needs can impede the building of sustainable peace and even renew the conflict.⁶ Particularly, developing countries suffer from such scarcities as they face drastic population growth and a change of consumption

⁴ Swain/Öjendal, *Environmental conflict and peacebuilding, An introduction*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 1, p. 3.

⁵ Conca/Wallace, *Environment and Peacebuilding in War-torn Societies: Lessons from the UN Environment Programme's Experience with Post-conflict Assessment, Global Governance*, Vol. 15, 2009, p. 485.

⁶ *Ibid*, p. 486.

behaviour which entails an increasing demand for resources.⁷ In situations where two or more states share water sources, the immense exploitation of such sources by one state may lead to inaccessibility of water in the other riparian states and thus result in the emergence or the deterioration of conflict.⁸ Climate change has also adverse impact on the water availability and therefore may cause conflicts between states.⁹

In order to eliminate the issues of post-conflict societies, the international community adopted the concept of peacebuilding.¹⁰ In this context, the assumption that liberally constituted societies are more peaceful has become dominant in the peacebuilding practice and created the guiding notion of liberal peacebuilding, i.e. the attainment of peace requires liberal democratic structures as well as market-based reforms and economic institutions.¹¹

6 Peacebuilding Through Environmental Cooperation: Case Study of the Israel-Palestine Water Conflict

The causal nexus between environmental stress and the emergence of violent conflicts demonstrates the necessity of integrating environment in peacebuilding strategies.¹² Otherwise, sustainable peace is not possible when natural resources and ecosystems are destroyed.¹³ In this context, the Middle East conflict illustrates the link between water scarcity and the emergence of a violent conflict. Bearing in mind the population growth but also the economic development and the adverse impacts of climate change, water issues become more severe given the increasing water evaporation and the declining

⁷ Swain/Öjendal, *Environmental conflict and peacebuilding, An introduction*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 1, p. 3.

⁸ Wolf, *Shared Waters: Conflict and Cooperation*, Annual Review of Environment and Resources, Vol. 32, 2007, pp. 253, 264; Swain/Öjendal, *Environmental conflict and peacebuilding, An introduction*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 1, p. 3.

⁹ Dresse/Nielsen/Zikos., *Moving beyond natural resources as a source of conflict: Exploring the human-environment nexus of environmental peacebuilding*, Integrative Research Institute on Transformations of Human-Environment Systems, Discussion Paper No. 2016-2, p. 8.

¹⁰ UNSC, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, par. 2.

¹¹ Richmond, *The UN and Liberal Peacebuilding: Consensus and Challenges*, in Darby/Mac Ginty (Eds.), *Contemporary Peacemaking*, p. 258.

¹² See <https://environmentalpeacebuilding.org/>.

¹³ *Ibid*, p. 10.

groundwater renewal. This will have negative effects on economic growth, social stability and food security and ultimately result in conflicts over resources.¹⁴

Therefore, the primary goal of environmental peacebuilding is to address resource scarcities at an early stage by introducing mechanisms and institutions aiming at the reduction of environmental exploitation and degradation.¹⁵ This must be the case for all stages of the “conflict cycle”, including the prevention of a conflict, the conflict management, the conflict resolution as well as the post-conflict situation.¹⁶ As a result, the conflict can potentially be transformed towards a more peaceful relationship at any stage.¹⁷ The history of several transboundary water conflicts has proved that interstate cooperation has always been prioritized over the use of force.¹⁸ Particularly in the aftermath of conflicts, environmental issues play a central role for peacebuilding since war-torn societies face major challenges in re-establishing public order and security as well as in recovering economy and ensuring livelihoods.¹⁹ As explained below, the Israel-Palestine case constitutes a good example for the vital role of environmental problems, such as water scarcity, in building peace in fragile states and societies that suffer from post-conflict conditions. In this context, some authors argue that in many cases the biophysical environment can be conducive rather to cooperation than to conflict as it serves as an incentive to create a win-win solution that provides sustainable and just resource allocation.²⁰ Moreover, it is suggested that if environmental factors can trigger

¹⁴ Aggestam, *Depoliticisation, water, and environmental peacebuilding*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 8, p. 102.

¹⁵ Stockholm International Water Institute (SIWI) <https://www.siwi.org/icwc-course-environmental-peacebuilding/>.

¹⁶ Conca/Beevers, *Environmental pathways to peace*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 5, p. 54.

¹⁷ Dresse/Fischhendler/Nielsen/Zikos., *Moving beyond natural resources as a source of conflict: Exploring the human-environment nexus of environmental peacebuilding*, Integrative Research Institute on Transformations of Human-Environment Systems, Discussion Paper No. 2016-2, p. 8.

¹⁸ For example the water cooperation in the Nile River basin, Niger River basin, Colorado River basin, Senegal River etc.; http://www.unece.org/fileadmin/DAM/env/water/publications/WAT_Good_practices/2015_PCCP_Flyer_Good_Practices_LIGHT_.pdf.

¹⁹ Conca/Beevers, *Environmental pathways to peace*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 5, p. 66.

²⁰ Brooks/Trottier/Doliner, *Changing the nature of transboundary water agreements: the Israeli–Palestinian case*, Water International, Vol 33, Issue 6, p. 681.

or intensify a conflict it must be possible to use the environment as an “entry point for peacebuilding”.²¹

6.1 Historical Background

After the First World War and the collapse of the Ottoman Empire, the League of Nations divided the territories of the Jordan River basin between the British and the French.²² Lebanon and Syria were put under French mandate, whereas Jordan, Palestine and Iraq would be controlled by Great Britain. Following the Balfour Declaration in 1917 the Jewish immigration to Palestine increased and finally resulted in the establishment of the State of Israel declaring its independence in 1948.²³ In this context, the tracking of water resources allowed major progress in the agricultural sector and the establishment of a functioning infrastructure which were essential catalysers for a flourishing economy. This, in turn, played a vital role for the development of a modern Israeli State.²⁴

In order to prevent the establishment of a Jewish State in Palestine, the Arab League (1945) was formed by Arab states. Although the General Assembly adopted the UN resolution no. 181 that called for the partition of Palestine into Arab and Jewish states²⁵, the resolution was rejected by the Arab league since it would have legitimized the establishment of an Israeli state.²⁶ This led to an invasion of Israel by neighbouring Arab States (Egypt, Syria, Iraq, Jordan) in 1948 which resulted in the conquest of Palestinian territories by Israel, the annexation of the West Bank by Jordan, and the control of the Gaza Strip by Egypt.²⁷

²¹ Dresse/Fischhendler/Nielsen/Zikos., *Environmental Peacebuilding: Towards a theoretical Framework*, Cooperation & Conflict, Vol. 54 Issue 1., p. 113.

²² Schulz, *The Security Implications of the Israeli-Palestinian Conflict*, in Jägerskog/Schulz/Swain, Routledge Handbook on Middle East Security, Chapter 6, p. 81.

²³ The Balfour Declaration, 2 November 1917; available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20balfour%20declaration.aspx>; Israel Ministry of Foreign Affairs, *The Declaration of the Establishment of the State of Israel*, 14 May 1948, available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>.

²⁴ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 10.

²⁵ UNGA, A/RES/181(II), *Future Government of Palestine*, 29 November 1947.

²⁶ Schulz, *The Security Implications of the Israeli-Palestinian Conflict*, in Jägerskog/Schulz/Swain, Routledge Handbook on Middle East Security, Chapter 6, p. 82.

²⁷ Haddadin/Shamir, *The Jordan River Basin Part 1: Water Conflict and Negotiated Resolution*.

From 1948 onwards, the large water exploitation by the Arab states (Egypt, Syria, Iraq, Jordan) and Israel has led to further hostilities and violent conflicts.²⁸ While the Arab countries made exploitation plans of the Jordan River, the “All Israel Plan” was directed to drain lakes and swamps as well as to the diversion of the northern Jordan River.²⁹ In 1953, the US ambassador Johnston was asked to foster the development of the Jordan basin. He promoted a settlement of the water allocations by initiating a cooperation agreement between Israel and the riparian Arab states which was based on a needs approach, i.e. water from the Jordan River would be allocated on the basis of actual water needs of the population in each riparian country.³⁰ Cooperation would thus consider the states’ water demands that coincide with the populations’ needs. The Plan also included a rights-based approach considering the water share of each riparian state. It is important to note that this rights-based approach does not relate to the human rights of individuals but to the rights that can be invoked by the states themselves. Such rights are regulated and defined in bilateral agreements or international law, e.g. multilateral water treaties. The proposed agreement stipulated that the states have certain rights concerning the management of water resources. However, following the agreement, the Arab states would have been obliged to respect Israeli rights and would thereby implicitly recognize the sovereignty of the Israeli state. Since this would obviously not be beneficial for the Arab states, they rejected the proposal by Johnston. After Israel occupied the Golan Heights in the West Bank territory during the Six Day War in 1967, Israel gained control over the Baniyas springs which are one of the richest water sources in the region.³¹ In the 1980’s, Israel and the Arab states arranged the so-called “picnic table meetings” and subsequently entered ad hoc agreements concerning the distribution of surface water.³²

Since the 1990’s, the conflict parties started to make efforts to improve their relationship and put emphasis on cooperation (e.g. in the water sector) instead of focussing on the tensions resulting from different interests. This led to the initiation of bilateral negotiations, the so-called back-channel talks, between Israel and the other riparian

²⁸ Schulz, *The Security Implications of the Israeli-Palestinian Conflict*, in Jägerskog/Schulz/Swain, *Routledge Handbook on Middle East Security*, Chapter 6, p. 82.

²⁹ Beach/Hamner/Hewitt et al., *Transboundary Freshwater Dispute resolution*, p. 92.

³⁰ *Ibid*, p. 93.

³¹ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 14; Schulz, *The Security Implications of the Israeli-Palestinian Conflict*, in Jägerskog/Schulz/Swain, *Routledge Handbook on Middle East Security*, Chapter 6, p. 82.

³² Beach/Hamner/Hewitt et al., *Transboundary Freshwater Dispute resolution*, p. 93.

countries.³³ Such talks enhanced further negotiations and finally resulted in the entering of the Interim Agreements between Israel and the Palestinians (1993 & 1995) as well as the closing of the Israel-Jordan Treaty of Peace (1994).³⁴

6.2 Biophysical and Socio-Political Context

With regards to the Middle East Conflict, the riparian states face severe environmental challenges in form of water scarcity and water pollution. For instance, the water used by Israel and Palestine stems from the shared Jordan River, a Mountain Aquifer and a Coastal Aquifer. Before it discharges into the Dead Sea, the Jordan River constitutes the border between Palestine and Jordan, and further north it separates Israel from Jordan.³⁵ The region is known for having one of the lowest per capita water resources worldwide which is even below the absolute water scarcity threshold of 500 m³/year per capita.³⁶ Based on this, there is a tendency that water demand continues to increase due to the expected population growth and the economic activities.³⁷ The result is an increasing discharge of untreated waste water, saline water and other contaminants resulting in dramatic deterioration of the water quality.³⁸ Moreover, in the past decades, the amount of water flowing in the Jordan River has decreased significantly due to dam constructions and the growing number of river diversions and the increasing intake by riparian states for irrigation purposes.³⁹ The decline of the Dead Sea water level is another indicator that the region's ecosystem is at risk.⁴⁰

In the regions where Israel is the upstream riparian state and Palestine the downstream state, Israel has unilateral control over the water sources and thereby excludes Palestine

³³ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 14; Schulz, *The Security Implications of the Israeli-Palestinian Conflict*, in Jägerskog/Schulz/Swain, *Routledge Handbook on Middle East Security*, Chapter 6, p. 82.

³⁴ Beach/Hamner/Hewitt et al., *Transboundary Freshwater Dispute resolution*, p. 94.

³⁵ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 33.

³⁶ Singh, *Human Right to Water in Transboundary Water Regimes*, in Singh (Ed.), *The Human Right to Water, From Concept to Reality*, Chapter 12, p. 210; AQUASTAT, *Irrigation in the Middle East region in figures*, Jordan River Basin, p. 3.

³⁷ UN ESCWA and BGR, *Inventory of Shared Water Resources in Western Asia*, Chapter 6, Jordan River Basin, p. 172.

³⁸ De Man, *Transboundary wastewater governance in the West Bank – Options based on an uncertainty perspective*, p. 9.

³⁹ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 33.

⁴⁰ UN ESCWA and BGR, *Inventory of Shared Water Resources in Western Asia*, Chapter 6, Jordan River Basin, p. 190.

from participating in exploitation plans of these resources.⁴¹ One implication of this heavy exploitation of the Jordan River by Israel is that Palestine cannot utilise any water, while Israeli utilisation is 600-700 million cubic meters per year (Mm³/y).⁴² There are, however, no regulations or mechanisms in place that would allow Palestine to raise the issue.⁴³

Regarding the Mountain aquifer, Israel extracts most of the water although almost the entire recharge area (80-90%) lies within Palestinian territory.⁴⁴ The Lower Mountain Aquifer is better suited for developing new water resources but requires advanced technology in order to drill wells. Given that Palestine is lacking such technologies, they need to be imported from Israel or Jordan.⁴⁵ Israeli water policy and technologies strengthen the Israeli economy and, thus, enable a stronger position of power. Moreover, as a result of the war in 1967, large parts of the Western Bank territory which are located close to the Jordan River have been declared as security zone, denying the Palestinians access to the river.⁴⁶ Given the water scarcity and the inaccessibility to existing resources, there is a large dependence of the Palestinian people on Israeli water resources. Moreover, in 1994, Israel started the construction of a wall as a West Bank barrier which had a significant impact on the availability and accessibility of water resources in the Palestinian territories. Among several reasons, the wall was meant to ensure complete control over water resources in the West Bank and deprived the Palestinian state of the possibility to conduct water extraction.⁴⁷

7 Transboundary Technocratic Cooperation

It is argued that transboundary cooperation entails mutual benefits for the conflict parties which can eliminate the causes of a conflict and thus contribute to the attainment of

⁴¹ Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, Water Alternatives, 6:1, p. 6.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ El-Fadel/Quba'a, El- Hougeiri/Hashisho/Jamali, *The Israeli Palestinian Mountain Aquifer: a case study in ground water conflict resolution*, JNRLSE Vol. 30, p. 54; The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 33.

⁴⁵ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 35.

⁴⁶ Haddad, *Politics and Water Management: A Palestinian Perspective*, in Shuval/Dweik (Eds.), *Water Resources in the Middle East, Israel-Palestinian Water Issues – From Conflict to Cooperation*, p. 43.

⁴⁷ Assaf, *Palestine Water as a human right: The understanding of water in Palestine*, Global Issue Papers, No. 11, Suppl. 4, p. 139; See Annex I, Figure 1: The Jordan River Basin.

peace.⁴⁸ This perception of cooperation is based on the assumption that "states seek to pursue rational and legitimate self-interest" and that "cooperation will occur only if the anticipated benefits exceed the costs of non-cooperation".⁴⁹ Mutual interests therefore play a significant role in triggering mutually beneficial solutions to environmental issues and may substitute unilateral actions which are often the more cost-intensive approach anyway.⁵⁰ In fact, the technical cooperation between Israel and Palestine had a positive-sum character, i.e. cooperation initiatives were advantageous for both parties. For instance, the Middle East Desalination Research Centre (MEDRC) – an international research and training institute – was established as a result of multilateral cooperation.⁵¹ Moreover, by exchanging technical knowledge, technologies in water treatment can be improved which allows recycling and reuse of water.⁵²

According to Conca, "environmental problems are cross-border, long-term, important and largely de-securitized issues on which significant epistemic communities exist".⁵³ Environmental issues may therefore be an initiator for dialogue between conflict parties and may enhance communication which, in turn, fosters the building of mutual trust and understanding during tensions and conflicts.⁵⁴ In essence, this so-called functionalist perspective suggests that environmental dialogue on "low politics" increases the chance of conflict parties to agree on cooperative measures against environmental scarcity.⁵⁵ A further essential feature of this liberal approach, which creates the basis for peacebuilding work⁵⁶, is the emphasis on the role of technology and science so that cooperation can be

⁴⁸ Dresse/Fischhendler/Nielsen/Zikos., *Environmental Peacebuilding: Towards a theoretical Framework*, Cooperation & Conflict, Vol. 54 Issue 1., p. 100.

⁴⁹ UNDP, *Human Development Report, Beyond scarcity: power, poverty and the global water crisis*, p. 218, 228.

⁵⁰ Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, Water Alternatives, 6:1, p. 3.

⁵¹ Middle East Desalination Research Centre, see <https://www.medrc.org/developmentcooperation/#transboundary-water>.

⁵² The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 1.

⁵³ Ide/Sümer/Aldehoff, *Environmental peacebuilding in the Middle East*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 12, p. 178; Conca, *The case for environmental peacemaking*, in Conca/Dabelko (Eds.), Environmental peacemaking, p. 2.

⁵⁴ Dresse/Fischhendler/Nielsen/Zikos., *Environmental Peacebuilding: Towards a theoretical Framework*, Cooperation & Conflict, Vol. 54 Issue 1., p. 103.

⁵⁵ Conca/Beevers, *Environmental pathways to peace*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 5, p. 67.

⁵⁶ Richmond, *The UN and Liberal Peacebuilding: Consensus and Challenges*, in Darby/Mac Ginty (Eds.), Contemporary Peacemaking, p. 258.

strengthened while contestation about political cooperation is reduced.⁵⁷ In this context, the adoption of a technocratic peacebuilding strategy plays a significant role for the realization of rational cooperation approaches.⁵⁸ Concretely, the proclaimed neutrality and impartiality of global peacebuilding actors created the basis for a technocratic understanding of environmental peacebuilding.⁵⁹ The process of setting priority to technical interaction instead of political cooperation is called depoliticization.⁶⁰

In the Israel-Palestine case, the vital role of water indicates that water resources are highly politicized and securitized. This politicization minimizes the willingness of cooperation related to the joint management of shared water resources. As a result, water cooperation efforts, such as negotiations concerning the common regional governance of water resources, are less likely to be successful. Therefore, collaborative interactions may be more promising when they involve neutral experts and therefore take place at a lower political level. This is because technical initiatives conducted by these experts can, as seen above, entail mutually beneficial outputs for both conflict parties and thus constitute incentives for the conflict parties to reach a consensus on cooperation, such as the initiation of water-related projects.⁶¹

The technical approach also manifests in the legal cooperation agreement between Israel and Palestine. On the bilateral level, the Oslo Accords of 1993 established the basis for cooperation on water resources, and for research on subjects such as water infrastructure and desalination. The 1995 Oslo Interim Accord (Oslo II), signed between Israel and the Palestine Liberation Organization (PLO)⁶², dealt with the water issue in depth. Article 40 entitled 'Water and Sewage' in Annex III, stipulated that Israel recognises the 'Palestinian water rights' in the West Bank.⁶³ Oslo II also led to the establishment of a Joint Water Committee (JWC). The JWC, made up of an equal number of experts from each side,

⁵⁷ Jägerskog, *Are there limits to environmental peacebuilding? A critical reflection on water cooperation in the Jordan basin*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 14, p. 213.

⁵⁸ Aggestam, *Depoliticisation, water, and environmental peacebuilding*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 8, p. 100.

⁵⁹ Mac Ginty, *Routine peace: Technocracy and peacebuilding*, *Cooperation and Conflict*, Vol. 47 (3), p. 296.

⁶⁰ Ide, *The dark side of environmental peacebuilding*, *World Development*, Vol. 127, p. 3.

⁶¹ *Ibid.*

⁶² Permanent Observer Mission of the State of Palestine to the United Nations, Palestine Liberation Organization, See <http://palestineun.org/about-palestine/palestine-liberation-organization/>.

⁶³ *The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III, Protocol Concerning Civil Affairs*, Art. 40.

was set up to regulate and ensure implementation of water and sewage-related issues in the West Bank. The tasks of the JWC include the management of approvals, licences and drilling of new wells as well as the exploration of new water sources and the development of existing water systems.⁶⁴ The JWC is divided into four sub-committees that are responsible for water, wastewater, hydrology and pricing respectively.⁶⁵ When one of the parties (Israel or Palestine) wants to initiate a new water infrastructure project, it is required to ask the JWC for approval. In this respect, the Committee, which works closely with the Palestinian Water Authority and the Water Authority of Israel, announces a decision based on consensus.⁶⁶

The Accords also allocated the quantities of water to each party, maintaining the then-quantities of usage, and defined the future needs for each party. The 'Palestinian' side was given the right to extract 20% of the annual renewable volume of the Mountain Aquifer and to extract water from the Coastal Aquifer according to its needs. The fact that the allocation of water resources depends on needs of the riparian states indicates the application of a quantitative approach of the Oslo Accords to the water issue in the Middle East region. Concretely, it regulates what quantities of water from the Western Aquifer would be allocated to Israel, the West Bank and Gaza. This quantitative or needs-based approach implicates that cooperative interaction is mainly advanced by non-governmental technical initiatives that pursue the improvement of water availability in order to ensure that the water needs are satisfied.

The peacebuilding literature is further characterized by the assumption that technical collaboration “can spur cooperation in other more sensitive political areas”.⁶⁷ These “spill over” processes lead to stronger collaborative interactions and finally entail additional benefits. As Tranholm-Mikkelsen puts it, environmental cooperation “will set in motion economic, social and political progresses which generate pressures towards further integration”.⁶⁸ The so-called “picnic table” talks between Israel and Jordan is an example

⁶⁴ *Ibid*, Schedule 8, available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20iii.aspx>.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*.

⁶⁷ Jägerskog, *Are there limits to environmental peacebuilding? A critical reflection on water cooperation in the Jordan basin*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 14, p. 212.

⁶⁸ Ide/Sümer/Aldehoff, *Environmental peacebuilding in the Middle East*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 12, p. 178.

of how such dialogue can be conducive to peacebuilding. In the 1994 peace treaty between the two states, the agreement on “partial institutionalisation” of water cooperation and dialogue networks “have continued to serve as open channels for easing the tensions” in the conflict over water resources in the Tigris-Euphrates basin.⁶⁹ Furthermore, this notion played an important role in the multilateral peace negotiations between Israel and Palestine which aim at establishing sustainable peace through long-term cooperation.⁷⁰ As a result, many hydro-projects focussing on technical solutions of water management were launched and financed by “de-securitizing” actors, such as NGO’s and international actors. As elaborated above, particularly Palestine benefited from the initiation of water infrastructure projects such as new irrigation systems and pipelines which were funded in order to strengthen the economic development and to build peace. The objective of cooperating in this manner was the normalization of dialogue in order to enhance a final settlement of the conflict.⁷¹

However, it is noteworthy that socio-political factors and biophysical circumstances are, in any conflict, closely intertwined. They are cumulative conditions for the emergence of a conflict in the sense that they “determine whether cooperation or conflict over scarce water resources prevail”.⁷² In the Israeli-Palestinian water conflict, social discourses and identities were, beside the scarcity of water, the main drivers of the conflict. The intertwining of socio-political and biophysical circumstances implicates that the causal nexus between cooperation and peace depends on a multitude of factors and circumstances.⁷³ Hence environmental cooperation is - to a large extent - contextualized, i.e. the effectiveness of cooperation depends on several contextual factors which, in turn, makes an assessment of the pre-existing relations between the conflict parties imperative. Finally, the technical approach, aiming at creating a win-win situation in order to reduce environmental issues, needs to be analysed as regards its effectiveness of addressing the root causes of the respective conflict. Since the elimination of the underlying drivers of a

⁶⁹ *Ibid.*

⁷⁰ Aggestam, *Depoliticisation, water, and environmental peacebuilding*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 8, p. 103.

⁷¹ *Routledge Handbook on Environmental Conflict and Peacebuilding*, p. 63

⁷² Krampe, *Building Sustainable Peace, Understanding the Linkages between Social, Political, and Ecological Processes in Post-War Countries*, p. 20.

⁷³ Dresse/Fischhendler/Nielsen/Zikos., *Environmental Peacebuilding: Towards a theoretical Framework*, *Cooperation & Conflict*, Vol. 54 Issue 1., p. 100.

conflict is an indispensable prerequisite for building sustainable peace, it is necessary to critically examine the technical peacebuilding approach on a case by case basis.

8 Shortcomings of Technical Cooperation

This section will focus on the analysis of the water conflict between Israel and Palestine and identify potential shortcomings of the common understanding of environmental cooperation and its implications. For this purpose, one must first take a closer look at the Interim peace agreement (Oslo II) which forms the basis of the transboundary cooperation between Israel and Palestine.

8.1 The Israel-Palestine Case: Analysis of the Oslo II Regime

Firstly, addressing the cooperation agreement between Israel and Palestine, the Oslo Accords do not contain any provisions concerning policy coordination over the Coastal Aquifer which is partly localized in the Gaza Strip. Rather, the Palestinian Authority (PA) has the unilateral responsibility for water resource management in those areas of the Gaza Strip under its control. Israel, on the other hand, is responsible for the unilateral management of the rest of the Aquifer which is upstream of Gaza.⁷⁴ As a result, the PA has no right to limit increasing water extraction conducted by Israel in the upstream part of the Aquifer. This leads to a lack of self-sufficiency on the Palestinian side when it comes to water supply. In this context, it is noteworthy that the water extraction in Gaza is twice as high as the natural recharge allows which leads to seawater intrusion and salination of groundwater.⁷⁵ Despite these dramatic circumstances, there is no regulation prescribing the cooperation over the water management in the Gaza Strip. Indeed, the Oslo agreements stipulate policy coordination regarding the only transboundary water resource, namely the Mountain Aquifer. However, the Accords only apply to those parts of the Aquifer lying in the West Bank territory. On the other side of the West Bank (Green Line), the Aquifer is unilaterally managed by Israel, facilitating limitless water abstraction.⁷⁶ The above-mentioned implications of the Oslo II negotiations led to

⁷⁴ Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, Water Alternatives, 6:1, p. 5.

⁷⁵ World Bank, *Assessment of Restrictions on Palestinian Water Sector Development*, Report No. 47657-GZ, 2009, p. 27.

⁷⁶ Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, Water Alternatives, 6:1, p. 6.

criticisms that the cooperation does not take into consideration the underlying contextual political factors of the case. For instance, the World Bank report implicates that the JWC represents asymmetric power relations between the rival states which exacerbates the water management in the West Bank and the Gaza Strip significantly. Moreover, it is criticized that Israel allows peacebuilding operations to be costly and time-consuming by imposing restrictive measures on local and international donors.⁷⁷

In addition to the Oslo II provisions, there are some other legal requirements that play a role for the cooperation process. For example, a military law prescribes the necessity of a JWC permit under certain circumstances, i.e. when a minimum length of pipelines and a maximum depth of drill holes is exceeded.⁷⁸ These “highly intrusive regulations” derive from the Israel Military Order established during the West Bank occupation in 1967. According to this Order, the Israeli military government (the Israeli Civil Administration – ICA) had the authority and the property rights over all water resources in the West Bank.⁷⁹ As a consequence, Israeli Civil Administration may require an extra permission even though the project got approved by the JWC already.⁸⁰ Hence Israel exerts a dominant influence on the implementation of projects in a region where the most important Palestinian water facilities are located.

Furthermore, the Palestinians face long delays when applying for approval and must expect an average waiting time of 11 months. In contrast, Israeli applications are processed within 2 months.⁸¹ Moreover, Palestinians are dependent on the Israeli wastewater treatment given their advanced technologies. In return, Israel charges Palestine for this service. According to the International Water Association, only 4 Mm³ wastewater are treated in Palestinian wastewater plants per year, whereas 14 Mm³/year are treated in Israeli plants. Such treatment leads to pollution of ground and surface water in Israel.⁸² Based on this, De Man states that 48-69% of Palestinians are dependent on

⁷⁷ World Bank, *Assessment of Restrictions on Palestinian Water Sector Development*, Report No. 47657-GZ, 2009, p. 130.

⁷⁸ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 40.

⁷⁹ Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, *Water Alternatives*, 6:1, p. 7.

⁸⁰ *Ibid*, p. 9; PWA, *National Water Strategic Plan and Action Plan (2017-2022)*, p. 25.

⁸¹ Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, *Water Alternatives*, 6:1, p. 13.

⁸² The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 30.

septic tanks and cesspits for the wastewater disposal which are also a reason for groundwater contamination.⁸³ Beside the delays of Palestinian applications for the development of new water resources, such applications are also often blocked by Israeli authorities. This is due to the structures of the JWC which require decision-making by consensus. As a consequence, Israel (and Palestine) possess veto rights when it comes to the initiation of water projects. This results in a monopoly of Israeli water companies selling water to Palestine for agricultural and purposes as well as for drinking.⁸⁴ Such provision of water increases proportionally to the growing population and is criticized as exploiting Palestinians instead of respecting their right to water.⁸⁵

Moreover, despite the agreement on water-related provisions and the acknowledgment of Palestinian water rights by Israel, Oslo II contains no further details on such rights. Rather, a more detailed definition was deferred to final status negotiations that - 25 years later - still have not been carried out.⁸⁶ Based on this, several claims by the Palestinians have been rejected despite the establishment of a seemingly neutral authority, namely the JWC. Moreover, Palestine invoked substantive water rights enshrined in the Helsinki Rules and the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses. These international regulations emphasize the principle of equality of all riparian states which includes the right to equitable access to water resources as well as the prohibition for all conflict parties to cause “significant harm”.⁸⁷ However, Israel has not recognized any of those rights.⁸⁸

Furthermore, there are critics arguing that the work of the JWC being ineffective in resolving the water conflict between Israel and Palestine: As there was clear attempt of Israel to integrate projects in the new Israeli settlements in the work of the JWC, the Palestinian Water Authority (PWA) withdrew its commitment to preserve a common

⁸³ De Man, *Transboundary wastewater governance in the West Bank – Options based on an uncertainty perspective*, p. 9.

⁸⁴ PWA, *National Water Strategic Plan and Action Plan (2017-2022)*, p. 14.

⁸⁵ See Annex II, Table 1: Palestinian West Bank water supplies; The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 30.

⁸⁶ *The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III*, Protocol Concerning Civil Affairs, Art. 40.

⁸⁷ Salman, *The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law*, in *Water Resources Development*, Vol. 23, No. 4, p. 628.

⁸⁸ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 27.

water management system and stopped participating in the JWC meetings.⁸⁹ It was argued that the approval of such projects would be an indirect legitimation and recognition of the settlements which would create a “stalemate within the JWC”.⁹⁰ According to the Strategic Development Plan of the PWA, the JWC imposed restrictions that “hinder the implementation of water projects which form the basis for the development of the Water Sector”.⁹¹ In this context, the Development Plan also points out that international actors often require the approval of the JWC for the funding of water projects.⁹²

Referring to the risk of deteriorating water quality and availability, the State Comptroller of Israel blamed the Israeli Water Authority (IWA) and the Coordinator of Government Activities in the Territories (COGAT)⁹³ for its inability to resolve discrepancies within the JWC and to restore coordination with the Palestinian Authority.⁹⁴ This enabled negotiations on a new agreement to change the agenda of the JWC. The agreement was signed in 2017 by COGAT and the Palestinian Minister of Civil Affairs.⁹⁵ It was a step forward to more independency of the PWA from the JWC. In essence, the PWA can implement small-scale water projects that do not need to be permitted by the JWC in order to be legal. However, the exploitation of new water resources and the construction of new water supplies, such as wells, requires prior permission.⁹⁶ It is important to note that the new agreement does not only allow the initiation of water projects on the Palestinian side but also on the Israeli side. This allows Israeli authorities to launch water-related projects in the highly contested West Bank settlements without the approval of the JWC. Consequently, the Palestinian veto-right concerning the occupied territories, which is granted by Art. 40 Annex III Oslo II, is being undermined.⁹⁷ As illustrated in

⁸⁹ *Ibid.*

⁹⁰ Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, *Water Alternatives*, 6:1, p. 1.

⁹¹ PWA, *National Water Strategic Plan and Action Plan (2017-2022)*, p. 25.

⁹² *Ibid.*, p. 24.

⁹³ The Coordination of Government Activities in the Territories (COGAT) is a professional branch of the Israeli Ministry of Defence and is responsible for coordination and liaison with the Palestinian Authority on development and security matters in the West Bank territories (COGAT, 2019); see

<http://www.cogat.mod.gov.il/en/about/Pages/default.aspx>

⁹⁴ The Hague Institute for Global Justice, *Transboundary Water Cooperation over the lower part of the Jordan River Basin*, p. 27 f.

⁹⁵ UN, *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, 2017; see

<https://www.un.org/press/en/2017/db170116.doc.htm>

⁹⁶ *The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III, Protocol Concerning Civil Affairs*, Schedule 8.

⁹⁷ Selby, *Renewing cooperation on water: what hope for the two state solution*, 2017, see

the table below, the approval rates for Israeli water projects have been twice as high as the approval of Palestinian initiatives.⁹⁸ In this context, the permissions turned out being interrelated with the geographic location of water projects. For instance, most of the applications concerning the constructions of new wells were successful in the Eastern Basin, whereas none of the water projects have been approved in the Western Basin.⁹⁹

Finally, the Oslo Accords have been criticised for neglecting natural factors, such as the adjustment to natural changes, and socio-economic developments, e.g. population increase. Given that a final status agreement has not been reached yet, the Oslo II Accords contain obsolete provisions regulating population sizes and needs that have changed drastically.¹⁰⁰

8.2 Lack of Addressing Power Imbalances

As explained above, access to water and well-managed ecosystems are important elements of peacebuilding in post-conflict societies, such as in the case of Palestine. In this context, Troell and Weinthal defined several key objectives of peacebuilding: 1) establishing security; 2) restoring basic services; 3) revitalizing the economy and enhancing livelihoods; and 4) rebuilding governance and inclusive political processes.¹⁰¹ Evidently, equitable water allocation and sustainable water resource management are conducive to these objectives, albeit hard to establish in transboundary settings. Given the complexity of transboundary water conflicts, the functionalist approach to peacebuilding, which assumes spill over effects into other sectors of cooperation, appears problematic: Referring to the cooperation framework between Israel and Palestine, there is no evidence that technical cooperation between the riparian states has encouraged such a spill over to other sectors.¹⁰² Concretely, the cooperation practices have not proved being effective in terms of fostering future cooperation on water issues and instigating wider cooperation beyond the water itself.¹⁰³

⁹⁸ See Table 1: JWC approval rate; Annex III.

⁹⁹ See Table 2: Approvals of Palestinian water projects; Annex IV.

¹⁰⁰ Lazarou, EPRS, *Water in the Israeli-Palestinian conflict*, 2016, p. 7.

¹⁰¹ Troell/Weinthal, *Harnessing water management for more effective peacebuilding: Lessons learned*, in Weinthal/Troell/Nakayama (Eds.), *Water and Post-Conflict Peacebuilding*, p. 406.

¹⁰² Jägerskog, *Are there limits to environmental peacebuilding? A critical reflection on water cooperation in the Jordan basin*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 14, p. 214.

¹⁰³ *Ibid*, p. 215.

The considerations regarding the Israel-Palestine water conflict lead to the conclusion that, by prioritising the technocratic aspects of cooperation, politically sensitive questions, such as water rights and equitable water distribution are rarely addressed in multilateral cooperation frameworks.¹⁰⁴ Rather, the outcomes of the Oslo II negotiations indicate that the technical framing of water management is frequently used as a strategy to benefit from the cooperation without being obligated to reshape power relations and to address pre-existing societal structures.¹⁰⁵ In fact, underlying issues and root causes are, in most cases, being neglected intentionally in order to profit from the positive-sum character of cooperation. It is therefore argued that, while technical cooperative projects can be beneficial to some degree, they are not sufficient in terms of addressing structural inequalities that, for example, result from occupation and the allocation of regional water resources.¹⁰⁶ Although the process of depoliticization is inherently anti-political,¹⁰⁷ it is still a political strategy that aims at shifting cooperation towards a sphere beyond traditional policy-making.¹⁰⁸ Based on this, Aggestam and Sundell-Eklund maintain that the “technocratic turn” in peacebuilding impedes the return of normal politics which is of great importance for managing social conflicts.¹⁰⁹ Krampe takes a similar view in his assessments concerning water resources in Kosovo: He states that water is being treated as technical issue “to the neglect of its complex political nature”.¹¹⁰ As water is inherently political in the Middle East region, several authors thus advocate the inclusion of politics in the cooperation practices. Otherwise, “important insights and considerations are lost”.¹¹¹ In addition, the task of solving environmental issues is, as Aggestam puts it, gradually delineated to state institutions and economic development.¹¹² By emphasizing

¹⁰⁴ Aggestam, *Depoliticisation, water, and environmental peacebuilding*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 8, p. 97.

¹⁰⁵ Ide, *The dark side of environmental peacebuilding*, World Development, Vol. 127, p. 3.

¹⁰⁶ *Ibid.*

¹⁰⁷ Aggestam, *Depoliticisation, water, and environmental peacebuilding*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 8, p. 99.

¹⁰⁸ *Ibid.*, p. 98.

¹⁰⁹ Conca/Beevers, *Environmental pathways to peace*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 5, p. 67.

¹¹⁰ Krampe, *Water for peace? Post-conflict water resource management in Kosovo*, Cooperation and Conflict, 2017, 52:2, p. 147.

¹¹¹ Jägerskog, *Are there limits to environmental peacebuilding? A critical reflection on water cooperation in the Jordan basin*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 14, p. 215.

¹¹² Aggestam, *Depoliticisation, water, and environmental peacebuilding*, in Swain/Öjendal (Eds.), Routledge Handbook on Environmental Conflict and Peacebuilding, Chapter 8, p. 100.

the seemingly neutral character of technical cooperation and by classifying it as low politics practice, unequal power relations and societal hierarchies remain invisible.

Furthermore, there are often no benefits from the international donor assistance at the local political level because local actors are not able to comply with technical peacebuilding strategies. Rather, the lack of political space may cause further insecurity.¹¹³ Consequently, a broad participation of the society in the peacebuilding process may paradoxically hinder the liberal peacebuilding strategy of the international community as it does not promote a scientific but a political approach. Instead, the neoliberalist notion of peacebuilding strengthens the position of experts and water managers providing them with a broad margin of discretion which has not been critically questioned sufficiently.¹¹⁴ Such actors are, in most of the cases, part of international institutions that serve as peacebuilding initiators. Consequently, international actors play a significant role not only for the funding of water management projects but – to a great extent – they are also involved in the implementation of such projects. This indicates that the depoliticization of conflicts fails to take into account the specific contextual factors that influence the emergence and the development of a conflict. Particularly, such practices neglect the local circumstances. Nonetheless, the liberal idea of peacebuilding legitimizes the work of international “experts”.¹¹⁵

Beside international actors, mediators between local and international discourses on water management play a significant role in shaping the development of water projects.¹¹⁶ They act as a link between local organizations and international actors and try to enforce the technocratic change in environmental cooperation at the local level. Usually, such mediators are local actors who have a special social position and a good network with international donors which enables them a wide freedom of action.¹¹⁷ In view of the increasing competition for international donor assistance among local water institutions, some local actors benefit more than others from funding. As a result, the neoliberal notion of peacebuilding produces fertile ground for outsourcing and privatisation of water-

¹¹³ *Ibid.*, p. 101.

¹¹⁴ Warner/Wegerich, *Is water politics? Towards international water relations*, in Wegerich/Warner (Eds.), *The Politics of Water: A Survey*, 2010, p. 6.

¹¹⁵ Selby, *Water, power and politics in the Middle East: The other Israeli-Palestinian conflict*, 2003, p. 44.

¹¹⁶ Aggestam, *Depoliticisation, water, and environmental peacebuilding*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 8, p. 104.

¹¹⁷ *Ibid.*

related peacebuilding initiatives and development aid by NGO's and other civil society organisations engaging in cooperation. Based on this, a critical look must be taken at the Western-oriented notion of liberal peacebuilding as such. Especially in the Middle East region, which suffered from colonisation and – nowadays – from proxy wars fought by western states, it is imperative to question the neutrality and impartiality of international actors. Liberal peacebuilding practices must be analysed from a postcolonial perspective assessing the pursuit of Western self-interest objectives and the risk of illegitimate international intervention justified by international law. Such an assessment is, however, beyond the scope of this paper and will therefore not be further addressed.

As implicated above, the consequences of depoliticizing peacebuilding methods become particularly clear in conflicts that are induced by asymmetric power relations. For example, in the Middle East conflict, particularly the Israel-Palestine case, the depoliticization of the water conflict is a common strategy framed in a technical cooperation between the two states. Such cooperative interactions do not take into account political concerns, water rights and historical contexts.¹¹⁸ Such considerations play, however, a significant role as they help to understand the perceptions of cooperation and how social values as well as power distribution affect the commitment and the effectiveness of cooperation.¹¹⁹ Rather, the Oslo II agreements cover only the management of existing water sources and the development of new resource supplies.¹²⁰ These limited peacebuilding practices result from the unwillingness of the more powerful conflict party – in our case the Israeli government – to provide access to their water sources and thereby redistribute the resource. Consequently, the technocratic turn in the approach to cooperation perpetuates the power position of the dominating riparian. Furthermore, by ignoring politics, such as the allocation of water resources, and by focusing on increasing water supply instead, the overall objectives of peacebuilding as outlined by Troell and Weinthal are unlikely to be achieved.

¹¹⁸ *Ibid.*

¹¹⁹ Dresse/Fischhendler/Nielsen/Zikos., *Environmental Peacebuilding: Towards a theoretical Framework*, *Cooperation & Conflict*, 54:1., p. 107.

¹²⁰ Weinthal/Marei, *One resource two visions, The Prospects for Israeli-Palestinian Water Cooperation*, *Water International*, 27:4, p. 462.

8.3 Concluding Remarks

The rational approach to water cooperation avoids hydro-political concerns and wider participation of the society as these factors are considered as inhibiting the efficiency. The Israeli-Palestinian case reaffirms this assumption and illustrates that environmental cooperation and particularly the work of the JWC turned out being ineffective for establishing sustainable peace as it perpetuates the power asymmetry between the states.¹²¹ Although technical cooperation over water might be the best possible solution for Palestine in the current situation, the hegemonic position of Israel allows it to dictate the conditions of cooperation.¹²² Therefore, regardless the improvements of the water sector in Palestine that result from the technocracy-based management system, the solution of the conflict as such is unlikely as long as its political root causes remain unaddressed. The rational approach to peacebuilding overemphasizes the ability of technocratic initiatives in fostering sustainable cooperation and development by focusing too much on action and behaviour which neglects the wider social and historical process.¹²³ As a result, depoliticizing water issues is incapable of fostering equitable water resource distribution and thereby achieving sustainable peace.

9 Rights-Based Approach to Water Management in Post-Conflict States

Given that asymmetries are “disparities in wealth, power and negotiating capacity” which decrease the willingness of cooperation, equal power relations are an essential requirement for the ability to carry out negotiations.¹²⁴ Although international peacebuilding initiatives are not suitable for establishing such power equality, they may indeed mitigate the adverse impacts of asymmetries. For example, by applying international human rights law in post-conflict settings, states can be obliged to ensure equitable access to natural resources. This, in turn, may reduce perceived inequalities and

¹²¹ World Bank, *Assessment of Restrictions on Palestinian Water Sector Development*, Report No. 47657-GZ, 2009, p. 130.

¹²² Jägerskog, *Are there limits to environmental peacebuilding? A critical reflection on water cooperation in the Jordan basin*, in Swain/Öjendal (Eds.), *Routledge Handbook on Environmental Conflict and Peacebuilding*, Chapter 14, p. 216.

¹²³ Kütting, *Environment, Society and International Relations: Towards More Effective International Agreements*, p. 100.

¹²⁴ UNDP, *Human Development Report, Beyond scarcity: power, poverty and the global water crisis*, p. 218, 223.

thus leads to social and environmental justice which finally contributes to sustainable peacebuilding.¹²⁵

Most importantly, fundamental human rights principles allow individuals to invoke procedural rights, such as participation in decision-making processes; access to information concerning water quality and water permits; and access to judicial redress mechanisms to safeguard the rule-of-law, fairness, and non-discrimination.¹²⁶ Water resource allocation is thus about how stakeholders can exercise procedural rights that ultimately may influence the outcomes of water allocation decisions. Consequently, using such a rights-based approach may enhance inclusive political negotiations over water management that take contextual circumstances into account and eventually help to address root causes of water conflicts. The following chapters will provide an overview of the HRBA and analyse its effectiveness in building sustainable peace in transboundary conflicts.

9.1 HRBA to Development

The human rights-based approach is a concept that derives from international human rights law and serves the promotion and protection of human rights in practice. Concretely, the HRBA aims at integrating peace, justice and, in particular, respect for human rights into peacebuilding activities.¹²⁷ The UN Statement of Common Understanding of Human Rights-Based Approaches to Development Cooperation and Programming calls upon the UN bodies to apply a consistent approach to mainstream human rights in their various activities at the global and the national level.¹²⁸ According to the Common Understanding, Human rights standards contained in, and principles derived from the Universal Declaration of Human Rights and other international human rights instruments should guide all development cooperation and programming in all

¹²⁵ Broberg/Sano, *Strengths and weaknesses in a human rights-based approach to international development – an analysis of a rights-based approach to development assistance based on practical experiences*, The International Journal of Human Rights, 22:5, p. 675.

¹²⁶ Parlevliet, *Human Rights and Peacebuilding: Complementary and Contradictory, Complex and Contingent*, Journal of Human Rights Practice, Vol. 9, 2017, pp. 341, 349.

¹²⁷ UN, *The Right to Water*, Fact Sheet No. 35, p. 15, available at <https://www.ohchr.org/documents/publications/factsheet35en.pdf>.

¹²⁸ United Nations Sustainable Development Group, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*, 2003 available at https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf.

sectors and in all phases of the programming process.¹²⁹ As opposed to the technical understanding of cooperation and its weaknesses as regards the realisation of equitable access to water, the HRBA is characterized by a shift from a needs- to a rights-based focus. Moreover, instead of focussing on voluntary commitments, the UN requires states to comply with certain human rights obligations. The responsibility of rights-holders and duty-bearers has thus been increased to enhance sustainable development. Consequently, people are not only passive recipients of services but play a key role in terms of strengthening the states' development.¹³⁰

The approach is based on the understanding that poverty is a result of injustice which, in turn, is caused by marginalization and discrimination. For example, water scarcity plays a crucial role for poverty and inequality in societies. Particularly in post-conflict states, there is a pressing need for water and sanitation given that weak water governance structures are persistent.¹³¹ Given the importance of water for ensuring livelihoods and cultural practices, it enhances successful economic and social development as well as environmental protection which are the main elements of sustainable development.¹³² It is therefore argued that using a rights-based approach to water management can help to overcome structural inequalities at the local, national and even international level.¹³³ This requires, however, that human rights standards are integrated into the policies and processes of water management.

By imposing the obligation on duty-bearers to respect, protect and fulfil all human rights, the HRBA seeks to empower the rights-holders to claim their rights.¹³⁴ Particularly, the procedural aspects of these rights, which include the access to public affairs, justice and information, are essential to the realisation of human rights.¹³⁵ They allow people to claim

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ Tignino, *The right to water and sanitation in post-conflict peacebuilding*, Water International, 2011 36:2, p. 242.

¹³² UNDESA, *Guidance in Preparing a National Sustainable Development Strategy: Managing Sustainable Development in The New Millenium*, Background Paper No. 13, 2002, p. 2.

¹³³ UNGA, A/HRC/27/55/Add. 2, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*, Catarina de Albuquerque 2014, par. 62; Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 385.

¹³⁴ Water Aid, *Rights-based approaches to increasing access to water and sanitation*, Discussion paper, 2011, p. 16.

¹³⁵ UNDP, *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users' Guide*, 2006, p. 2, available at <http://www.undp-aci.org/publications/other/undp/hr/humanrights-indicators-06e.pdf>.

the substantive standards that governments are obliged to progressively fulfil. Human rights law may therefore help establishing equitable water access in water-stressed regions by providing a multitude of procedural rights that strengthen the position of individuals in environmental decision-making. Given that human rights redress mechanisms are in place and that states have obligations under IHRL, people concerned can potentially claim violations and assert their rights which, in turn, may eradicate poverty and inequality.

9.2 The Human Right to Water

In the past decades, the idea has been evolving that access fresh water is a human right. In its resolution from 2010, the General Assembly finally recognized the right to water and sanitation as a human right and called upon the states and international organizations to provide financial resources and capacity-building to realize the right.¹³⁶

Several human rights treaties, including the Convention on the Elimination of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1989) explicitly refer to the right to water. Moreover, it is mentioned in most of the regional human rights and environmental treaties. In his statement to the Human Rights Council in 2014, the former UN Special Rapporteur on Human Rights and the Environment, Professor John Knox, concluded that Human Rights Law clearly includes obligations relating to the environment.¹³⁷

The human right to water was reaffirmed by the UN General Assembly and the Human Rights Council in their resolutions from 2010 and 2013.¹³⁸ Furthermore, the UN Committee on Economic, Social and Cultural Rights recognized this right and determined its scope in its General Comment No. 15 on the Right to Water.¹³⁹ In terms of sustainable water cooperation, the right to water entitles each rights holder to sufficient and safe water access. This has significant effects on water management and, in particular, on the

¹³⁶ UNGA, A/64/292, *The human right to water and sanitation*, 2010, par. 2.

¹³⁷ UNGA, A/HRC/25/53, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox, Mapping report, par. 79.

¹³⁸ UN HRC, A/HRC/RES/15/9, *Human rights and access to safe drinking water and sanitation*, 6 October 2010; UNGA, A/RES/68/157, *The human right to safe drinking water and sanitation*, 19 November 2013.

¹³⁹ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*; available at <https://digitallibrary.un.org/record/486454>.

allocation of water.¹⁴⁰ Concretely, General Comment Number 15 states on allocation: “Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights.”¹⁴¹

It further clarifies that access to water is an integral part of the right to life and that “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.”¹⁴² This illustrates that the human rights to water and sanitation are based on the right to an adequate standard of living and are closely related to the right to health as well as the right to life and human dignity.¹⁴³

Moreover, the enjoyment of numerous civil and political rights depend on the right to water. For example, the right to education, which is aimed at ensuring dignity, is not attainable when there is a lack of water and sanitation. Particularly in development countries, children have to support their parents when there is insufficient access to water. As a consequence, they are not able to attend school. In this context, the right to security is often at risk in situations where it is unsafe to fetch water. Moreover, the lack of adequate sanitation facilities in schools threatens the dignity and safety of girls. Therefore, parents often prohibit their children to go to school. Finally, lacking water access can lead to water borne diseases and thereby adversely impact fundamental human rights, such as the right to health. Hence, without equitable access to clean water, fundamental rights cannot be realized.

Although states are not legally bound by the Comment, it has the nature of “soft law” and serves as an interpretation of the International Covenant on Economic, Social and Cultural Rights. As a result, UN treaty bodies can consider such interpretations when monitoring the implementation process in the countries that are party to the Covenant. Concretely, the obligation of states to submit periodic reports on the implementation of

¹⁴⁰ UN, *The Right to Water*, Fact Sheet No. 35, p. 36, available at <https://www.ohchr.org/documents/publications/factsheet35en.pdf>.

¹⁴¹ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 6.

¹⁴² *Ibid*, par. 2.

¹⁴³ UNGA, A/RES/68/157, *The human right to safe drinking water and sanitation.*, 19 November 2013, par. 1.

human rights allows monitoring bodies to review the states progress in promoting human rights which provides a platform for accountability.¹⁴⁴

Moreover, instead of referring to the volume of water or to technologies, the CESCR (Committee on Economic, Social and Cultural Rights) indicated the need for a broad interpretation of the sufficiency of water.¹⁴⁵ “Water should be treated as a social and cultural good, and not primarily as an economic commodity”.¹⁴⁶ The legal obligation that stems from the recognition of a right to water should therefore encourage states to “make effective changes in domestic and aid policies and resource allocation.”¹⁴⁷

However, as regards the Israel-Palestine case, the human rights situation in Palestine is still alarming, given the lack of basic water supply and adequate sanitation.¹⁴⁸ The Human Rights Committee noted that the water scarcity would disproportionately affect the people living in the occupied territories and thereby infringe their rights to life and non-discrimination protected under the ICCPR.¹⁴⁹

9.3 HRBA Principles

As already alluded to, certain principles deriving from human rights law must be taken into account when framing the states’ obligation to realise the human right to water. These principles form the basis for the HRBA as they entail procedural rights that may help eliminating inequalities in water allocation. Particularly, the rights to participation in environmental decision-making processes, access to information and access to legal redress may play a crucial role in building sustainable peace.¹⁵⁰ The HRBA therefore emphasizes the need to establish participatory, transparent and non-discriminatory water management structures that provide mechanisms for legal redress. Such principles will be elucidated in this section.

¹⁴⁴ Singh, *Realizing the Human Right to Water in Local Communities: An Actor-Oriented Analysis*, in Singh (Ed.), *The Human Right to Water, From Concept to Reality*, Chapter 2, p. 17.

¹⁴⁵ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 11.

¹⁴⁶ *Ibid.*

¹⁴⁷ Assaf, *Palestine Water as a human right: The understanding of water in Palestine*, Global Issue Papers, No. 11, Suppl. 4, p. 155.

¹⁴⁸ *Ibid.*

¹⁴⁹ UN, Human Rights Committee, CCPR/C/ISR/CO/3, *Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee*, 2010, par. 18.

¹⁵⁰ UN OHCHR, HR/PUB/06/12, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, par. 20.

9.3.1 Participation and Inclusiveness

Using an HRBA entails a right of people to participate in decision-making processes.¹⁵¹ This results from Art. 25 ICCPR regulating the right to take part in public affairs.¹⁵² Such participation must be ensured in an active, free and meaningful way.¹⁵³ This requires that participation is inclusive, i.e. that everyone can participate on the basis of equality.¹⁵⁴ Referring to the right to water, the Special Rapporteur noted in this context that “violations of the rights to water and sanitation are often connected with systemic patterns of exclusion and unequal power relationships.”¹⁵⁵ States must therefore take effective measures to ensure inclusiveness and that people do not face physical, economic and social barriers in participation and access to justice.¹⁵⁶

Instead of realising human rights only for those people who are immediately concerned, all stakeholders rights and interests must be protected and included, for example in water and sanitation management processes.¹⁵⁷ Effective participation also requires full access to information at all stages of decision-making.¹⁵⁸ In this context, there must be sufficient time for collecting information and providing input.¹⁵⁹

In addition, the civil society should be involved early in the formation of decision-making processes to ensure that they can actively participate.¹⁶⁰ Taking the example of water

¹⁵¹ UN, HRC, A/HRC/27/55, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Common violations of the human rights to water and sanitation*, par. 69.

¹⁵² International Covenant on Civil and Political Rights, Art. 25; available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁵³ UN HRC, A/HRC/39/28, *Draft guidelines for States on the effective implementation of the right to participate in public affairs*, 20 July 2018, par. 24 c), 99, 109; Winkler, *A Human Rights-based Approach to Water Supply and Sanitation: Translating Theory into Practice*, UNDP Policy Guidance Workshop, p. 10.

¹⁵⁴ UN, HRC, A/HRC/27/55, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Common violations of the human rights to water and sanitation*, par. 55.

¹⁵⁵ *Ibid*, par. 5

¹⁵⁶ *Ibid*, par. 83 (h), (l).

¹⁵⁷ SIWI, *Human Rights-Based Approaches and Managing Water Resources, Exploring the potentials for enhancing development outcomes*, Water Governance Facility Report No. 1, p. 17.

¹⁵⁸ UN HRC, A/HRC/39/28, *Draft guidelines for States on the effective implementation of the right to participate in public affairs*, 20 July 2018, par. 111.

¹⁵⁹ UN, *The Right to Water*, Fact Sheet No. 35, p. 16, available at <https://www.ohchr.org/documents/publications/factsheet35en.pdf>.

¹⁶⁰ Winkler, *A Human Rights-based Approach to Water Supply and Sanitation: Translating Theory into Practice*, UNDP Policy Guidance Workshop, p. 10.

conflicts, the state should take legislative measures to allow and encourage people to participate in water management processes, e.g. by creating incentives.¹⁶¹

9.3.2 Transparency

Based on the above explanations, transparency and access to information are human rights principles themselves, deriving from the freedom of information protected under Art. 19 (2) ICCPR.¹⁶² In his 2005 Report, the Special Rapporteur noted that “although international standards establish only a general right to freedom of information, the right of access to information, especially information held by public bodies, is easily deduced from the expression ‘to seek [and] receive ... information’ as contained in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights”.¹⁶³ These principles are therefore important catalysers for effective participation.¹⁶⁴ They entail corresponding positive rights to transparency and thus to access to information and participation. Meaningful participation requires that people are aware of current policies that they understand them.¹⁶⁵ However, participatory processes will inevitably lead to competing interests over water resource allocation.¹⁶⁶ Therefore, processes and regulations need to be in place to balance these competing interests while providing protection to the rights, interests, and concerns of minorities.¹⁶⁷

9.3.3 Accountability

Following an HRBA, states must be held accountable for actions and decisions that are incompatible with obligations that they have committed to under IHRL and their own constitutions.¹⁶⁸ States must adopt legal frameworks and other mechanisms ensuring that

¹⁶¹ SIWI, *Human Rights-Based Approach to Integrated Water Resources Management*, p. 26.

¹⁶² Art. 19 (2) states that “this right (freedom of expression) shall include freedom to seek, receive and impart information”, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁶³ UN Special Rapporteur, E/CN.4/20.05/64, *Report on the protection and promotion of the right to freedom of opinion and expression*, 2005, par. 39.

¹⁶⁴ McDonagh, *The Right to Information in International Human Rights Law*, *Human Rights Law Review*, 13:1, p. 36.

¹⁶⁵ EU Policy Department, *Conflict and cooperation over water - the role of the EU in ensuring the realisation of human rights*, 2015, p. 39

¹⁶⁶ SIWI, *Human Rights-Based Approaches and Managing Water Resources, Exploring the potentials for enhancing development outcomes*, Water Governance Facility Report No. 1, p. 14.

¹⁶⁷ *Ibid.*, p. 17.

¹⁶⁸ Winkler, *A Human Rights-based Approach to Water Supply and Sanitation: Translating Theory into Practice*, UNDP Policy Guidance Workshop, p. 11.

abuses of power and illegal acts are being punished.¹⁶⁹ Such mechanisms include administrative and regulatory mechanisms, National Human Rights Institutions, and access to the courts.¹⁷⁰ By developing capacities for the civil society as rights-holder and for public authorities as duty-bearers, the HRBA allows citizens to scrutinize institutions and to hold the government accountable.¹⁷¹

9.3.4 Non-Discrimination, Equality and Equity

According to Art. 2 UDHR, every individual is entitled to equal treatment without discrimination of any kind on grounds such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status.¹⁷² As regards the realisation of the right to water, domestic legislation and governance structures should therefore put special emphasis on the protection of marginalized groups suffering from water scarcity.¹⁷³ To identify systematic discrimination of certain groups, special mechanisms must be established. Marginalized groups should then directly participate in eliminating the causes of discrimination.¹⁷⁴ Furthermore, States are obligated to refrain from any discrimination against groups and individuals when taking measures regarding the competition or cooperation over water. They also must redistribute resources and ensure redress for existing and past marginalisation and inequalities.¹⁷⁵ By imposing such obligation on states, the HRBA aims at achieving substantive equality resulting from Art. 1 UDHR. This Article states that “all human beings are born free and equal in dignity and rights”.¹⁷⁶ Consequently, individuals must be given equal opportunities and treated without difference. As opposed to the right to equality, the term “equity” refers to fairness in outcomes, not just in

¹⁶⁹ SIWI, *Human Rights-Based Approach to Integrated Water Resources Management*, p. 26.

¹⁷⁰ EU Policy Department, *Conflict and cooperation over water - the role of the EU in ensuring the realisation of human rights*, 2015, p. 39.

¹⁷¹ Winkler, *A Human Rights-based Approach to Water Supply and Sanitation: Translating Theory into Practice*, UNDP Policy Guidance Workshop, p. 11.

¹⁷² Universal Declaration of Human Rights, Art. 2; available at [https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III))

¹⁷³ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 12 c) (iii).

¹⁷⁴ Vink, *Transboundary water law and vulnerable people: legal interpretations of the ‘equitable use’ principle*, *Water International*, 39:5, 2014, p. 750.

¹⁷⁵ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 7.

¹⁷⁶ Universal Declaration of Human Rights, Art. 1.

opportunity.¹⁷⁷ The principle recognizes that, particularly in cases of unbalanced conditions (e.g. underrepresented populations), there is a need for fairness to assist equality of outcomes. In terms of water access for example, water resources must be allocated fairly in order to achieve equitable water access.

9.4 State Obligations Resulting from the Right to Water

Human rights regimes provide a powerful moral framework that is acknowledged by the majority of the international community.¹⁷⁸ It protects the values that are crucial for human life and emphasizes the importance of equal worth and supreme value of every human being.¹⁷⁹ Moreover, it sets minimum standards for governance, for example regarding water management, and it clarifies the scope of rights and obligations. The human right to water entails certain obligations for states, namely to respect, protect and fulfil human rights.¹⁸⁰ The obligation to respect the human rights to water and sanitation stipulates that states must not prevent people from enjoying their right.¹⁸¹ The obligation to protect the right to water requires that states prevent third parties, such as private water delivery services, from interfering with people's enjoyment of the human rights, for example by charging an unaffordable fee.¹⁸² The obligation to fulfil the human rights to water and sanitation requires states to take positive measures to ensure that everyone has access to water and sanitation.¹⁸³ Such obligations include the duty of the states to realise the right to water without discrimination.¹⁸⁴ As a consequence, states often need to revise existing policies and legislation that contain discriminatory aspects. As explained previously, the state is also obliged to ensure civil participation and to establish accountability mechanisms.¹⁸⁵ The South African Water Services Act from 1997 is an

¹⁷⁷ Humber College, *Key Human Rights and Equity Terms*, p. 2, available at https://hrs.humber.ca/assets/files/human_rights/Key_Human_Rights_and_Equity_Terms_August_2016.pdf.

¹⁷⁸ SIWI, *Human Rights-Based Approaches and Managing Water Resources, Exploring the potentials for enhancing development outcomes*, Water Governance Facility Report No. 1, p. 12.

¹⁷⁹ Campbell, *Moral Dimensions of Human Rights*, in Campbell/Miller (Eds.), *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organisations*, p. 11.

¹⁸⁰ UN OHCHR, HR/PUB/06/12, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, par. 48.

¹⁸¹ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 21.

¹⁸² *Ibid.*, par. 23.

¹⁸³ *Ibid.*, par. 25.

¹⁸⁴ *Ibid.*, par. 37 b).

¹⁸⁵ UN OHCHR, HR/PUB/06/12, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, par. 55.

example of how to provide access to information and to integrate communities in decision-making. It requires water service authorities to take reasonable steps to inform the people about service development plans and to invite public comments to be submitted. Moreover, authorities are obligated to consider all comments before adopting their development plans.¹⁸⁶ The fact that the realisation of human rights is dependent upon resources stems from the principle of progressive realisation enshrined in Art. 2 (1) ICESCR. This principle prescribes the realisation of human rights if states have available resources.¹⁸⁷ It also creates a constant duty for States to move quickly and effectively towards the full realisation of a right.¹⁸⁸ Concretely, States are obliged to “ensure access to the minimum essential amount of water,” “to ensure the right of access to water and water facilities and services on a non-discriminatory basis,” and “to adopt relatively low-cost targeted water programs to protect vulnerable and marginalized groups”.¹⁸⁹

State obligations can be of immediate or progressive nature.¹⁹⁰ For example, states have an immediate obligation to “to ensure equitable distribution of all available water facilities and services”¹⁹¹. Progressive obligations include that states must “take steps”, e.g. to establish an effective regulatory system which includes independent monitoring and public participation.¹⁹² Especially post-conflict scenarios require states to integrate the right to water into the policies and laws as well as to establish judicial mechanisms for ensuring the states’ compliance with international law.¹⁹³ Irrespective of the allocation mechanisms on which the domestic legal framework is based on, states must adopt legislation and policies that are compatible with international legal obligations

¹⁸⁶ Republic of South Africa, Water Services Act, 1997, Chapter III, Section 11 f., available at https://www.gov.za/sites/default/files/gcis_document/201409/a108-97.pdf; UN, *The Right to Water*, Fact sheet No. 35, p. 16.

¹⁸⁷ International Covenant on Economic, Social and Cultural Rights, Art. 2 (1); available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

¹⁸⁸ UN CESCR, E/1991/23, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), par. 1.

¹⁸⁹ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 37.

¹⁹⁰ UN OHCHR, HR/PUB/13/5, *Transitional Justice and Economic, Social and Cultural Rights*, 2014, p. 11.

¹⁹¹ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 37 e).

¹⁹² *Ibid.*, par. 24.

¹⁹³ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, *Water and post-conflict peacebuilding*, p. 385.

concerning the right to water.¹⁹⁴ This includes the obligation to assist the most marginalised and disadvantaged groups in the realization of their rights.¹⁹⁵

Moreover, a state must establish a national water management strategy and effective institutions to implement the human right to water.¹⁹⁶ National water policies and laws must clearly define the right to water by determining rights and obligations and by identifying the rights holders and duty bearers.¹⁹⁷ Whether water service providers are private or public, states must take legislative measures and establish monitoring mechanisms (e.g. courts, national human rights institutions, water tribunals) to ensure that service providers comply with human rights standards.¹⁹⁸ Otherwise there is no chance that citizens would have their rights respected.¹⁹⁹

9.5 Legal Mechanisms

The protection of human right to water requires that “accessible, transparent and effective mechanisms of accountability be established”.²⁰⁰ There are numerous mechanisms that may support the realisation of human rights in war-torn states. The establishment of such mechanisms can, for example, be a result of the provisions of a peace agreements or domestic legislation. Moreover, UN treaty bodies can be essential for the enforcement of human rights. In post-conflict states, transitional justice mechanisms like international criminal tribunals and regional human rights institutions as well as truth commissions play an important role in providing reparation.²⁰¹ Through the recognition of human rights violations and by empowering victims, such mechanisms can be an essential catalyser for long-term peacebuilding in post-conflict societies.²⁰² In 2004, the Secretary-General noted in his report to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies that transitional justice is “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a

¹⁹⁴ UN, CESCR, E/C.12/2002/11, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, par. 59.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*, par. 28.

¹⁹⁷ SDC, *A Human Rights-based Approach to Water and Sanitation*, Briefing Paper, p. 7.

¹⁹⁸ UN, *The Right to Water*, Fact Sheet No. 35, p. 27.

¹⁹⁹ SDC, *A Human Rights-based Approach to Water and Sanitation*, Briefing Paper, p. 7.

²⁰⁰ UN OHCHR, HR/PUB/13/5, *Transitional Justice and Economic, Social and Cultural Rights*, 2014, p. 14.

²⁰¹ Merryl, *Victims of Environmental Harm During Conflict: The Potential for “Justice”*, Stahn/Iverson/Easterday, *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices*, 2017, p. 393.

²⁰² UN OHCHR, HR/PUB/13/5, *Transitional Justice and Economic, Social and Cultural Rights*, 2014, p. 6.

legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”.²⁰³ Transitional justice mechanisms are therefore an important tool for strengthening the rule of law and for fighting against impunity for violations of ESC rights.²⁰⁴ Transitional justice consists of both judicial and non-judicial mechanisms which include international criminal tribunals, human rights courts and truth commissions.²⁰⁵ In the declaration of the High-level Meeting on the Rule of Law, the member states committed to the adaptation of judicial and non-judicial measures to ensure accountability and to provide remedies to victims in order to promote the rule of law.²⁰⁶ In addition, Louise Arbour, the former UN High Commissioner for Human Rights, clarified that transitional justice should comprehensively take into account the root causes of conflicts and the related violations of all rights, including civil, political, economic, social and cultural rights.²⁰⁷

9.5.1 Peace Agreements

Peace agreements that were entered after a conflict are sources of norms that aim at conflict resolution and the development of mechanisms for building a peaceful society. Post-conflict constitutions and domestic legislation are increasingly based on such peace agreements and thus provide the normative framework for addressing social and economic inequalities.²⁰⁸ Given that constitutions and peace treaties mostly coincide, Easterday argues that the latter must be seen as a “constitutional moment” for post-conflict states.²⁰⁹ As transitional constitutions, peace agreements shape future domestic laws and can thereby integrate the right to water. As Tignino points out, this inclusion of the right to water “goes hand in hand with the development of the legislative and judicial

²⁰³ UNSC, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, par. 8.

²⁰⁴ UN OHCHR, HR/PUB/13/5, *Transitional Justice and Economic, Social and Cultural Rights*, 2014, p .6.

²⁰⁵ UNSC, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, par. 8.; Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 393.

²⁰⁶ UNGA, 67th Session, A/RES/67/1, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, 30 November 2012, par. 21.

²⁰⁷ Arbour, *Economic and social justice for societies in transition*, New York University Journal of International Law and Politics, 40 (1), 2007, pp. 26-27.

²⁰⁸ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 390.

²⁰⁹ Easterday, *Peace Agreements as a Framework for Jus Post Bellum*, in Stahn/Easterday/Iverson, *Jus Post Bellum*, Mapping the Normative Foundations, p. 386.

mechanisms necessary for their implementation”.²¹⁰ Concretely, peace agreements can create new governance frameworks and enable social dialogue which is an important requirement for the integration of human rights.²¹¹ For example, the constitution of South Africa provides protections for rights related to housing, health care, food and water.²¹² The Darfur peace agreement formulates fundamental rights, such as the right to access to medical care and education.²¹³

9.5.2 International Monitoring Mechanisms

UN treaty bodies, including the CESCR, CRC, CEDAW and the CERD, can play a crucial role in supporting states in the implementation of legislative and institutional frameworks.²¹⁴

According to Art. 16 (1) ICESCR, States that are party to international human rights treaties have the obligation to “undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein”.²¹⁵ By reviewing the reports, the UN treaty bodies reaffirm the states’ commitment to the protection of human rights and create a “forum for dialogue” between international bodies and states, even though such treaty bodies do not have any enforcement mechanisms.²¹⁶ This is particularly important when a post-conflict state has no resources available for realizing human rights standards. In addition, treaty bodies formulate specific recommendations for the improvement of domestic frameworks concerning the protection the right to water.²¹⁷

²¹⁰ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 391.

²¹¹ Samuels, *Postwar Constitution Building: Opportunities and Challenges*, in Paris/Sisk (Eds), *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, p.173.

²¹² UNGA, A/HRC/6/3, *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007, par. 63.

²¹³ *Ibid.*

²¹⁴ UNGA, A/HRC/6/3, *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007, par. 43 a).

²¹⁵ International Covenant on Economic, Social and Cultural Rights, Art. 16.

²¹⁶ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 391.

²¹⁷ UNGA, A/HRC/6/3, *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007, par. 43 a).

In case of a violation of the reporting procedure, treaty bodies may request additional information.²¹⁸ For example, the report submitted to the CESCR by Israel in 1998 did not contain sufficient information concerning the human rights measures taken in the West Bank and Gaza. The committee asked Israel “to provide additional information on the realization of economic, social and cultural rights in the occupied territories, in order to complete the State party’s initial report and thereby ensure full compliance with its reporting obligations”.²¹⁹ Moreover, human rights treaty bodies may raise concerns when they identified challenges and gaps in domestic legislative frameworks.²²⁰ For instance, in the case of Uganda, the CRC has observed the “increasingly large numbers of children who do not enjoy the right to an adequate standard of living, including access to food, clean drinking water, adequate housing and latrines”.²²¹ As a result, the CRC urged Uganda to “reinforce its efforts to provide support and material assistance, with a particular focus on the most marginalized and disadvantaged families, and to guarantee the right of children to an adequate standard of living”.²²²

Furthermore, special investigating bodies, such as the UN Fact Finding Mission on the Gaza Conflict, assess the human rights situation in armed conflicts. Such bodies may investigate national human rights mechanisms and gather information on rights violations.²²³ In the UN Mission on the Gaza conflict, the expert team reviewed all allegations in relation to human rights violations and analysed the parties’ compliance with their obligations under IHRL and IHL.²²⁴ It recommended that Israel should set up independent inquiry and review mechanisms and that the states shall involve the civil society in devising sustainable peace agreements that are consistent with international law.²²⁵

²¹⁸ UN OHCHR, *Reporting to the United Nations Human Right Treaty Bodies: Training Guide*, 2017, p. 52.

²¹⁹ Committee on Economic, Social and Cultural Rights (CESCR), E/C.12/1/Add.90, *Concluding Observations, Israel*, 26 June 2003, par. 32.

²²⁰ UN OHCHR, *Reporting to the United Nations Human Right Treaty Bodies: Training Guide*, 2017, p. 46.

²²¹ UNCRC, CRC/C/UGA/CO/2, *Concluding observations of the Committee on the Rights of the Child: Uganda*, 23 November 2005, par. 57.

²²² *Ibid*, par. 58.

²²³ UN OHCHR, HR/PUB/14/7, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice*, 2015, p. 36.

²²⁴ UN HRC, A/HRC/12/48, *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, 25 September 2009, par. 156, 158.

²²⁵ *Ibid*, par. 1972 g), 1977 a).

9.5.3 Criminal Proceedings

In order to restore peace in post-conflict settings, it is necessary to secure justice for the victims of human rights violations and to re-establish the rule of law. To achieve this goal, international criminal tribunals have been established by the Security Council (e.g. International Criminal Tribunal for the Former Yugoslavia).²²⁶ Such tribunals aim at trying and punishing those responsible for committing serious human rights violations.²²⁷ According to Principle 20 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, States are responsible to exercise jurisdiction over these crimes.²²⁸ Consequently, states must provide sufficient capacities for national prosecution. This can contribute to more credibility and legitimacy of the states' institutions.²²⁹ While post-conflict states are often unwilling or unable to investigate and prosecute human rights violations, international criminal tribunals may exercise concurrent jurisdiction and thereby advance human rights protection.²³⁰

Although transitional justice is strongly impacted by human rights law, it mostly focusses on civil and political rights.²³¹ As a result, economic, social and cultural rights have rarely been addressed by criminal tribunals. However, the jurisprudence of some international tribunals show that ESC rights have been considered in the tribunals' findings. For example, in the *Kupreškic* case, the ICTY examined whether "economic rights can be considered so fundamental that their denial is capable of constituting persecution."²³² It then clarified that ESC rights are within the scope of persecution as a crime against humanity. It argued that the infringement of housing, health and cultural rights could

²²⁶ UNSC, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, par. 38.

²²⁷ UNGA, A/HRC/6/3, *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007, par. 19.

²²⁸ UN ESC, E/CN.4/2005/102/Add.1, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2005, principle 20; available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>.

²²⁹ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 394.

²³⁰ UNGA, A/HRC/6/3, *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007, par. 19.

²³¹ UN OHCHR, HR/PUB/13/5, *Transitional Justice and Economic, Social and Cultural Rights*, 2014, p. 6.

²³² ICTY, *Prosecutor v. Kupreškic et al.*, No. IT-95-16-T, Trial Chamber, Judgement of 14 January 2000, par. 630.

amount to persecution since it might entail a “destruction of the livelihood of a certain population”.²³³

This conclusion was reaffirmed by the UN Fact Finding Mission on the Gaza Conflict. It stated that “The series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water . . . could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.”²³⁴ The findings illustrate that attacks against water supplies aimed at depriving people of their livelihood can be qualified as a crime against humanity. In order to realise peoples’ right to access to justice, the ICC statute contains special provisions regulating reparations for victims (Art. 75 Rome Statute) and their participation in ICC proceedings (Art. 68 Rome Statute).²³⁵ Consequently, the liability for restricting water access would be a deterrent²³⁶, i.e. perpetrators would refrain from committing a violation because they would have to offer compensation otherwise.

9.5.4 Reparations Mechanisms

In the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the General Assembly has reaffirmed the right of victims to remedies, including reparations.²³⁷ Redress for violations of social, economic and cultural rights can thus be provided by regional mechanisms in the form of restitution, compensation and rehabilitation.²³⁸ For example, the protection of the right to water has been addressed several times by regional human rights courts and Committees.

²³³ *Ibid*, par. 631.

²³⁴ UN HRC, A/HRC/12/48, *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, 25 September 2009, par. 75.

²³⁵ Rome Statute of the International Criminal Court; available at https://legal.un.org/icc/statute/99_corr/cstatute.htm.

²³⁶ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, *Water and post-conflict peacebuilding*, p. 395.

²³⁷ UNGA, A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 21 March 2006, par. 3 d).

²³⁸ UNGA, A/HRC/6/3, *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007, par. 28.

In the case of the *Sawhoyamaxa Indigenous Community v. Paraguay*, the Inter-American Court of Human Rights found that the lack of fresh water supply and the death of several tribe members as a consequence thereof, was a violation of the right to life.²³⁹ In its judgement, the Court ordered the government of Paraguay to adopt immediate and permanent measures to ensure sufficient supply of drinking water for consumption and personal hygiene as well as to set up sanitation facilities. It also considered the restitution of traditional lands as the best form of reparation since it enhances better water access for the indigenous people.²⁴⁰

Moreover, in the case of *Plan de Sánchez Massacre v. Guatemala*, the reparations awarded by the IACtHR included the right to water. After the massacre of more than 268 indigenous people by the Guatemalan military, the Court held that the massacre “gravely affected the Maya-Achí people in their identity and values” and thereby infringed important cultural rights.²⁴¹ The Court ordered the government to implement development programs including a sewage system and potable water supply, which is a prerequisite for the realisation of the right to health.²⁴²

In addition, the African Commission has addressed the role of water during and after conflict. It held in its decision of the case of *Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v. The Sudan* the poisoning of wells and the denial of access to water during the Darfur conflict constituted a violation of the African Charter of Human Rights.²⁴³ In relation to the rehabilitation of infrastructure, the Commission emphasized the necessity of water services to facilitate the return of displaced persons and refugees.²⁴⁴ It further recommended the establishment of a Reconciliation Forum to address root causes of the conflict and recognized the importance of water access to prevent future conflict.²⁴⁵ However, according to principle 20 of the Updated Set of principles for the protection and promotion of human rights through action to combat

²³⁹ Inter-American Court of Human Rights, Case of *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of March 29, 2006, *par. 148*.

²⁴⁰ *Ibid*, *par. 210 ff*.

²⁴¹ Inter-American Court of Human Rights, Case of *Plan de Sánchez Massacre v. Guatemala*, Judgment of 19 November 2004, Series C, No. 116, *par. 51*.

²⁴² UN CESCR, E/C.12/2000/4, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 11 August 2000, *par. 11*.

²⁴³ African Commission on Human and Peoples' Rights, *Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v. The Sudan*, Judgment of 13-27 May 2009, *Par. 228*.

²⁴⁴ *Ibid*, *par. 229 e*).

²⁴⁵ *Ibid*, *par. 229 f*); Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, *Water and post-conflict peacebuilding*, p. 397.

impunity, States have primary responsibility to exercise jurisdiction over serious crimes under international law.²⁴⁶

9.5.5 Truth-seeking Mechanisms

Past human rights violations can also be addressed through truth-seeking processes. Such processes are undertaken by truth commissions, commissions of inquiry or other fact-finding missions.²⁴⁷ Truth commissions are “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years”.²⁴⁸ Given that the mandates of such bodies provide redress for the causes and the consequences of a conflict, truth commissions are promising when it comes to the protection of economic, social and cultural rights.²⁴⁹ Particularly, they can assist post-conflict states to find the “facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms”.²⁵⁰ Although truth-seeking bodies have not yet dealt with the right to water, the water scarcity in post-conflict states triggers the national recognition of a right to water. Moreover, it proves that there is a need to adopt legislative measures in the water sector which can be stimulated by recommendations of truth commissions.²⁵¹

10 Implementation of the Human Right to Water in the Israel-Palestine Case

In order to fulfil their obligations under the ICESCR, states must progressively realize human rights at the national level. The implementation of the human right to water in the constitution and other domestic legal systems of a post-conflict state is therefore a prerequisite for ensuring access to water and procedural rights. Referring to the Israel-Palestine case, the State of Palestine must take effective steps to protect, respect and fulfil

²⁴⁶ UN ESC, E/CN.4/2005/102/Add.1, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2005, principle 20.

²⁴⁷ UNGA, A/HRC/6/3, *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007, par. 8.

²⁴⁸ UNSC, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, par. 50.

²⁴⁹ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 397.

²⁵⁰ UNSC, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, par. 50.

²⁵¹ Tignino, *The right to water and sanitation in post-conflict legal mechanisms: An emerging regime?*, Water and post-conflict peacebuilding, p. 398.

the right to water of Palestinian population. However, given that Palestine is partly occupied by Israel, it remains problematic if it can actually meet its obligations. Hence, this section addresses the question whether Israel has an obligation to realize the water rights of Palestinian people although they – technically – do not fall under the jurisdiction of the Israeli State.

10.1 HRBA to Water Management in Palestine

The Palestinian government formally acknowledged the concept of the human right to water in its policies governing water management. In 1966, the Palestinian Water Authority (PWA) issued a draft of the National Water Policy which was elaborated within a multi-stakeholder dialogue. All decisions of the water sector, its institutions and legislations are based on the principles set out in the Water Policy.²⁵²

Although the Policy qualifies water as ‘an economic good’ it does so only in order to clarify that “any damage to water should be compensated by the polluter”.²⁵³ As the Policy underlines that water resources are state property, it recognizes the role of water as a social and cultural good.²⁵⁴ Furthermore, the Policy sets out basic principles that indicate the integration of the human right to water in Palestinian water management. One of these principles is that water has a unique value for human survival and health, and that citizens have a right to sufficient and affordable water of good quality.²⁵⁵ Moreover, water supply must be based on a sustainable development of available water resources.²⁵⁶ Finally, the Water Policy regulates that all relevant stakeholders at the national and local level shall collaborate and that water development should be based on a participatory approach.²⁵⁷ With regards to transboundary waters, the overarching aim of the Palestinian water development is to ensure the full water rights of Palestinians to national and transboundary water resources.²⁵⁸ This includes the fair right of access, right of control and right of use to water resources shared with other countries. The obtainment

²⁵² Klawitter, *Water as a Human Right: The Understanding of Water Rights in Palestine*, International Journal of Water Resources Development, 23:2, 2007, p. 307.

²⁵³ Assaf, *Palestine Water as a human right: The understanding of water in Palestine*, Global Issue Papers, No. 11, Suppl. 4, p. 156.

²⁵⁴ Palestinian Water Authority, *National Water Policy for Palestine, Final Draft, Water Policy 2013-2032*, p. 4, 2.1.

²⁵⁵ *Ibid*, p. 4, 2.4.

²⁵⁶ *Ibid*, p. 4, 2.1.

²⁵⁷ *Ibid*, p. 3, 1.2 b); p. 5, 2.6.

²⁵⁸ *Ibid*, p. 8, 3.3.

of these rights shall, according to the National Water Policy, take place in line with international law.²⁵⁹

However, as elaborated above, the water sector in the occupied territories, namely the West Bank, is still under control of Israel as the military order of the Israeli Civil Administration established in 1967 prescribes the prior approval of water infrastructure projects in this area.²⁶⁰ It is important to note that the pre-occupation law in the Gaza and the West Bank was subordinate to the primary tier of the legal system, namely the laws enacted by the military administration, the so-called “security enactments”.²⁶¹ As a result, new water laws introduced by the Palestinian government were invalid.²⁶² Moreover, given the anchoring of the Israeli water laws in the cooperation agreement between the riparian states, Palestinian people living in the occupied territories cannot access fresh water resources in the same way as people in other areas can. Thereby, Israel prevents the Palestinian government from establishing legal frameworks that regulate water rights. Consequently, the development goals set by the National Water Policy are not feasible as long as the bilateral agreements do not regulate the reallocation of water resources. Based on this, the stagnation and the deficiencies of the peace process deteriorates the socio-economic development.²⁶³ Hence the Palestinian approach to a rights-based water management, including the provision of procedural rights to participation and access to information, is not realisable in the absence of adequate water resources. In other words, the State of Palestine would never be able to implement the human right to water even if individual complainants would claim their rights before an international court or tribunal.

10.2 Implementation in Interstate Settings

This scenario illustrates the complexity of interstate settings in contrast to those conflicts that take place at an intrastate level. While the latter can be resolved by implementing the right to water at the national level and thus by ensuring the participation of local

²⁵⁹ *Ibid*, p. 4, 2.3.

²⁶⁰ Assaf, *Palestine Water as a human right: The understanding of water in Palestine*, Global Issue Papers, No. 11, Suppl. 4, p. 156.

²⁶¹ Benvenisti, *The Israeli Occupation of the West Bank and Gaza*, in Benvenisti, *The International Law of Occupation*, 2012, Chapter 8.2.2, p. 213.

²⁶² *Ibid*; The Order Concerning Interpretation (the West Bank) (no. 130), 5727–1967, para. 8, provides that “security enactments supersede any law”.

²⁶³ Assaf, *Palestine Water as a human right: The understanding of water in Palestine*, Global Issue Papers, No. 11, Suppl. 4, p. 157.

communities in national water decision-making processes, the former are characterized by an interdependence between two or more states. In order to provide equitable water access, such states need to cooperate, e.g. through the establishment of joint water management systems. Within such transboundary decision-making structures there is a need to engage all relevant stakeholders, including the most marginalized people. It is therefore necessary that the right to water is recognized by all conflict parties in order to be implemented in the cooperation process. Otherwise, equitable water allocation is not feasible in shared river basins. This becomes even more evident in situations of unequal power relations between riparian states. As in the Israel-Palestine case, Palestine as the less powerful state is dependent on water supply by Israel. This results in inequitable water allocation which can only be resolved when both Israel and Palestine implement the human right to water. In other words, reasonable water access for Palestinian people requires that Israel is obligated under the cooperation agreement or under international law.

10.2.1 Legal Frameworks of Transboundary Water Cooperation

In the next section, I will identify the legal frameworks that are relevant for the protection of water-related rights in the context of transboundary cooperation. Based on this, I will analyse how Israel deals with water management issues and to what extent it is obliged to respect, protect and fulfil the right to water.

10.2.1.1 Peace Agreements

One of the major legal frameworks applicable to water conflicts is the cooperation agreement which conditions are mostly framed in a peace treaty. As already mentioned, peace agreements provide the possibility to include the human right to water in the transboundary management of water resources. As a consequence, water-related rights deriving from adopted legislation must be respected by all riparian states that are party to the agreement. However, peace agreements face major challenges in transforming post-conflict states into stable societies. The success of such agreements is dependent on their design and implementation. Since peace treaties are the outcome of political negotiations

between two or more States, they run the risk of being subject to political trade-offs neglecting the interests of the public.²⁶⁴

Consequently, in many cases such water rights are not referred to in a peace treaty. This is particularly the case in water conflicts that are characterized by asymmetric power relations. In the aftermath of such conflicts it is inherent to peace negotiations that the more powerful state will impose its understandings of peace and justice on the weaker conflict party. In other words, peace agreements always reflect a winner side and a loser side.

In the Israel-Palestine case, the Oslo II Accords illustrate the deficiencies of accommodating the right to water in peace negotiations. Despite the Palestinian rights that Israel has generally acknowledged in the Interim Agreement, the ambiguity and the vague language used in the Accords prove that the states have a broad margin of interpretation when it comes to the framing of certain water rights.²⁶⁵ As a consequence, there is no clear consensus on the extent to which states are subjects to obligations. Although the two parties agreed on the establishment of a common water management system, namely the Joint Water Committee, the limited functions of this committee in terms of actual water management raise doubts as regards the accountability of Israel. The fact that the JWC's responsibility is limited to the West Bank zone leads to the assumption that the role of the committee is to control the water management rather than improving it.²⁶⁶ As explained earlier in this paper, the decision-making by consensus and the equal composition of the JWC allows Israel important veto-rights that are used to maintain the status quo in the occupied territories.

Given that the debate over Palestinian water rights was deferred to "final status" negotiations, one must take a look at customary and international law as potential instruments to support water-related rights.

10.2.1.2 Customary International Law

There are several legal frameworks governing water conflicts as such. These include, besides human rights law and humanitarian law, international water laws regulating the

²⁶⁴ Easterday, *Peace Agreements as a Framework for Jus Post Bellum*, in Stahn/Easterday/Iverson, *Jus Post Bellum*, Mapping the Normative Foundations, p. 387.

²⁶⁵ Bismuth, *Water Resources, Cooperation and Power Asymmetries*, in Huettl/Bens, Bismuth/Hoehstetter (Eds.), *Society-Water-Technology, A Critical Appraisal of Major Water Projects*, Chapter 13.3, p. 201.

²⁶⁶ Brichs, *The "Convention on the Law of the Non-navigational Uses of International Watercourses" (1997) and the Negotiations over Water Resources in Occupied Territories of Palestine*, p. 11.

management of transboundary water resources, conventions as well as customary international law. For example, The Helsinki Rules on the Uses of the Waters of International Rivers, issued by the International Law Association (ILA) in 1966, codify customary law of international watercourses.²⁶⁷ On the basis of the Helsinki Rules, the General Assembly adopted the Convention on the Law of Non-navigational Uses of International Watercourses in 1997 which entered into force in 2014.²⁶⁸ It regulates the use of a “international watercourses” which are shared by several states.²⁶⁹ Following the signing of the Convention in 1989, Israel ratified it in 1994 and is therefore legally bound by its provisions.

One of the core customary principles of international water law is the principle of equitable and reasonable utilisation. For instance, Art. 5 of the 1997 Convention stipulates that “watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner.”²⁷⁰ Art. 6 of the Convention requires that factors, such as the state’s social and economic needs, the effects of the use of water, and the population needs need to be taken into consideration when identifying if a watercourse is utilized in an equitable and reasonable way.²⁷¹

It is noteworthy in this context that upstream states prefer the equitable and reasonable use of water resource since the above-mentioned factors must be included in negotiations over water infrastructure projects which provides flexibility for water utilization that has adverse impacts for downstream riparians. As the principle of equitable and reasonable use is also enshrined in the Helsinki Rules,²⁷² both regimes share this principle as their foundation.²⁷³ Moreover, according to Article 7 of the Helsinki Rules “a basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for a co-basin State future use of such waters.” Referring to the Israel-Palestine case, Niehuss argues that the Israeli denial of water access to Palestinians on the basis of

²⁶⁷ ILA, Helsinki Rules on the Uses of the Waters of International Rivers, 52nd Conference, Helsinki, 1966, available at https://www.internationalwaterlaw.org/documents/intldocs/ILA/Helsinki_Rules-original_with_comments.pdf.

²⁶⁸ Convention on the Law of the Non-navigational Uses of International Watercourses 1997, United Nations Treaty Collection, Ratification of Palestine, 2015a, UNGA, Res. 51/229, available at <https://www.unece.org/env/nyc.html>.

²⁶⁹ *Ibid*, Art. 2.

²⁷⁰ *Ibid*, Art. 5.

²⁷¹ *Ibid*, Art. 6

²⁷² Helsinki Rules on the Uses of the Waters of International Rivers, Art. 4.

²⁷³ Odom/Wolf, *Institutional resilience and climate variability in international water treaties: the Jordan River Basin as “proof-of-concept”*, Hydrological Sciences Journal, 56:4, 2011, p. 705.

own future needs is in contradiction to this principle.²⁷⁴ However, the Helsinki Rules have no binding effects on Israel although the work of the ILC is acknowledged within the international community.

Another core principle of international water law is anchored in Art. 7 of the 1997 Convention. It states that “Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.”²⁷⁵ This principle strengthens the right of Palestinian people to access water that is clean and not polluted by wastewater and sewage. In addition, Art. 10 of the Convention is of particular importance from the human rights perspective. Art. 10 (1) prescribes that “in the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses”. Art. 10 (2) sets forth that water conflicts shall be resolved “with special regard being given to the requirements of vital human needs.” The General Assembly clarified that, in order to meet these vital needs, it is necessary to provide “sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.”²⁷⁶ However, according to Hey and other legal scholars, Art. 10 (2) has to be read together with Art. 10 (1). As a result, Art. 10 is not applicable in situations where there is an agreement to the contrary.²⁷⁷ It is argued that a conflict of how to use water resources is only possible where “no system of priorities governing those uses (...) had been established by agreement or custom as between the watercourse States concerned”.²⁷⁸ Hence states may choose by agreement how to use water resources, whereas the requirements set out in the Convention only apply in the

²⁷⁴ Niehuss, *The Legal Implications of the Israeli-Palestinian Water Crisis*, Sustainable Development Law & Policy, 5:1, 2005, p. 15.

²⁷⁵ Convention on the Law of the Non-navigational Uses of International Watercourses 1997, Art. 7.

²⁷⁶ UNGA, A/51/869, *Convention on the Law of the Non-navigational Uses of International Watercourses*, Report of the Sixth Committee convening as the Working Group of the Whole, 1997, par. 8.

²⁷⁷ Hey, *Sustainable Use of Shared Water Resources: The Need for a Paradigm Shift in International Watercourses Law*, in Blake, Gerald H. et al. (Eds.), *The Peaceful Management of Transboundary Resources*, p. 132.

²⁷⁸ UN, International Law Commission (ILC), Draft articles on the law of the non-navigational uses of international watercourses and commentaries thereto and resolution on transboundary confined groundwater, 1994, p. 110, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/8_3_1994.pdf.

absence of such an agreement.²⁷⁹ As a Consequence, the Convention indeed emphasizes the protection of vital human needs, but it refrains from prescribing this priority.

In addition to the 1997 Convention and the Helsinki Rules, the International Law Association issued the Berlin Rules in 2004 which revise the provisions of the Helsinki Rules.²⁸⁰ In contrast to the 1997 Convention and the Helsinki Rules, Art. 14 (1) of the Berlin Rules requires states to first allocate waters to satisfy vital human needs when determining an equitable and reasonable use. Thus, the Berlin Rules implicate a priority for vital human needs instead of making it dependent on the existence of an agreement between the riparian states. Moreover, according to Art. 3 (20), vital human needs are considered being “waters used for immediate human survival, including drinking, cooking, and sanitary needs, as well as water needed for the immediate sustenance of a household”. The Berlin Rules, therefore, provide a broader interpretation of “human needs”. Furthermore, Art. 17 (1) explicitly refers to the elements of the human right to water by stating that “every individual has a right of access to sufficient, safe, acceptable, physically accessible, and affordable water to meet that individual’s vital human needs”. In this context, Art. 18 regulates that “in the management of waters, states shall assure that persons subject to the State’s jurisdiction and likely to be affected by water management decisions are able to participate, directly or indirectly, in processes by which those decisions are made and have a reasonable opportunity to express their views on programs, plans, projects, or activities relating to waters.”

In terms of the management of groundwater resources, the International Law Commission adopted the draft Articles on the Law of Transboundary Aquifers in 2008.²⁸¹ These Articles are based on the same principles enshrined in the 1997 Convention and transfer them to cases where groundwater is concerned.²⁸² Art. 5 (2) is of particular interest for the human rights context as it stipulates that “in weighing different kinds of

²⁷⁹ Hey, *Sustainable Use of Shared Water Resources: The Need for a Paradigm Shift in International Watercourses Law*, in Blake, Gerald H. et al. (Eds.), *The Peaceful Management of Transboundary Resources*, p. 132.

²⁸⁰ ILA (International Law Association), *Berlin Rules on Water Resources Law*, 2004, available at https://www.unece.org/fileadmin/DAM/env/water/meetings/legal_board/2010/annexes_groundwater_paper/Annex_IV_Berlin_Rules_on_Water_Resources_ILA.pdf.

²⁸¹ ILC, *Draft articles on the Law of Transboundary Aquifers*, 2008; available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_5_2008.pdf.

²⁸² Gavouneli, *A Human Right to Groundwater?*, *International Community Law Review*, Vol. 13, 2011, p. 313.

utilization of a transboundary aquifer or aquifer system, special regard shall be given to vital human needs.”

Finally, the international water law regimes in place provide extensive protection of water-related rights in transboundary settings. By setting priority to vital human needs, the human right to water is particularly reflected in the Berlin Rules and the draft Articles on the Law of Transboundary Aquifers. Although Israel is not legally bound by these instruments, they are guidelines for the interpretation of the human right to water. In a next step, it is therefore necessary to address the legal frameworks of the human right to water and the extent to which Israel is obliged to realise this right.

10.2.1.3 Humanitarian Law and Human Rights Law

As regards the applicable legal frameworks in times of war, International humanitarian law, and in particular the Fourth Geneva Convention, provides protection for civilians living in occupied territories. Israel is a party to the 1949 Geneva Conventions; however, it has not ratified Protocol I of the Conventions. Referring to the responsibilities of Israel in the water conflict with Palestine, the Israeli government repeatedly denied its obligations under the Fourth Geneva Convention arguing that the Convention not only protects civilians but also the status and rights of the sovereign ousted by the occupant. This denial is based on the claim that the Palestinian territories do not constitute a sovereign state which is, in the view of Israel, a prerequisite for customary law and humanitarian law to be applicable.²⁸³ Concretely, Israel argues that international law “regulates the relation between states and individuals” which renders human rights provisions inapplicable to the occupied territories as its relation to Israel “differs from that of democratic systems”.²⁸⁴ Israel further claims that, by applying the Convention, it would implicitly recognize the sovereignty of other states over the occupied territories. Instead, Israel emphasizes its voluntary respect for “the humanitarian provisions” of the Fourth Geneva Convention without explaining or defining this term.²⁸⁵ Nevertheless, in view of the fact that the sovereign State of Palestine is recognized by almost all states,

²⁸³ Abouali, *Natural Resources Under Occupation: The Status of Palestinian Water Under International Law*, in *Pace International Law Review*, 10:2, 1998, p. 498.

²⁸⁴ *Ibid.*

²⁸⁵ Bell, *Peace Agreements and Human Rights*, 2003, p. 77.

the Israeli argument appears weak. Moreover, even the UN advocated the vision of a Palestinian State which implies the sovereignty of Palestine.²⁸⁶

Given that Israel exercises effective control over the West Bank territory, it must therefore be qualified as an “occupying power” under Art. 42 of the Hague Regulations. Based on this, Pertile and Faccio argue in their assessment of the Crimean occupation that the occupying power has an obligation under Art. 55 of the Fourth Geneva Convention and Art. 43 of the Hague Regulations to ensure that the population suffering from the occupation has adequate access to water resources.²⁸⁷ Precisely, Art. 43 stipulates that the occupying power has to take “all the measures in his power to restore and ensure, as far as possible, public order and life while respecting, unless absolutely prevented, the laws in force in the country.” This obligation entails, according to the authors, the duty to assure safe access of the population to “essential goods such as foodstuffs and water”.²⁸⁸ Concretely, it is argued that the realisation of “public order and life” inevitably requires the availability and accessibility of water.²⁸⁹ Art. 55 GV IV specifies this obligation by setting out that “to the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.” By interpreting the understandings of “food” and “other articles” broadly, one can assume that water is also included in the obligation.²⁹⁰

Even when negating the obligation to ensure water access, the IHL norms may still leave space for interpretation in the light of relevant human rights law provisions. However, such interpretation requires the applicability of international human rights law and, in particular, of the International Covenant on Economic Social and Cultural Rights (ICESCR). While the international community has increasingly recognized that IHRL provisions are complementary to the *lex specialis* norms of IHL, Israel denies the applicability of human rights standards to situations of occupation on the same grounds that it denies its obligations under the Fourth Geneva Convention and the Hague

²⁸⁶ UN Security Council Resolution No. 1397, 2002, S/RES/1397.

²⁸⁷ Pertile/Faccio, *Access to water in Donbass and Crimea: Attacks against water infrastructures and the blockade of the North Crimea Canal*, RECIEL, 29:1, 2020, p. 61.

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

Regulations.²⁹¹ Nonetheless, the Israeli Supreme Court found instead that Israel is an occupying power and thus is obliged to act in compliance with human rights law set forth in the Geneva Conventions and the Hague Regulations.²⁹² Moreover the Human Rights Council called upon Israel to provide “international protection for the Palestinian people in the Occupied Palestinian Territory, in compliance with international human rights and humanitarian law, applicable in the Occupied Palestinian Territory, including East Jerusalem.”²⁹³

In order to set out effective state obligations in terms of the realisation of the right to water, the ICESCR is of great importance as it contains neither derogation clauses nor references to jurisdiction. In its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the ICJ affirmed the application of the ICESCR “both to territories over which a State party has sovereignty and to those over which a State exercise territorial jurisdiction”.²⁹⁴ Indeed, the Court held that, in the occupied Palestinian territory, “Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights” and that Israel was “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.”²⁹⁵ On the basis of this finding, the Committee on Economic, Social and Cultural Rights reaffirmed that the “State party’s obligations under the Covenant apply to all territories and populations under its effective control”.²⁹⁶ Furthermore, the CESCR emphasized “that even in a situation of armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights, as part of the minimum standards of human rights,

²⁹¹ Bell, *Peace Agreements and Human Rights*, 2003, p. 80; UNGA, Res. 2675, Chapter XXV, *Basic Principles for the Protection of Civilian Population in Armed Conflicts*, December 9, 1970: The first “basic principle” for the protection of civilian population states: “Fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict.”

²⁹² Abouali, *Natural Resources Under Occupation: The Status of Palestinian Water Under International Law*, in *Pace International Law Review*, 10:2, 1998, p. 498.

²⁹³ UN Human Rights Council, A/HRC/RES/16/29, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, 13 April 2011, par. 9.; available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/128/11/PDF/G1112811.pdf?OpenElement>.

²⁹⁴ ICJ, Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004, par. 112; available at <https://www.un.org/unispal/document/auto-insert-178825/>.

²⁹⁵ *Ibid.*

²⁹⁶ Committee on Economic, Social and Cultural Rights (CESCR), E/C.12/1/Add.90, *Concluding Observations, Israel*, 26 June 2003, par. 31; available at <https://www.refworld.org/docid/3f242abc7.html>.

are guaranteed under customary international law and are also prescribed by international humanitarian law” and that “the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2 (1) for the actions of its authorities.”²⁹⁷

As Israel has ratified the ICESCR, human rights law therefore serves as a tool to interpret the IHL norms and establishes an independent obligation to realise the right to water in situations of occupation under IHRL.

10.2.2 Concluding Remarks

Despite the establishment of a Joint Water Committee and a Palestinian Water Authority, the Oslo II agreement does not contain any norms regulating Palestinian water-related rights. However, by exercising effective control over the occupied Palestinian territories, Israel must abide by its obligations under international law, i.e. to respect, protect and fulfil the human right to water deriving from the ICESCR. The interpretative work of the CESCR and particularly its General Comment No. 15 plays an important role in defining the obligations of Israel in the occupied Palestinian territories. Based on these interpretations of IHL and IHRL, Israel is obligated to implement the right to water in the occupied territories which includes the provision of equitable and reasonable access to water as well as the realisation of the procedural rights to participation in decision-making processes and the rights to access to information and legal redress.

10.3 Challenges

Having identified the obligations of riparian states to realise the human right to water, the question arises how to implement such right in transboundary cooperation. Most importantly, the effectiveness of a human rights-based approach in fostering equitable water distribution at a transboundary level and in eliminating underlying political root causes of water conflicts must be assessed. This section will therefore identify potential weaknesses and pitfalls of a human rights-based approach in transboundary settings. This will be done by means of an analysis of the Israel-Palestine case.

²⁹⁷ *Ibid.*

10.3.1 Discrepancy between Political, Legal and Cultural Systems

Applying human rights to transboundary water management seems to have a multitude of positive effects. Firstly, the recognition of the right to water obligates states to take measures to provide equitable and reasonable access to water resources for domestic purposes. This, in turn, entails procedural rights to active participation in environmental decision-making processes as well as to the access to information and legal redress. Through strengthening the rule of law in war-torn societies, people can theoretically pave the way for water reallocation and, thus, contribute to sustainable cooperation practices. Nevertheless, while such bottom-up approach appears effective in cooperation scenarios that arise from intrastate conflicts, they face some severe challenges when applied to transboundary water conflicts.

Given that the implementation of the human right to water needs to be carried out through laws and policy initiatives at the domestic level, the social, political and legal differences between the two state systems constitute obstacles for the realisation of the water right. In fact, human rights are absolute rights that are non-negotiable. Nonetheless, the application and interpretation of such rights is not absolute but rather depends on the political, cultural and historical circumstances in each state.²⁹⁸ This appears problematic in cooperation scenarios that are characterized by unequal power relations since the guidelines set out by international law fail to take into consideration the specific context in which the actions will unfold. The Israel-Palestine conflict is a case in point as the conflict parties have completely different understandings of how to frame water rights. This has several implications for the implementation of the HRBA in domestic and transboundary water governance systems.

10.3.2 Lack of Consolidated Interpretation

As illustrated in the context of the implementation of the right to water in Palestine, the Palestinian water policy reflects a strict rights-based approach, whereas the Israeli Basic Laws do not make any explicit references to the right to water. Although Israel has ratified human rights treaties that are relevant for the protection of the right to water, their provisions are technically not part of domestic law until they are implemented. This has

²⁹⁸ UN OHCHR, *Human Rights*, Handbook for Parliamentarians No. 26, 2016, p. 47; available at <https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf>.

not been the case yet. Rather, the jurisdiction of the military courts set up by the Israeli Civil Administration was limited to the adjudication of infringements of the military laws. Such laws prescribed that “[t]hose who exercise judicial functions are, in judicial proceedings, subordinate to nothing but the law [the local laws] and the security enactments.”²⁹⁹ Consequently, Israel follows a strict needs-based approach that does not consider the rights of the Palestinian people in the occupied territories. As local Israeli Courts continue to operate, they have therefore been reluctant to take into account such rights under international law.³⁰⁰ The unbridgeable conflict of interests between the riparian states becomes even clearer when looking at the Israeli Supreme Court’s practice. Given that the Court consistently reaffirmed the decisions of the military administration, it prioritized Israeli security matters over the needs of the population in the occupied territories. In fact, the Court held that the Jewish settlements are indispensable for promoting public order in the occupied territories.³⁰¹ This indicates the strong bias of the seemingly neutral legal institutions as well as their role in legitimizing political actions of the Israeli government.

However, even if Israel and Palestine would both follow a rights-based approach, the scope of such rights remains problematic. Particularly, the right to equitable water allocation must be defined in order to identify the respective state obligations. Although the two states are obliged to abide by the international law standards, these standards provide insufficient guidance in terms of water allocation. The scope of water rights is therefore at the discretion of the conflict parties. In asymmetric conflicts, especially in situations of occupations, the efforts to agree on defined norms and enforcement mechanisms are clearly reduced.³⁰² Thus, when the two states insist on their respective rights, there is not much room for bargaining which leads to the risk that there is no cooperation at all. As a consequence of the lack of a common understanding of the right to water, conflict parties would be reluctant when it comes to joint water management.

²⁹⁹ Benvenisti, *The Israeli Occupation of the West Bank and Gaza*, in Benvenisti, *The International Law of Occupation*, 2012, Chapter 8.2.4, p. 215; Military Order Concerning Interpretation Paragraph 7A, February 3, 1988.

³⁰⁰ Benvenisti, *The Israeli Occupation of the West Bank and Gaza*, in Benvenisti, *The International Law of Occupation*, 2012, Chapter 8.2.4, p. 216.

³⁰¹ High Court of Justice, H CJ 72/86, *Zalun v Military Commander of Judea and Samaria*, 41(1) PD, 1987, p. 528.

³⁰² Benvenisti, *The Israeli Occupation of the West Bank and Gaza*, in Benvenisti, *The International Law of Occupation*, 2012, Chapter 8.2.4, p. 216.

As explained previously, water allocation would become a highly securitized issue that is subject to formal dialogue at a high political level. At this level, the likelihood of sustainable cooperation is drastically reduced, given that states would always pursue own political interests. Applying a human rights-based approach would therefore “over-politicize” the issue of equitable water allocation and constrain the efforts for increasing water supply.³⁰³ In order to avoid such consequences, states would prioritize needs-based criteria for water allocation as they are much easier to quantify.

10.3.3 Political Resistance

Moreover, as a result of the power imbalance in transboundary water conflicts, the riparian state that benefits from the status quo is likely to resist initiatives for change because it involves a transfer of power.³⁰⁴ Parlevliet argues in this respect that even if there is a strong commitment to the standards of human rights law, “social and political systems and pre-existing practices impede a rights-based water management system”.³⁰⁵ Taking the example of the lower Jordan basin, the political system in Israel, which is characterized by hierarchical leadership and passive acceptance of the status quo, eventually limits the space for rights-based action of grass-roots organizations and civil participation. As noted previously, several claims by the Palestinians to respect the right to equitable access to water resources have been rejected on the basis that Israel is not bound by international law. This indicates that Israel perceives assertions of rights as a threat and that demands for human rights can at times lead to a recurrence of conflict. Although the intensification of conflict may be necessary in a context of injustice to trigger positive societal developments in the long run,³⁰⁶ it shows that the human rights-based approach is not inevitably conducive to the reconciliation of political power inequalities.

In addition, instead of pushing structural transformation, the increasing trend of privatization of water management services leads to a decentralisation of decision-

³⁰³ Hulme, *Using a Framework of Human Rights and transitional justice for post-conflict environmental protection*, in Stahn/Iverson/Easterday, *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices*, 2017, p. 141 f.

³⁰⁴ International Council on Human Rights Policy (ICHRP), *Negotiating Justice? Human Rights and Peace Agreements*, 2006, p. 101.

³⁰⁵ Parlevliet, *Rethinking Conflict Transformation from a Human Rights Perspective*, 2009, p. 16.

³⁰⁶ Pia/Diez, *Conflict and Human Rights, A theoretical Framework*, 2007, p. 20.

making processes. This is particularly the case in Israel. This privatization is, according to Weinthal and Marei, the reason why “the successful integration of multiple new inputs continues to lack support from environmental governance and management systems”.³⁰⁷ Moreover, the delegation of water service delivery to non-state actors constrains the access to information and thereby leads to a lack of transparency. It is therefore still necessary that the civil society participates in decision-making and that such participants remain accountable. Consequently, the integration of new knowledge into formal policy at higher levels remains weak.³⁰⁸

At the transboundary level, there is a strong tendency that water management institutions are hierarchically structured and “firmly rooted in an administrative rationality” which exacerbates the active participation of all stakeholders.³⁰⁹ This phenomenon results from the prioritisation of rational, technical cooperation practices. As in the Israeli-Palestine case, joint water management systems cover only the management of existing water sources and the development of new resource supplies without providing remedy mechanisms.³¹⁰ The strong focus on water supply rather than water demand further impedes the HRBA to water allocation. Based on this, Weinthal and Marei raise concerns regarding the realisation of meaningful participation through a “redistribution of decision-making power”.³¹¹ They argue that new water governance and management institutions emerged “on the basis of their expert specialised knowledge” which constrains the participation of non-experts.³¹² Furthermore, the provision of procedural rights is problematic as regards their legal enforceability. The practice of legal institutions, which are often of an ad hoc nature, is prone to political, economic and military influences. These constraints may prevent the creation of impartial and effective response mechanisms aiming at providing legal redress. For example, in its reaction to the ICJ’s *Wall Advisory Opinion*, the Israeli Supreme Court criticized the “deficient evidentiary basis and fact-finding capabilities” of the ICJ and thereby undermined its authority. Based on this, inter-court disagreements can be seen as “the continuation of

³⁰⁷ *Ibid.*

³⁰⁸ Dawson, *Unravelling Sustainability: The complex dynamics of emergent environmental governance and management systems at multiple scales*, Doctoral Thesis, Stockholm University, 2019, p. 81.

³⁰⁹ *Ibid.*

³¹⁰ Weinthal/Marei, *One resource two visions, The Prospects for Israeli-Palestinian Water Cooperation*, Water International, 27:4, p. 461.

³¹¹ *Ibid.*

³¹² *Ibid.*

politics by other means.”³¹³ As a result of the reluctance of domestic legal mechanisms to implement the right to water, vulnerable individuals and groups remain excluded from decision-making processes. In states where participation in decision-making is based on such inequality, the rule of law is apparently weak. While effective access to justice and redress mechanisms is denied to many stakeholders, power elites claim as many resources as possible.³¹⁴

Furthermore, the implementation of the human right to water is dependent on the fulfilment of the requirements set out in Art. 2 (1) ICESCR. This Article states that “each State Party...undertakes to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”³¹⁵ Although water service delivery is possible when setting it as a planning priority, most States claim to have limited financial resources. The concept of progressive realisation and the possibility to invoke limited available resources therefore weaken the states’ obligations to implement the human right to water.³¹⁶

11 Conclusions

A human rights-based approach to water cooperation can be seen as useful to address issues of equity related to water resources management and allocation issues. It can be used as a means to deal with issues of distribution of water rights and non-discrimination in a more detailed manner since it provides important procedural rights for individuals that facilitate participation in decisions in the water sector.

Moreover, using an HRBA allows people to access certain legal mechanisms that support them in claiming their water-related rights. However, the HRBA does not provide a one-size-fits-all solution to water issues, such as inequitable allocation. Rather, the effectiveness of the approach is dependent on the national legal frameworks as well as

³¹³ Benvenisti, *Enforcement Mechanisms for compliance with the law of occupation*, in Benvenisti, *The International Law of Occupation*, 2012, Chapter 12.3., p. 347.

³¹⁴ SIWI, *Human Rights-Based Approaches and Managing Water Resources, Exploring the potentials for enhancing development outcomes*, Water Governance Facility Report No. 1, p. 9.

³¹⁵ International Covenant on Economic, Social and Cultural Rights, Art. 2 (1) ; available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

³¹⁶ Salman, *The human right to water and sanitation : challenges and opportunities*, in Tignino, M., & Bréthaut, C. (Eds.), *Research Handbook on Freshwater Law and International Relations*, 2018, Chapter 12, p. 299.

capacities and contextual factors. Most importantly, states must have a general political will to realise human rights and, in particular, the right to water. In this context, social and political dynamics of states often create hurdles for the development of sustainable water cooperation. The assertion of procedural rights might enable equitable resource distribution in certain states but be insufficient in other countries. Broad participation and access to justice requires strong legal mechanisms that support bottom-up initiatives in taking part in higher-level development. Such mechanisms must not only be in place at the national level but also in transboundary settings. It is therefore imperative to create a basis for both national and interstate water governance structures and to effectively align them.

The analysis of the Israel-Palestine conflict has shown that the discrepancy between the two domestic legal systems and the diverging interpretations of international law impedes the establishment of a set of rules and principles for the equitable and sustainable management of transboundary waters. This eventually leads to a separation of national and interstate decision-making processes which renders the participation of non-state actors unfeasible.

Moreover, by denying the applicability of international human rights law and humanitarian law, Israel undermines its state obligations to set up institutional and legal frameworks. Hence the effectiveness of cooperation efforts relating to the integration of the human right to water strongly depends on political factors. The Israel-Palestine case shows that these political factors are striking in cases where transboundary water management is affected by asymmetric power relations. In such scenarios, the more powerful state would always attempt to take advantage of cooperation and to minimize its duties by exercising influence on the design of cooperation agreements. In the Israeli-Palestine conflict, it is therefore more than unlikely that Israel as the powerful occupying state would, all of a sudden, evolve towards an impartial, trustworthy cooperation partner as envisioned by the law.

Given the heavy dependence of the implementation of the human right to water on the political will of each riparian state, one can draw the conclusion that using a rights-based approach to water management does not inevitably help to address structural inequalities in water basins. Despite the increasing protection of water rights under international law, the realisation of such rights still lies in the hands of the states.

Furthermore, even if the participation in decision-making processes is guaranteed, the competing interests and aspirations of the stakeholders would create obstacles in terms of reaching a consensus on water reallocation. In this respect, it is important to note that water governance is a combination of a multitude of factors which are all shaped by the values and aspirations of individuals and organisations.³¹⁷ These values and mindsets may change over time and therefore constantly create room for dissent. Finally, the elimination of underlying causes of a conflict is time-consuming. It is a long-term process to change behaviour and cultural norms.³¹⁸ This is even more complicated when institutions lack capacities and when there is low awareness of human rights, for example because stakeholders are politically influenced.³¹⁹ In transboundary situations, this entails the risk of cooperation negotiations to be “over-politicized” which exacerbates the stalemate in joint water management.

Therefore, even though the human rights-based approach may provide possibilities for individuals to assert their rights in post conflict situations, it still faces major hurdles when it comes to its implementation at the domestic level. This becomes even more problematic in interstate armed conflicts and especially in cases of occupations. As the HRBA is not fully capable of reconciling political power asymmetries between riparian states, the rights-based approach can neither be seen as a substitute for technical cooperation nor does it eliminate the shortcomings of the technical cooperation.

The ineffectiveness of the HRBA is, from a more philosophical perspective, also due to the neoliberal nature of peacebuilding. As elaborated earlier in this paper, the technical or rational approach is essential to the neoliberal notion of peacebuilding. By calling upon UN bodies to mainstream human rights in their peacebuilding activities, the UN Statement of Common Understanding of Human Rights-Based Approaches to Development Cooperation and Programming implicates the applicability of both an HRBA and a rational approach to peacebuilding. Accordingly, technical peacebuilding practices must be guided by Human Rights Law. However, the neoliberal idea of peacebuilding might constrain the implementation of Human Rights, given its clear

³¹⁷ Jiménez/Saikia/Giné/Avello et al., *Unpacking Water Governance: A Framework for Practitioners*, Stockholm International Water Institute, p. 16.

³¹⁸ Winkler, *A Human Rights-based Approach to Water Supply and Sanitation: Translating Theory into Practice*, UNDP Policy Guidance Workshop, p. 13.

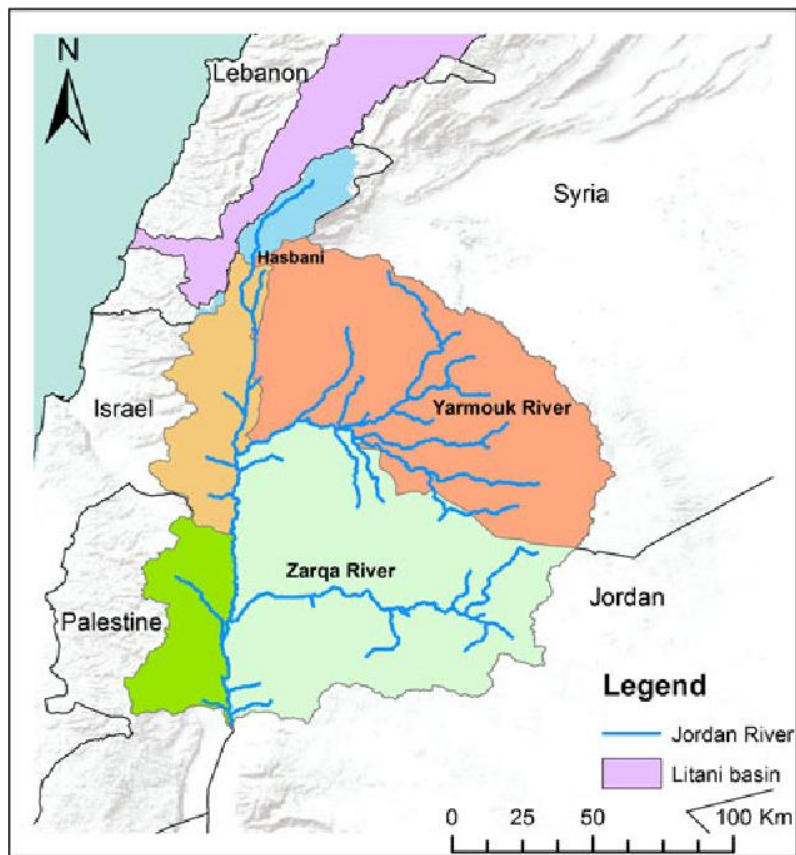
³¹⁹ *Ibid.*

prioritization of experts over local communities in decision-making. As previously explained, a broad participation of the society in the peacebuilding process may hinder the liberal peacebuilding strategy of the international community as it does not promote a scientific but a political approach. Applying a human rights-based approach, which has the public participation as a core element, would therefore impede the liberal notion of peacebuilding as well.

It remains therefore questionable if the human rights-based approach can be successful in practice. In theory, it does, however, put pressure on states by imposing obligations and by framing important guidelines for sustainable cooperation. Particularly, the recognition of the right to water and its protection under IHL and IHRL are milestones in the protection of vulnerable groups. The realisation of the right to water must therefore be seen as an indispensable condition for peacebuilding in water conflicts.

Appendix

Annex I: Figure 1: The Jordan River Basin.³²⁰



³²⁰ Comair/McKinney/Siegel, *Hydrology of the Jordan River Basin: Watershed Delineation, Precipitation and Evapotranspiration*, Water Resources Management, Vol 26, 2012.

Annex II: Table 1: Palestinian West Bank water supplies, 1995 and 2010 compared.³²¹

Source	1995	2010	Change	% Change
Wells drilled since 1995 (Mm3/y)	-	13,3	13,3	-
Wells drilled pre-1995 (Mm3/y)	69	58,3	-10,7	-15,5%
Springs (Mm3/y)	49	26,8	-22,2	-45,3%
Total internal production (Mm3/y)	118	98,3	-19,7	-16,7%
Imported from Israel (Mm3/y)	27,9	55,4	27,5	98,6%
Total supply (Mm3/y)	145,9	153,7	7,8	5,3%
Population (million)*	1,386	2,131	0,745	53,8%
Gross per capita supply (m3/y)	105,3	72,1	-33,2	-31,5

Annex III: Table 2: JWC approval rate in % for the period 1995-2008.³²²

Project type	Palestinian	Israeli
Wells	30-66*	100
Water supply network	50-80 (estimate)	100
Wastewater	58**	96

* Includes approvals of projects that were submitted before 2008 up to end of 2009.

** Includes approvals up to end of 2011.

³²¹ Palestinian Water Authority (PWA), Annual Status Report on water resources, Water Supply, and Wastewater in the Occupied State of Palestine, 2011, Table 5, p. 26; available at <http://pwa.ps/userfiles/file/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1/Annual%20Water%20Status%20report%202011.pdf>.

³²² Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, Water Alternatives, 6:1, p. 12.

Annex IV: Table 2: Approvals of Palestinian water projects in different regions (1995-2008).³²³

	Production wells			Substitute wells			Rehabilitation*			Monitoring wells		
	Appl.	Approvals		Appl.	Approvals		App.	Approvals		Appl.	Approvals	
	No.	No.	%	No.	No.	%	No.	No.	%	No.	No.	%
Western Basin	7	0	0	9	2	22,2				0	-	-
North-East Basin	15	8	53,3	6	4	66,7				5	5	100
Eastern Basin	28	24	85,7	1	0	0				15	14	93,3
Total	50	32	64,0	16	6	37,5	102	0	0	20	19	95

* The data for rehabilitation applications and approvals are drawn from uncorroborated PWA documentation, and thus need treating with some caution

³²³ *Ibid*, p. 14.

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